

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE A.D. 2023**

**CLAIM No. 177 of 2023 [2]**

**BETWEEN:**

**SHAMAR FOSTER**

Claimant

and

**[1] COMMISSIONER OF POLICE**

First Respondent

**[2] THE ATTORNEY GENERAL OF BELIZE**

Second Respondent

**Appearances:**

Ms. Leslie Mendez for the Claimant

Ms. Alea Gomez and Mr. Stanley Grinage for the Respondents

-----  
2024: April 24;  
July 10;  
November 4.  
-----

**JUDGMENT**

*Trial – Constitutional Claim – Breach of Sections 3, 6, 9, and 12 – Unlawful & Unreasonable Search – No Reasons Given for Search – Right to Protection of the Law – Video Recording of Police Search Stopped – Whether Breach of Rights to Freedom of Expression & to Protection of the Law – Whether Video Recording is an Obstruction – Right of the Public to Video Record Police Search – Whether Police Disciplinary Proceedings Under the Professional Standards Branch are an Effective Remedy or Lack Transparency, Impartiality and Independence – Whether Mechanism for Citizens Complaints about Police Misconduct Must Align With Constitution and International Human Rights Standards – Vindictory Damages.*

[1] **ALEXANDER, J:** This is a constitutional action brought by Shamar Foster (“the claimant”) against the Commissioner of Police and the Attorney General of Belize for breaches of sections 3, 6, 9 and 12 of the Belize Constitution.

- [2] I find that the claimant's constitutional rights under sections 3, 6, 9 and 12 of the Constitution of Belize were breached, and that he is entitled to compensation. I award the claimant damages including vindictory damages.

## **Background**

- [3] These proceedings arise out of an incident that occurred on 1<sup>st</sup> April 2022 between the claimant and Police Constable Albert Martinez ("Constable Martinez") at the Belize Municipal Airport. The claimant was working as a tour guide with a group of some eighteen (18) tourists, awaiting a 5:30 p.m. flight to San Pedro.
- [4] According to the claimant, at around 5:20 p.m., he spotted Constable Martinez and Corporal Linda Chun exit a police vehicle at the airport and looked around. Constable Martinez approached the claimant and ordered him to stand up to be searched. It is the claimant's evidence that he asked the officers for the reason for the search and Constable Martinez responded by ridiculing and taunting him without giving any reason for the search. The officers then asked him to follow them and, fearing violence, he took out his cellular phone and began recording.
- [5] When Constable Martinez realized that the claimant was recording, he became enraged, put his hand on his gun and started cursing and threatening the claimant by saying, "you want this to get fucking nasty". Constable Martinez then ordered the claimant to stop "profiling". The claimant continued to record the incident and events that were unfolding, and Constable Martinez struck the claimant's arm, causing the cellular phone to fall to the ground. Nothing illegal was found on the claimant and he was not arrested or charged with any offence. Eric Andrews, who was a fellow tour guide working with the claimant that evening, provided evidence corroborating the claimant's version.
- [6] The respondents disputed the claimant's account with the evidence of both Constable Martinez and Corporal Chun who both said essentially the same thing in their affidavits. Their versions of the incident were that they were responding to information

received of a suspicious male person dressed in a white t-shirt and red pants in the area. The claimant was wearing those colours and was approached by the officers. Constable Martinez informed the claimant that he intended to conduct a search of the claimant's person for illegal drugs. According to Constable Martinez, the claimant replied that he could not be searched, became boisterous and resisted the search by pushing away Constable Martinez and walking backwards. This further aroused Constable Martinez's suspicions that the claimant had something incriminating on his person.

- [7] During cross-examination, Constable Martinez, who had initially denied using expletives in his affidavit, conceded that he became furious and used profane language but not to the claimant. He admitted that ays he used curse words at himself. Constable Martinez says also that when the claimant started recording the incident, he asked the claimant to put away the phone, as he was not finished with the search. The claimant refused to comply with Constable Martinez's requests, so the officer used reasonable force to take the cell phone from the claimant's hands.
- [8] I accepted into evidence two videos of the incident recorded on the said date, pursuant to a summary ruling made by this court on 10<sup>th</sup> April 2024.
- [9] The claimant reported the incident to the Professional Standards Branch ("PSB") of the Belize Police Department ("BPD") in or around June 2022 and provided a statement. He was **not** informed about the progress of the matter against either of the officers save and except that he was summoned to give evidence in the proceedings against Corporal Chun. However, that hearing against Corporal Chun was cancelled. Despite multiple enquiries by the claimant's attorney at law, Ms. Leslie Mendez, no response was received from the PSB. Again, the respondents' disputed the claimant's assertions and contended that the PSB had invited the claimant to participate in the disciplinary proceedings, but it was the claimant who did not make himself available. The PSB brought a battery of police witnesses to corroborate their evidence on the disciplinary proceedings. During cross-examination, however, these witnesses failed at proving the respondents' claim that the claimant chose not to attend the hearing.

