

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

**Claim No. 218 of 2022**

**BETWEEN**

**GODWIN ARTHUR HULSE**

**CLAIMANT**

**AND**

**EDMUND ANDREW MARSHALLECK JR.**

**1<sup>st</sup> DEFENDANT**

**LUKE MARTINEZ**

**2<sup>nd</sup> DEFENDANT**

**MARCELLO BLAKE**

**3<sup>rd</sup> DEFENDANT**

**AS COMMISSIONERS OF THE COMMISSION OF  
INQUIRY INTO THE SALE OF GOVERNMENT ASSETS**

**THE ATTORNEY GENERAL OF BELIZE**

**4<sup>th</sup> DEFENDANT**

**Before the Honourable Madam Justice Geneviève Chabot**

**Date of Last Written Submissions: January 30<sup>th</sup>, 2023**

**Appearances**

Magalie Perdomo, for the Claimant

Hector Guerra, for the 1<sup>st</sup> to 3<sup>rd</sup> Defendants

Douglas L. Mendes, SC and Iliana N. Swift, for the 4<sup>th</sup> Defendant

**JUDGMENT**

**Introduction**

1. In response to allegations of abuse and corruption in relation to the sale of government assets to “favoured persons”, the Government of Belize established the Commission of Inquiry into the Sale of Government Assets (the “Commission”). In its Report, the Commission makes findings of wrongdoing against the Claimant.

2. The Claimant applied for leave to apply for the judicial review of the Commission's Report. The Claimant sought a declaration that the Report was null and void as having been made in breach of his natural justice and constitutional rights, an order of *certiorari* quashing the findings of the Report as they pertained to him, an order of prohibition, and a permanent injunction restraining the Government of Belize from acting upon the Report. The Claimant also sought damages and costs.
3. The Defendants did not object to the granting of the leave. Subsequently, the Defendants admitted to the breach of the Claimant's right to be heard and of his constitutional right to the protection of the law. The Defendants consented to quashing those parts of the Report pertaining to the Claimant. This Judgment is for an assessment of the damages owed to the Claimant as a result of those breaches.
4. The Claimant is awarded \$75,000 in compensatory damages and \$30,000 in vindicatory damages.

## **Background**

5. The Claimant was the Minister of Agriculture, Forestry, Fisheries, Sustainable Development, and Immigration and Nationality from October 2016 to February 2020. He then acted as Minister of Food and Agriculture, and Immigration, from February 2020 to November 2020.
6. On January 19<sup>th</sup>, 2021, the Government of Belize established the Commission. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants were appointed as commissioners. The Commission was charged with investigating the procedures and processes for the sale of government assets during the period of October 2019 to November 2020, and determining whether any improprieties, irregularities, or wrongdoings occurred in the sale of such assets and to recommend any corrective measures and necessary actions against those involved.
7. The Report of the Commission dated January 6<sup>th</sup>, 2022 was released on January 19<sup>th</sup>, 2022. The Report made findings of wrongdoing against the Claimant.
8. On April 6<sup>th</sup>, 2022, the Claimant filed an Application for Permission to Apply for Judicial Review. The Claimant sought leave to apply for the granting of a declaration that the Report was null and void as having been made in breach of his natural justice and constitutional rights, the granting of an order of *certiorari* quashing the findings of the Report as they pertained to him, an order of prohibition, and a permanent injunction restraining the Government of Belize from acting upon the Report. The Claimant also sought damages and costs.

