

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 493 of 2019

SHANTEL BERRY

CLAIMANT

AND

**COMMISSIONER OF POLICE
ATTORNEY GENERAL OF BELIZE**

**1st DEFENDANT
2nd DEFENDANT**

CLAIM NO. 646 of 2019

ALEEYA WADE

CLAIMANT

AND

**COMMISSIONER OF POLICE
ATTORNEY GENERAL OF BELIZE**

**1st DEFENDANT
2nd DEFENDANT**

BEFORE the Honourable Madam Justice Sonya Young

Decision

29th January, 2021

Appearances:

Mr. Anthony Sylvestre and Ms. Leslie D. Mendez for the Claimants.

Mrs. Samantha Matute-Tucker for the Defendants.

KEYWORDS: Constitutional Law - Police Standing Orders - Policy - Directive -

Dreadlocks - Female Police Officer - Freedom of Religion - Freedom of

Expression - Discrimination

JUDGMENT

1. In 2016, the young black women at South Africa's Pretoria Girls High School were advised to "discipline" their hair by relaxing it. Similarly, Shantel Berry and Aleeya Wade, two (2) female police officers of African descent, had been formally warned to remove their dreadlocks in order to conform to the Police Regulations. By refusing to comply, they now face disciplinary action.

2. Ms. Berry, a twenty-four year old woman, began growing her locks at age seventeen (17). It was, for her, the first step towards adherence to the Rastafarian faith of which her family members were followers. When she entered the National Police Training Academy in August 2015, she was advised then to remove her dreadlocks and she complied.

3. She was also given basic training on the Police Standing Orders, which guides an officer's behavior and conduct including grooming. During training, she was never specifically told that these regulations prohibited police officers from wearing locks nor did she raise any concern in relation to the prohibitions which were contained therein.

4. However, she eventually realized that there were other women police officers who wore dreadlocks in the force and so she regrew her own. By a memorandum dated the 13th February, 2018 and addressed to Regional Divisional, Formation Branch and Unit Commanders of Police Department, the Professional Standards Branch reminded police personnel countrywide about compliance with Regulation 7 of Chapter 4 of the Police Standing

Orders, which concerns hair, dress and jewelry worn by police officers whilst on duty.

5. Around August, 2018, Ms. Berry was verbally directed to remove her dreadlocks as they breached the said Regulation. She did not comply. In January of 2019, she was given a directive by her Station Manager to remove her hairstyle. She did not comply. She received a warning letter from her Station Manager on the 28th January, 2019 but she refused to remove her hairstyle. In March, 2019, the Commissioner of Police, Mr. Chester Williams delivered a speech at the Police Women's Conference held for Women's Month. There he addressed the issue of officers wearing locks. Ms. Berry was present. On the 28th March, 2019, she was again verbally directed to remove her dreadlocks. She did not comply.
6. Subsequently, on the 23rd April, 2019, she was served with a notice of disciplinary proceedings. She was charged with willfully disobeying a "*lawful command*" contrary to section 24(4) (bb) of the Police Act, Chapter 138. She responded by a letter from an Attorney outlining the perceived unconstitutionality of the directive and the proposed proper interpretation of the particular section of the Standing Orders. There was no response and she remains charged.
7. Aleeya Wade had begun wearing dreadlocks from the age of twenty-two. She had by then already entered the Police Force. She is now on filing this claim, twenty-five years old. She says she chose to do this in celebration of her hair's natural afro texture, to fortify her sense of self and to resist the notion that hair like hers was unprofessional, unmanageable or "*bad hair*."

8. She too received the memorandum dated the 13th February, 2018 and was verbally directed to remove her locks around August, 2018. In March, 2019, she was again given a directive to remove her hairstyle on or before the 1st April, 2019. She refused and was served with a notice of disciplinary proceedings just as Ms. Berry had been. She too has approached the Court in aid.
9. Both officers seek declarations that Regulation 7 and the policy restricting dreadlocks are inconsistent with their constitutional right to freedom of conscience, expression and non-discrimination and the disciplinary proceedings instituted against them is therefore unlawful. They wish to strike down Regulation 7 in this regard and stay the disciplinary proceedings.
10. In his Defence, the Commissioner of Police relies on the Standing Orders. He says that the women were asked to remove their dreadlocks because of the possibility of not being able to identify them as police officers. More importantly, the hairstyle posed a work hazard if they were to engage in physical altercations with others.
11. Ms. Berry and Ms. Wade are two (2) of seven (7) female police officers who have been so charged. They have brought separate claims which have been heard together as it seemed the most reasonable and efficient thing to do. In the meantime, the disciplinary proceedings have been suspended.

12. I wish to take this opportunity to thank Counsel on both sides who, appreciating the true nature of this matter, agree to a statement of facts and issues thereby circumventing the need for a lengthy trial. The matter was eventually overtaken by the Covid 19 pandemic and further delayed by the exigencies of this job.

