COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2011/CLE/GEN/FP 00170

BETWEEN

ROBERT KANE

Plaintiff

AND

THE ATTORNEY GENERAL

1st Defendant

AND

THE COMMISSIONER OF POLICE

2nd Defendant

AND

THE DIRECTOR OF FISHERIES

3rd Defendant

AND

GILFORD LLOYD

4th Defendant

AND

INSPECTOR HENRY ROLLE

5th Defendant

AND

CPL. 1608 HANNA

6th Defendant

AND

CUSTODY SUITE OFFICER UN-NAMED

7th Defendant

BEFORE The Honourable Mrs. Senior Justice Estelle Gray Evans

APPEARANCES: Mr Carlson Shurland and Mr Renaldo Toote for the plaintiff

Mrs Sophia Williams-Thompson and Mr David Whyms for the defendants

ASSESSMENT OF DAMAGES

Gray Evans, Sr J:

1. This is an assessment of damages that has taken an inordinately long time to get to this point.

2. The plaintiff is a citizen of the United States of America. He is also a fisherman. He, along with his crew, was arrested on Wednesday, 25 May 2011, in Bahamian waters; charged with various offences in violation of the Fisheries Resources (Jurisdiction & Conservation) Act, chapter 244 ("the Fisheries Act"); and detained by The Bahamas Government authorities. The plaintiff and his crew were released on bail on Monday, 30 May 2011. On 22 June 2011 the Attorney General filed a nolle prosequi, discontinuing prosecution of the plaintiff and his crew, who were then discharged and released.

3. The plaintiff brought this action against the defendants alleging unlawful arrest, unlawful detention, false imprisonment and breaches of human and constitutional rights. He pleaded that by reason of the matters alleged he had lost his liberty, suffered emotional trauma, pain and abuse of his human rights and breach of constitutional rights for which he claimed damages together with interest pursuant to the Civil Procedure (Award of Interest) Act, 1992, further or other relief, and costs.

4. In its decision, the court made the following findings:

   a) The plaintiff's arrest and subsequent detention by the Defence Force officers during the period from about 3:15 p.m. on Wednesday, 25 May 2011, to about 3:05 a.m. on Thursday, 26 May 2011, amounted to an unlawful arrest and false imprisonment for approximately 24 hours (i.e. 23 hours and 50 minutes) in that the defendants failed to inform the plaintiff of the reason why he was being detained.

   b) The plaintiff had been lawfully arrested by Mr Lloyd at 3:05 pm on the 26 May 2011 when he was informed of the reason for his arrest.

   c) The plaintiff was taken before a magistrate at 10:40 a.m. on Monday, 30 May 2011.

   d) The time that had elapsed from the plaintiff's lawful arrest by Mr Lloyd on 26 May 2011 to the time he was taken before a magistrate on 30 May 2011 was approximately 91 hours and 35 minutes.

   e) The defendants could lawfully detain the plaintiff for up to 48 hours before taking him before a magistrate.

   f) The plaintiff was, therefore, unlawfully detained by the police for a period of approximately 43 hours and 35 minutes, that is, the period in excess of the aforesaid period of 48 hours.

   g) The plaintiff's statutory right under section 18 of the Criminal Procedure Code Act, as well as his constitutional right under Article 19(3) of the Constitution, to be brought before a magistrate as soon as reasonably practicable or without undue delay, were breached, and he is entitled to damages therefor.

   h) The plaintiff has not proven that his constitutional rights under Article 19(2) of the Constitution to retain and instruct without delay a legal representative of his own choice and to hold private communication with such legal representative were breached.

i) The plaintiff's allegation that he was denied medical treatment for 24 hours and that his constitutional rights were breached thereby was not proven.

j) The plaintiff's allegations of suffering nightmares, sleepless nights and psychological shock, have not been proven.

k) The plaintiff's allegations that he was denied the use of the bathroom and verbally threatened to be "Gutted like a Fish" by the Custody Suite Officer, the 7th defendant, on the 4 to 12 shift have not been proven.

l) The plaintiff, not having pleaded or particularized a claim for malicious prosecution, the claim for malicious prosecution has not been made out and, therefore, does not arise for consideration by this court.

5. On the issue of liability, this court found for the plaintiff: that he was at liberty to enter judgment against the defendants for the breaches of his common law, statutory and constitutional rights in respect to his unlawful arrest, false imprisonment and unlawful detention; and that he was entitled to be compensated in damages therefor, in an amount to be agreed by the parties, or, in the absence of such agreement, to be assessed by the Court, together with interest and costs, to be taxed if not agreed.

6. Subsequent to the delivery of the said judgment, and having regard to the court's finding that the issue of malicious prosecution did not arise for consideration, the plaintiff, on 22 June 2017, applied via summons for leave to amend his writ of summons and statement of claim to include an allegation of, and claim for damages for, malicious prosecution.

7. That application was denied and the matter adjourned to 22 September 2017 for the assessment of damages, unless the parties had otherwise agreed prior thereto. The court directed that in the absence of agreement, written submissions were to be filed and exchanged by 19 September 2017.

8. The defendants' submissions on assessment of damages were filed on 20 September 2017. On 22 September 2017 the parties sought, and were granted, an adjournment to permit them to engage in settlement discussions. The matter was subsequently set down for hearing on 13 June 2018, by which date, the following additional submissions had been filed by:

a) The plaintiff on 25 September 2017; 10 November 2017 and 6 February 2018
b) The defendants on 27 October 2017 and 6 June 2018

9. The plaintiff did not appear on 13 June 2018 and the matter was again adjourned at the request of his counsel to a date to be fixed.

10. On 20 August 2018, the plaintiff filed another summons for leave to amend his statement of claim to include claims for:

a) Constitutional damages for false imprisonment, arbitrary arrest and detention and breach of freedom of movement;

b) Malicious prosecution;

c) Special damages to include cost of the seized fish.

11. That summons was set for hearing on 27 November 2018. On that date, the matter was further adjourned at the request of counsel to enable them to continue settlement discussions.