9. The hearing of the Application was adjourned pending the determination of two related matters that were before another Court. Shoman J. released her decision in *The Honourable Hugo Patt v Edmund Andrew Marshalleck Jr. et al.*<sup>1</sup> on June 23<sup>rd</sup>, 2022, and her decision in *The Rt. Honourable Dean Barrow v Edmund Marshalleck Jr. et al.*<sup>2</sup> on June 28<sup>th</sup>, 2022. As a consequence of those decisions, this Application was amended on August 4<sup>th</sup>, 2022.
10. Although they denied the allegations in the Application, the Defendants did not object to the granting of the leave. By consent, the Claimant was granted leave to apply for judicial review. The Claimant filed a Fixed Date Claim Form for Judicial Review and Constitutional Relief on October 12<sup>th</sup>, 2022, seeking the relief listed above.
11. The Defendants filed no response to the Claim for Judicial Review and Constitutional Relief. By Consent Order dated December 2<sup>nd</sup>, 2022 the parties agreed to the following orders and declarations:
  1. The 1<sup>st</sup> through 3<sup>rd</sup> Defendants infringed the Claimant’s right to be heard by failing to issue a Salmon letter, disclose certain documents and provide the Claimant with the opportunity to respond to material that could cast an unfavourable light on him;
  2. An order for *certiorari* quashing those parts of the Report of the Commission of Inquiry into the Sale of Government Assets dated the 6<sup>th</sup> January, 2022, more particularly, “[I]s also more likely than not that the Honourable Godwin Hulse also acquired a 2013 Mahindra pickup (which he continues to regularly use) in the name of Carl Gillette during the relevant period. All these contracts were clearly on account of the public service”;
  3. The Claimant’s constitutional right to the protection of the law has been infringed;
  4. Damages, if any, be assessed and paid by the Fourth Defendant to the Claimant;
  5. The costs of the Claim be paid by the Fourth Defendant to the Claimant.
12. This Judgment only deals with the issue of the damages owed to the Claimant as a result of the admitted breach of his right to be heard and of his constitutional right to the protection of the law.

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<sup>1</sup> Claim No. 29 of 2022 (“Patt”).

<sup>2</sup> Claim No. 33 of 2022 (“Barrow”).

## Parties' Submissions

### *Claimant's Submissions*

13. The Claimant seeks \$120,000 in compensatory damages for distress and injury, and \$60,000 in vindicatory damages.
14. The Claimant alleges that the Report makes the following findings, which are adverse to him and to which he was not given a chance to respond:
  - a. That he 'more likely than not' acquired a 2013 Mahindra pickup in the name of a third party, Carl Gillette (which he continues to regularly use) on account of the public service (para. 18 of the Report);
  - b. That the Claimant bought the vehicle in the name of a third party to mask his involvement with the acquisition (para. 15 of the Report);
  - c. That the Claimant had contracted with the Government to purchase the said vehicle, without any repercussion on his qualification as a member of the National Assembly and without regard to the heightened need for transparency in transactions approved by the Prime Minister in favour of members of its own Cabinet (para. 17 of the Report);
  - d. That the sale of the Mahindra pickup to the Claimant was not within the ambit of lawfully approved or established policies and that the sale reflected mismanagement of public resources involving waste and abuse of which he was a part (para. 14 of the Report);
  - e. By virtue of the *Belize Constitution*, the Claimant was likely disqualified from continuing to sit as a member of the National Assembly (para. 19 of the Report);
  - f. That the Mahindra vehicle purportedly purchased by the Claimant was among the 112 sales of motor vehicles during the relevant period which were effected in breach of the provisions of Part IV of the *Finance and Audit Reform Act*<sup>3</sup> because none of the required tendering procedures were in fact followed in effecting any of the sales (para. 42 of the Report);
  - g. That the misconceived process for effecting sale of the said vehicle to the Claimant may have been used in aid of corrupt acts and to launder proceeds of crime (para. 106 of the Report);

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<sup>3</sup> Cap. 15 of the Substantive Laws of Belize ("*FARA*").

