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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO CL G 116 OF 1999

BETWEEN	**SHARON GREENWOOD-HENRY**	**CLAIMANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**DEFENDANT**

Mr. Lawton Heywood for the claimant

Mr. Garfield Haisley instructed by the Director of State Proceedings for the defendant

October 19 and 26, 2005

FALSE IMPRISONMENT, ASSAULT AND BATTERY, AGGRAVATED, EXEMPLARY AND VINDICATORY DAMAGES

SYKES J

1. The war on drugs has claimed many victims. In this case, the victim was Mrs. Sharon Greenwood-Henry, a hard working, respectable, law-abiding citizen of Jamaica without even the whiff of criminality. On December 4, 1998, she was scheduled to depart from the Norman Manley International Airport, an airport named after one of Jamaica's most distinguished sons and National Hero, at 10:05pm. She was on her way to London, England. She was accompanying a friend who was to have surgical treatment in the United Kingdom. This mercy mission came to an abrupt and inglorious end at about 8:30pm when she was pulled from the line by Corporal Oriel Wilson of the Jamaica Constabulary Force. Corporal Wilson drew no inspiration from Mr. Manley.

2. The claimant was eventually taken to the police station at the airport and then to that most famous of hospitals, the Kingston Public Hospital (KPH). She was x-rayed, "laxitised" and then released midday the following day. All this in the name of detecting drugs. As it turned out no drugs were found - not even trace amounts of any kind of illegal substance. I might add that during this entire ordeal she did not have the advice of counsel, friend or relatives.

3. Mrs. Greenwood-Henry has sought to vindicate her rights. She filed a writ of summons on October 8, 1999, in which she claimed damages for false imprisonment, assault and battery. For six long years, she pursued the Attorney General. The Attorney General finally surrendered on October 19, 2005, - eleven days after the sixth anniversary of the filing of the writ. Charles Dickens, the great chronicler of English legal and social history, would have much to say about this. Liability was admitted and so this matter was transformed into a trial for the assessment of damages.

4. I need to recount the traumatic experience of the claimant so that the reasons for the award are clear to all. By admitting liability on all the torts, the Attorney General is conceding that the police officer was not truthful when he asserted that he removed Mrs. Greenwood-Henry because of a call he allegedly received from a female caller from the Narcotics Police. It necessarily follows that the arrest was unlawful and the continued detention of the claimant was unlawful. There was therefore no basis upon which she should have been taken to the KPH, have invasive searches done by a medical practitioner and have a laxative administered to her, against her will.

5. She said that she was humiliated by the whole experience. She became depressed - depressed to the point where she had to seek the services of Dr. Aggrey Irons, a psychiatrist. The news of her predicament spread rapidly. On her release, her telephone rang incessantly. The curious and the sympathetic all wanted to know about her experience. Those who did not call enquired in person when she went out on social occasions. This was indeed unwelcomed curiosity. So terrified was she that she became a Howard Hughes like figure – a recluse. She withdrew from all social events and functions for many weeks. Her witness statement actually uses the words "many weeks" but her oral amplification said two years. Mr. Haisley said I should not accept this period because she did not say so in her witness statement. I agree. There is much difference between saying many weeks and many months. Usually in Jamaica when persons speak of many weeks they do not mean twenty four months. She complained of insomnia and dietary difficulties. If a police car passed her gate she would become alarmed, especially if it slowed down or stopped nearby. She would imagine that her tormentors would be returning.

6. The medical report of Dr. Irons indicated Mrs. Greenwood-Henry showed evidence of insomnia, evidence of appetite disturbance, phobic avoidance behaviour specific to the incident, depression and anxiety and psychophysiological bowel and bladder disturbance. He concluded by saying that these signs met the criteria for post traumatic stress disorder. Medication was prescribed.

7. While she was at the airport she said that she was stripped and searched by a female police officer who inserted her finger in her vagina. Mr. Haisley says that this is an exaggeration because she only mentioned in her witness statement that only her trousers came off and she was searched. I accept that at the very least her trousers were off. If this is so, it is hard to see where else the police officer would be searching but either her anus or vagina. I therefore find on a balance of probabilities that her vagina was invaded by the prying fingers of a police officer. I accept that this was done while she was in the bathroom of the police station. No legislation was pointed to me that authorised this type of search to be conducted by a police officer. There is no evidence that this police officer was a health professional. There was no evidence of the level of hygiene observed by the female officer. The evidence suggested that this bathroom was one in general use. The risk of infection was clear. All this being done to a citizen in circumstances in which the Attorney General has finally accepted had no foundation in fact or law. While she was at the police station, she was subjected to further embarrassment arising from comments made by the men and women of the Constabulary Force.