[10] Aggrieved, the claimant brought this constitutional claim seeking the following reliefs:

a. A Declaration that the search of the Claimant's person carried out by officers of the Belize Police Department, on the 1st of April 2022, at the municipal airport in Belize City, Belize, in the absence of any reasonable suspicion of criminal activity, contravened Section 9 of the Belize Constitution and is unlawful being disproportionate and in excess of any statutory authority to search the Claimant's person;

b. A Declaration that preventing the Claimant from recording the police officer's search constitutes a breach of the Claimant's fundamental right to protection of the law and freedom of expression guaranteed under sections 6 and 9 of the Belize Constitution;

c. A Declaration that the manner in which the officers conducted the search, on the 1<sup>st</sup> of April 2022, violated the Claimant's right to dignity and respect guaranteed under section 3 of the Belize Constitution;

d. A Declaration that the failure to inform the Claimant about the disciplinary proceedings conducted by the Professional Standard (sic) Branch deprived the Claimant of an effective remedy for the breach of his constitutionally protected right against arbitrary search and seizure and right to dignity and freedom of expression constitutes a breach of the Claimant's right to protection of the law and freedom of expression as guaranteed under sections 9 and 14 of the Belize Constitution;

e. A Declaration that the disciplinary proceedings conducted by the Professional Standard (sic) Branch under the Belize Police Department fails to meet the requirements to provide an effective remedy to the Claimant in that the process lacks transparency, independence and impartiality in contravention to section 6 of the Belize Constitution;

f. Damages for constitutional relief, including vindicatory damages;

g. An order that the Defendants take the necessary measures to bring the Professional Standards Branch insofar as investigations into police misconduct violative of citizens' rights are concerned into conformity with the Constitution and international human rights standards, or, in the alternative, establish a mechanism for the investigation and determination of citizens' complaints of police misconduct, outside of the Belize Police Department, that conforms with the Constitution and international human rights standards for transparency, impartiality and independence

## **Issues**

[11] The claimant's entitlement to these remedies depends upon the resolution of the following issues:

(i) Whether the search of the claimant by the police breached his rights under sections 3 and 9 of the Constitution ("the Search");

- (ii) Whether the right to record the police is a dimension of the right to freedom of expression and if yes, whether that right was breached when the police attempted to prevent the claimant from recording them (“the Act of Recording”); and
- (iii) Whether the PSB fails to meet the requirements of fairness guaranteed to the claimant by the Constitution (“the Professional Standards Branch”).

[12] These questions will be addressed under the applicable subtitle or description ascribed after each.

## **Analysis**

### **(i) The Search**

[13] Section 9 of the Belize Constitution provides:

1. Except with his own consent, a person shall not be subjected to the search of his person or his property or the entry by others on his premises.
2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-
  - a) that is required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources or the development or utilisation of any property for a purpose beneficial to the community;
  - b) that is required for the purpose of protecting the rights or freedoms of other persons;
  - c) that authorises an officer or agent of the Government, a local government authority or a body corporate established by law for public purposes to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government or to that authority or body corporate, as the case may be; or
  - d) that authorises, for the purpose of enforcing the judgment or order of the court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order.

[14] Every person in Belize is *prima facie* entitled to not be subjected to a search of his person, property or premises except by his own consent or by the authority of a law duly passed in accordance with section 9(2) of the Constitution. It is the respondents' case that the officers had power to carry out a search under section 25(2) of the **Misuse of Drugs Act Cap. 103 R.E. 2011** which sets out that:

25 (2) If a member of the Belize Police Department has **reasonable grounds to suspect** that any person is in possession of a controlled drug in contravention of this Act, or of any regulations made thereunder, the member of the Belize Police Department may, subject to subsection (3) of this section,  
(a) search that person, and detain him for the purpose of searching him; [My Emphasis].

[15] Once the claimant has established that a search occurred without his consent, it is for the police to justify the search. The State has the legal burden of proof to show that the search was reasonable and thus fell within the four corners of the legislation. See **Shepherd v The Queen**<sup>1</sup> and **Ramsingh v Attorney General of Trinidad & Tobago**.<sup>2</sup>

[16] The meaning of “reasonable grounds to suspect” has engaged courts throughout the Commonwealth. Indeed, the leading authority on the interpretation of that statutory requirement is the judgment of Lord Hope in **O’Hara v Chief Constable of the Royal Ulster Constabulary**,<sup>3</sup> which refers to section 12(1) Prevention of Terrorism (Temporary Provisions) Act 1984 authorizing a constable to arrest a person whom he has reasonable grounds for suspecting to be concerned in acts of terrorism. Lord Hope stated at page 298:

My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to **what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test**, because he must have **formed a genuine suspicion in his own mind** that the person has been concerned in acts of terrorism. In part also it is an objective one, because **there must also be reasonable grounds for the suspicion which he has formed**. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed. All that the objective test requires is that these grounds be

---

<sup>1</sup> [2009] 2 SCR 526, para 16.

<sup>2</sup> [2012] UKPC 16 [8].