- h. That the purported sale of a 2013 Mahindra to the Claimant amounted to self-dealing on his part (para. 106 of the Report);
  - i. That as a member of Cabinet, the Claimant acted in his own interest in purchasing the motor vehicle from the Government and without any regard to the impact of the transactions on the public purse (para. 106 of the Report);
  - j. That the Claimant leveraged personal relationships with his colleagues to secure private gains (para. 106 of the Report);
  - k. That, as a Government Minister, the Claimant was gifted public assets in a manner which was not transparent, which was tainted by financial mismanagement, and without securing market value for the said public assets (para. 67 of the Report).
15. In his Affidavit in support of the Fixed Date Claim Form, the Claimant describes finding out on January 12<sup>th</sup>, 2022 that the Report had been released through a media report. The media report contained excerpts of the Report. The Claimant alleges that he was “shocked” to read those excerpts identifying him as having “more likely than not” acquired a 2013 Mahindra pickup from the Government of Belize in the name of Carl Gillette during the relevant period of the Commission of Inquiry. The Report also found that the Claimant “regularly uses” the said pickup. The Claimant was subsequently contacted by media houses and gave various interviews in an effort to “exculpate [his] name and provide an accurate account”. The Claimant alleges that the Commission’s findings against him were published nationwide and approved by Cabinet in a Government press release dated January 11<sup>th</sup>, 2022.
16. The Claimant describes being “flabbergasted” when he read the findings against him in the context of the full Report. He was also concerned that the Report had been submitted to the Attorney General’s Office and Office of the Director of Public Prosecutions for advice and action deemed appropriate and necessary.
17. The Claimant alleges that the Commission’s findings against him caused him to experience significant distress and inconvenience. He also alleges that the Report and its findings damaged his reputation as a “former Minister of Government and known public figure who throughout the years consistently advocated for transparency in Government”. The Claimant says that he is particularly aggrieved by the fact that he was not given a chance to provide his true account or to answer the charge against him.
18. The Claimant alleges that since the release of the Report, he has endured sarcastic and cruel remarks made to him about the Mahindra he currently drives. In the Claimant’s estimation, the Commission’s findings against him will have an extended effect since he intends to

continue driving the said Mahindra for several more years. The alleged remarks were made to the Claimant while using the vehicle at the supermarket, the hardware store, and from friends and colleagues. These remarks include persons asking him to sell them the Mahindra cheap because he got it for free from the Government, allegations that he stole government assets, and allegations that he purchased government assets and put private plates on his vehicle to “look clean”. The Claimant says that he experiences anxiety when using the Mahindra in public as he is aware of the “negative taint” which has been inflicted on the use of his own vehicle since the Commission’s Report. He adds that when he tries to defend himself, he faces assertions that as long as it is in the Commission’s Report, it must be true.

19. Throughout his career, the Claimant held various high profile positions both in the public and the private sector. He was given awards in recognition of his service, including an Order of Distinction granted by the Governor General of Belize, the Paul Harris Fellow from the Rotary Foundation of Rotary International, and a honorary PhD from Galen University. The Claimant alleges that the impact the Commission’s findings have on the views of the public towards him has caused him great distress, as he is left feeling embarrassed and degraded. He is inconvenienced by having to constantly defend himself. The Claimant claims that the Commission’s findings against him have caused irremediable harm, which includes a lasting feeling of embarrassment he continues to suffer when out in the community where he resides.
20. The Claimant relies on two recent judgments from our Court arising from the same Report. In *Barrow*, the former Prime Minister and Minister of Finance was awarded \$125,000 in compensatory damages, and \$60,000 in vindicatory damages for the allegations made against him in the Report. In *Patt*, the former Deputy Prime Minister was awarded \$95,000 in compensatory damages, and \$50,000 in vindicatory damages for similar allegations.
21. In *Barrow*, the Court accepted the principle that compensatory damages within the context of a breach of constitutional rights is an award for distress, injury, or inconvenience, as opposed to an attack on one’s reputation. However, the Court also accepted that the reputation of the Claimant may be a factor when assessing damages for distress and injury. The Claimant submits that, as the Court in *Barrow* and *Patt* did, this Court should accept that comparable cases, including defamation cases, may be used to determine the measure of compensatory damages. The Claimant cites the decision in *Karen Bevans v Hon. John Briceño et al.*<sup>4</sup> in which James J. granted Mrs. Bevans \$60,000 in damages for defamation, and \$30,000 in aggravated damages for public comments made by the Hon. Briceño that Mrs. Bevans was a “crony”, had awarded herself a “massive” contract while she “fired everybody”, and as such committed abuses. *Bevans* was recently upheld by the Court of

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<sup>4</sup> Claim No. 771 of 2020 (“*Bevans*”).

