THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. CA P203 of 2023

Claim No.CV2022-00618

BETWEEN

VIJAY RAMAI

Appellant/Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent/Defendant

Panel: P. Moosai JA
V. Kokaram JA
E. Donaldson-Honeywell JA

Appearances:

1. **Mr. L. Lalla S.C. instructed by Ms. T. Mangroo, Attorneys-at-law for the Appellant.**
2. **Ms. K. Prosper, Ms. S. Singh, Mr. V. Jardine and Ms. J. Guerra, Attorneys-at-law for the Respondent.**

Date of Delivery: 23rd January 2026.

I have read the judgment of V. Kokaram J.A. I agree with it and have nothing to add
/s/ P. Moosai J.A.

……

I have read the judgment of V. Kokaram J.A. I agree with it and have nothing to add
/ s/ E. Donaldson-Honeywell J.A.

……..

DECISION

Delivered by V. Kokaram J.A.

Introduction

1. Voice is the heartbeat of our Caribbean democracies. Voice releases the soul. Voice giving expression to one's thoughts in various ways which does not unduly interfere with the rights and freedoms of others, enjoys a free space in the sacrosanct amphitheatre of the fundamental human rights guaranteed by our Republican Constitution. Voice in a Caribbean society emerging from the receding shadows of colonial rule "voiceless-ness" shapes identity. That freedom to publicly express one's opinion, needs, desires, goals, recognised in our Constitution as a fundamental human right of thought and expression is not a gift but a cherished recognised birth right. Giving voice within the contours of respect for the rights of others and having it heard, gives life to the inclusivity in democratic life, the opportunity to assimilate that voice with the shared goals of a future for our people, a satisfaction of our sense of interconnection and belonging in our own governance. So then, if we have no voice we are robbed of our dignity.

2. Dressed in smart business attire, Vijay Ramai ("Mr Ramai"), the Appellant, stood on the pavement of Woodford Square, a public square, in our capital city, to give voice and expression to his opinion about the negative effects of the government imposed COVID restrictions during the COVID 19 pandemic. It was his one-person protest where his voice was represented by a colourful placard which he held before his chest with a cryptic, short but poignant statement:

   "SAFE ZONE Discriminates and Oppressive Fix it Now".

   His message was intended for, not only the public, but the parliamentarians and the Minster of Health who would have taken their seats in the Red House, our seat of Parliament, itself a symbol of our democratic life and a constitutional institution to give voice for all in our governance.

3. Ironically, Woodford Square itself which sits across the Red House is a powerful historical symbol in our country well known as "The People's Square". It is our public space of debate and is the symbol of free speech. It lies between our Parliament and the Hall of Justice in our capital city. No better juxtaposition of the importance of free speech and the role of the Court to protect it. The people's square is a space mirroring the public debates in Parliament. The "people's university" an expressive free zone in Woodford Square is well known as a sacred ground for the free expression of thoughts and expression. Indeed, it has been described as the "University of Woodford Square" and at this "university" it "brought political education to the people of the West Indies and introduced a new technique of cold intellectual political analysis based on reasoning and facts".[1] In this "university" there was participation of "thousands of citizens in this programme of political education"[2] and was described as "revolution by intelligence".[3]

4. It is on this pavement on a Friday morning of the 4th February 2022 before Parliament had convened, that Mr Ramai was unlawfully instructed by the police to cease his one person protest and he abandoned his protest. The main issue before the trial judge giving rise to this appeal is whether this unlawful act of the State gives rise to any constitutional relief.

5. The trial judge was of the view that the unlawful instruction did not hamper Mr Ramai from giving full vent of his expression and there was no breach of his freedom of thought and expression and protection of the law.

6. For the reasons that we have set out in this judgment we are of the view that the trial judge erred in failing to take into account the correct content and context of the right to freedom of thought and expression enshrined in section 4(i) of the Constitution;

[1] "**Eric E. Williams SPEAKS- Essays on Colonialism and Independence**" by Selwyn Cudjoe, 1993 Calaloux Publications at page 208.
[2] Ibid.
[3] Ibid.

misapplied the accepted facts; erred in conflating the question of what appeared to the trial judge as a minimal breach to hold that Mr Ramai voluntarily ended his protest and failed to analyse the protection of a constitutional right in its proper proportionality analysis.

7. We are of the view that in the circumstances of this case even though the action of the State through the police officer was not egregious nor oppressive, it was an unlawful interference of a sacrosanct right to express oneself as enshrined under section 4(i) of the Constitution. There is no contest and the parties have agreed on this appeal that such an unlawful interference would also amount to a breach of Mr Ramai's right to the protection of the law. As a constitutional court we cannot turn a blind eye or shrug off unlawful conduct. Such illegitimate acts, seemingly innocent on its face, are the sleight of hand that the Judiciary is enjoined to guard against to prevent any creeping diminution and dilution of sacred rights. It is sufficient in our view not only to mark the breach by a declaration but to make a modest award of damages to highlight the importance of this constitutional value that in this case was illegitimately impeded. While there was no direct damage suffered by Mr Ramai, the obstruction was sufficient to add insult to the dignity of the solemn occasion of Mr Ramai's single person peaceful silent protest.

8. The main issues arising in this appeal and a summary of our findings are for convenience set out as follows:

   (a) **Whether Mr Ramai's constitutional rights to freedom of expression and protection of the law were engaged by the unlawful instruction by the police to cease his protest**- (i) we are of the view that there was a causal connection between the unlawful instruction and Mr Ramai's stoppage of his silent protest, (ii) the unlawful act did not pursue a legitimate aim even though there was no egregious conduct by the State it is enough to make it unconstitutional.

   (b) **Whether trivial breaches of constitutional rights can be accommodated as non-actionable breaches**- Save for a proportionality analysis, there is no place to accommodate trivial breaches of the Constitution where an act which contravenes a

fundamental right has occurred. The question that should then engage the Court is whether the Court should exercise its discretion to grant relief and, if so, what should be the appropriate remedy taking into account all the circumstances.

(c) **Whether any constitutional relief should be granted**- This is a fitting case for declaratory relief and an award of $30,000.00 to mark the importance of the constitutional right that was breached.

Mr Ramai's one person protest at Woodford Square

9. The factual matrix in this appeal is outlined in the affidavit evidence[4] of the Appellant and Respondent in the court below. There was limited cross examination of PC Sinanan on behalf of the Respondent and largely the facts are not in dispute. Further, we add that there was a video of the entire incident which placed the Court in as good a position as the trial judge to assess the evidence and determine what findings should reasonably be drawn.