12. On the adjourned date, 31 January 2019, the court was advised that, except for the claims for loss of income and attorney fees incurred in the Magistrate's Court, the parties had agreed to settle the plaintiff's special damages claims.

13. In that regard, counsel for the plaintiff informed the court that while he was of the view that the parties also had an agreement to settle the plaintiff's claim for loss of income, he, that is, counsel for the plaintiff had, just before the hearing convened, been advised by counsel for the defendants that the defendants were no longer prepared to agree a sum for loss of income.

14. Mr Whyms for the defendants admitted that he "did advise counsel" that he "had been instructed to resist the amount, notwithstanding the agreement that [the parties] had."

15. Counsel for the plaintiff therefore invited the court to consider the plaintiff's claim for loss of income and re-imbursement of legal fees incurred in connection with the magistrate court matter as items of special damages in its assessment of the plaintiff's damages herein.

16. It is settled law that special damages must be pleaded, particularised and proven, unless, of course, they are agreed. See, for example, Ilkiw v Samuels [1963] 1 WLR 991; Lubin v Major [No. 6 of 1990]; Merson v Cartwright *supra*; Tynes v Barr *supra; and* Timothy Bethel and Sherry Strachan v Karen McDonald, SCCiv 2 of 2012, in which Adderley, J.A. delivering the judgment of the Court, with which the other justices agreed, reiterated: "Special damages must be both pleaded and proved."

17. In that last-mentioned case, the learned Deputy Registrar had found that the plaintiff pleaded and proved special damages in the total sum of $27,047.69. On appeal, counsel for the respondent conceded that only the amount of $298.94 had been pleaded and proved. The Court of Appeal found that the concession was rightly made as there was no averment or proof of special damages other than $298.94.

18. In the case of Michelle Russell v Ethylyn Simms and Darren Smith, 2008/CLE/gen/00440, Sir Michael Barnett, CJ, as he then was, said at paragraph 43:

> "43. It is not in general sufficient for him merely to plead special damage and thereafter recite on oath the same facts, or give evidence in an affidavit without any supporting credible evidence aliunde, and sit back expecting the tribunal of fact to accept his evidence as true in its entirety, merely because the aforesaid evidence is not controverted…"

19. At paragraph 47 of that case, the learned Chief Justice also said: "Unquestionably, it is for the plaintiff to prove her damage. It is not enough to write down particulars, and, so to speak, throw them at the court and say "I am entitled to this."

20. In this case, while the plaintiff in his statement of claim included "loss of income from 25th May 2011 and continuing" as an item under the heading "particulars of special damages", no other particulars were provided and nowhere in his statement of claim did the plaintiff plead the loss or make a claim therefor. Further, no evidence was given by the plaintiff or anyone on his behalf as to such loss. And, except for averring at paragraph 17 of his statement of claim that "at material time the vessel was brought into The Bahamas to Bradford Shipyard, there was a quantity of swordfish, dolphin and tuna, in excess of 5,000 pounds with a commercial street value of over $100,000.00", the plaintiff's statement of claim included no further details of what could be considered a quantification of his "special damages".

21. What, however, the plaintiff appears to have relied on as evidence of his loss of income is a copy of a letter dated 3 April 2011 from one Michael Black c/o Floribbean Wholesale, which is included amongst the plaintiff's supplemental list of documents and in which Mr Black wrote:

> "To Whom It May Concern
>
> This letter is to inform you that my company, Floribbean Wholesale Inc, purchased fish from the last three fishing trips made by the fishing vessel, Janice Ann. The purchase price of those past three trips total $140,013.55, therefore the average of each fishing trip

> would be $46,671.18. Each of those trips were [sic] for an average of six days of fishing. My company deals exclusively with fish and fish products both from within and outside the United States. My company has been in business for over 25 years.
>
> Sincerely
>
> Michael Black."

22. The evidence is that the plaintiff was given the keys to the Janice Ann on 22 June 2011. By that time the vessel would have been in the custody of Bahamian authorities for about four weeks. There is no evidence as to how many trips the plaintiff could have made during that period; or how much fish he could have caught; or how much he could have earned. And, while according to Mr Black, the plaintiff's fishing trips were for an average of six days, there is no evidence of how frequently he went on those trips; nor is there any evidence as to the period over which the "last three fishing trips made by the fishing vessel, Janice Ann" to which Mr Black refers, were made. Nor is there any evidence of the poundage of fish from those fishing trips.

23. Nevertheless, counsel for the plaintiff made the following submission:

> "The uncontroverted evidence is that at the time of the plaintiff's arrest, the Janice Ann was subject to a private commercial contract to supply fish to an American vendor which evidently was frustrated by the defendants' unlawful conduct. Resultantly, the plaintiff suffered further losses in that several other contracts in which he was obligated to perform but were subsequently fatally frustrated because of the Janice Ann's detention."

24. However, while Mr Black's letter appears to confirm past dealings with the plaintiff, as pointed out by counsel for the defendants, there is no evidence that the plaintiff had a contract or contracts with Mr Black, or anyone else, for the sale of his fish, which he could not fulfill because the Janice Ann was in the custody of Bahamian authorities. In fact, there is no evidence that the plaintiff "suffered further losses in that several other contracts in which he was obligated to perform but were subsequently fatally frustrated because of the Janice Ann's detention" as argued by his counsel.

25. Indeed, the plaintiff's evidence is that while Mr Black of Floribbean Wholesale Inc purchased fish from him "all the time", both Day Boat Seafood and Mr Black purchased fish from him and he had not yet made a decision as to whom he would have sold the fish. As I understood his evidence, that decision would have been made when he found out what the buyers were willing to pay for that particular catch.

26. In any event, as I understand it, the parties have agreed to settle the cost of the catch which the plaintiff would have sold to Day Boat Seafood or Floribbean Wholesale Inc or some other purchaser, had he not been arrested or the catch not allowed to spoil, so he would have suffered no loss of income in that regard.

27. So, while it is not unreasonable to assume that the plaintiff, as a fisherman, would have suffered some loss of income as a result of his arrest and detention and the detention of his fishing vessel for approximately four weeks, in that he would not have been able to engage in any fishing trips in the Janice Ann during that period, regrettably, the plaintiff has, in my judgment, failed to prove as an item of special damage any "economic loss" or "loss of income" during the period he and or the Janice Ann would have been detained by Bahamian authorities.