The Relevant Sections:

13. Regulation 7 of the Police Standing Orders, Service Regulations Chapter 4 of the Police Act Cap:

Hair (i).....

(ii) Female officers when in uniform will wear their hair dressed up above the collar and secured in place with ribbon or clips of a dark blue or black material. No elaborate head decorations or attachment of hairpieces or braids may be worn when on duty whether in uniform or normal duty in plain clothes. Facial cosmetics may be worn in moderation.

The Constitution:

14. ***Section 11.-(1)*** *Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.*

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

(a) in the interests of defence, public safety, public order, public morality or public health;

- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practice any religion without the unsolicited intervention of members of any other religion; or*
- (c) for the purpose of regulating educational institutions in the interest of the persons who receive or may receive instruction in them.*

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

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

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

15. The issues as agreed by the parties are as follows:

1. *Whether the interpretation and application of Regulation 7(ii) of the Belize Police Standing Orders, Service Regulations, and Chapter 4 as prohibiting women police officer from wearing dreadlocks is a restriction on the Claimant's exercise of her constitutional rights as guaranteed by sections 11, 12 and 16 of the Constitution.*
2. *Whether the directive to remove the dreadlocks breaches the Claimant's constitutional rights as guaranteed by sections 11, 12 and 16 of the Constitution.*
3. *Whether Regulation 7(ii) is unconstitutional, null and void to the extent that it prevents the Claimant from wearing her hair in dreadlock in breach of the Claimant's constitutional rights as guaranteed by sections 11, 12 and 16 of the Constitution.*
4. *Whether the consequent disciplinary proceedings are unlawful, null and void.*
5. *Whether the Claimant is entitled to the reliefs sought."*

16. The Court however, prefers the following which are for the most part as stated by Counsel for the Defendants in her submissions:

1. Whether Regulation 7(ii) of the Belize Police Standing Orders, Service Regulations, Chapter 4 is unconstitutional
2. Whether the interpretation of Regulation 7(ii) by and the directive and policy of the Police Department prohibiting officers from wearing dreadlocks breaches the Claimant's constitutional rights as guaranteed by sections 11, 12 and 16 of the Constitution.
3. Whether the Claimant is entitled to the reliefs sought

17. Because the submissions relating to both issues are basically the same only the Court's discussion will show the distinction.

The Claimants' Submissions:

18. Counsel begun helpfully by outlining the constitutional framework and the general principles which aid constitutional interpretation. He immediately directed the Court's attention to the supremacy of the constitution as enshrined in section 2 and the deference paid to the fundamental rights and freedoms reflected in the Preamble particularly subsections (a) and (e) which

“(a) affirm that the Nation of Belize shall be founded upon principles which acknowledge the supremacy of God, faith in human rights and fundamental 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,

(e) require policies of state which protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; which eliminate economic and social privilege and disparity among the citizens of Belize whether by race, colour, creed or sex; which protect the rights of the individual to life, liberty and the pursuit of happiness”

19. By Section 3 *“every person in Belize is entitled to the fundamental rights and freedoms of the individual whatever his race, place of origin, political opinions, color, creed or sex.”* But he easily agreed that these rights were not without limitations which are *“designed to ensure that the enjoyment of the said rights and freedoms of any person does not prejudice the rights and freedoms of others or the public interest...”* And are, therefore, made *“subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-*

- (a) *life, liberty, security of the person, and the protection of the law;*
- (b) *freedom of conscience, of expression and of assembly and association;*
- (c) *protection for his family life, his personal privacy, the privacy of his home and other property and recognition of his human dignity; and*
- (d) *protection from arbitrary deprivation of property*
- (e) *Specific right limitations are also included in each particular right itemized in Part II.*

20. He reminded that the Court ought to give a liberal and purposive interpretation to these fundamental rights as established in **Minister of Home Affairs v Fisher [1980] AC 319**. He urged that the nation's international obligations ought also to be used as an aid to interpretation and quoted Chief Justice Benjamin (as he then was) in the **Caleb Orozco v The Attorney General Claim No. 668 of 2010**:

[58] It have been judicially pronounced that the Constitution is a 'living instrument' (See: Boyce v R (2004) 64 WIR 37(para 24) and R v Lewis (2007) 70 WIR 75 (at para. 74). The Belize Constitution owes its provenance to the European Convention on Human Rights which in turn was influenced by the UN Declaration on Human Rights. As such, decisions in relation to human rights issues have been informed by developments in international law (See: Boyce. per Lord Hoffman (at para. 27). Indeed, the final appellate court of Belize, the Caribbean Court of Justice has acknowledged the application of the jurisprudence from international bodies to domestic law (See: AG v Jeffery Joseph et al —CCJ Appeal No. CV2 of 2005 (at para. 106).

21. Limitations, he submitted, must conform to the tripartite criteria outlined in **de Freitas v Permanent Secretary of the Ministry of Agriculture, Fisheries, Lands and Housing and Others [1998] 53 WIR 131 at paragraph 25**:
- a. *In determining whether a limitation is arbitrary or excessive he said that the Court would ask itself: -*
 - “whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means*

used to impair the right or freedom are no more than is necessary to accomplish the objective”.