10. The Appellant is an activist and owner of the Fun Splash Waterpark in Debe. The Appellant pleaded that he was negatively affected by the safe zone policy instituted by the government.[5] As a result of this policy, on the 4th February 2022 he journeyed across the

[4] Affidavit of Vijay Ramai filed 25 February 2022, Affidavit of PC Sinanan filed on 2 June 2022.

[5] In Mr Ramai's Affidavit in Support of his Fixed Date Claim Form filed on 25 February 2022, Mr Ramai states at paragraphs 3, 5, 6, 7 and 8:

> "3. As a citizen of this Country I believe it is important that citizens are always free to speak out and let their voices be heard on the various social, political and economic issues that affect our country on a day to day basis, so that we may be instruments in forcing change on these issues by making the powers that be aware of our concerns so that they may be encouraged and mobilised to bring about necessary changes for the betterment of all and the greater good of the Country.
>
> 5. Being the owner of the Waterpark I have been directly and negatively affected by the safe zone policy instituted by the Government, which policy has had a harmful effect on my business, the persons I employ and their families.
>
> 6. Throughout the pandemic, and up to Monday February 21st 2022 waterparks were banned from admitting patrons who were unvaccinated. (See Legal Notice 14 of January 30th 2022 at Regulation 8). This effectively meant that the main persons for whom the waterpark serve as an attraction i.e. children under the age of 12, were prevented from being admitted to the waterpark, while they were not so prevented from going to beaches and rivers.
>
> 7. I was of the view that this practice and law was discriminatory.

length of Trinidad that morning to be in place for his early protest on the sidewalk opposite the Red House in Port-of-Spain, where he stood peacefully by himself with a placard. While he was there, the Appellant pleaded that he was approached by a police officer, PC Sinanan, who told him he had no permission from the Commissioner of Police and that he should put down his placard.

11. The Appellant related to the police officer that he was allowed to stage a "one man"[6] protest without the need for the Commissioner of Police's permission but the police officer insisted he put down the placard and at this time other heavily armed police officers[7] stood at PC Sinanan's side. He then put down his placard as he was fearful of arrest.

12. At that time, the Appellant's friend who was not engaged in the protest took a video recording of what happened between himself and the police officer.

13. PC Sinanan deposed that on the day in question, he along with two other police officers responded to a gathering opposite the Red House. On arriving at the scene, the police officer saw 12 persons gathering and formed the view that they all formed one gathering due to their proximity to each other. PC Sinanan outlined the process which would be followed to engage a protest of two or more persons which entailed speaking to the leader of the group (if there is any) and ascertaining if the Commissioner of Police was

---

> 8. I was also of the view that the best place to raise my concern about this issue and to exercise my fundamental right to liberty as well as my right to freedom of thought and expression on the issue was by staging a peaceful one man protest on the sidewalk in the front of the Red House, the seat of Parliament, where the laws of the country are made, and on the day that the House of Representatives sits at the Parliament and when the press would be around to provide a further avenue to raise and air my concern."

[6] Paragraph 13 of Mr Ramai's Affidavit filed on 25 February 2022.

[7] In the Affidavit of Police Constable Tim Sinanan Regimental Number 20938 filed on 2 June 2022 at paragraph 9, PC Sinanan described how the officers were dressed:

> "9. … WPC Rullow and I were equipped with a pistol on our holsters and I also carried a spark (Tazer is the brand) in a holster. PC Mc Meo had a Galil (rifle) slung across his body and pointing to the ground and a pistol in his holster. PC Mc Meo and I were wearing bullet-proof vests with our badges displayed in a strap securing it on the left hand side of the vest."

notified. Based on this, if there was no notification to the Commissioner, then an officer of higher rank will arrive at the scene and advise the leader and supporters to disperse.

14. According to the Respondent, PC Sinanan interacted with the first person he saw i.e. the Appellant and told him to take down his placard as he told him that he formed the view that he was part of the protest for which the Commissioner of Police had to be notified. The Appellant told him that he was allowed to make a "one man" protest and there was no need for the Commissioner's permission. PC Sinanan deposed that although the Appellant said he was by himself, based on his past experience that although persons would claim they are in a one person protest, they would be engaged with other persons, PC Sinanan was unsure because the Appellant was standing in close proximity to other persons.

15. PC Sinanan spoke to other persons nearby and formed the view that those persons were in support of a female who was there for different reasons to the Appellant. The Respondent's case was that at no time did the police officer tell the Appellant to disperse or threaten to arrest him.

16. PC Sinanan's testimony under cross-examination was as follows, as set out by the trial judge at paragraph 10 of his decision:

> "10. Under cross examination he stated that he could not recall that the claimant was wearing a blue blazer and appeared to have been dressed differently to the other persons present. This was so despite having reviewed the video about one week before being cross examined. He could not recall that the sign was white with red markings. When it was put to him that the other persons had blue Bristol board signs he also could not recall. While he was talking to the claimant none of the other persons in the black tee shirts approached him and the claimant. He admitted that when he approached the claimant he told him to put down his placard before making any enquires other than his name. From his perspective he

was part of the line of people when he approached him. He admitted that he had no reason to believe that the claimant was also in support of the female."

17. According to the trial judge, the issue was whether the instruction by the police officer to "put down" the placard, that he was "not allowed to put up" the placard and "was not supposed to have" the placard was the direct cause of an infringement of the right of freedom of Mr Ramai to express his thoughts and if so whether it was a minimal infringement as suggested by the Respondent.

18. The trial judge held that the Appellant ignored the instruction by PC Sinanan and proceeded for some 3 minutes and 17 seconds to ventilate and articulate the subject of his demonstration. Although the police officer's instructions were unlawful (according to the trial judge), the learned judge held the view that the Appellant refused to abide by the police officer's instruction and went on to accomplish his goal which was to address the issue for which he came with the use of his placard.

19. As a result, the trial judge held that since the Appellant accomplished his task there was no breach of his right to freedom of thought and expression by the unlawful instruction of the police officer.