28. Of course, it was open to the parties to agree special damages.

29. In that regard, I gathered from counsel for the plaintiff's submissions, and this has not been refuted by counsel for the defendants, that the parties had agreed that each of the plaintiff's fishing trips was valued at $42,500.00. I gathered further, that the plaintiff's position is that during the period the Janice Ann remained in the custody of Bahamian authorities the

plaintiff could/would have made at least three fishing trips. Consequently, counsel for the plaintiff argues that the plaintiff could have earned approximately $126,500.00 being 3 trips at $42,500.00 per trip [$127,500.00 by my calculation]. However, that as a compromise, the parties had agreed that the defendants would compensate the plaintiff for two such trips in the sum of $84,000.00 [$85,000.00 by my calculation].

30. (I note, that although the plaintiff had estimated $42,500.00 as the value of the spoiled fish, the parties have, in fact, settled that claim for $35,000.00 instead, which may account for why, as counsel for the plaintiff asserts, the defendants "sought unilaterally to amend the sum of $84,000.00 to $70,000.00").

31. Be that, as it may, counsel for the defendants says that the parties do not, or no longer, have an agreement with respect to the plaintiff's claim for loss of income as an item of special damages. I am, therefore, constrained to find that in the absence of an agreement between the parties as to the plaintiff's claim for loss of income as an item of special damages, and the plaintiff not having, in my judgment, pleaded, particularized or proven the same, the plaintiff's claim for loss of income in the sum of $126,500.00, or any other sum, is refused.

Legal fees in Magistrates' Court

32. In relation to the plaintiff's claim for reimbursement/recovery of his legal fees in the Magistrate's Court, also included amongst the particulars of special damages in his statement of claim is the line "legal fees for criminal matter." Nowhere in the statement of claim does the plaintiff plead or particularize such a claim, although included in the plaintiff's said itemized list of "Monies spent/lost by Janice Ann" in his bundle of documents, is the following item:

Attorney's fees • McKinney, Bancroft & Hughes (Bahamas) • Jeanne T. Tate PA (Tampa, FL) • Shurland & Company (Bahamas)	$ 31,600.00

33. Counsel for the plaintiff submits that during the unlawful arrest and detention of the plaintiff and his crew at the Magistrate Court, the plaintiff incurred considerable legal costs amounting to $31,600.00; that having regards to the pleadings and the rules of special damages, the plaintiff claims reimbursement of its legal fees ($31,600.00) at the Magistrate's Court, as the special damages claims.

34. While it is accepted that the plaintiff would have incurred some legal costs in respect to his arrest, detention and subsequent appearances in the Magistrate's Court, no evidence was led by the plaintiff or anyone on his behalf, nor were any invoices and or receipts included amongst the aforesaid documentary evidence, to show that the plaintiff was billed and or that he paid sums totaling $31,600.00 for legal fees to McKinney, Bancroft & Hughes, Jeanne T. Tate PA and or Shurland & Co.

35. In the circumstances, I find that the plaintiff has failed to plead, particularised and or prove his claim for $31,600.00 being legal fees in the magistrate's court or, as stated in his particulars of special damages, "legal fees for criminal matter", as an item of special damages.

36. I therefore make no award for the same.

GENERAL DAMAGES

37. I turn now to the issue of general damages.

38. As indicated, the court found that the plaintiff is entitled to be compensated in damages for his unlawful arrest, false imprisonment, unlawful detention and breach of his constitutional right under Article 19(3) of the Constitution.

39. The plaintiff is seeking general damages in the sum of $350,000.00.

40. In support of the plaintiff's position, counsel for the plaintiff makes the following observations and or submissions:

1) It must be noted that any unlawful arrest is tantamount to an assault and battery of one's person: Seymour v Commissioner of Police and The Office of the Attorney General, 2012/CLE/GEN/01339; and even if there is no intention on the part of the defendant to injure the plaintiff, his actions still amount to a battery. Wilson v Pringle [1987] 1 QB 237.

2) In assessing damages for assault and battery and an unlawful arrest there is no standard measure of damages to compensate an injured person;

3) Notwithstanding, the proviso to Article 28 of the Constitution of The Bahamas, the plaintiff ought to be entitled to damages in both tort and the relevant breaches of his Constitutional rights, inclusive of vindicatory damages. Merson v Cartwright et al (2005) 67 WIR 17 (JCPC);

4) Upon methodic examination of the evidence, the learned trial judge determined that the plaintiff and his crewmen were unlawfully detained and imprisoned for 5 days. Comparatively, the facts of Seymour v Attorney General (unreported) 2012/CLE/gen/01339 did not disclose an unlawful arrest per se, but were merely predicated on an assault and battery. Notwithstanding, the Court awarded the sum of $35,000.00 representing general and exemplary damages;

5) The plaintiff in this case, however, was actually arrested and confined to remain in one place under heavy armed artillery on the high seas for three days until arrival into Freeport. The exacerbation of the defendants' conduct also created international humiliation and embarrassment for the plaintiff and crew as the media was summoned to record them being escorted from the port with sirens under heavy armed police guards;

6) Interestingly enough, the 4th defendant (Gilford Lloyd) was recently successful in a similar claim against the Royal Bahamas Police Force wherein he was unlawfully arrested and detained at his residence when the Police with heavy rifles mistakenly barged into his home. Charles, J awarded Mr Lloyd $60,000.00 in damages;

7) In this case, the plaintiff was subjected to more intense and severe treatment and humiliation than Mr Lloyd;

8) Indeed, there is no yardstick to measure the value of the loss of freedom or by which a price-tag can be put on the loss of personal liberty. However, the merits and or circumstances of the case and subsequent arrest and detention for five days of the plaintiff, coupled with the breaches of his Constitutional rights, dictate that proper compensation be awarded to discourage the flagrant behavior by the executive;