22. He then concluded that the directive to the Claimants to remove their dreadlocks infringed their right to freedom of conscience and freedom of expression and denied them their right to protection against discrimination. A denial which could not be justified as a limitation as it lacked rationality and proportionality.

Right to Freedom of conscience:

23. Counsel was of the firm view that the dreadlocks formed part of the Claimants’ religious and/or conscientiously held belief; that embracing their natural Afro-textured hair in the form of dreadlocks is a symbol of resistance to Eurocentric standards of beauty and professionalism. For Ms. Berry, particularly, it was an observance of her Rastafarian faith.
24. He relied heavily on the Zimbabwean case of **Re Chikweche [1995] 2 LRC 93** to urge that *“freedom of conscience and religion had to be broadly construed to extend to conscientiously held beliefs whether grounded in religion and secular morality”*.

“... I am of the view that the reference in s 19(1) to freedom of conscience is intended to encompass and protect systems of belief which are not centred on a deity or religiously motivated, but are founded on personal morality. The point was made forcefully by Wilson J in the Canadian case of Morgentaler v R [1990] LRC (Const) 242 at 333 in these terms:

‘It seems to me, therefore, that in a free and democratic society ““freedom of conscience and religion” should be broadly construed to extend to conscientiously-held beliefs, whether grounded in religion or in a secular

morality. Indeed, as a matter of statutory interpretation, “conscience” and “religion” should not be treated as tautologous if capable of independent, although related, meaning.’

25. Counsel also quoted from **Commodore Royal Bahamas Defence Force v Laramore [2017] UKPC 13**, which reasoned that *“Freedom of conscience is in its essence a personal matter. It may take the form of belief in a particular religion or sect, or it may take the form of agnosticism or atheism. It is by reference to a person’s particular subjective beliefs that it must be judged whether there has been a hindrance”*.
26. **Re Chikweche (ibid)** he felt was of special relevance since it dealt with an individual who was denied registration as an attorney by virtue of his dreadlock hairstyle. He was considered unfit and improper by the registering body. The Court reversed this decision while finding his dreadlocks to be a symbolic expression of religious and philosophical outlook of the world and a denial of this was indeed an infringement of his right to freedom of conscience.
27. Using this broad interpretation then, both Claimants’ right to freedom of conscience had been infringed by the order to remove their locks as their enjoyment of this right had been hindered in a way which, necessarily, failed the limitation test set out in **deFreitas (ibid)**. The legitimate aim of the restriction was never stated; the aim and the means are not rationally connected, nor was the restriction required for the proper performance of their function. Ergo, it failed the proportionality test since exceptions could certainly be made to accommodate those whose religious beliefs are compromised (**Commodore case (ibid)**).

Right to Freedom of Expression:

28. Counsel began with **McEwan et al v The Attorney General of Guyana and others (Guyana) [2018] CCJ 30 [AJ]**, which discussed attire as an expression of one's identity and observed in paragraphs 75-77 that the right "*underpins and reinforces many of the other fundamental rights.*" Therefore, "*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.*"
29. In asserting that there was an infringement of this right he then invited the Court to make the two (2) stage inquiry followed in **Caleb Orozco (ibid)**:
1. Does the activity fall within the scope of protected expression?
 2. If yes, was it the purpose or effect of the Government's action to restrict freedom of expression?
30. He relied on **McEwan (ibid)** where the CCJ reaffirmed that mode of dress may constitute a form of expression protected under this right. For hair in particular, he turned again to the African continent. In the South African case of **D.A v Governing Body, the Settlers High School Case No. 3791/00** the Court set aside the finding of serious misconduct where a student grew locks and wore a cap in accordance with Rastafarian custom. It found that the hairstyle was an expression of the applicant's religious convictions and cultural traditions. The prohibition would undermine, *inter alia*, the principles of mutual respect for another's convictions, cultural traditions and freedom of expression.

31. As to purpose of the restriction, Counsel wasted no time in informing that the order of removal would effectively stifle the Claimants' ability to express their philosophical outlook of life and their racial and cultural identity. It was, he opined, their lasting sign of black pride and political expression. He proposed that the Respondents had never specified the legitimate aim being pursued by the restriction. While Counsel accepted that discipline in the police force was of utmost importance there was nothing presented, in his view, which could even imply at the very least that wearing dreadlocks would have a negative effect on discipline.

32. He drew the Court's attention to **MEC for Education and Others v Pillay [2007] ZACC 21** another South African case **paragraphs 100-101:**

"100. Rules are important to education. Not only do they promote an important sense of discipline in children, they prepare them for the real world which contains even more rules than the schoolyard. Schools belong to the communities they serve and that ownership implies a responsibility not only to make rules that fit the community, but also to abide by those rules. Nothing in this judgment should be interpreted as encouraging or condoning the breaking of school rules.