20. In relation to the other alleged breaches of section 4(a) and 4(b) of the Constitution, the trial judge held that there was no evidence of a deprivation of his liberty or of his property under section 4(a) and the learned judge also held that there was no breach of section 4(b) having regard to the court's findings in relation to section 4(i).[8]

21. The findings of fact of the trial judge are important and are unchallenged by the State. At paragraphs 12 and 13 of the trial judge's judgment, the trial judge stated:

[8] There was no appeal against the trial judge's finding that there was no breach of Mr Ramai's constitutional rights under section 4(a) of the Constitution.

"12. The court therefore finds that when the claimant was approached by the PC there was sufficient for him from the physical juxtaposition of the claimant and the other persons, their methods of dress and their placards for him to form the reasonable inference that the claimant was in fact engaged in a solo protest. Further, that even if the PC was unsure at that stage, he did not speak with the other persons or make any other enquiry prior to instructing the claimant to put down his sign and informing him that he required permission to engage in the activity in which he was engaging. In so finding the court also finds that the circumstances were such that the PC was not merely advising as the use of his words imply. A rose by any other same smells just as sweet. It must be underscored that this was a uniformed, armed officer in the presence on other uniformed armed officers who was stating as a fact that the claimant could not protest without permission and telling him to put down his placard. The use of the word "advice" in those circumstances rings hollow. When all of the circumstances are considered (sic) the use of the word advice seems to have been an afterthought as the discussion continued between the claimant and the PC, the PC having already in any event instructed the claimant to put down his placard and the court so finds.

13. Finally it is also the finding of the court that the claimant appeared on all of the evidence to have been engaged in a protest on his own against the policy. Under cross examination PC Sinanan attempted (perhaps as a last salvo) to give the impression that he formed the view that the person doing the recording was protesting with the claimant). For the avoidance of doubt the court finds that this is not the case having regard to the fact that that person was not armed with a placard and there is no nexus between he and the claimant except to say that he was his friend. Further, the evidence of this being part of the thought process of the PC has come at last minute as it were so that the court does not believe that the PC formed this view on that day."

22. It demonstrates that quite to the contrary of what was being argued by the State, the Court held that there was an unlawful order to cease the one person protest. It was more than an instruction.

23. The Court however committed the following errors:

    a. in the analysis of when a breach of the Constitution occurs;
    b. in failing to recognise that a trivial breach goes to the question of remedies;
    c. in failing to properly analyse the evidence in the face of the Court's own findings and the importance of the breach.

Freedom of thought and expression

24. Section 4(i) of the Constitution sets out:

> "4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:
> (i) freedom of thought and expression".

25. The trial judge was correct to hold as unassailable the sacrosanct rights of the freedom of expression as the pulse of our democracy.[9] This fundamental right engages the values of participatory democracy, inclusivity and the inherent dignity of the person reflected in our Preamble. Our Preamble underscores an understanding of key elements of our human dignity:

[9] At paragraph 19 of the trial judge's decision:
"19. The defendant has submitted that the duty of the court is to guard against true oppression and not to accord an overly vigorous and sacrosanct importance to freedom of expression with the result that a breach of the constitutional right is easily engaged by minimal of indirect intrusion. Of course the co-relation between the freedom to think and express one's view and the pillars of democracy is well established and it is often the case if not always that the exercise of the latter is fundamental to a true and meaningful existence of the former."

"Whereas the People of Trinidad and Tobago—

(a) have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

(b);

(c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(e) desire that their Constitution should enshrine the above-mentioned principles and beliefs and make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms."

26. In **Brooker v Police [2007] 3 LRC 750** Thomas J highlighted the concept of human dignity within the context of free expression:

"178. Barak observes that human dignity constitutes a right in itself and is expressly recognised as a right in a number of Constitutions. The right to dignity, he continues, reflects the 'recognition that a human being is a free agent, who develops his body and mind as he wishes, and the social framework to which he is connected and on which he depends' (pp 85–86). When identifying the elements which make up the 'right to dignity', Barak states that human dignity is the freedom of the individual to shape an individual identity. It is the autonomy of the individual will. It is the freedom of choice. Human dignity, Barak adds, regards a human being as an end, not as a means to achieve the ends of others."

27. Saunders P, in the Caribbean Court of Justice's decision of **McEwan and others v The Attorney General of Guyana CCJ Appeal No. GYCV2017/015** at paragraphs 75 and 76 acknowledges this point when he commented on the importance of the right of freedom of expression to the citizens of a country and stated:

> "75. Because it underpins and reinforces many of the other fundamental rights, freedom of expression is rightly regarded as the cornerstone of any democracy. A regime that unduly constrains free speech produces harm, not just to the individual whose expression is denied, but to society as a whole. On the one hand, the human spirit is stultified. On the other, social progress is retarded. The fates of brilliant persons like Galileo, and Darwin, and countless others, sung and unsung, betray a familiar pattern in the history of humankind. Today's heresy may easily become tomorrow's gratefully embraced orthodoxy.
>
> 76. It is essential to human progress that contrary ideas and opinions peacefully contend. Tolerance, an appreciation of difference, must be cultivated, not only for the sake of those who convey a meaning, but also for the sake of those to whom it is conveyed…".

28. Justice Saunders in the case of **Benjamin et al v The Honourable Minister of Information and Broadcasting et al No. 56 of 1997** which was decided in the High Court of Anguilla also reiterated the importance of the Constitutional right to expression. Saunders J (as he then was) stated:

> '…freedom of expression conduces to the enhancement of our democratic values. It is a necessary condition for the effective pursuit of truth. It heightens the ability of the citizenry fully to participate in the making of decisions. By being able freely to ventilate grievances, a healthy social pressure valve is created and utilized. If this valve is clogged or its usage denied, the result could be violent and dangerous

expression. Freedom of expression provides the mechanism through which is often peacefully resolved that tension that always exists between social change and preservation of the status quo, that this right is to be found in the First Amendment to the United States Constitution is not a coincidence. It is a testament to its primacy.'

29. In **Brooker** Thomas J stated at paragraphs 234 and 240:

"234. Freedom of expression is a hallowed right and needs no enlargement. Its critical importance in a free society has been recognised on countless occasions in numerous judgments. Indeed, the courts have been zealous in assuming a responsibility to protect the right to freedom of expression from perceived encroachment. It is a right which lends itself to immensely strong formulations in the abstract. Proponents, including judges, with or without a rhetorical flair, quickly and earnestly portray the right to freedom of expression as the central pillar of a free and democratic society, the true bastion against tyranny of thought. The judiciary tends to see itself as the anointed guardian of this fundamental right. A presumption reflecting this predilection can quickly become a 'trump' card. The right, it seems, is seen to implicitly constitute a superior law and judgments can at times exhibit a crusading or missionary zeal which is a trifle discomforting.