9) Having regard to the awards made in the cases cited and having regard to the merits of the plaintiff's case which disclosed:

    a) Stealing of fuel by the plaintiff's sub-contracted agent (the Black Pearl);
    b) Spoilage of its fish;
    c) Omission to return a firearm;
    d) The ultra vires conduct of the Police to grant the plaintiff a cash bail in excess of its statutory authority which, in essence, is tantamount to 'no bail';
    e) Breach of the plaintiff's constitutional rights to

i) reasonably be informed as to the reason for his arrest and detention pursuant to Article 19(2);
ii) False imprisonment pursuant to Article 19(1);
iii) Protection of the law pursuant to Article 19(3);
iv) Protection of property pursuant to Article 21(1); and
v) Protection of freedom of Movement pursuant to Article 25(1).

a reasonable award for general damages to the plaintiff would be $350,000.00, made up as follows:

a.	Constitutional damages	$100,000.00
b.	Vindicatory damages	$ 50,000.00
c.	Unlawfully arrest detention	$100,000.00
d.	False imprisonment (5 days)	$100,000.00

41. On the other hand, the defendants say that the plaintiff should be awarded $2,000.00 in general damages, and in support of that position, counsel for the defendants makes the following observations and or submissions:

a) The plaintiff claims he was unlawfully detained for 91 hours and 35 minutes. However, the court determined, and the defendants accept, that the plaintiff was properly entitled to compensation for 43 hours and 35 minutes;

b) In assessing damages for unlawful detention, the court must consider the loss of time, considered primarily from a pecuniary viewpoint, the injury to feelings (i.e. dignity, disgrace, mental suffering and humiliation with any attendant loss of social status): Thompson v The Commissioner of Police of the Metropolis (1998) QB 498;

c) The plaintiff did not claim damages for assault and battery in any pleading, therefore, the case of Wilson v Pringle [1987] QB 237, cited by counsel for the plaintiff, does not apply and the claim should be rejected;

d) The matter of constitutional redress does not arise in this case. At paragraph 271 of her judgment, the court states: “as regards to the plaintiff’s claims for unlawful arrest, false imprisonment and unlawful detention, this court finds on the issue of liability for the plaintiff;

e) The statement made at paragraph 272 of the judgment was a statement made obiter as it was evident that the plaintiff’s statement of claim did not specifically plead for any constitutional redress;

f) The defendants submit that the plaintiff’s action and evidence adduced at trial are captured by the proviso to Article 28 of the Constitution in that there is remedy provided for at both common law and statute; that the action that the plaintiff is attempting to claim for in his submissions for damages is already provided for in tort and, therefore, the plaintiff cannot seek to resort to the Constitution which is a remedy of last resort. See Attorney General of Trinidad and Tobago v Ramanoop Appeal No. 13 of 2004, paragraphs 25-26;

g) The court must, therefore, reject the plaintiff’s claim of any breach of the Constitution onthe above-mentioned;

h) The background upon which the judge rejected the plaintiff’s assertion that he is entitled to any constitutional remedy at the trial of this matter in the face of a remedy at common law must be maintained;

i) Even if the defendants are incorrect in that submission, the defendants say that the alleged breach of the plaintiff’s constitutional rights nowhere rises to the level of the constitutional breaches found in Tynes v Barr [1994] 45 WIR 7 on which the plaintiff relies, and, therefore, that case is distinguishable on the facts;

j) This is not a case for aggravating or exemplary damages as in the case of Tynes v Barr and the Attorney General (2001) Court of Appeal No. 18 of 1994 as there were no aggravating features whatsoever in this case and it is a bona fide straightforward matter;

k) Further there were no aggravating features such as those that occurred in Merson v Cartwright & Anor [2005] UKPC 38 to warrant any damages for constitutional breach claimed by the plaintiff;

l) The defendants say further that nothing outside the fact that the plaintiff was found to have been detained for an extended period beyond the 48-hour period limit permitted by the police without seeking an order from the court to go beyond that period occurred in this instance;

m) Based on the foregoing, the defendants say that the sum of $2,000.00 is a reasonable sum in the circumstances of this case as compensation for the plaintiff's unlawful detention for 43 hours and 35 minutes; and that $7,500.00 is a reasonable sum for legal costs.

42. It appears from the foregoing submissions that both sides misunderstood and or misinterpreted the court's findings in relation to the plaintiff's entitlement to be compensated in damages.

43. While in his writ of summons filed 12 July 2011 the plaintiff alleged that he was, without lawful justification, arrested and or imprisoned by the defendants in the custody suite at Central Police Station for a period of 5 days, the plaintiff did not prove, nor did the court find, that he was unlawfully detained and imprisoned for a total of five days.

44. Nor, as counsel for the plaintiff states, did the court determine that the defendant had been "confined to remain in one place under heavy armed artillery on the high seas for three days until arrival in Freeport".

45. What the court found on the evidence, is that 23 hours and 50 minutes had elapsed between the time the plaintiff's vessel, the Janice Ann, was boarded by Royal Bahamas Defence Force Officers on 25 May 2011 and when the vessel docked in Freeport where the plaintiff was handed over to fisheries and police officers and lawfully arrested on 26 May 2011. That because the defendants did not inform the plaintiff of the reason for his detention, that period amounted to an unlawful arrest and false imprisonment.

46. Further, that after the plaintiff's lawful arrest he was subsequently unlawfully detained by the police for a period of approximately 43 hours and 35 minutes in excess of the maximum time which the police could lawfully detain him before taking him before a magistrate.

47. So, based on those findings, the total period for which the plaintiff is entitled to be compensated in damages for unlawful arrest, false imprisonment and unlawful detention is 67 hours and 25 minutes – approximately three days – not five days as argued by the plaintiff and not merely 43 hours and 35 minutes as argued by the defendants.

48. Moreover, I remind myself that counsel's assertions, observations, arguments and or submissions, are not evidence.

49. In that regard, and, notwithstanding counsel for the plaintiff's assertion that the defendants' conduct "created international humiliation and embarrassment for the plaintiff and crew as the media was summoned to record them being escorted from the port with sirens under heavy guard and armed police guards", no such evidence was led at trial nor did the court make any such findings.