8. At around 11:30 pm an ambulance, with siren blaring, arrived at the police station to take the hapless claimant to KPH. Up to this point although the claimant was permitted to make a telephone call, she had not able to contact anyone to let them know what was happening to her. The noisy arrival of the ambulance attracted gawking onlookers, much like the crowds laced with black humour who would attend public hangings in England in centuries past, who had much to say about Mrs. Greenwood-Henry's predicament. Her passage to the ambulance from the police station was littered with comments such as "Dem gyal deh, you cyan trus dem" or "Dem pretty but yuh cyan trus dem. Dem still carry drugs."

9. At the hospital Corporal Wilson heaped humiliation upon humiliation. Even though Dr. Sidney Ebanks, who read the x-ray stated, that he did not see any evidence of

drugs, the Corporal insisted that the doctor conduct further examinations. The doctor obliged by examining the anus and vagina of the claimant. Even after this body cavity examination yielded no evidence of drugs, the police officer was not satisfied. Surely, it ought to have begun to dawn upon Corporal Wilson that his continued detention of the claimant was on very shaky foundations.

10. Not to be deterred the police officer the then declared that the doctor should administer a laxative. Now this was now into the early hours of the morning of December 5, 1998. No friend or relative knew what had become of the claimant. She had tried to make contact with someone at the airport but that was unsuccessful. She was now isolated from her support systems and firmly in the grasp of an overbearing police officer and a doctor who apparently surrendered his professional judgment to the police officer.

11. She was given a bitter tasting product to consume which was supposed to induce a bowel movement. I am compelled to set out the claimant's testimony on this point because it seems to me that the health professionals surrendered their authority to the police. Mrs. Greenwood-Henry said that after her anus and vagina were examined while she was dressing herself a nurse came to her with a clear fluid and told her that she is to drink the substance. She told the nurse that she is not drinking it. Dr. Ebanks came and told her that she had to drink it. She tasted it and then declared that she is not drinking the liquid. Ten minutes later the doctor told her that the police officer (Cpl. Wilson) said she had to drink the substance. She then drank the liquid. Inferentially, this was the laxative. She came out of the observation room and sat somewhere in the hospital for a while. It does not appear that the desired result occurred. No one told her what the drink was. No one enquired of her whether she had any allergies before administering the drink. Mrs. Greenwood-Henry testified that she never consented to this treatment. One wonders assuming that Mrs. Greenwood-Henry had "consented" that such a consent was free, voluntary and informed. I accept her evidence that she did not consent to the administration of the bitter drink.

12. While in bed on Edwina Ward at the KPH blood was taken from her at least three times. There is no evidence that she was told why this was being done. There is no evidence that she was told the result of any examination of the blood taken from

her. She was discharged from the hospital at midday December 5. In her own words, Mrs. Greenwood-Henry felt "dirty, tired, sick, nervous and really terrible." From the evidence given by the claimant sleep would have been impossible. In effect, the claimant was deprived of sleep between 8:30pm on December 4, 1998 and midday December 5. There is no evidence that the claimant was provided with a meal or even the opportunity to bathe. After she left the hospital, the following day she went to airport to retrieve her luggage.

13. We come to a part of the evidence that Mr. Haisley submits was outside the scope of the doctor's employment. The doctor used the personal information given by the claimant at the hospital to call her literally every day seeking sexual favours. This persisted until after she filed her writ and it was served on the Attorney General who apparently contacted the doctor. Not to be outdone the Corporal called the claimant on at least five occasions extending invitations to her to enjoy the pleasure of his company. I do not take any of this evidence into account when assessing the damages in this case. I also exclude from my consideration the evidence of the doctor entering her house and fondling her breasts after offering Mrs. Greenwood-Henry a lift home while she stood outside KPH after she was discharged from the hospital.

The assessment

14. Both sides relied on ***Celma Pinnock v The Attorney General for Jamaica*** Suit No. C.L. 1993 P 188 where a jury on July 27, 1998 awarded the sum of $2,500,000 at 5% interest. The claimant in that case claimed damages for false imprisonment, assault and battery, aggravated and exemplary damages. The jury considered exemplary damages but did not award any because they felt that the sum awarded was sufficiently punitive. The updated figure is $4,793,205 using the August 2005 CPI of 2214.7. In that case, the claimant suffered severe anxiety, severe depression, severe phobic responses related to travel and sexual activity and loss of libido. Miss Pinnock was subjected to a search which had as one of its aggravating features a male police officer forcibly inserting his fingers in her vagina.