"101. But this case is not about the constitutionality of school uniforms. It is about granting religious and cultural expressions to an existing uniform. The admirable purposes that uniforms serve do not seem to be undermined by granting religious and cultural exemptions. There is no reason to believe, nor has the School presented any evidence to show, that a learner who is granted an exemption from the provisions of the Code will be any less disciplined or that she will negatively affect the discipline of others."

33. An even better statement of the need to justify the aim of the restriction is to be found in **D.A v Governing Body, the Settlers High School (ibid) at paragraph17:**

“The question should be asked, in this regard, is whether or not the prohibition is aimed to promoting positive discipline and whether or not noncompliance there with justifies punishment or some other form of sanction. This requires a spirit of mutual respect, reconciliation and tolerance. The mutual respect, in turn, must be directed at understanding and protecting, rather than rejecting and infringing upon, the inherent dignity convictions and traditions of the offender. Most importantly, adequate recognition must be given for the offender’s need to indulge in freedom of expression, which may or may not relate to clothing selection and hairstyles.”

Right to Protection against Discrimination:

34. Section 16 (3) of the Constitution defines discriminatory as:

“... affording different treatment to different persons attributable wholly or mainly to their respective descriptions by sex, race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons or another such description.”

35. **McEwan (ibid)**, he explained speaks to the importance of ensuring that the spirit of the equality provision is realized through the adoption of a substantive approach:

“... [t]o safeguard equality rights, courts must adopt a substantive approach. Ensuring substantive equality might require equal treatment for those equally circumstanced, different treatment for those who are differently situated, and special treatment for those who merit special treatment. Paying regard to mere formal equality could lead to grave injustice and defeat the spirit of the equality provisions.”

Critical to the adoption of a substantive approach is the need to examine the impact or effect of a challenged measure.”

36. Counsel went on to state that once differential treatment is shown by the Claimant the burden shifts to the state, “..... *to show reasonableness, objective purposefulness, justification, accommodation, etc. But ‘Courts will not readily allow laws to stand, which have the effect of discriminating on the basis of the stated personal characteristics’ of race, origin, colour, religion or sex. These are in a special category because such discrimination ‘undermines the dignity of persons, severely fractures peace and erodes freedom’ (p 55). Jamadar J regarded the approach to section 4(b) as relatively settled and clear. By contrast, he observed that ‘the law as to what is required to prove inequality of treatment or discrimination in the application of laws by administrative action is in a state of uncertainty’ (p 59).” **Webster v AG of Trinidad and Tobago [2015] UKPC 10.***
37. **McEwan (ibid)** also quoted **Law v Canada (1999) 1 SCR 497** when explaining at paragraph 69 that human dignity is “also harmed” “... *when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within... society. Human dignity within the meaning of the equality guarantee does not relate to the status or position of an individual in society per se, but rather concerns the manner in which a person legitimately feels when confronted with a particular law. Does the law treat him or her unfairly, taking into account all the circumstances regarding the individuals affected and excluded by the law?”*
38. Having considered all this, Counsel concluded that Regulation 7 was discriminatory. It targeted black hair and black hairstyles. Braids in particular he said are widely associated with Afro textured hair and hair traditions. These inflexible and uniformed rules devalue and marginalize this

type of hair and demonstrate an implicit preference for non-African culture and traits. The Commissioner's directive needs to be viewed through these same lenses as they purport to enforce the Regulation although the Standing Orders do not include any prohibition against locks. The directive is rooted in and reinforces bias and prejudice against African features and Rastafarianism.

Defendants' Submissions:

39. Counsel begun with the presumption of constitutionality and relied on **de Freitas v Permanent Secretary of the Ministry of Agriculture (Antigua nd Barbuda) [1998] UKPC 30 paragraph 5:**

"It is also accepted that in the construction of statutory provisions which contravene human rights and freedoms that there is a presumption of constitutionality (Attorney General of the Gambia v Momodue Jobe [1984] AC 689) and that in construing constitutional provisions a liberal approach is required (Minister of Home Affairs v Fisher [1980] AC 310.)"

40. Therefore, all acts passed by the National Assembly of Belize are constitutional until a court of competent jurisdiction declares otherwise as the Caribbean Court of Justice stated in **Dean Boyce and British Caribbean Bank v the Attorney General of Belize [2012] CCJ 1 (AJ) at paragraph 18:**

"However, the majority considered that it is also trite that until and unless set aside, the 2011 legislation is valid and must be given full force and effect. Its validity is to be presumed..."

41. As explained in **Attorney General of St. Kitts and Nevis v Lawrence (1983) 31 WIR 176**, the burden is upon the one who launches an attack

against the constitutionality of a statute to prove that “*there has been a clear transgression of the constitutional principles.*” Since there is no explicit prohibition in the Regulation on the use of the dreadlock hairstyle by women, it simply cannot be proven or held to be unconstitutional.