Appeal,<sup>5</sup> which found that the quantum of damages awarded was “neither the result of an error of law by the trial judge, nor inappropriate”.<sup>6</sup>

22. With respect to vindictory damages, the Claimant relies on the dictum of the Privy Council in *Attorney General of Trinidad and Tobago v Ramanoop*<sup>7</sup> according to which an additional award of compensation may be appropriate to remedy a breach of constitutional rights. Based on the quantum awarded in *Barrow* and *Patt*, the Claimant seeks \$60,000 in vindictory damages.

### *Defendants’ Submissions*

23. The Defendants made no submissions in relation to the Claimant’s interpretation of the Report and its import. Their submissions focus on the appropriate quantum of damages in light of the Claimant’s allegations of distress and inconvenience. The Defendants submit that an appropriate award in this case for distress and injury to feelings would be in the range of \$25,000 to \$40,000. The Defendants further submit that this is not a matter where vindictory damages should be awarded. If this Court decides to award vindictory damages, the sum of \$10,000 to \$25,000 would be appropriate.
24. The Defendants admit that under section 20 of the *Belize Constitution*, the Claimant is entitled to “redress” for the breach of his fundamental rights. An order for the payment of compensation is a form of redress to which a victim of a violation of constitutional rights is entitled.<sup>8</sup> In both *Maharaj* and *James v Attorney General*,<sup>9</sup> the Privy Council confirmed that compensation for non-pecuniary loss is available for distress and inconvenience suffered as a consequence of the breach. In *Crane v Rees*,<sup>10</sup> the Court held that while not a separate head of damages for breach of a constitutional right, loss of reputation may affect the quality and extent of the distress and inconvenience which a claimant may suffer:

As regards the claim for loss of reputation, I have already indicated that damages per se for such loss are not available in this case. It is not a claim in tort for common law damages. It is one in public law for monetary compensation for breach of one’s constitutional right. But that having been said, I do not accept that the question of reputation should be ruled out altogether. It must be a factor that has to be taken into account in determining the distress and inconvenience suffered by the appellant. The right to be heard is not simply an abstract right that exists in a vacuum. It serves a purpose, and a very significant one at that. It

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<sup>5</sup> Civil Appeal No. 20 of 2021.

<sup>6</sup> *Ibid* at para. 35.

<sup>7</sup> [2005] UKPC 15 (“*Ramanoop*”).

<sup>8</sup> *Maharaj v Attorney-General of Trinidad and Tobago (No. 2)*, [1979] AC 385 (“*Maharaj*”).

<sup>9</sup> [2010] UKPC 23 (“*James*”).

<sup>10</sup> (2000) 60 WIR 4098.

protects a citizen against any arbitrary act of the State or its agents by ensuring that he is heard before any action adverse to him is taken. In doing so one's reputation is protected. The right would be meaningless, in my view, and of little value to a citizen if it could not protect him in this way. I think that this view is borne out in the opinion of the Privy Council as regards the injury to the appellant's reputation.

It cannot be doubted that injury to one's reputation will generally have an effect on the victim in that, amongst other things, it will cause him distress and grief. The fact that distress is also an ingredient that is taken into account in an award in defamation at common law should not, in my view, preclude a court in a constitutional matter from taking that very distress into account. The fact that there may be some overlap is of no consequence [emphasis added].<sup>11</sup>

25. The Defendants submit that it is a fundamental principle of fair assessment of damages that awards made in any case should bear a reasonable relationship to awards made in comparable cases.<sup>12</sup> They submit that the award in *Crane v Rees* is a "benchmark" because of the similarities in the circumstances and right infringed. The award of TTD\$125,000 granted to the claimant in *Crane v Rees* is equivalent to BZ\$40,000. Awards made in defamation cases are also, in the Defendants' view, helpful to guide the assessment of damages in the present matter. They note that the Court in *Bevans* found that awards of general damages in defamation cases range from \$25,000 to \$60,000. In *Anwar Barrow v Michael Rudon*,<sup>13</sup> the claimant was awarded \$40,000 in general and \$10,000 in aggravated damages for an accusation that he had used his political relationship with his father to get a Minister fired and then conspired to release documents that would "destroy" him.
26. The Defendants invite this Court to approach the awards in *Barrow* and *Patt* with the greatest of caution because in their view, "it appeared that the awards made encompassed an undisclosed amount for injury to reputation". The Defendants point out that Shoman J. "indicated that she took into account the stature and standing of the Claimant in society, which might be relevant to an assessment of damages to reputation in a defamation case, but is not relevant to an assessment of compensation for distress and injury to feelings". The Defendants also note that "the attack on the Claimant's character in this case is not as widespread, definitive and damning as the attack on the characters of the *Barrow* and *Patt* Claimants".