50. As for counsel for the defendant's submission that the matter of constitutional redress does not arise in that the finding of the court at paragraph 272 of the said judgment was a "statement made obiter", attention is drawn to paragraph 230 of the said judgment where the court found that the plaintiff's statutory right under section 18 of the Criminal Procedure Code Act as well as his constitutional right under Article 19(3) of the Constitution to be brought before a magistrate as soon as reasonably practicable or without undue delay, were breached and that he is entitled to damages therefor.

51. It is accepted that in the case of the torts of unlawful arrest, false imprisonment and unlawful detention, damages are "at large", meaning there is no actual yardstick by which damages can be measured. So, too, the assessment of damages for breach of a constitutional right, since Article 19(4) of the Constitution does not set any limit on the amount of damages which can be awarded for such breaches. Per Sawyer J in Merson v Cartwright et al [1994] BHS J No 54, paras 254, 256. See also Dumbell v Roberts [1944] 1 All ER 326,where Scott, L.J. said at p. 329-330:

> "By the common law there is no fixed measure of damages for such an interference [with personal freedom] when unjustifiable because the damages are at large, and in so far as they represent the disapproval of the law for improper interference with personal freedom they may be 'punitive' or 'exemplary' given by way of punishment of the defendant or as a deterrent example and then are not limited to compensation for the plaintiff's loss."

52. In the case of Merson v Cartwright et al supra, Sawyer J. (as she then was) in June 1994, found that Ms Merson had been unlawfully arrested and falsely imprisoned for 57 hours before she was released on bail and that she had been subjected to "outrageous treatment" by police officers. The learned judge awarded Ms Merson $90,000.00 for assault, battery and false imprisonment; $90,000.00 for malicious prosecution; and $100,000.00 for breach of the plaintiff's constitutional rights. The defendants appealed to the Court of Appeal on the grounds that the $100,000.00 award should not have been made under Art 28(1) of the Constitution and that the same was duplicitous: [2002] BHS J No. 17. The Court of Appeal allowed the appeal and set aside that award. On appeal by the appellant to the Privy Council the Board re-instated the $100,000.00 award and opined that on the extreme facts of that case, they regarded the award of $100,000.00 by way of vindicatory damages as high but within the bracket of discretion available to the judge. In their opinion, the totality of the damages Merson was awarded was reasonable as a global figure to reflect what had been done to her: (2005) 67 WIR 17.

53. In Tynes v Barr [1994] BHS J No 27, Sawyer, J. (as she then was) in March 1994, found that the conduct of the police officer towards Mr Tynes was "arrogant, abusive and outrageous"; and that Mr Tynes, an attorney at law and Queens Counsel, was not treated humanely while he was in police custody. The learned judge awarded Mr Tynes general damages in the total sum of $215,000.00: $75,000.00 for assault, battery and false imprisonment; $100,000.00 for malicious prosecution; and $40,000.00 for breach of his constitutional rights. Mr Tynes was falsely imprisoned for approximately 2 ½ hours

54. The Court of Appeal allowed the appeal in relation to the award for breach of the appellant's constitutional rights, opining that a claim for damages could be made either under Article 19(4) of the Constitution or a claim in tort for false imprisonment; and that as the respondent was awarded damages for the tort of false imprisonment, an award for breach of his constitutional right would have been a duplication of damages for the same unlawful arrest: No. 18 of 1994, [2001] BHS J. No. 37. At paragraph 43 of their decision, their Lordships found that the proviso to Article 28 of the Constitution should have been considered as the claim in tort for false imprisonment would have provided an adequate means of redress for the wrong suffered by the respondent. It was, therefore, wrong, they said, for the trial judge to award separate damages for the constitutional breach.

55. That issue also arose in the Privy Council case of Attorney General of Trinidad and Tobago v Ramanoop Appeal No. 13 of 2004 in which Mr Ramanoop was subjected to "quite appalling misbehavior by a police officer". The court at first instance made declarations to the effect that his arrest and imprisonment were unconstitutional and in breach of his rights under s(4)(a) of the Constitution of Trinidad and Tobago. So, too was the police's assault upon Mr Ramanoop during his arrest and imprisonment. The judge awarded Mr Ramanoop $18,000.00 for the deprivation of his liberty for two hours and $35,000.00 for the assaults. The judge was of the view that he had no jurisdiction to award exemplary damages, but said that even if he did, exemplary damages were inappropriate and superfluous in proceedings under s 14 of the Constitution.

56. Both the Court of Appeal of Trinidad and Tobago and the Privy Council found that the judge could have considered exemplary damages and remitted the matter for consideration of whether an additional award of "exemplary/vindicatory" damages was appropriate in that case.

57. In the Bahamian case of Takitota v Attorney General 2009 UKPC 11, the plaintiff, a foreign national, was detained in custody at Her Majesty's Prison in the Maximum Security Section for a period of upwards of eight years, in what were found by the court to be "appalling conditions", such that Mr Takitota had attempted to commit suicide on three occasions. He was subsequently transferred to minimum security at the prison and later sent to the Detention Centre where he remained until he was released on bail bond.

58. Shortly after his release, Mr Takitota commenced an action in which he claimed special, general, aggravated and exemplary damages and also sought declarations that his fundamental rights under Articles 17(1) and 19(1) of the Constitution had been infringed. Longley J, (as he then was) awarded Mr Takitota the sum of $1,000.00 in damages for his unlawful detention during the "brief' period", which the learned judge found to be four days, he was in custody before the issue of the deportation order. The learned judge also declared that Mr Takitota's rights under Articles 17 and 19 of the Constitution had been breached and were likely to be breached.

59. Based on the aforesaid award of $1,000.00, the Court of Appeal determined that the award made by Longley J (as he then was) amounted to $250.00 per day for unlawful detention, but found that the learned judge had miscalculated the period of detention, which the Court of Appeal found to be 2,922 and not four days. Using the sum of $250.00 per day as a guide, the Court of Appeal, awarded the appellant the sum of $730,500.00 as compensatory damages, reducing that amount to $400,000.00 on the ground that the appellant would be receiving a lump sum payment. The court also awarded the sum of $100,000.00 as exemplary damages.