42. The directive on the other hand could be amenable to consideration. However, certain limitations could definitely be placed on every right guaranteed and protected under the Constitution. But those limitations, she also agreed, must be proportionate to achieve a legitimate aim. In determining proportionality, the Court must consider whether the limitation was reasonably required and reasonably justifiable.
43. The Belize Police Department was a disciplined organization with responsibility to maintain law and order in Belize. Any limitations imposed on its members’ constitutional rights by Regulation 7 (ii) are to ensure their identifiability as police officers and their safety while in the execution of their duties.
44. Like the Claimants, Counsel for the Defendants also outlined the **deFreitas (ibid)** three prong test and urged the Court to find that Regulation 7 (ii) met the criteria.

Freedom of Expression

45. Counsel drew the Court’s attention to the fact that the basic training given to recruits by the Belize Police Department includes behavior, conduct and appearance. Counsel then proposed that if indeed Ms. Berry was devoted to her religion, she would not have removed her locks. Strangely, she sought

support in **MEC for Education: Kwazulu-Natal and Others v Pillay (ibid)** when she quoted from paragraph 85:

“The practice to which Sunali adheres is that once she inserts the nose stud, she must never remove it. Preventing her from wearing it for several hours of each school day would undermine the practice and therefore constitutes a significant infringement of her religious and cultural identity. What is relevant is the symbolic effect of denying her the right to wear it for even a short period; it sends a message that Sunali, her religion and her culture are not welcome.”

46. Counsel for the Defendants questioned Ms. Berry’s sincerity to her faith stating she would not have removed her locks initially. She referred to the discussion in **Hinds v The AG of Barbados (1999) CA 20** where the Court cited a United States Federal District Court decision **Teterud v Gillmann 385 Federal Supplement 153** and stated:

“In considering whether the hair regulation infringes upon the plaintiff’s constitutional right to the free exercise of his religion, two issues must be considered, first, whether or not an Indian’s cultural and traditional beliefs constitute a religion and, secondly, whether the plaintiff possesses a sincere belief in his creed.”

The Court continued at the last paragraph:

“A male prisoner may be wearing dreadlocks but the hairstyle does not ipso facto denote membership of the Rastafari religion. The wearing of dreadlock does not necessarily mean that the wearer believes in the Rastafari religion or that his belief is honest, held in good faith or sincere.”

47. She went on to inform that certainly Ms. Berry could observe here Rastafarian religion without wearing dreadlocks since not only is freedom of religion not an absolute right but *“the wearing of dreadlocks is rather more symbolic of Rastafarian faith and adherence to its beliefs than it is itself a central or fundamental tenet of the beliefs themselves.”* **Grant and Chin v The Principal of John Cumber Primary School [1999] CILR 307.**

Non-discrimination:

48. Counsel proffered that the Regulation is in fact race neutral and applies to all women police officers of all races that their hair should be worn in a particular manner. The Claimants, she opined, had failed to show how they were discriminated against, as being Afrocentric or Rastafarian.
49. She considered the use of the term “excessive hairstyle” in **Equal Employment Opportunity Commission (“EEOC”) v Catastrophe Management Solutions (“CMS”) Case 14-13482 United States Court of Appeals, 11th Circuit**. Then she sought to persuade this Court by the Court of Appeal’s decision that it was lawful for CMS to rescind its job offer made to a black woman who refused to remove her dreadlocks. The court cited **Rogers v American Airlines Inc. 527 F. Supp. 229 (S.D.N.Y. 1981)** which stated that:

“certain hairstyles ‘even if socioculturally associated with a particular race or nationality, is not an impermissible basis for distinctions in the application of employment practices by an employer’ ‘even where hair is considered part of plaintiff’s ‘racial identity’ it cannot form the basis of disparate treatment’.”

Discussion:

Whether Regulation 7 of the Belize Police Standing Orders, Service Regulations, Chapter 4 is unconstitutional:

50. Rule 4(1) of the Police Rules which are made pursuant to section 7 of the Police Act Cap. 138 state that “*members of the Department shall wear such uniform and equipment as prescribed by the Commissioner subject to the approval of the Minister.*” Rule 10 provides that “*(1) The Commissioner may from time to time make*

such departmental orders as he may consider necessary for the good management and control of the Department:

Provided that these orders shall not be inconsistent with any rule or regulation made by the Minister or with the provisions of any Act.

(2) Such orders shall be termed Standing Orders and Routine Orders.

(3) Standing Orders shall be of a permanent nature.

(4) Routine Orders shall be a regular monthly publication covering the domestic affairs of the Department and instructions from the Commissioner which are of a temporary nature.