<sup>3</sup> [1997] AC 286; [1997] 1 All E.R. 129.

examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as **he is entitled to form a suspicion based on what he has been told**. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. **The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances.** [My Emphasis].

[17] The jurisprudence has settled that the test for reasonable and probable cause has both a subjective and objective element. It is a simple and practical test, with the subjective part relating to a genuine suspicion formed in the mind of the arresting officer, and the objective part requiring that the grounds be judged at the time when the power was exercised. This test was recently reaffirmed by the Privy Council in **Betaudier v The Attorney General of Trinidad and Tobago**,<sup>4</sup> referring to **O'Hara**. Essentially, reasonable grounds for the suspicion depends on "the source of his information and its context" in light of the whole circumstances. This was described in **Nigel Lashley v The Attorney General of Trinidad and Tobago**<sup>5</sup> thus:

... The test for reasonable and probable cause has a subjective as well as an objective element. The arresting officer must have an honest belief or suspicion that the suspect had committed an offence, and this belief or suspicion must be based on the existence of objective circumstances, which can reasonably justify the belief or suspicion. A police officer need not have evidence amounting to a prima facie case. Hearsay information including information from other officers may be sufficient to create reasonable grounds for arrest as long as that information is within the knowledge of the arresting officer... **The lawfulness of the arrest is to be judged at the time of the arrest.** [My Emphasis].

---

<sup>4</sup> [2021] UKPC 7, para. 11.

<sup>5</sup> Civil Appeal No. 267 of 2011.

[18] The test was recognized and applied in this jurisdiction in **Nunez et al v Commissioner of Police et al**,<sup>6</sup> where James J at paragraph 17 drew upon the guidance contained in the United Kingdom Police and Criminal Evidence Act (“PACE”) to clarify what gives rise to ‘reasonable grounds to suspect’:

17. The English Police and Criminal Evidence Act and the subsidiary Code of Practice for the Exercise by: Police Officers of Statutory Powers of Stop and Search ("Code A"). Code A sheds some further light on the meaning of "reasonable grounds to suspect". At paragraph A2.2 the guidance offered for police officers is that:

"A2.2 Reasonable grounds for suspicion depend on the circumstances in each case. There must be an objective basis for that suspicion based on facts, information, and/or intelligence which are relevant to the likelihood of finding an article of a certain kind.....Reasonable suspicion can never be supported on the basis of personal factors alone without reliable supporting intelligence or information or some specific behaviour by the person concerned. For example, a person's race, age, appearance, or the fact that the person is known to have a previous conviction cannot be used alone or in combination with each other as the reason for searching that person. **Reasonable suspicion cannot be based on generalizations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.**

A.2.3 Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalization stemming from the behaviour of a person. For example, if an officer encounters someone on the street at night who is obviously trying to hide something, the officer may (depending on other surrounding circumstances) base such suspicion on the fact that this kind of behaviour is often linked to stolen or prohibited articles being carried.” [My Emphasis].

[19] Like James J, I find that although PACE does not apply in Belize, paragraph A.2.2 as quoted above represents the correct view of the law on this subject and should be adopted. The facts and information relied on by the police officer to form the reasonable suspicion must have a rational connection to possession of illegal drugs to unlock the power to search without a warrant under the Misuse of Drugs Act. Personal factors such as age, race, appearance or sex cannot by themselves give rise to a reasonable suspicion. There must be something more by way of information,

---

<sup>6</sup> Claim No.773 of 2020.



intelligence or the behaviour of the individual which gives rise to a reasonable suspicion.

[20] Therefore, to establish reasonable grounds to suspect that a person is in possession of illegal drugs and should be searched under section 25(2) of the Misuse of Drugs Act, the following principles may be distilled from the authorities:

- i. A search of a person is prima facie a breach of section 9 of the Constitution and is tortious.
- ii. The burden is on the police officer to demonstrate that he had reasonable grounds to suspect that the individual was in possession of illegal drugs. That is to say the police must justify the search.
- iii. The police officer must subjectively believe that the individual is in possession of illegal drugs.
- iv. That subjective belief must be tested objectively to determine whether a reasonable person, with the information possessed by the police officer at the time of the search, would think that there are reasonable grounds to suspect drug possession.
- v. The police officer is entitled to form a view based on information received, However, the information received must be rationally connected to the possession of drugs.
- vi. Personal characteristics of an individual alone do not amount to reasonable grounds to suspect that an individual is in possession of illegal drugs.

[21] While the parties agree on the law, they part ways on whether the test was satisfied in this case.

[22] Ms Mendez submitted that for the search to be valid, the respondents had the burden of **proving** that the officers had “reasonable grounds to suspect” that the claimant was in possession of a controlled drug. Counsel pointed out that nowhere in the evidence did the officers even assert that they, in their own minds, formed an honest belief that the claimant was in possession of illegal drugs. In fact, the information received was that there was a suspicious male dressed in the colours worn by the

claimant. Ms. Mendez argued that the respondents did not condense into details the nature of the activity, which the informant deemed suspicious, and which formed the basis for the search. The description of the male as “suspicious” by itself offered no grounds whatsoever to suspect the claimant as possibly being in possession of controlled drugs. Consequently, the respondents failed to discharge the burden of proving that the search was in accordance with the Misuse of Drugs Act.