60. On appeal to the Privy Council, their Lordships, in upholding the award of $100,000.00 as exemplary damages, opined that that sum was justifiable on the facts of that case as an award of constitutional or vindicatory damages. Their Lordships, in allowing the appeal on the compensatory damages award, remitted the case to the Court of Appeal for re-consideration thereof and directed, at paragraph 17, that:

> "The court should determine what they consider to be an appropriate figure to reflect compensation for the long period of wrongful detention of the appellant, taking into account any element of aggravation they think proper, reflecting the conditions of his detention, and, in their own words, the misery which he endured."

61. On reconsideration, the Court of Appeal, with the consent of the appellant and the respondent in that case, reassessed compensatory damages at $500,000.00 plus $100,000.00 for the aggravating circumstances with interest at the rate of 10%. See SCCivApp & CAIS No. 54 of 2004, unreported, 9 June 2009.

62. In another local case, Jamal Cleare v Attorney General and others, 2007/CLE/GEN/FP1028 (unreported), Longley SJ, (as he then was), in 2011 found that the plaintiff was wrongfully detained for three days and, again using a rate of $250.00 per day, awarded him $750.00 in damages. On appeal, the Court of Appeal determined that Mr Cleare was entitled to greater compensation for his unlawful detention. Their Lordships allowed the appeal, set aside the award of $750.00, and substituted an award of $25,000.00 therefor, which sum they adjudged to be both compensatory and vindicatory of Mr Cleare's right to personal freedom and his right not to be denied this by unlawful detention: [2013] 1 BHS J No. 64.

63. Allen P, delivering the judgment of the court, stated at paragraphs 47 through 49 as follows:

> "47. The measure of and quantum of damages for unlawful detention would, of course, depend on the nature and circumstances of each case. There can hardly be a one-size-fits-all formula for the breach of such an important constitutional right as the right to personal freedom.
>
> 48. Needless to say, in our view, it would be most invidious to put a price tag or tariff on the deprivation of personal liberty. But it is undoubted that the right to personal liberty is, next to the right to life, an elemental right on which the enjoyment of most, if not all, of the other rights guaranteed in the Constitution is dependent. Personal liberty truly is priceless.
>
> 49. It is for these reasons that we are unable to support the quantum of damages of seven hundred and fifty dollars ($750.00) awarded by the learned judge; nor for that matter do we think the measure of damages of two hundred and fifty dollars ($250) per day, used to arrive at that quantum, is justified or appropriate. As we have stated, we are convinced and satisfied that Takitota did not intend to lay down a general tariff for the unlawful detention of an individual."

64. Delano Kelton Smith v Commissioner of Police and Attorney General, supra, is a 2014 decision in which Mr Smith was arrested and wrongfully detained for six hours. Sir Michael Barnett, C.J., as he then was, in making an award of $1,500.00, said at paragraph 8: "The plaintiff was wrongfully detained for 6 hours, which was about one quarter of 24 hours. Plaintiff should receive $1,500.00 as compensation for injury suffered as a result of being unlawfully detained. This is slightly more than one quarter of $4,800.00, which was the sum suggested in Thompson v Commissioner of Police of the Metropolis [1997] EWCA Civ 3083 (19 February 1997), [1998] QB 498 for being detained for 24 hours."

65. That is a 1998 English Court of Appeal decision in which the court, acknowledging that there is no formula which is appropriate for all cases, gave the following guidelines as to the directions which should be given by judges in their summing up to juries in these kinds of cases:

> "(5) In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for twenty four hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale."

66. In that case, Miss Thompson was lawfully arrested on the 28th September 1991 at about 5 a.m. in connection with a drink and driving offence to which she pleaded guilty on 23 April 1992. She would have been released in the normal way on bail at about 7am but instead she was granted bail by the Magistrates Court at 9.18 a.m. Miss Thompson was placed in a cell.

Several officers, including two females, were involved and considerable and unnecessary force was used on Miss Thompson, resulting in part of her hair being pulled out and, in her own words, "it was like I was being abused physically and sexually by all of them". As a result of the assault, in addition to the loss of hair, Miss Thompson was bruised and had pain in the back and hands. The jury awarded her £1,500 as compensatory damages and £50,000 exemplary damages for a global award of £51,500.00. Miss Thompson appealed the award of compensatory damages.

67. On appeal, their Lordships said that when considering whether to allow the appeal they are concerned with the total award, so while they did not disturb the total amount of the jury's award, £51,500.00, they thought it was preferable to set out their assessment under each head.

68. In that regard, their Lordships considered the compensatory "damages of £1,500 totally out of line" and, bearing in mind that Miss Thompson's initial arrest was lawful, they considered that for the subsequent unlawful conduct, which they found continued for seven months, they would award £10,000 for compensatory damages, plus £10,000 for aggravated damages and £25,000 for exemplary damages for a total of £45,000, which they found to be marginally less than the total of £51,500.00 awarded by the jury; and, as "the jury retain a margin of appreciation" their Lordships decided that the difference was not so great that they should interfere with the jury's total award.

69. Then, in the local case of Farquharson v The Attorney-General [2015] 1 BHS J. No. 84, the appellant, an attorney-at-law, was arrested and detained by order of the trial judge for what the judge deemed to be Mr Farquharson's contempt in the face of the court. Having found the appellant guilty of such contempt, the learned judge imposed against Mr Farquharson a fine of $800.00 and a sentence of two weeks imprisonment in default of payment.

70. Mr Farquharson, appealing against the initial arrest and detention, the subsequent finding of contempt and the penalty imposed, sought damages and costs in the sum of $2,640,443.00, for:

a) Breach of constitutional rights
b) Unlawful detention and false imprisonment
c) Malicious prosecution
d) Defamation
e) Exemplary damages

71. The Attorney General argued that an award of $6,900.00 inclusive of costs would, in the circumstances of that case, be appropriate.

72. The Court of Appeal found that ordering Mr Farquharson's removal from the court in the circumstances of that case resulted in the infringement of his constitutional rights; and that he was entitled to appropriate damages therefor.