51. In 1992, a Commissioner determined it necessary to make Regulation 7 (ii). The regulation speaks to elaborate head decorations or attachments of hair pieces or braids being prohibited for female members. This, the Claimant says, targets a particular race, has no legitimate aim and is not proportionate.
52. This issue can be dealt with quite quickly. The Belize Police Department is indeed a disciplined, uniformed organization. Most police uniforms consist of a hat of some sort so, understandably, the use of elaborate head decorations, attachments or hair pieces may very well impede the officer's ability to properly comply. There is also a need for overall uniformity among members which may also be affected by additional adornments and hair pieces.
53. The Court also considers that the limitation may ensure the officers' identifiability as a member of a disciplined body and safety while out in the field. Thus it is to be worn up above the collar which means it would not be easily accessible if there was some person to person altercation. There is a legitimate aim.
54. Hair attachments have not been proven to be indicative of a particular race or religion. Braids here are informed by the words which precede it and

appear to be referring to hair extensions woven into the hair and not the ordinary braiding of the hair as for example Africans, Native American Indians and the Swiss to name a few, have been doing for generations.

55. While the Claimants find it difficult not to conclude that this rule specifically regulates black hair and hairstyles this Court begs to differ. Braids as described above have indeed been singled out and are indeed generally associated with Afro textured hair and hairstyles. However, this Court sees it simply as making clear that braids are in fact included as an attachment of hair pieces. The distinction being that one may attempt to argue that hair woven into is not 'attached to'. It is not in my view targeting, it simply aids clarity.
56. To my mind, the regulation does not devalue or marginalize any particular hair texture and is in no way discriminatory. It does not interfere with anyone's freedom of expression, rather it is required for the proper performance of their function and the Commissioner has been given the power to make rules of this kind. The regulation merely sets the standard of the disciplined organization one may choose to enter.
57. The Claimants have sought to use the directive prohibiting dreadlocks as proof of the regulation's unconstitutionality. This cannot be, since there is no such prohibition stated therein. The Claimants, therefore, have not discharged their burden of proving that the rule transgresses any constitutional principles and ought to be struck down. The Court will not make the declaration sought in that regard.

Whether the directive and policy of the Police Department prohibiting officers from wearing dreadlocks breaches the Claimant's constitutional rights

58. Both parties agree that the Regulation 7(ii) deals particularly with the way in which a female police officer is to wear her hair and does not explicitly prohibit the wearing of dreadlocks. It makes absolutely no reference to this hairstyle whatsoever. I think all concerned are accepting of this fact. However, the rule was interpreted to prohibit dreadlocks and the directive issued is indicative of this policy.
59. There is a presumption of constitutionality which applies to the regulation. But a reading of the regulation brings one to the inevitable conclusion that the interpretation given to the section by the Belize Police Department is far wider than the very clear words of the regulation itself. Dreadlocks are neither an elaborate hair decoration, attachment of hair pieces or braids. This Court is convinced that dreadlocks were never intended to be included, specifically because the section continues that the particular items (not hairstyles) are not to be worn while at work. Dread locks could not reasonably fit into such a category.
60. It means, therefore, that this interpretation is clearly wrong. Beyond that however, this Court finds that the interpretation does contravene the Claimants right to freedom of expression, freedom of conscience and to be protected from discrimination. While the Court agrees that certain limitations may be placed on every guaranteed right, the limitation must be proportionate to achieve the legitimate aim.

61. If the aim of the limitation as it relates to the hairstyle of female police officers is to promote uniformity and ensure identifiability and safety, this aim must accept that hair comes in various textures and lengths. Afro centric hair will coil on itself and lock as a natural phenomenon if left to its own devices. In fact, all hair given time will do this. Once that hair can be dressed above the collar then how is the limitation against dreadlocks proportionate. It is certainly not the least restrictive option which could be used.

62. This Court also notes that the Claimants exhibited photographs and attended Court with their dreadlocks neatly pinned up above their collar and it revealed no physical difference to any other hair type which grew naturally long and could be pinned up similarly. The Defendants offered not a single descriptive account of how this particular hairstyle posed a threat, engendered ill-discipline or obstructed the ability to perform duties as an officer. The policy seems arbitrary and excessive. To my mind, the Defendants have failed to discharge their burden of proof. They have failed the **deFreitas** test for constitutionality.

Religion:

63. Ms. Berry, it is agreed between the parties, began wearing her dreadlocks at 17 having been influenced by her Rastafarian family members. She had an interest in the teachings and locked her hair as a first step towards adherence to that faith.

64. There can be no doubt that Rastafarianism is a religion. One need only to look around the Caribbean and the world now to find legislation which

shows greater and greater recognition of and respect for the Rastafarian faith. Many of the cases discussed by both sides reflect this view.

65. In **Re Chikweche (ibid)**, at page 97, Gubbay CJ quoted from the text *Rasta and Resistance: From Marcus Garvey to Walter Rodney* a portion which I feel it necessary to repeat here:

“Professor Campbell maintains that the wearing of dreadlocks is a symbolic expression of the Rastafari movement, which embraces the cultural, philosophical and religious aspirations of the African peoples in general and, in particular, the African peoples of the diaspora. He explains that the movement was an expression of resentment against British colonial overrule and the complicity of the Christian Church in the colonial enterprise. It emerged in the context of colonialism in Jamaica where the African presence always had to find a new mode of expression and self-proclamation. The brutality of slavery and colonial racism led the African majority to seek cultural and religious outlets. When, in 1930, Haile Selassie was crowned Emperor of Ethiopia, the rural Jamaican African population accepted him as their king and later came to venerate him as God. Ethiopia, with its political and religious autonomy and independence, in the period of colonialism, was seen as an expression of the freedom and redemption of the African continent and the African peoples.