240. The reality therefore, is that the courts must deal with the right as exercised in a particular situation; that is, move from the abstract concept to its concrete application. This requirement does not mean that the courts should judge the validity of the particular expression. Rather, because the right to freedom of expression will never fall to be considered in isolation, but always in conjunction with other rights, interests or values, the courts must recognise that the application of the right must be approached with a fair sense of proportion.

Freedom of expression is of immense importance in a democracy, but its importance in a particular case will always turn on the circumstances."

30. It is accepted by the State that the activity of the Appellant was not in breach of any law. The trial judge's exposition and analysis of our public disorder laws at paragraphs 14 to 16 of his judgment demonstrates that Mr Ramai's act fell outside the ambit of a restricted public act. There has been no cross-appeal. It is not necessary to rehearse the trial judge's analysis simply to identify the enabling provisions of the criminal law which sanctions, limits and restricts the freedom of expression in sections 107(1), 109, 110(1), 112, 113(1) and 114(1) of the Summary Offences Act Chap. 11:02. The trial judge held that Mr Ramai's one person protest fell within the zone of lawful permissible protest action.

31. The point however here is that the trial judge had found as a fact in paragraph 12 of his decision that the police engaged in an illegal act by instructing Mr Ramai to (a) put down his sign and (b) to inform Mr Ramai that his entire activity was devoid of permission from the Commissioner of Police and therefore illegitimate. The trial judge also found that there was an implicit threat of arrest when he was instructed that he could not protest without permission.[10]At this point there is an unlawful interference of Mr Ramai's right to protest.

The "right to protest"

32. Mr Ramai therefore in this case enjoyed the full right to give voice to his expression as a single person silent protest. Importantly, on the facts, it is unchallenged that it was his desire to stage this protest in response to what he saw was an unjust governmental policy.

1. [10] It must be underscored that this was a uniformed, armed officer in the presence on other uniformed armed officers who was stating as a fact that the claimant could not protest without permission and telling him to put down his placard. The use of the word "advice" in those circumstances rings hollow. When all of the circumstances are conserved the use of the word advice seems to have been an afterthought as the discussion continued between the claimant and the PC, the PC having already in any event instructed the claimant to put down his placard and the court so finds."

He also felt that this was his last chance to actively engage in democratic life, his previous pleas to the Minster going unanswered.

33. Some useful authorities were referred to us on the "right to protest" which are found at paragraph 40 of **David Thomas James Howarth v Commissioner of Police of the Metropolis [2011] EWHC 2818 (QB)**:

> "40. We were reminded too of the "constitutional shift" in the importance of the freedom of assembly and expression brought about by the 1998 Act and referred to the following passage in the speech of Lord Bingham in the *Laporte* case [2007] 2 AC at 126-7, paragraphs 34-36:
>
> "The approach of the English common law to freedom of expression and assembly was hesitant and negative, permitting that which was not prohibited. Thus although Dicey in *An Introduction to the Study of the law of the Constitution,* 10th ed (1959), in Part ii on the "Rule of Law", included chapters VI and VII entitled "The Right to Freedom and Discussion" and "The Right of Public Meeting", he wrote of the first, at pp 239-240, that "at no time has there in England been any proclamation of the right to liberty of thought or to freedom of speech" and of the second, at p 271, that "it can hardly be said that our constitution knows of such a thing as any specific right of public meeting". Lord Hewart CJ reflected the then current orthodoxy when he observed in *Duncan v Jones* [1936] 1 KB 218, 222, that "English law does not recognise any special right of public meeting for political or other purposes." The Human Rights Act 1998, giving domestic effect to articles 10 and 11 of the European Convention, represented what Sedley LJ in *Redmond-Bate v Director of Public Prosecutions*163 JP 789, 795, aptly called a "constitutional shift."
>
> Article 10 confers a right to freedom of expression and article 11 to freedom of peaceful assembly. Neither right is absolute. The exercise of these rights may be

restricted if the restriction is prescribed by law, necessary in a democratic society and directed to any one of a number of specified ends.

The Strasbourg court has recognised that exercise of the right to freedom of assembly and exercise of the right to free expression are often, in practice, closely associated: see, for example, *Ezelin v France* (1991) 14 EHRR 362, paras 37, 51; *Djavit An v Turkey* reports of Judgments and Decisions, 2003-III, p 231, para 39; *Christian Democratic People's Party v Moldova* (Application No 28793/02) (unreported) 14 May 2006, para 62; *Ollinger v Austria* (Application No 76900/01) (unreported) 29 June 2006, para 38. The fundamental importance of these rights has been stressed. Thus in *Steel v Untied Kingdom* 28 EHHR 603, para 101, freedom of expression was said to constitute: " an essential foundation of democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment." In *Ezelin v France*, para 53, the court considered

That the freedom to take part in a peaceful assembly-in this instance a demonstration that had not been prohibited-is of such importance that it cannot be restricted in any way, even for an *avocat,* so long as the person concerned does not himself commit any reprehensible act on such an occasion."

Moreover, Lord Bingham went on to cite *Ziliberberg v Moldova* (Application No. 61821/00) where the European Court added that an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of a demonstration. Any prior restraint on freedom of expression "calls for the most careful scrutiny": *Sunday Times v United Kingdom (No. 2)* (1991) 14 EHRR 229, paragraph 51 and *Hashman & anor. v United Kingdom* (1999) 30 EHRR 241, paragraph 32."

34. Similarly, in **Brooker**, the appellant staged a one-person protest in front of a police officer's home. He then went to the home of Constable Croft, a police officer, to protest against what he felt was police harassment. He sang songs, played his guitar, and

displayed a sign in front of her house early in the morning. Mr. Brooker was subsequently arrested and charged with disorderly behaviour. Tipping J stated at paragraphs 91 and 92:

> "91. The involvement of one of the rights and freedoms affirmed by the Bill of Rights is likely to influence the level of anxiety and disturbance which a reasonable member of the public should be expected to bear. In the present case it is the right to freedom of expression which is involved. Section 5 of the Bill of Rights provides that this freedom should be limited only to an extent that is reasonable and can be demonstrably justified in a free and democratic society. The level of anxiety or disturbance which citizens are expected to bear should be consistent with that legislative mandate. In a case like the present the application of the disorderly conduct test requires the court to balance the competing interests of those exercising their right to freedom of expression, and more particularly their freedom to protest, against the legitimate interests and expectations of those affected by that exercise.
>
> 92. Where, as here, the behaviour concerned involves a genuine exercise of the right to freedom of expression, the reasonable member of the public may well be expected to bear a somewhat higher level of anxiety or disturbance than would otherwise be the case. This may be necessary to prevent an unjustified limitation of the freedom and is consistent with the purpose of s 6 of the Bill of Rights. There must, however, come a point at which the manner or some other facet of the exercise of the freedom will create such a level of anxiety or disturbance that the behaviour involved becomes disorderly under s 4(1)(a) and, correspondingly, the limit thereby imposed on the freedom becomes justified under s 5. No abstract guidance can be given as to when that level will be reached. That decision is a matter of judgment according to all the relevant circumstances of the individual case."