15. Mr. Haisley submitted that in the present case there should not be any award for exemplary damages because the facts here do not amount to the abuse spoken of

by Lord Devlin in ***Rookes v Barnard*** [1964] AC 1129 and reaffirmed by ***Kuddus v Chief Constable of Leicestershire*** [2002] 2 AC 122. I do not agree. What can be more abusive than a police officer using his power to arrest a citizen, subject her to two, not one, vaginal intrusions, an anal inspection, unlawful and unwarranted administration of a laxative, detaining her in a hospital overnight thereby inflicting opprobrium and shame without any reasonable and probable cause? I conclude that the conduct of the police officer was arbitrary, oppressive and unconstitutional and therefore attracts an award of exemplary damages. I cannot help but note that when Lord Devlin established his first category in ***Rookes'*** case there were not many "recent" cases in England in which exemplary damages were awarded. That was 1964. That situation changed dramatically in the 1980s and 1990s (see Burrows, Andrew ***Remedies for Torts and Breach of Contract*** 3rd (OUP) 2004, chapter 18). Juries in the United Kingdom were clearly unimpressed by the conduct of the police. The juries began to make hefty awards including aggravated and exemplary damages against police officers. By 1997, the Court of Appeal of England felt constrained to impose some fetter on the jury awards. They did this in the case of ***Thompson v Commissioner of Police*** [1998] Q.B. 498. In none of the cases did the Court of Appeal say that exemplary damages should not have been awarded. In one of the cases under review, that of Miss Thompson, she was lawfully arrested and subsequently entered a plea of guilty. This should have led to her release on bail. It was decided to place her in a cell. Excessive force was used to accomplish this with the result that some of her hair was pulled out and she had bruises on her hand. In the other case reviewed by the Court, the claimant was punched, kicked and carted off to jail by the police. The police claimed that he pushed a police officer. The jury in both cases rejected the police's version, found for the claimants and awarded exemplary damages. If these cases were regarded as sufficient to attract exemplary damages why not this case before?

16. Having said all this I must indicate the limitations on using the award in ***Pinnock's*** case in light of the Privy Council's decision in ***Tamara Merson v Drexel Cartwright and the Attorney General*** PCA No. 61 of 2003 on appeal from the Court of Appeal of the Bahamas (delivered October 13, 2005). The case is interesting for a number of reason not the least of which is that the Board upheld

awards of damages for assault, battery, false imprisonment, malicious prosecution and very importantly, an award for contravention of the claimant's constitutional rights by Sawyers J (as she was at the time). The Board accepted that the sums awarded included awards for exemplary and aggravated damages. The Court of Appeal had set aside the award for breach of the claimant's constitutional rights. This award was restored by the Privy Council. The ***Tamara Merson*** case is the second case from the region in which the Board has considered the propriety of awarding damages for breach of constitutional rights. The other is ***The Attorney General of Trinidad and Tobago v Siewchand Ramanoop*** PCA No. 13 of 2004 (delivered March 25, 2005). These two cases from the Board indicate a clear departure from judicial reticence to award damages under the constitution in false imprisonment, assault and battery cases and point forward to the shape of things to come. It is appropriate to point out that the decision by the Board in ***Ramanoop*** confirmed this propriety of vindicatory damages awards that were being made by the Supreme Court of the Republic of Trinidad and Tobago. Those judges were emboldened by the observations of the Trinidadian Court of Appeal, led by de la Bastide CJ (as he was at the time and now President of the Caribbean Court of Justice) in the case of ***Jorsingh v Attorney General*** (1997) 52 WIR 501 (see de la Bastide CJ at 505f-506a and Sharma J.A (as he was then and currently Chief Justice) at pages 512a – 514f).

17. There is now a beckoning finger that invites victims who have suffered abuse of their constitutional rights to claim what could now be called constitutional damages or as the Board says, vindicatory damages, in cases of false imprisonment, assault and battery. I cannot help but note that the constitutional damages in ***Merson*** do not appear to have been what may be called "a conventional sum".

18. In response to the ***Merson*** case came to my attention at the conclusion of the assessment but before judgment was delivered, I invited counsel to make written submissions on the case particularly as it relates to the itemization of the different awards. Mr. Heywood made the interesting submission that I should award vindicatory damages in this case if I found that it was supportable by the evidence in the case. He submitted that even though he had not claimed such an award specifically I could still do so because the case proceeded on the basis that the

State had infringed in an egregious manner constitutionally protected rights and freedoms. He submitted that in this type of case the claim for exemplary damages used the expression "abusive, arbitrary and unconstitutional".