[23] Ms. Mendez submitted further that the behaviour of the police officers particularly Constable Martinez, when coupled with an already illegal search, brings this case “squarely within the realm of a dignity violation”.

[24] On the other hand, Crown Counsel for the respondents maintained that no search was conducted at all but submitted, in the alternative, that if I find that a search was conducted, it was constitutional. Crown Counsel contended that Constable Martinez had “reasonable and probable cause” to search the claimant since Constable Martinez was in receipt of information of “a suspicious male person”, who was believed to have in his control illegal drugs and was dressed in “a white in colour t-shirt and red in colour pants”. On arrival at the airport, Constable Martinez saw someone who matched the description and formed an honest belief that that person should be searched for illegal drugs, which honest belief was cemented by the response of the person in attempting to obstruct the search after Constable Martinez disclosed the reasons for the search.

[25] I find that the claimant was clearly searched by Constable Martinez. I am resolute in this conclusion for several reasons. First, at paragraph 11 of his affidavit sworn on 5<sup>th</sup> January 2024, Constable Martinez admitted “[A]s I began searching the Claimant and his bag”. This is clear evidence by the police officer himself that a search was at least commenced.

[26] Secondly, it is not only the person of the individual that is constitutionally protected from being searched except by way of due process (that is to say for the purposes of this case a search sanctioned by statute) but the protection extends to his property. The video evidence admitted in this case shows clearly that the claimant’s bag was

being searched by Constable Martinez. The bag was the property of the claimant, and a search of the claimant's property is a search of the claimant.

[27] Finally, the fact that a search was conducted is corroborated by both the affidavit evidence of Linda Chun (who was the partner of Constable Martinez when the incident occurred) sworn on 5<sup>th</sup> January 2024 and Constable Martinez's own precinct report to the Commissioner of Police dated 5<sup>th</sup> April 2022. At paragraph 11 of her affidavit Corporal Chun stated that "[A]s Constable Martinez **began searching the Claimant and his bag**, the Claimant resisted the search by pushing Constable Martinez away." [My Emphasis]. This reflects the contents of the precinct report wherein Constable Martinez related that he "proceeded in searching" the claimant and that he asked the claimant to put away his cell phone because "I haven't finished conducting the search."

[28] While counsel for the respondents submitted that the information received by the officers was of a suspicious male believed to be in possession or control of illegal drugs, there is nothing in the evidence to suggest that the 'suspicion' had anything to do with illicit drugs. Both Constable Martinez and Corporal Chun, in their identical affidavits, revealed that they were on patrol in the vicinity of the Sir Barry Bowen Municipal Airport and received information of "a suspicious male person, dressed in a white in colour t-shirt, and red in colour pants, in the area." Nothing more is provided as to what qualified for the 'male person' to be deemed 'suspicious.' Labelling a person 'suspicious' does not actually make a person suspicious. Particulars to justify the use of that adjective are required.

[29] Instead, both police officers alleged that when they encountered the claimant, Constable Martinez informed him that he would be conducting a search upon him for illegal drugs. The claimant denies that he was ever given a reason for the search and indeed the claimant can be seen in the video evidence vigorously asking to be told why he was being searched. However, nothing turns on whether the claimant was informed of the reason for the search. What is more important, and alarming, is that no evidence is given as to why Constable Martinez equated alleged information about

a 'suspicious male' person in the area with a male person carrying illegal drugs (even if he did not disclose this to the claimant at the time of the search).

[30] All the information possessed by Constable Martinez related to the personal appearance of the claimant alone. No further evidence was provided, and I find that was so since on the balance of probabilities no other information or intelligence existed. Constable Martinez sought, belatedly, to suggest that the behaviour of the claimant in 'obstructing' or resisting the search when coupled with the description received of "a suspicious male" met the threshold of reasonable grounds to suspect. However, the search was already commenced when what Constable Martinez described as 'obstruction' occurred. The behaviour relied on must have been identifiable *before* the search commenced in order to clothe Constable Martinez with the lawful authority to search. Further, and in any event, the video evidence does not show the claimant resisting Constable Martinez. Enquiring about the reasons for a search is not resisting a search neither is video recording by itself to be construed as resistance. So, the behaviour which Constable Martinez says he relied on adds nothing to the bare description he received of a suspicious male person and did not take him any further with respect to reasonable grounds.

[31] No reasonable person with the information possessed by Constable Martinez of only the physical attire, gender and appearance of a nameless 'suspicious' person would believe that that amounted to reasonable grounds to suspect that the claimant was in possession of illegal drugs. It follows that the search was unlawful, arbitrary and a breach of the claimant's rights under section 9 of the Constitution and I so declare. This is a case where more than the words of a declaration are necessary. This claimant has clearly suffered damage in terms of distress and embarrassment from being subjected to an unlawful search in a public place, where the claimant was lawfully engaged in the conduct of his job. In my judgment, an award of compensation is required in the circumstances.