35. At paragraphs 116 and 117, McGrath J stated:

> "116. Protest in general involves the physical presence of the protester or protesters where the protest takes place, the conveying of information, attempts at persuasion and pressure on the subject of the protest. To these ends protesters will seek to draw the attention of their immediate or wider audience to perceived public mischiefs in ways that will bring home to those at whom the protest is directed the force of their criticisms. Protesting actively in or within view of a public place will normally be thought to have a greater impact on public opinion than a more passive approach, especially if it generates media attention. In assessing the particular weight to be given to freedom of speech in a protest context, respecting the freedom to choose the means of protesting which are seen to be most effective is important. Respect for protest as a means of pressing for change in official policy or conduct is very much part of New Zealand's culture and societal values. A protest concerning perceived overbearing police conduct is well within the spirit of the right to freedom of expression. As Andrew Geddis has put it:
>
> > [T]he overall health of our body politic may be judged by how far our legal ordering provides [the individual dissenter] with the space to make her opinions known to the public.
>
> [117] Freedom of expression has the status of a protected right under s 14 of the Bill of Rights Act, as well as under international instruments. Article 19(3) of the International Covenant on Civil and Political Rights, which is a source of s 14, does however state that restrictions may be imposed on freedom of expression by law, where necessary, including for the protection of public order. This right of limitation is not expressly included in s 14 of the Bill of Rights Act but, as previously mentioned, is stipulated by s 5. Accordingly I now turn to the considerations which

are said to limit the right to freedom of expression in relation to what is disorderly behaviour."

36. Importantly, the legitimacy of this form of expression and its value demonstrates that Mr Ramai's statement "SAFE ZONE Discriminates and Oppressive Fix it Now" on his placard adds to the marketplace of ideas on the question of safe zones as a COVID-19 policy. It is an expression which contributes to democratic theory and although expressed in simple terms it is as significant itself as a statement made on the floor of the parliamentary chamber. Contextually, Mr Ramai's choice of space is symbolic of his exercise of a right which enures to public debate and public discussion.

37. The trial judge fell into error, while accepting the breadth of the constitutional right, failed to pay regard to key aspects of Mr Ramai's expression (a) his desire to protest in front of Parliament; (b) to do so for the day that Parliament was sitting; (c) to do so in the form of a placard protest. Had the trial judge focused on these elements of Mr Ramai's choice of expression he would have come to the conclusion that the unlawful instruction obstructed Mr Ramai from exercising his right to give life to his mode of expression.

38. The trial judge concluded that Mr Ramai voluntarily ended his protest. This is on its face an inconsistent finding when the trial judge had also found that Mr Ramai was instructed to end his protest. Further, the facts demonstrate uncontrovertibly that Mr Ramai felt compelled to cut his protest short. The following are his uncontradicted statements where he said he was fearful of arrest and had to stop:

    (a) "I am believing that if I don't do that I might be arrested so I have to abandon my protest and seek further advise from my ..my attorney at law"
    (b) "Am now that PC Sinannan has advised me that I cannot do ah one man demonstration …you know I have no other option but to put down my sign and leave here for some other recourse which I can do so I can have a peaceful resolve to this matter".

(c) "I can't voice my opinion I have tried all the civil methods in terms of writing to the minister etc ….and nothing has happen now I decided to come and highlight my am.. highlight my…my issue here and the police officer has surrounded us yuh know I feel very intimidated".

(d) "right now the police officers are here…and as I say.. I am getting ah little bit scared as to what might be happening with me".

39. Mr Ramai was not cross-examined and his statement demonstrates fear of intimidation and he expressed himself to one person who was taping him which was not intended for the wider public.

40. While we are mindful of appellate caution in reversing a trial judge's finding of fact we are convinced having reviewed the video footage and considered the uncontradicted evidence of the Appellant that the trial judge in this instance took into account irrelevant factors and failed to adopt a correct analysis of the evidence in the context of the constitutional right under investigation.

41. There was therefore no basis in fact for the trial judge to have held that the police did not cause a breach or that the Appellant ignored the police and fully ventilated his concerns. This loses sight of the fact that (a) Mr Ramai had only began his protest a few moments before the police arrived; (b) he was forced to disperse before Parliament had convened; (c) the statement "**I made my point**" cannot in the circumstances connote a satisfaction that his intended protest was complete; (d) the video was conflated to a fully articulate expression of his view when it was simply a recording of his exasperation and there is no evidence that this was publicised nor that it was his intended mode of protest. To the contrary this evidence of his intention was clearly set out in his affidavit to stage the silent protest with his placard for the day of the parliamentary debate a matter which was truncated by the police.

Proportionality and the minimalist theory

42. It would appear that the trial judge held the view that even if the police had caused an illegitimate obstruction to Mr Ramai's choice of free expression, it may have been too minimal to have given rise to an actionable constitutional breach. This idea of "a minimal breach" was espoused in **Howarth** at paragraph 41:

> "41. All these features I obviously accept and bear fully in mind. The rights of expression and of assembly protected by the Convention are indeed precious in a democratic society. However, there is a significant danger of the law becoming "over precious", in a rather different sense, about minimal intrusions into privacy and alleged indirect infringements of the rights of privacy, assembly and expression which are the price today of participation in numerous lawful activities conducted in large groups of people. I do not forget that many such activities, such as travel and attendance at sporting and entertainment events are not rights protected by the Convention. I also note the point made by the European Court in *Gillan* that persons attending private events and those travelling by air can be taken to consent to such searches. Expression and assembly, like those other lawful activities, are nonetheless encouraged and fostered, rather than hindered, by sensible and good natured controls by the authorities and the sensible and good natured acceptance of such controls by members of the public. In my judgment, while the courts must be astute to guard individuals against true oppression, it is precisely this type of consideration that is envisaged by Articles 8.2, 10.2 and 11.2. In my view, what PC Babin did here was necessary and proportionate for the legitimate purpose that it is accepted existed on the facts of this case."