73. As authority for that finding, the court cited the cases of Ramanoop, Merson and Cleare, all supra; and at paragraph 80 of their judgment, the Court opined that:

> "80. There is no yardstick to measure the value of the loss of freedom or by which a price-tag can be put on the loss of personal liberty. However, in this particular case, given the circumstances of the arrest of the appellant and the fact that he was detained in police custody for only a couple of hours, we think it is appropriate to award damages for his arrest and detention in the sum of $25,000.00 by way of compensation for his unlawful arrest and detention. To this amount we add the sum of $10,000.00 to vindicate his constitutional rights to liberty and freedom which were infringed by his arrest and detention."

74. In the 2017 decision of Lockwood v Department of Immigration [2014] 2 BHS J. No. 7; and 2007/PUB/CON/00037 (unreported), the plaintiff was arrested and taken to Central Police Station in relation to an allegation of rape. He was charged in the Magistrate Court and remanded to Her Majesty's Prison, Fox Hill until the trial. He was subsequently acquitted of the charge and released by the judge. He was taken to the Central Police Station and later to the Detention Centre by Immigration Officers where he was detained for four days. Shortly after his release, he commenced an action in which he claimed damages, inclusive of aggravated and exemplary damages, for unlawful arrest and detention. The court found that the plaintiff had been unlawfully detained for two days in breach of Article 19 of the Constitution and that he was entitled to damages, to include aggravated and exemplary damages to be assessed.

75. Mr Lockwood sought a global award of $225,000.00: $100,000.00 for breach of his constitutional rights; $50,000.00 in exemplary damages and $75,000.00 in aggravated damages. Counsel for the defendant submitted that the damages should be assessed at $13,000.00 being $8,000.00 for false imprisonment and $5,000.00 as aggravated damages.

76. The court made a global award of $70,000.00 to the plaintiff: $10,000.00 as general damages**;** $50,000.00 as aggravated and exemplary damages; and $10,000.00 as vindicatory damages for breach of the plaintiff's constitutional right under Article 19(1) “in keeping with the sum awarded to Farquharson in 2013”.

77. Lloyd v. Chief Superintendent Cunningham and others, 2016/CLE/gen/00062; [2017] 2 BHS J. No. 76, is another local decision. Interestingly, Mr Lloyd is the 4th defendant in this case.

78. On the night of 9 January 2015, Mr Lloyd was at home alone and asleep when he was awaken by a loud banging. Uncertain of where the banging was coming from, he did not respond immediately. As he was coming out of his bedroom, a man placed a shotgun to his forehead. He later realized that the man was a police officer and that there were two of them in his house. He was asked to get down on the floor, which he did. He was subsequently arrested, placed in handcuffs and escorted outside of his residence where he stood for approximately 30 minutes in the presence of onlookers. The handcuffs were eventually removed and Mr Lloyd released.

79. The learned judge found that Mr Lloyd’s residence had been unlawfully entered by the police; and that he had been wrongfully assaulted, unlawfully arrested and falsely imprisoned. She made a global award of $60,000.00, being $10,000.00 for unlawful entry; $30,000.00 for unlawful arrest and false imprisonment; and $20,000.00 as exemplary damages.

80. It is evident from the above-mentioned authorities that a number of factors influence the type and amount of award that may be made to a person who complains that his or her right to personal freedom has been infringed by his or her unlawful arrest and or detention. So, as Allen P observed in the Jamal Cleare case, there is no one-size-fits-all formula to determine the quantum of awards in cases involving the breach of such an important constitutional right as the right to personal freedom.

81. Further, it is accepted that in determining a reasonable amount of general damages for the torts of unlawful arrest, false imprisonment and unlawful detention, the court must take into consideration all of the facts, including the circumstances of the detainment, the length of time and the treatment by officials of the detainee while in the custody of the state. The court must also consider the fact that the liberty of the plaintiff in question has been infringed upon illegally by the executive.

82. In R v Governor of Brockhill Prison ex parte Evans [2001] 2 AC 19 HL at 28C, the court held that “it is contrary to principle that the executive should not be liable for illegally interfering

with the liberty of the subject. The remedy of habeas corpus and the tort of false imprisonment are important constitutional safeguards of the liberty of the subject against the executive."

83. An unlawful arrest is a false imprisonment and false imprisonment and unlawful detention are both the deprivation of one's liberty for a time, however, short, without lawful cause, for which the plaintiff is entitled to be compensated in damages. The learned authors of McGregor on Damages at para 37-011:

> "The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, i.e. the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, i.e. the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status and injury to reputation. This will all be included in the general damages which are usually awarded in these cases; generally no breakdown appeared in the cases."

84. Likewise, vindicatory damages and constitutional damages are the same. See The Attorney General of Trinidad and Tobago v Siewchand Ramanoop and Merson v Cartwright (supra).

85. In Ramanoop, in describing the character of the additional award of damages, the Board said at paragraphs 18 and 19:

> "18. When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 [of the Constitution of Trinidad and Tobago] is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.
>
> 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, emphasize 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 section 14 [of the Constitution of Trinidad and Tobago] 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 expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award."

86. In Merson v Cartwright (supra), the Privy Council (Lord Scott of Foscote) said:

> "18. These principles apply, in their Lordships' opinion, to claims for constitutional redress under the comparable provisions of the Bahamian constitution. If the case is one for an award of damages by way of constitutional redress – and their Lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course', the nature of the damages awarded may be compensatory but should always be vindicatory and accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of vindicatory award is not a punitive purpose. It is

> not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in The Bahamas free from unjustified executive interference mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

87. In another Privy Council case from the Court of Appeal of Trinidad and Tobago, Dennis Graham v Police Service Commission and the Attorney General of Trinidad and Tobago [2011] UKPC 46, Privy Council Appeal No. 0108 of 2010, the Board, commenting on that passage in Merson v Cartwright supra, said:

> "Plainly the statement that "the nature of the damages…should always be vindicatory" does not imply a rule that a distinct vindicatory award should be made in every case of constitutional violation; as the balance of the passage shows, it merely serves to indicate the overall purpose of any award of damages in constitutional cases."