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<sup>11</sup> *Ibid* at 425-426.

<sup>12</sup> *Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton and anor.*, Civil Appeal No. 22 of 2004 at para. 35.

<sup>13</sup> Claim No. 254 of 2018 ("*Rudon*").

27. The Defendants submit that an award for vindictory damages is not appropriate in the circumstances of this case. In *Ramanoop* and in *Merson v Cartwright*,<sup>14</sup> the Privy Council clarified that the purpose of vindictory damages is not punitive, but rather “reflect[s] the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches”.<sup>15</sup> While discretionary, the sum to be awarded depends “upon the nature of the particular infringement and the circumstances relating to that infringement”.<sup>16</sup> The basis for the sum arrived at must be set out by the judge.<sup>17</sup>
28. In *Attorney General of Trinidad and Tobago v JM (a minor by his kin and next friend NM)*,<sup>18</sup> the Privy Council offered some guidance on the nature and function of vindictory damages:

56. The first is that one has to be very careful with terminology so as to avoid needless confusion. Most remedies for wrongs may be said to have the subsidiary function of vindicating the right infringed. So, for example, the primary function of compensatory damages is to compensate the loss of the claimant but, in so doing, one is also inevitably vindicating the right infringed. And the primary function of an account of profits awarded for a wrong (such as breach of fiduciary duty) is the disgorgement of the gains made by the wrong but, in making such an award, one is also vindicating the underlying right. In contrast, the primary function of vindictory damages, as explained by Lord Nicholls, is to vindicate the right infringed by emphasising its importance. Other functions are, as he made clear, to reflect the sense of public outrage, to emphasise the gravity of the breach, and to deter future breaches.

57. The second observation is that there is a parallel between vindictory damages and punitive (otherwise known as exemplary) damages that may be awarded at common law. In English law, punitive damages can be awarded for torts but, as laid down by Lord Devlin giving the leading speech in the House of Lords in *Rookes v Barnard* [1964] AC 1129, only in three categories of case. The first of those categories is where there has been “oppressive, arbitrary or unconstitutional action by the servants of the government”. This may be thought to be somewhat similar to breach of a constitutional right. Moreover, some of the functions of punitive damages (eg, deterrence and to reflect the sense of public outrage) match the functions of vindictory damages and it is for this reason (ie to avoid duplication) that, as laid down in *Takitota v Attorney General of the Bahamas* [2009] UKPC 11, a court should not award both punitive damages for a tort and

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<sup>14</sup> (2005) 67 WIR (“*Merson*”).

<sup>15</sup> *Ramanoop*, *supra* at para. 19.

<sup>16</sup> *Merson*, *supra* at para 19.

<sup>17</sup> *Inniss v Attorney General of Saint Christopher and Nevis*, (2008) 73 WIR 187.

<sup>18</sup> [2022] UKPC 54 (“*JM*”).

vindictory damages for breach of a constitutional right. But the essential and crucial difference, as Lord Nicholls made clear in *Ramanoop* (in the passage cited at para 55 above), is that vindictory damages, unlike punitive damages, are not concerned to inflict punishment, in the sense of retribution, on the defendant.

58. The third observation is that, as Lord Nicholls made clear, vindictory damages are additional to any compensatory damages. It is only if compensatory damages are inadequate to vindicate the right (and to achieve the other functions of vindictory damages) that vindictory damages should be awarded. This may be expressed by saying that vindictory damages should be awarded “if but only if” compensatory damages (which may include so-called “aggravated damages” reflecting the mental distress caused to the claimant by the particularly bad conduct of the defendant) are inadequate to vindicate the right. Such a restriction has its parallel in relation to punitive damages because Lord Devlin in *Rookes v Barnard*, at pp 1227-1228, said that, if a case fell within one of the categories, a jury should be directed that: “if, but only if, the sum which they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct ... then it can award some larger sum.”