43. However, conversely as Saunders P so eloquently espoused in his text Fundamentals of Caribbean Constitutional Law,[11] constitutional rights are not fine pieces of china reserved

[11] **Fundamentals of Caribbean Constitutional Law, 2nd Edition** by Dr. Arif Bulkan, The Hon Mr Justice Adrian Saunders, Tracy Robinson.

for the select few. It is the court's role to prevent even casual indifference to breaches of constitutional rights. **Romauld James v AG [2010] UKPC 23** demonstrates that there is no need to prove a deliberate act, mere indifference is enough. There is no room in our constitutional analysis for any minimal threshold test to determine if there was an interference with a right. Lord Kerr, albeit in relation to a breach of sections 4(b) and (d) of the Constitution, stated at paragraph 28:

> "28. An injury suffered as a result of discrimination is no less real because it does not possess tangible physical or financial consequences. And the difficulty in assessing the amount of compensation for that type of injury should not deter a court from recognising its compensatable potential. This concept was well expressed by Mummery LJ in Vento v Chief Constable of West Yorkshire Police [2003] ICR 318, at 331: -
>
> > "50. It is self evident that the assessment of compensation for an injury or loss, which is neither physical nor financial, presents special problems for the judicial process, which aims to produce results objectively justified by evidence, reason and precedent. Subjective feelings of upset, frustration worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on and the degree of their intensity are incapable of objective proof or of measurement in monetary terms. Translating hurt feelings into hard currency is bound to be an artificial exercise. As Dickson J said in Andrews v Grand & Toy Alberta Ltd (1978) 83 DLR (3d) 452, 475-476, (cited by this court in Heil v Rankin [2001] QB 272, 292, para 16) there is no medium of exchange or market for non-pecuniary losses and their monetary evaluation: 'is a philosophical and policy exercise more than a legal or logical one. The award must be fair and reasonable, fairness being gauged by earlier decisions; but the award must

also of necessity be arbitrary or conventional. No money can provide true restitution.'

51. Although they are incapable of objective proof or measurement in monetary terms, hurt feelings are none the less real in human terms. The courts and tribunals have to do the best they can on the available material to make a sensible assessment, accepting that it is impossible to justify or explain a particular sum with the same kind of solid evidential foundation and persuasive practical reasoning available in the calculation of financial loss or compensation for bodily injury."

44. In doing so the trial judge lost sight of the proper analysis that fundamental rights would only give way to countervailing legitimate public interest which secures a proportionate aim. It is Lady Hale in **Surratt and others v AG [2008] 1 AC 655** who famously underscored that there are inherent limitations of fundamental rights. At paragraph 58 Lady Hale states:

"58. It cannot be the case that every Act of Parliament which impinges in any way upon the rights protected in sections 4 and 5 of the Constitution is for that reason alone unconstitutional. Legislation frequently affects rights such as freedom of thought and expression and the enjoyment of property. These are both qualified rights which may be limited, either by general legislation or in the particular case, provided that the limitation pursues a legitimate aim and is proportionate to it. It is for Parliament in the first instance to strike the balance between individual rights and the general interest. The courts may on occasion have to decide whether Parliament has achieved the right balance. But there can be little doubt that the balance which Parliament has struck in the EOA is justifiable and consistent with the Constitution. Section 7 does impinge upon freedom of expression but arguably goes no further in doing so than the existing law; if it does go further, by including gender as well as racial or religious hatred, it is merely

bringing the law into conformity with all modern human rights instruments, which include sex or gender among the prohibited grounds of discrimination. Sections 17 and 18 do impinge upon freedom of contract but in ways which are now so common in the common law world that it can hardly be argued that they are not proportionate to the legitimate aim which they pursue. Finally, adding to the role of the Judicial and Legal Service Commission in exactly the way contemplated by section 111 is not inconsistent with the Constitution."

45. With this analysis recognising that the rights protected are not themselves absolute but are qualified rights, only if the breach was proportionate to a legitimate aim would there be good reason to say that no constitutional breach occurred.[12] Not only was that analysis not conducted but it is demonstrated on the trial judge's own findings that there was no action by the State to pursue a legitimate aim at all. It was an unlawful act from the inception to pursue an illegitimate aim of disposing a lawful one person protest and which paid no regard to Mr Ramai's peaceful expression of opinion at Woodford Square.

Protection of the law

46. The State correctly contended that if there was an interference with the freedom of expression it would follow that there was a breach of the right to the protection of the law having regard to the fact that the interference was as a result of an illegal instruction

[12] Sykes CJ in **Julian Robinson v AG of Jamaica [2019] JMFC Full 4** at paragraph 87 stated:

"87. This test of proportionality has been described by Dr Dhananjaya Chandrachud J in Justice K Puttaswamy (Rtd) and anr v Union of India Writ Petition (Civil) NO 494 of 2012 (delivered September 26, 2018). His Lordship said at paragraphs 197 - 198:

> The test of proportionality, which began as an unwritten set of general principles of law, today constitutes the dominant "best practice" judicial standard for resolving disputes that involve either a conflict between two rights claims or between a right and a legitimate government interest. It has become a "centrepiece of jurisprudence" across the European continent as well as in common law jurisdictions including the United Kingdom, South Africa and Israel. … It has been raised to the rank of fundamental constitutional principle, and represents a global shift from a culture of authority to a culture of justification. …
>
> …The test of proportionality stipulates that the nature and extent of the State's interference with the exercise of the right …must be proportionate to the goal it seeks to achieve…."

by the police. Mr Ramai was not afforded the protection of the safe zone for the one person protest unhindered by criminal legislation restraining protests, marches by more than one person.

47. Sir Dennis Byron P in **The Maya Leaders Alliance v AG of Belize [2015] CCJ 15** at paragraph 47 stated:

> "47. 'The law is evidently in a state of evolution but we make the following observations. The right to protection of the law is a multi-dimensional, broad and pervasive constitutional precept grounded in fundamental notions of justice and the rule of law. The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional rights. However, the concept goes beyond such questions of access and includes the right of the citizen to be afforded, 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power.' The right to protection of the law may, in appropriate cases, require the relevant organs of the state to take positive action in order to secure and ensure the enjoyment of basic constitutional rights. In appropriate cases, the action or failure of the state may result in a breach of the right to protection of the law."