88. As I understand it, in short, an additional award for breach of constitutional rights should only be made when an award of compensatory damages under the common law tort will not be sufficient to reflect the sense of public outrage at the conduct of the executive and to serve as a deterrent to further breaches.

89. In deciding an appropriate award for the plaintiff to be compensated for the aforesaid unlawful arrest, false imprisonment/unlawful detention and breach of his constitutional right under Article 19(3) of the Constitution, I have considered the fact that while the plaintiff made a number of allegations in his statement of claim of improper and or inhumane treatment at the hands of officers, the court found, that except for the breach of his Article 19(3) right to be taken before a magistrate without delay, the plaintiff failed prove that any of his other constitutional rights had been breached.

90. Moreover, although not proven, the plaintiff's allegations of his alleged treatment by police officers while he was detained, were nowhere near as egregious as those found proven in the cases of Merson v Cartwright and Tynes v Barr, which cases, I accept, are distinguishable on their facts. Furthermore, in the cases of Merson v Cartwright and Tynes v Barr, in addition to the tort of false imprisonment, the court also made findings of, and awarded damages, for assault, battery. No such findings were made with respect to the plaintiff in this case.

91. Similarly with the case of Lloyd v Chief Superintendent Cunningham and others, in which not only was there an unlawful entry into Mr Lloyd's home in the dead of night, awakening him out of his sleep, but Mr Lloyd was also met by an armed police officer who put a gun to his head. Further, Mr Lloyd also suffered the indignation of being arrested and placed in handcuffs outside his residence in the presence of his neighbors and then released without being told why.

92. As for the case of Takitota v Attorney General, although both Longley J and the Court of Appeal used as a guide, a per-diem rate of $250.00, as noted by Allen P in the Jamal Cleare case, not only did "Takitota did not intend to lay down a general tariff for the unlawful detention of an individual", but her Ladyship also expressed the view that $250.00 per day as a measure of damages for unlawful detention was not "justified or appropriate".

93. As indicated, this court found that the plaintiff was unlawfully arrested and falsely imprisoned, initially, for almost a day, that is, 23 hours and 50 minutes, by the Defence Force Officers. During that period of confinement, he and his crew were required to remain on the vessel, the Janice Ann, with two armed officers, one with a pistol and the other with a rifle. Officer Evans confirmed that although he did not tell the plaintiff or his crew that they were

under arrest, neither the plaintiff nor any of his crewmen was free to leave once Defence Force officers boarded the Janice Ann. The Janice Ann, along with its crew, was then towed into Freeport Harbour. Except for the armed guards, there was no evidence of any improper treatment meted out to the plaintiff from the time the Defence Force officers boarded the Janice Ann and their arrival in Freeport. Indeed, the evidence is that the plaintiff thought the vessel was being towed into Freeport so that repairs to its engine could be effected.

94. As for the period following the plaintiff's arrest and detention at the Central Police Station, the plaintiff in his generally indorsed writ of summons and statement of claim made a number of allegations against the defendants, namely, he was: verbally threatened; refused access to the bathroom to relieve himself; not given an opportunity to contact a lawyer or make a phone call; not read his Article 19(2) constitutional rights; never told he was under arrest; denied medical treatment for almost 24 hours for a hand injury; and that he was verbally threatened to be "Gutted like a Fish" by one of the defendants. However, this court found that those allegations were not proven.

95. Moreover, while the plaintiff listed the following as particulars of injuries and physical shock: Infection to his right hand; Nightmares and sleepless nights; and shock, except for the infection to his right hand, which this court found was not attributed to any act on the part of the defendants, the plaintiff led no evidence with respect to his alleged "injuries and physical shock."

96. On the other hand, although it is unclear exactly when such information was brought to the attention of the police officers defendants, there is evidence that prior to the plaintiff and his crew being charged, information had been brought to the attention of Fisheries Officers that led them to the view that perhaps the plaintiff and his crew ought not to be charged in this matter. However, attempts by Fisheries Officers to have the police release the plaintiff and his crew earlier and without charging them, were unsuccessful.

97. Further, while it is recorded on the Royal Bahamas Police Force detention record with respect to the plaintiff that at 5:45 p.m. on 28 May 2011 Police Inspector Rolle had given instructions that the plaintiff could be released on $30,000.00 cash bail, Officer Rolle admitted that as a police officer the upper limit of bail that he was authorized to grant without seeking additional authority was $10,000.00. So not only was the offer of bail made at the eleventh hour but the sum of $30,000.00 was in excess of the amount of bail Inspector Rolle was authorized to grant.

98. It is, in my judgment, clear from that evidence that not only did Officer Rolle have the authority to release the plaintiff earlier on bail, but by granting bail in an amount that exceeded his authority at a time when he must have known that the banks would have been closed and in circumstances where the plaintiff, a foreign national, was unlikely to have been able to meet the conditions of bail, was, in my view, not only tantamount to no bail, but appears to have been calculated to keep the plaintiff in custody rather than release him on bail.

99. I have found that the plaintiff was deprived of his liberty by Bahamian authorities without lawful cause for a total period of 67½ hours (23 hours and 50 minutes in the first instance and 43 hours and 35 minutes in the second instance), approximately four and a half hours shy of 3 days.

100. In the circumstances, then, and having regard to the foregoing, I assess damages in the sum of $30,000.00 by way of compensation for the torts of unlawful arrest, false imprisonment/unlawful detention, and $20,000.00 to vindicate the plaintiff's constitutional rights to liberty and freedom which were infringed by his wrongful arrest, false imprisonment and unlawful detention.

101. There will accordingly be judgment for the plaintiff in the sum of $50,000.00 together with interest at the rate of four per cent annum from the date of the filing of the writ of summons, 12 July 2011, until the date of judgment on the assessment, and thereafter with interest pursuant to the Civil Procedure (Award of Interest) Act until payment, and costs, to be taxed if not agreed.

DATED this 24th day of July 2019

Estelle G. Gray Evans
Senior Justice