[32] Not only was the search unlawful and unconstitutional but it was conducted in a high-handed and oppressive manner. At paragraph 29 of her written submissions, Ms.

Mendez summarized accurately, in my view, the conduct of Constable Martinez as shown in the video evidence.

[33] While I accept that the conduct of Constable Martinez was in retaliation for the claimant requesting more information and calculated to ridicule and bully the claimant into submission, I do not agree with Ms. Mendez that this amounts to discrimination or a breach of the right to dignity in the sense described by the CCJ in **McEwan et al v AG of Guyana** at paragraph 69:<sup>7</sup>

[69] Jamadar J (as he then was) has pointed out that “a court is entitled to consider granting constitutional relief, where the claim is that a person has been discriminated against by reason of a condition which is inherent and integral to his/her identity and personhood. Such discrimination undermines the dignity of persons, severely fractures peace and erodes freedom.”<sup>8</sup> The Canadian Supreme Court Justice, Iacobucci J, states that human dignity relates to a person’s self-respect and self-worth. **It is harmed “by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs, capacities, or merits.”**<sup>9</sup> **It is also harmed**

**“... when individuals and groups are marginalized, ignored, or devalued,** and is enhanced when laws recognize the full place of all individuals and groups within...society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all of the circumstances regarding the individuals affected and excluded by the law?”<sup>10</sup> [My Emphasis].

[34] **McEwan** was a case concerning the constitutionality of a law criminalising what is commonly described as ‘cross-dressing’ in Guyana. That law had significant deleterious consequences for the gender identity of a constituency of the Guyanese population. The law in that case directly impinged upon the dignity, self-respect and self-worth of trans-gendered persons.

---

<sup>7</sup> [2018] CCJ 30 (AJ).

<sup>8</sup> Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc. et al v The Attorney General of Trinidad and Tobago HCA No. S2065 of 2004.

<sup>9</sup> Law v Canada [1999] 1 SCR 497 at 53.

<sup>10</sup> Ibid.

[35] The test identified by the CCJ for a breach of the right to dignity appears to be “**unfair treatment premised upon personal traits or circumstances** which do not relate to individual needs, capacities, or merits”. [My Emphasis]. It is true that simply having information on the appearance or attire of a person is not enough to raise reasonable grounds to suspect that that person is in possession of illegal drugs, however, that is a long way from saying that this claimant was unfairly treated based upon his personal traits. To make out the latter allegation more evidence was required. It is not every act of unfair treatment by State actors which will amount to a breach of the right to dignity. In my judgment, the evidence of the encounter with Constable Martinez, while reprehensible and a poor example of policing, does not disclose an attack on the *personal traits* of the claimant. In fact, the claimant was not even arrested. The damage suffered is the breach of his section 9 rights and the public humiliation of the encounter and its debilitating effects on his livelihood.

[36] The conduct of the police was an aggravating factor which goes towards the extent of the breach of the claimant's section 9 rights and an additional award of damages to reflect the gravity of the breach, to reflect a sense of public outrage and to deter further breaches is sufficient to vindicate the right. The juridical basis for this additional award is found in the Privy Council authority of **Attorney General v Siewchand Ramanoop**.<sup>11</sup> The Board ruled at paragraph 19 that:

[19] An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. ‘Redress’ in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions ‘punitive damages’ or ‘exemplary damages’ are better avoided as descriptions of this type of additional award.

---

<sup>11</sup> [2005] UKPC 15, para. 17.

(ii) ***The Act of Recording***

[37] Section 12 of the Constitution provides:

12-(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes reasonable provision-

- a. that is required in the interests of defence, public safety, public order, public morality or public health;
- b. that is required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the administration or the technical operation of telephone, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or
- c. that imposes restrictions on officers in the public service that are required for the proper performance of their functions.

[38] Ms. Mendez submitted that the right to freedom of expression as articulated in section 12 encompasses the right to record police officers in the course of their duties since the act of recording is contained in the right to receive and communicate ideas and information. That entitlement to record the police in the purported discharge of their duties, as a dimension of the right to free expression, was breached when Constable Martinez directed the claimant to stop recording and struck his arm, in order to make good his demand that recording ceases. Furthermore, Ms. Mendez pointed out that the claimant's act of recording neither prevented nor impeded the officer from conducting the search. Other than the officer's annoyance and belief that it constituted an act of "profiling" him, the officers were fully able to continue searching the claimant and did in fact continue to so search.

[39] Counsel for the respondents conceded that citizens may video record police officers carrying out their duties. However, the claimant was not entitled to record in the

circumstances of this case, since to do so involved the claimant obstructing Constable Martinez in the performance of his duties, which is an offence contrary to section 38 of the **Police Act Cap138**.