What form of redress is appropriate?

48. This is really the main issue in this appeal. What relief or remedy ought to be granted in light of the circumstances of this case?

49. In **Ramanoop v AG [2005] UKPC 15**, Lord Nicholls stated:

“17. Their lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of Chapter 1 rights and freedoms. This jurisdiction is an integral part of the protection which Chapter 1 of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of State power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the State's violation of a constitutional right. This jurisdiction is separate from and additional to ('without prejudice to') all other remedial jurisdiction of the court.

[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 s 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous 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, 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."

50. Importantly, the JCPC in **Romauld James** underscores the importance of declaratory relief. In that case, the Police Service Commission in 1974 decided that constables and corporals who obtained a pass in English Language in O'Level examinations could be exempted from the English language component of the qualifying promotion examination to ranks of corporal and sergeant. Mr James, took the examination in 1997, but did not get the necessary grade in the English component. He sat CXC English and got a Grade III and thereafter applied for an exemption of the English Language component of the qualifying examination for promotion. However, he was not entitled to the exemption since Regulation 4 of the Police Service Regulations had nothing to do with it but other police officers who were in an equivalent position to Mr James received exemptions with similar results to Mr James. He filed a constitutional motion for certain forms of relief and redress under the Constitution which included, *inter alia*, declarations that he was discriminated against and he also sought damages. He was only granted declaratory relief.

51. Lord Kerr at paragraphs 34, 35 and 36 stated:

"34. Of course, Suratt's case was different from the present. What the appellants in that case had lost was the opportunity to bring proceedings against individuals and there was no guarantee that, had that opportunity been available, they would have succeeded in any claim. By contrast, here the appellant has established that he was the victim of discrimination. But that consideration alone does not bring

with it an automatic entitlement to compensation. This, essentially, was the appellant's case – that where a violation of a constitutional right occurs monetary compensation should be ordered. That case was based principally on the opening words of Lord Nicholls in para 18 of his judgment in Ramanoop (quoted above at para 25) where he said: -

> "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."

35. I do not understand Lord Nicholls in this passage to be suggesting that, in principle, compensation should normally be awarded. What, as it seems to me, he was at pains to point out was that a violation of someone's constitutional rights will commonly call for something more than a mere statement to that effect. This is required in order to reflect the importance of the constitutional right and the need for it to be respected by the state authorities. A risk of the devaluation of such rights would obviously arise if the state could expect that the most significant sanction for their being flouted was a declaration that they had been breached. It is, of course, significant that in Ramanoop there was no dispute as to whether the respondent was entitled to damages. The question in that case was whether the state should be required to pay an additional amount of damages in order to reflect the sense of public outrage that the breach of the constitutional right had occasioned. Moreover, the case was one which clearly called for a compensatory award (as well as the additional award). The respondent had been assaulted over a prolonged period by a police officer. The latter's behaviour had been described by Lord Nicholls as "quite appalling". The need for a compensatory award – and, indeed, an additional award – of damages was, in that case, quite plain.

36. To treat entitlement to monetary compensation as automatic where violation of a constitutional right has occurred would undermine the discretion that is invested in the court by section 14 of the Constitution. It would also run directly counter to jurisprudence in this area. In Inniss v Attorney General of St Christopher and Nevis [2008] UKPC 42, in considering this issue Lord Hope of Craighead said this in para 21: -

> "The question … is whether a declaration that there has been a contravention of s 83(3) would be sufficient relief for the Appellant in the circumstances. The function that the granting of relief is intended to serve is to vindicate the constitutional right. In some cases a declaration on its own may achieve all that is needed to vindicate the right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief."

52. In this case unlike in **James,** Mr Ramai's right was impinged and he was directly affected in having to end his one person protest in response to the intimidation of the police. He was prevented from continuing his one person protest. He did not envisage being prohibited by the police or that he would not be able to have his say to the public for the day. The police came to Woodford Square to disperse protesters and achieved their purpose. He was intimidated and was fearful that he would have been arrested. It was not an implausible fear having regard to the trial judge's findings of the implication of force in the directive to end the protest.

53. Mr Ramai is therefore entitled to declaratory relief. The question is whether he is entitled to something more. Any remedy for breach of a constitutional right must be effective, appropriate and proportionate to the circumstances. The minimalist breach theory may be relevant here in determining whether simply a declaratory relief is sufficient. However, the focus of the Court in ensuring there is an effective remedy for the litigant whose constitutional rights are breached is on the important nature of the protected right and

the need for its affirmation, promotion and protection in our democracy. The principal objective of any remedy to that extent fulfills a vindication of the right. A violation of a constitutional right does not automatically require monetary compensation for its vindication. However, in this case something more is required than simply a declaration to vindicate Mr Ramai's constitutional rights to reflect the importance of the fundamental right and the need for it to be respected by State authorities. In contrast to **Romauld James** where the breach had no material impact on him, in the case of Mr Ramai he was deprived of the opportunity to canvass his one person protest. There is no need for an additional award of what is known as "vindicatory damages" as conceded by Senior Counsel for the Appellant. A compensatory award of a modest amount will be sufficient to fully vindicate the rights of Mr Ramai in this instance.

54. The parties were unable to supply this Court with another comparable case save for **CV 2017-03276 Sharon Roop v AG (judgment dated 26 November 2019)**. In that case Special Reserve Police Officer Roop's constitutional right under section 4(h) (freedom of conscience and religious belief and observance) was held to have been infringed by a denial of her request to wear a hijab together with her official uniform while on duty as police officer. She was awarded the sums of $125,000.00 in compensatory damages and $60,000.00 in vindicatory damages. While Senior Counsel for the Appellant contended that the breach of one's right to freedom of religion is akin to freedom of expression we are of the view that there are distinctions between these fundamental rights. For the least, an expression may be transient in nature while expressing or practicing one's religion is a deep rooted belief system. The facts of discrimination against Ms Roop are far more serious than these actions against Mr Ramai. In Mohammed J's reasoning in **Roop** however there is a reference to modest compensatory awards for breach of the right to the protection of the law. Paragraphs 77 and 88 of that judgment are particularly instructive.