According to Professor Campbell, the wearing of locks developed as an act of defiance to the colonial conception of beauty and good grooming. It commenced in the 1950s when the Rastafari saw pictures of the African freedom fighters from Kenya (Mau Mau), which ignited the feelings of solidarity among the Africans in Jamaica. The photographs of Dedan Kimathi, General China and Jomo Kenyatta were taken as positive symbols of African expression and the Rasta carried their hair in locks as a protest against the then current fashion of close cut-hair. The biblical justification for locks came from the Book of Numbers, ch 6, verse 5. This holds that when the children of Israel became holy”

'All the time of this separation no razor shall pass over his head, until the day be fulfilled of his consecration to the Lord. He shall be holy, and shall let the hair of his head grow.'

Professor Campbell proceeds to recount that in time the wearing of locks gave rise to the idea of dreadlocks. This was an affirmation that the hair of the African was as good as any other hair. The concept of 'Natty Dread' became part of the vocabulary of resistance. He says:

'The symbol of dreadlocks became a lasting sign of black pride. It was a symbol which was to gain international significance after reggae artists took on the physical appearance of the Dreads and exposed the culture of the hills to the saloons of London, Frankfurt and Amsterdam, to the big musical centres of Los Angeles and New York, and ultimately to the independence Celebration in Zimbabwe.'

And goes on

'This explosion of the symbols of the Rastafari has met with opposition from the establishment all over the world. It requires a lot of confidence for African persons to wear their hair in locks because there is so much persecution of the Rastafari and dreadlocks, especially among the profession classes.'"

66. Ms. Berry says this is her personal belief and faith. She maintains that through her dreadlocks she is able to connect with her faith and movement and communicate her belief and solidarity with its philosophy. However, she did cut her hair as part of the training protocol to enter the force. Counsel for the Defendants asked the Court to draw certain inferences from this act; to find that Ms. Berry was not convicted in her belief or sincere in her adherence. Further, that not wearing locks does not prohibit the practice of her faith.

67. It also seems disingenuous to assert that because Ms. Berry followed a similar directive, by the very same organization, when seeking to join that organization, it ought to be considered negatively and a demonstration of her lack of commitment to her faith.
68. Firstly, it may have cost her a job and a livelihood. That weighs heavy in the scales. Secondly, it has always been of concern that there has been a requirement of sorts for a person to show on some imagined spectrum their level of commitment to their religion in order to merit redress. How does one honestly judge honest commitment? What is the criteria and who sets them?
69. The spectrum may be so broad and a person's display may vary so vastly that is it even possible to make a proper determination. Those closer to either end of the spectrum may be easily discernable but what of those who reside in the grey. Am I less of a convicted Christian because I do not attend church? Am I less of a convicted Rastafarian because I have cut my dreadlocks before? But I digress.
70. I do not consider Ms. Berry's cutting her hair as indicative of a lack of conviction in her belief. Rather, I look at her perseverance in regrowing it and her refusal to cut them after she had gained employment as a demonstration of her conviction.
71. As to whether dreadlocks are integral to practice of her faith, I agree with the Claimants who relied on the **Commodore (ibid)** and **Pillay (ibid)** cases. In **Commodore at parag 12** the Privy Council made it clear that the right to freedom of conscience protects *"both of what the European Court of Justice*

recently called the ‘the forum internal, the fact of having a belief, and the forum external, that is the manifestation of religious faith in public.’”

72. It was agreed that Ms. Berry’s hair gave her that connection to her faith that she desired. So the issue is not simply whether Ms. Berry could still practice her faith without wearing locks but as Counsel for the Claimants so aptly puts it, *“the question is in what circumstances would the state be permitted to force or coerce an individual, whether by law, policy or directive to not adhere to one of the tenets of his or her faith.”*

73. The **Pillay case (ibid)** went further than **Commodore**, recognizing that even the non-mandatory tenets of a religion such as wearing a nose ring were also protected. Having reiterated the need to interpret rights in such a way as to promote human dignity, equality and the freedom the court stated at paragraphs 64 and 65:

64. “A necessary element of freedom and of dignity of any individual is an ‘entitlement to respect for the unique set of ends that the individual pursues.’ One of those ends is the voluntary religious and cultural practices in which we participate. That we choose voluntary rather than through a feeling of obligation only enhances the significance of a practice to our autonomy, our identity and our dignity.

65. “The protection of voluntary as well as obligatory practices also conforms to the Constitution’s commitment to affirming diversity.”