[40] I have already found that the search was unlawful and that the video evidence indicates that the recording was not hampering what turned out to be an unlawful search of the claimant. Consequently, I reject at the outset the submissions on behalf of the respondents that the claimant's recording of the encounter was an obstruction. In fact, if the police officers honestly believed that they were being obstructed, they would have charged the claimant with that offence. If there was no obstruction, the balance of the respondents' submissions on this point crumbles.

[41] This leaves the question of the parameters of the individual's right to record police officers as a corollary of his constitutionally protected freedom of expression. That is an issue of law, and I have not been pointed to any authority on the issue in this jurisdiction. I have found the authorities out of Canada (although of first instance) to be particularly instructive and a correct statement of the law.

[42] In **R v Homer**,<sup>12</sup> Mr. Homer was charged with offences of obstructing the police, causing a disturbance and assault arising out of circumstances in which Mr. Homer was recording the arrest of another person by police officers. The court found at paragraph 71 that:

There is no indication that Mr. Homer's actions obstructed Mr. Lowe in that arrest. I should indicate, parenthetically, that there is no prohibition against a citizen videotaping a police arrest. To the extent that the person doing the videotaping does not impede, interfere or obstruct the police in carrying out their duties, then the person is within his or her rights to videotape an arrest. That is part of the panoply of freedoms enjoyed by citizens in a democratic society.

[43] Similarly, in **R v Zarafonitis**,<sup>13</sup> a photographer was taking photographs of a police operation both inside and outside a Niagara Falls restaurant. The police were responding to a noise complaint against the restaurant. When Mr. Zarafonitis, one of

---

<sup>12</sup> 2009 ONCJ 530.

<sup>13</sup> 2013 ONCJ 570.



the police officers on the scene, observed the photographing taking place he told the photographer to stop photographing and to leave the area. The photographer declined to leave, feeling he was entitled to continue taking photographs. Mr. Zarafonitis responded to the refusal by arresting him. In considering the lawfulness of the direction to stop recording, the court held at paragraph 26:

....In the absence of an overarching and tangible safety concern, such as telling a photographer at a fire scene to back away if there is a danger that the building will collapse on him, telling people not to record these interactions, whether they be a bystander or the person the police are dealing with, is not a lawful exercise of police power. An officer who conducts himself reasonably has nothing to fear from an audio, video or photographic record of his interaction with the public. The public has a right to use means at their disposal to record their interactions with the police, something that many police services themselves do through in-car cameras and similar technology. **The officer's powers exist to allow him to protect the public and himself and to enforce the law; they do not extend to controlling the public record of what happened.** The maintenance of that public record plays a significant role in the maintenance of the rule of law. The existence of this form of objective "oversight" has great potential to minimize abuses of authority and to maintain peaceable interaction between police and the citizenry, all of which is very much in the public interest. **Interference by a police officer in the public's exercise of that right is a significant abuse of authority.** [My Emphasis].

[44] I agree. There is no room in a constitutional democracy to immunize the police from public scrutiny and appraisal of police work.

[45] Like Canada, there is no law in Belize prohibiting the video recording of police activities. It is well within the individual's right to free expression to record the police performing their duties as agents of the State. This right is particularly important in relation to creating a video recording of police activity in circumstances where the police wield considerable coercive power, and the accountability of a video recording adds necessary balance to interplay between public safety and personal freedoms.

[46] Of course, video recording of the police cannot be permissible where it interferes with or obstructs the police officer's lawful execution of his duties. To be so limited, there must be objective interference. There is no interference or obstruction simply because the police officer says so or feels that recording should not take place.

[47] In my judgment, the claimant was entitled as part of his right to freedom of expression to record the encounter with the police. Any attempt by Constable Martinez to stop the recording amounted to a breach of section 12 of the Constitution. Therefore, his commands to the claimant to stop recording were unconstitutional and outwith his police powers. A refusal of an unlawful order is not and cannot be obstruction. I will grant a declaration that the claimant's section 12 right to freedom of expression was breached in this case by Constable Martinez's attempts to stop the claimant from recording.

[48] I am not convinced that an order for damages is required to vindicate this breach of the claimant's rights since there is no evidence of loss being suffered.

**(iii) The Professional Standards Branch**

[49] This point is the third relief sought by the claimant in his amended Fixed Date Claim Form:

d. A Declaration that the failure to inform the Claimant about the disciplinary proceedings conducted by the Professional Standard (sic) Branch deprived the Claimant of an effective remedy for the breach of his constitutionally protected right against arbitrary search and seizure and right to dignity and freedom of expression constitutes a breach of the Claimant's right to protection of the law and freedom of expression as guaranteed under sections 9 and 14 of the Belize Constitution;

e. A Declaration that the disciplinary proceedings conducted by the Professional Standard (sic) Branch under the Belize Police Department fails to meet the requirements to provide an effective remedy to the Claimant in that the process lacks transparency, independence and impartiality in contravention to section 6 of the Belize Constitution;

f...