55. In addition to the learning from **Innis v Attorney General of St Christopher and Nevis [2008] UKPC 42**, **Subiah v AG [2008] UKPC 47**, **Ramanoop** and Jamadar JA's (as he then was) judgment in **AG v Dillon Civ App P245/2012**, the judgment of Blanchard J in **Taunoa and others v AG and another [2007] 5 LRC 680** provides an important perspective on awarding nominal sums in compensation for constitutional breaches at paragraphs 256, 257, 258, 259, 260 and 264:

> "256. It may be entirely unnecessary or inappropriate to award damages if the breach is relatively quite minor or the right is of a kind which is appropriately vindicated by non-monetary means, such as through the exclusion of improperly obtained evidence at a criminal trial. It may also be unnecessary if a damages award under another cause of action has adequately compensated the victim, especially so where that award has a component of aggravated damages. In such a case there is nothing to be gained by way of vindication by adding a nominal sum for the Bill of Rights breach.
>
> 257. In other cases, however, non-Bill of Rights damages may not be available since the only actionable wrong done to the plaintiff is the Bill of Rights breach. Then a restrained award of damages may be required if without them other Bill of Rights remedies will not provide an effective remedy.
>
> 258. When, therefore, a court concludes that the plaintiff's right as guaranteed by the Bill of Rights Act has been infringed and turns to the question of remedy, it must begin by considering the non-monetary relief which should be given, and having done so it should ask whether that is enough to redress the breach and the consequent injury to the rights of the plaintiff in the particular circumstances, taking into account any non-Bill of Rights damages which are concurrently being awarded to the plaintiff. It is only if the court concludes that just satisfaction is not thereby being achieved that it should consider an award of Bill of Rights Act

damages. When it does address them, it should not proceed on the basis of any equivalence with the quantum of awards in tort. In this respect I would adopt the approach in R (Greenfield) v Secretary of State for the Home Department [2005] 2 All ER 240 and Fose v Minister of Safety and Security [1988] 1 LRC 198. **The sum chosen must, however, be enough to provide an incentive to the defendant and other state agencies not to repeat the infringing conduct and also to ensure that the plaintiff does not reasonably feel that the award is trivialising of the breach.**

259. But, equally, it is to be remembered that an award of Bill of Rights Act damages does not perform the same economic or legal function as common law damages or equitable compensation; nor should it be allowed to perform the function of filling perceived gaps in the coverage of the general law, notably in this country in the area of personal injury. In public law, making amends to a victim is generally a secondary or subsidiary function. It is usually less important than bringing the infringing conduct to an end and ensuring future compliance with the law by governmental agencies and officials, which is the primary function of public law (see Anufrijeva v Southwark London BC [2003] EWCA Civ 1406, [2004] 1 All ER 833 at [52]–[53]). Thus the award of public law damages is normally more to mark society's disapproval of official conduct than it is to compensate for hurt to personal feelings.

260. The fixing of levels of Bill of Rights Act damages is far from an exact science. There is no scale of damages to which a judge can resort. A figure must be chosen with which responsible members of New Zealand society will feel comfortable taking into account all the circumstances, including the nature of the infringed right, the nature of the breach, the effect on the victim and the other redress which has been ordered. The level will have to be worked out on a right-by-right and breach-by-breach basis, sometimes with the assistance of the appeal

process. But this will become easier as the experience of the legal system with such cases increases over time.

264. The fixing of the level of the monetary sanction for an individual plaintiff is the most difficult issue. The amount should not be so small as to seem derisory. An award of nominal damages benefits neither the victim nor society. It may appear to trivialise the breach. And if damages are customarily set at very low amounts those who have suffered from a breach of their rights may not consider it worth their while undergoing the stress, and perhaps also meeting the cost, of pursuing a claim (where a plaintiff relies on legal aid any sum awarded will be charged in favour of the Legal Services Board). New Zealand does not currently have public interest bodies equipped to bring proceedings on behalf of victims."

56. In our view Mr Ramai is entitled to an award of damages, modest though it may be, for the following reasons:

(a) It is required to mark the importance of the right to a peaceful one person demonstration which does not inhibit the rights of others or engage any criminal law;

(b) It is required to reflect the need for this right to be respected by the State authority. I have noted that the police officer had come with the objective to disperse protesters and care must be exercised in lawfully executing the law and respecting the freedom of others;

(c) There was a material disadvantage to Mr Ramai who saw this one person protest as his last straw to get the attention of the Minister of Health;

(d) The video goes no way to advance the cause of Mr Ramai as a public demonstration. The message was published only to someone who taped it and there is no evidence that it was publicised. The video is the only evidence of what Mr Ramai wanted to say as distinct from carrying out his protest for the eyes and ears of the Members of Parliament, his intended audience.

(e) It obviates the allowance of further creeping incursions of the citizens' rights under the guise of advice;

(f) It is not a case where an additional award beyond a compensatory element should be awarded. As Senior Counsel for the Appellant conceded, there is no egregious act of the officer. Ill-advised and ill-informed, it does not ascribe to the level of seriousness which calls for an "extra" vindicatory award;

(g) We have given thought to whether a "vindicatory award" alone could have been made in addition to declaratory relief a matter that was theorised as possible by the Law Lords in **James** but declined to do so having regard to the fact that the Senior Counsel for the Appellant no longer pursues that vindicatory element.

57. We have considered the range of awards for a breach of the right to expression and protection of the law. In our view a modest, though not inconsequential or nominal award, is appropriate to compensate for the indignity of the breach. This would be the sum of $30,000.00.

Conclusion

58. The Appeal will be allowed. The Appellant is entitled to the following declaratory orders:

(a) A declaration that the action of Police Officer Regimental Number #20938 Sinanan of Central Police Station, a servant/agent of the State of Trinidad and Tobago in directing/ordering the Appellant to lower his placard and end his protest while the Appellant was standing in a one person protest in front of the Red House, the seat of the Parliament of Trinidad and Tobago was unlawful and unconstitutional action and in breach of the Appellant's fundamental right under section 4(i) of the Constitution of the Republic of Trinidad and Tobago to the freedom of thought and expression and 4(b) of the Constitution of the Republic of Trinidad and Tobago to protection of the law.

(b) The Respondent shall pay to the Appellant damages in the sum of $30,000.00.

(c) The Respondent shall pay to the Appellant the costs of the trial certified fit for Junior Counsel and the costs of the appeal certified fit for Senior Counsel to be assessed in default of agreement.