74. Considering all this, the Court finds that Ms. Berry’s decision to wear dreadlocks as a manifestation of her religious belief must be protected. The directive to Ms. Berry to remove her dreadlocks punishes the practice of her religion and therefore infringes her right to freedom of religious belief.

Conscience and Culture:

75. It was agreed in the statement of facts that the Claimants chose to wear their hair in dreadlocks in celebration of their natural Afro -textured hair and their blackness and in resistance to the notion that Afro-textured hair is unprofessional, unmanageable or bad hair. Both Claimants assert in their submissions that their decision to wear dreadlocks was rooted in their *“desire to embrace their black identity and challenge mainstream notions of beauty and professionalism that regard Afro-textured hair as ugly or bad.”*
76. While the Defendants did not address the Court specifically on conscientiously held beliefs, this Court leans towards the expressions of the African cases. Cases which find true value in cultural convictions and practices and appreciate that one could express one’s convictions in different ways.
77. **Re Chickwe (ibid)** acknowledged that freedom of expression extended to conscientiously held beliefs founded on personal morality. In the **MEC for Education case (ibid)**, Langa CJ accepted that they were as important and could be as strongly held as religious beliefs. At paragraph 53 he stated *“Cultural identity is one of the most important parts of a person’s identity precisely because it flows from belonging to a community and not from personal choice or achievement. And belonging involves more than simple association; it includes participation and expression of the community’s practices and traditions.”*
78. I think on all that was said by Professor Campbell above, and I consider Belize’s history of slavery and the arrival and treatment of its Garifuna people of African and Carib descent. Hair is undoubtedly, intricately linked to our history and identity. Dreadlocks tell a tale of pain and suffering of

resilience and strength. It embodies pride and rejects the cultural brainwashing of slavery that established euro-centric beauty as the standard. This strengthens my finding that the requirement to remove the dreadlocks undermines principles of mutual respect for another's convictions and cultural traditions and infringes both Ms. Berry and Ms. Wade's right to freedom of expression.

Discrimination:

79. The Committee on Economic, Social and Cultural Rights, a body which monitor's states' implementation of the International Covenant on Economic, Social and Cultural Rights (ratified in Belize in March 2015) at General Comment 20 require States to eliminate discrimination in practice by *“paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination.”*

80. This Court agrees with Counsel for the Claimants that the directive is a form of direct, indirect and systemic discrimination. Female police officers of any race are generally allowed to wear their hair long but those with Afro textured hair who chose to wear it in dreadlocks are the only ones prohibited from wearing their natural hair long. Traditionally, dreadlocks are worn by those of African descent and they are, accordingly, disproportionately affected. It is systemic because it perpetuates predominant cultural attitudes which treat Afro textured hair as inferior and undesirable. This punishment can no longer continue.

Human Dignity:

81. In Orozco (**ibid**), the Court also recognized that human dignity underscored and underpinned the entire framework of rights and freedom. The directive to remove dreadlocks and the policy which prohibits the women police from wearing dreadlocks is an assault on their basic human dignity. It says your religion, your culture and you are not valued in this society or deemed worthy of protection. It has been proven to be without reason or justification. The law will today recognize the full place of these women who chose to be members of the force and to wear dreadlocks.

Remedies:

82. This Court finds that making declarations as to the infringement of the Claimants' fundamental rights ought to be sufficient and there is no need to stay the disciplinary proceedings. It is difficult to imagine that having made such a ruling those proceedings would still be pursued. The Court feels secure in this view particularly as the proceedings have been stayed pending the outcome of these matters.
83. The Claimants in their submissions addressed briefly on damages although there was no such claim in their statement of case. Before making a determination on this particular issue the Court will allow an opportunity for address from both sides.

Determination:

Shantel Berry:

1. It is declared that the Claimant's right to freedom of conscience and religious belief and non-discrimination has been infringed by the directive to remove her dreadlocks and the policy which prohibits wearing dreadlocks as a female police officer of the Belize Police Department.
2. It is declared that the policy and directive of the Belize Police Department which restricts female police officers from wearing dreadlocks is unlawful.
3. The Claimant is to file and serve written submissions on the issue of entitlement to damages on or before the 12th February, 2021.
4. The Defendant is to file and serve any written response on or before the 19th February, 2021.
5. Costs to the Claimant in the agreed sum of \$9,000.00.

Alleeya Wade:

1. It is declared that the Claimant's right to freedom of conscience and non-discrimination has been infringed by the directive to remove her dreadlocks and the policy which prohibits wearing dreadlocks as a female police officer of the Belize Police Department.
2. It is declared that the policy and directive of the Belize Police Department which restricts female police officers from wearing dreadlocks is unlawful.
3. The Claimant is to file and serve written submissions on the issue of entitlement to damages on or before the 12th February, 2021.

4. The Defendant is to file and serve any written response on or before the 19th February, 2021.
5. Costs to the Claimant in the agreed sum of \$9,000.00.

SONYA YOUNG
SUPREME COURT JUDGE