59. The fourth observation is that, under the present law, vindictory damages can be awarded only for breach of constitutional rights [...] [emphasis added].<sup>19</sup>

29. An award of vindictory damages is therefore not automatic. In *James*, the Privy Council held as follows:

[24] [...] The constitutional dimension adds an extra ingredient. The violated right requires emphatic vindication. For that reason, careful consideration is required of the nature of the breach, of the circumstances in which it occurred and of the need to send a clear message that it should not be repeated. Frequently, this will lead to the conclusion that something beyond a mere declaration that there has been a violation will be necessary. This is not inevitably so, however. Nor is it even the case that it will be required in all but exceptional circumstances. Close attention to the facts of each individual case is required in order to decide on what is required to meet the need for vindication of the constitutional right which is at stake [emphasis added].<sup>20</sup>

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<sup>19</sup> *Ibid* at paras. 56-59.

<sup>20</sup> *James*, *supra* at para. 24. See also *Subiah v Attorney General*, [2009] 4 LRC 253 at para. 11. See also *Maya Leaders Alliance v Attorney General of Belize*, [2016] 2 LRC 414 at para. 61; *Titan International Securities Inc v Attorney General of Belize* [2019], 2 LRC 279 at para. 59.

30. The Defendants go on to list recent Caribbean cases in which vindictory damages were awarded in cases of a breach of constitutional rights:
- a. *Econo Parts Ltd v Comptroller of Customs and Excise*:<sup>21</sup> EC\$75,000.00 (around BZ\$56,000) in vindictory damages in a case of breaches of the right to property where the court found that “the laxity with which this matter was treated coupled with the overall tenor of the officers’ expressions and actions can only be considered as a most deplorable abuse of power”.
  - b. *Attorney General of Grenada v Ehsan*:<sup>22</sup> EC\$50,000 (around BZ\$37,000) in vindictory damages for the wrongful arrest and detention of the claimant, the retention of his passport, and breaches of the claimant’s right to due process of the law.
  - c. *Attorney General of Antigua and Barbuda v The Estate of Thomas Bufton et al*:<sup>23</sup> EC\$10,000 (around BZ\$7,450) in vindictory damages.
  - d. *Julius Espat v Michael Peyrefitte*:<sup>24</sup> \$50,000 in vindictory damages for an elected official who was physically removed from the House of Representatives.
31. The Defendants also list cases in which vindictory damages were denied by the court:
- a. *Major v Attorney General and others*:<sup>25</sup> in a case where the claimant was detained for 38 days under an unconstitutional provision of the *Firearms (Amendment) Act*, the court found that general and special damages were appropriate, but not vindictory damages.
  - b. *Graham v Police Service Commission and another*:<sup>26</sup> the Privy Council held that vindictory damages were not appropriate where the alleged breach was in the nature of a want of procedural fairness. Of note is that the lower court judge had found no bad faith or deliberate wrongdoing on the part of the State, but found that the breach was the result of an administrative error.
32. The Defendants maintain that this is not an appropriate case for an award of vindictory damages. The Defendants have consented to appropriate orders expunging the offending words from the record, and declarations acknowledging the breach of the Claimant’s right to be heard and his constitutional rights. The attack on his character is also relatively

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<sup>21</sup> SLUHCVAP 2017/0019.

<sup>22</sup>[2021] 1 LRC 651.

<sup>23</sup> Civil Appeal No. 22 of 2004.

<sup>24</sup> Claim No. 560 of 2016.

<sup>25</sup> [2016] 4 LRC 337.

<sup>26</sup> [2011] UKPC 46.

speaking not of the gravest nature. The Court will also have already made an award for the distress and injury to feelings suffered as a result of those breaches. In the circumstances, there is no further need for the Court to register the public's outrage at those breaches, to emphasise the importance of the constitutional right and the gravity of the breach, or to deter further breaches. Deterrence is not necessary because the Defendants have readily accepted their culpability and their willingness to make reparations. Further, there is no suggestion of bad faith on the part of the Defendants or a deliberate attempt to injure the Claimant. In the Defendants' view, this is not a case of reprehensible conduct on the part of the State egregious enough to warrant a monetary order in addition to the agreed orders, declaration and compensation awarded.