g. An order that the Defendants take the necessary measures to bring the Professional Standards Branch insofar as investigations into police misconduct violative of citizens' rights are concerned into conformity with the Constitution and international human rights standards, or, in the alternative, establish a mechanism for the investigation and determination of citizens' complaints of police misconduct, outside of the Belize Police Department, that conforms with the

Constitution and international human rights standards for transparency, impartiality and independence;

[50] In support, Ms. Mendez submitted that the right to protection of the law necessitates that disciplinary proceedings before the PSB, especially those prompted by a citizen's complaint, be conducted in a manner that accounts for the substantive and procedural rights of citizens. This means that, in determining the matter, the PSB must be alive to the fact that, if proven, the officer would have been found in breach of the supreme law of the land, and not merely an internal infraction. This also means that, in keeping with the standards of fairness, the citizen must be informed and given due opportunity to participate and be heard in the process. It also means that the process must be open, transparent and impartial.

[51] Counsel argues further that citizens are allowed to make complaints, since they view the PSB as the mechanism for police accountability. Thus, it is important that the processes of the PSB accord with the standards of fairness. In this respect, Ms. Mendez emphasises that transparent and effective mechanisms for holding police officers accountable for misconduct are essential to deter wrongful actions and promote ethical behaviour within the force. This not only helps to protect citizens from abuse but also reinforces the legitimacy of the police in the eyes of the public.

[52] Ms. Mendez also pointed out that the interaction between the claimant and the PSB, in this case, lacked transparency and formality and the claimant was not given any meaningful opportunity to participate. Not only was the claimant not informed of the outcome of the disciplinary proceedings, but the results were themselves inadequate to achieve non-repetition of these violations. Ms Mendez then invited this court (in the spirit of 'judicial innovation') to fashion a remedy to compel the State to establish an independent and impartial unit to investigate police misconduct or to reform the PSB in conformity with the standards of fairness, transparency and impartiality.

[53] Crown Counsel for the respondents submitted that the PSB has always been and remains transparent, independent, and impartial as it is responsible for registration, monitoring and (as necessary) directing the investigations of serious complaints against the police. Additionally, counsel for the respondents argued that section 20 of

the Constitution provides the claimant with an effective remedy where he alleges that the State has breached his constitutional rights, and the conduct of the disciplinary proceedings is not the forum to adjudicate a breach of the claimant's rights. Furthermore, the claimant was given ample opportunity to participate in the process and it was he who failed to be involved. In sum, they submitted that Ms. Mendez's submissions are misconceived.

[54] While I agree with Ms. Mendez that the processes employed by the PSB leave a lot to be desired, I am not of the view that the internal procedures of that unit amount to a breach of the claimant's constitutional guarantees of fairness and the right to a hearing before an independent and impartial tribunal. Annexed to the affidavit of Bartholomew Jones is the Belize Police Department's policies, and procedures manual, which at section 402.3 sets out the purpose of the PSB:

The Professional Standards Branch (PSB) of the BPD is responsible for registration, monitoring and (as necessary) directing the investigations of serious complaints against the Police and against employees of the Police Department undertaken at Formation and Branch level. In addition, the PSB will undertake the most serious investigations as directed by the Commissioner of Police and be responsible for maintaining the confidentiality of complaint/Discipline Investigation files and records.

[55] The PSB is a mechanism for internal disciplinary control of police officers with a focus on investigating serious complaints. It exists to investigate and determine disciplinary breaches of police officers. The purpose of its operations exists as between employer and employee. Of course, an aggrieved civilian is entitled to make a complaint against a police officer to his employer, but the disciplining of the employee is a function as between employer and the employee police officer. The PSB is not the forum for an aggrieved civilian to vindicate his constitutional rights, which may or may not have been breached by police officers. The PSB should not be confused with a court of law. In fact, the outcome of a PSB investigation does not interfere with an individual's right to seek constitutional redress.

[56] Contrary to the submission of Ms. Mendez, the arbiter of breaches of constitutional rights is the Senior Courts of Belize and not any other administrative body including

the PSB. If the PSB finds a police officer to have committed a disciplinary offence, then it recommends disciplinary or corrective action against that officer to the Commissioner of Police. That is an internal administrative matter. It is not for this court to dictate to an administrative body the disciplinary control it must exercise over its own employees. The establishment of a police investigative entity outside of the police service is a matter for the legislature.

[57] The fact that there is an internal administrative system for disciplining police officers means that there is a system in place, however flawed, by which civilians may bring complaints of police misconduct to the attention of the police force which may ultimately result in the Commissioner of Police taking disciplinary action against the officers. The existence of the PSB, with oversight for serious complaints, does not mean that a police officer cannot be subjected to a criminal investigation for serious crimes, in the ordinary course, or that the Director of Public Prosecutions is prohibited from prosecuting a police officer for a serious crime allegedly committed while on police duty. Neither does the existence of the PSB prevent an aggrieved individual from bringing a civil claim against the State in tort (such as in false imprisonment, assault or malicious prosecution) or a constitutional action (like the instant case) where it is contended that police officers breached the individual's fundamental rights and freedoms.