19. It is with reluctance that I disagree with Mr. Heywood on this point. Constitutional or vindicatory damages are a unique and special kind of award. It is not every case of abuse that attracts this kind of award. That constitutional redress is a special remedy was reinforced by the Privy Council in the ***Ramanoop*** case (see para. 24 and 25). Consistent with this philosophy it seems to be that if that kind of remedy is to retain its status as being special and unique then the claimant would need to plead it specifically and set out the facts which he says entitles him to such an award. This would enable the offending party to know that this claim is being made and how to respond to it. I say offending party and not the State because Carberry J.A. raised the possibility, that is yet to be explored, in ***Grant v DPP*** (1989) 30 WIR 246, 274g-275d, that the infringer of the Constitution need not be a State organisation. If a claim for exemplary damages is required to be explicitly pleaded why not a claim for vindicatory damages?

20. Had vindicatory damages been claimed in this case there was ample evidence to support such an award. The facts supporting that award would be (a) depriving the claimant of rest since the narrative of events makes it beyond dispute that she was not allowed any sufficient time to sleep; (b) there is no evidence that she was allowed meals; (c) the administration of a laxative without her consent and (d) the unlawful body cavity search by the female police officer at the Norman Manley International Airport Police Station. These amount to degrading treatment which unless permitted by law are contrary to section 17 (1) of the Constitution of Jamaica. None of these acts properly falls under the torts of false imprisonment, assault and battery, except possibly the unlawful search.

21. The Board in ***Merson*** went on to approve dictum from the Bahamian Court of Appeal to the effect that damages should be awarded under each head so that if there is an appeal against the award then it will be easier for the appellate courts to see if and where any adjustment should be made. ***Pinnock's*** case is a global figure awarded by the jury.

22. In respect of the false imprisonment, Mrs. Greenwood-Henry was falsely imprisoned from 8:30pm on December 4, 1998 to midday December 5, 1998, when she was discharged from the KPH. This would be a period of about fifteen hours. Based on the narrative of the claimant I can infer that she did not have any or much sleep.

23. While she was falsely imprisoned she was subjected to a vaginal examination by a female police officer in circumstances of questionable hygienic conditions. This amounted to an assault and battery. At the hospital, without lawful excuse or justification she was subjected to an anal and vaginal examination. She was intimidated into drinking a laxative which she neither wanted nor requested. Even though the x ray and laxative did not produce any evidence of drug trafficking she was detained over night and had blood samples taken from her without her free and voluntary consent because I find that any consent, if indeed it was, obtained in these circumstances of false imprisonment and intimidation cannot amount to free and informed consent.

24. No one can deny the injury to the claimant's dignity, pride and self esteem. No one can deny the mental suffering and anguish suffered in the climate of fear created by Corporal Wilson. In my view, what I have outlined in paragraph 23 and this one entitles the claimant to both aggravated and exemplary damages. It is said that exemplary damages is to be a deterrent to future conduct of this nature. One wonders whether that laudable objective is achievable without some financial contribution from the offender.

25. Harris J in ***Herwin Fearon v The Attorney General of Jamaica and Constable Brown*** Claim No. C.L. 1990/F – 046 (delivered March 31, 2005) in making an award for false imprisonment referred to two other cases. Her Ladyship awarded the sum of $280,000 for false imprisonment for 3 ½ days. In the case of ***Cassie v Williams and the Attorney General*** Suit No. C.L. 1994/C 364 (assessed February 20, 2000) the court awarded $50,000 for being falsely imprisoned for twenty four hours. In the case before me Mrs. Greenwood-Henry was imprisoned for approximately 15 to 16 hours.

26. In the case before me there is evidence that the claimant suffered from post-traumatic stress disorder arising from her ordeal. Jones J in ***Esrick Morgan v The***

Attorney General Claim No. C.L. 2002/M 162 (assessed February 17, 2005) isolated a sum of $200,000 awarded specifically for post traumatic stress disorder. His Lordship was conducting an assessment arising out of injuries inflicted by police officers. The award was separate and apart from the general damages award for pain, suffering and loss of amenity.

27. I propose to take into account the post traumatic stress disorder. The sum awarded for this item specifically is $500,000 but it will be included in the sum awarded for assault and battery.

28. I therefore make the following awards:

a. false imprisonment - $100,000

b. assault and battery - $1,100,000

c. aggravated damages - $700,000

d. exemplary damages - $700,000.

This gives a total of $2,600,000 which attracts 6% interest is from the date of the service of the writ of summons to the date of judgment. Costs to the claimant to be agreed or taxed.