[58] Regarding the claim that the failure to involve the claimant in the disciplinary process breached the claimant's guarantees of procedural fairness protected in the right to protection of the law, I say only that the principles of fairness vary according to the circumstances of different cases. In **Public Service Commission v Ceron Richards**,<sup>14</sup> the Board held:

30. It is sufficient to refer to two leading statements about the duty to act fairly. First, in *R v Secretary of State for the Home Department, ex p Doody* [1993] UKHL 8; [1994] 1 AC 531, a case concerning the procedure to be followed by the Secretary of State in setting tariff periods of mandatory imprisonment for prisoners serving life sentences, Lord Mustill said (p 560):

---

<sup>14</sup> [2022] UKPC 1.

“What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the often-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. (3) **The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.** (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.” [My Emphasis].

[59] In internal disciplinary proceedings, the requirement of fairness is geared towards the employee who may be adversely affected by the decision of the administrative body and not so much the person making the complaint. All the administrative body has the power to do is to investigate and recommend internal disciplinary action against the employees who in this case are the police officers concerned. The procedures employed by the public body for its internal disciplinary control are a matter for that public body and when a third-party triggers that internal process by making a complaint, the individual is tacitly accepting the process utilized by the administrative body. Those procedures may or may not involve the participation of the complainant. However, the claimant’s fundamental right to protection of the law is not impinged merely because he was not contacted to give evidence or the administrative penalty imposed is believed to be too lenient.

[60] In the premises, I find that there is no breach of the claimant’s rights under this head, and I will refuse the remedies identified at paragraph 49 above.

## Damages

[61] I have already found that the claimant is entitled to compensation for the breach of his rights under section 9 of the Constitution when he was subjected to an unconstitutional search and for an additional award of vindictory damages having regard to the circumstances of the search. Ms. Mendez requested an award in the sum of BZ\$5,000.00 in compensatory damages for the act of physical violence and overall humiliation he experienced in public, especially considering that he was with his “guests” or clients. In addition, the claimant submits that an award of vindictory damages in the sum of \$25,000 also be awarded. There were no submissions on quantum on behalf of the respondents.

[62] Although I have found that there was no breach of the right to dignity, I found that the humiliation suffered, and the conduct of the police officers were all aggravating factors to be remedied in damages. I will, therefore, order the respondents to pay to the claimant compensation in the sum of BZ\$5000.00.

[63] In the 2021 case of **Nunez**, which also concerned an unconstitutional search the claimant was awarded \$10,000.00 in vindictory damages. The CCJ in **Titan International Securities v Attorney General of Belize**<sup>15</sup> awarded \$100,000.00 in vindictory damages. At paragraph 60 the CCJ reasoned:

[60] We take into account the following matters in deciding whether an award of vindictory damages ought to be made: (i) Abel J found that a copy of the search warrant was not left with Titan’s officials, (ii) he also found that items were taken which were not relevant to the Request from the US Government, (iii) the Court of Appeal agreed that the search was conducted in an unreasonable and excessive manner since there was no sifting of the records to comply with the specific Request from the US; (iv) no inventory of the items taken was left with Titan, (v) Titan’s attorney was denied entry into the premises during the search and (vi) the Court of Appeal found that the police officers acted in a very high handed manner during the operation. In these circumstances, we think that this is an appropriate case to make an award of vindictory damages. We therefore make an award of BZD\$100,000.

---

<sup>15</sup> [2018] CCJ 28(AJ).

[64] There clearly is a wide discretion to award vindictory damages within this broad range of \$10,000.00 to \$100,0000.00. The conduct of the agents of the State in **Titan** was much more reprehensible than in the instant case. In the present matter, the police conduct shares more equivalency with officers in **Nunez**. However, the breaches in the present case occurred in a more public setting and in full view of the claimant's customers to both of which Constable Martinez paid no mind. The public embarrassment and abusive manner of the search are accepted, but there was no evidence consequent thereto of loss of clientele or slippage in business as a tour guide. The officers' conduct was unreasonable and unbecoming of proper standards of policing. I will make an award of vindictory damages in the sum of \$20,000.00.

### **Disposition**

[65] I will grant the following orders:

- i. A Declaration that the search of the claimant's person carried out by officers of the Belize Police Department, on the 1<sup>st</sup> of April 2022, at the Municipal Airport in Belize City, Belize, in the absence of any reasonable suspicion of criminal activity, contravened Section 9 of the Belize Constitution and is unlawful being disproportionate and in excess of any statutory authority to search the claimant's person;
- ii. A Declaration that preventing the claimant from recording the police officer's search constitutes a breach of the claimant's fundamental right to protection of the law and freedom of expression guaranteed under sections 6 and 12 of the Belize Constitution;
- iii. Compensation in the sum of \$5,000.00;
- iv. Vindictory damages in the sum of \$20,000.00; and
- v. The claimant is awarded costs to be agreed and, in default thereto, assessed by the Registrar.

**Martha Alexander**  
High Court Judge