### **Analysis**

33. The questions this Court must answer are narrow. The Defendants accept liability. They admit that the Commission violated the Claimant's right to be heard and infringed his constitutional right to the protection of the law. They concede that the Claimant is entitled to compensatory damages for distress and inconvenience, but deny the Claimant's entitlement to vindictory damages. This Court must therefore determine the appropriate quantum of compensatory damages, and whether the Claimant is entitled to vindictory damages in the circumstances of this case.

### *Compensatory Damages*

34. This Court awards the Claimant \$75,000 in compensatory damages, based on the following considerations.
35. The Court begins its analysis with the recent decisions in *Barrow* and *Patt*, in which Shoman J. awarded the claimants \$125,000 and \$95,000, respectively, in compensatory damages for similar constitutional breaches arising from the same Commission of Inquiry. While the Court is mindful of the Defendants' caution with respect to the amounts awarded in those claims, unless and until the Court of Appeal finds those amounts to be inappropriate, the awards in *Barrow* and *Patt*, are considered persuasive authorities. Of course, this Court must conduct its own analysis and award damages on the basis of the Claimant's own circumstances.
36. On a reading of the Report, it is obvious to this Court that the accusations of wrongdoing levelled against the Claimant are not as categorical and damaging as those levelled against the Right Hon. Dean Barrow SC, the former Prime Minister and Minister of Finance, and the Hon. Hugo Patt, former Deputy Prime Minister. The Report paints a picture of a system rife with abuse, corruption, and disregard for the applicable laws and regulations. The Right Hon. Barrow, as Prime Minister and Minister of Finance, is placed at the center of this system and is painted as having enabled it to flourish and continue unaddressed. The Right

Hon. Barrow is also accused of favouritism. The Hon. Patt is specifically accused of having taken advantage of the system to launder the proceeds of a bribe for the sale of lands. The Report recommends that the conduct of the Hon. Patt be investigated with a view to being prosecuted, and that his qualifications to continue to sit in the National Assembly be investigated.

37. By contrast, the Claimant is identified as having “more likely than not” acquired a vehicle in the name of another, which could disqualify him from sitting in the National Assembly. While there is no suggestion that the Claimant played any part other than having taken advantage of the system by acquiring one vehicle, it is implicit from the Report’s conclusions that by doing so, the Claimant was complicit in the abuse, the corruption, and the breaches of the law and regulations that the Report condemns. As noted by the Defendants, the “attack on the [Claimant’s] character in this case is not as widespread, definitive and damning as the attack on the characters of the *Barrow* and *Patt* Claimants”. While this may be true, there was an “attack” on the Claimant’s character for which he must be compensated.
38. The Claimant alleges that the Report’s findings against him caused him to experience significant distress and inconvenience. The Claimant says that he was “shocked” when he heard a media report containing excerpts of the Report identifying him as having “more likely than not” acquired a 2013 Mahindra from the Government in the name of another. The Claimant had not been made aware of the release of the Report and of its findings before these excerpts were broadcasted to the public. The Claimant was thereafter “flabbergasted” when reading the full Report, and was “concerned” that the Report had been submitted to the Attorney General and Office of the Director of Public Prosecutions for advice and action. The Claimant says that he was “particularly aggrieved” by the fact that he was not given a chance to provide his true account or to answer the charge against him. The Claimant also alleges suffering from “anxiety” when driving the Mahindra.
39. The inconvenience listed by the Claimant includes having to contact media houses and give interviews in an effort to “exculpate [his] name”, and having to hear and respond to sarcastic and cruel remarks made about him and his vehicle, which he still drives, from acquaintances and strangers.
40. The Claimant made submissions as to his reputation and standing in society. As noted in *Crane v Rees*, damages for loss of reputation are not available in a claim for breach of constitutional rights. However, the question of reputation can be considered by this Court as a “factor that has to be taken into account in determining the distress and inconvenience suffered”<sup>27</sup> by the Claimant. It is apparent from the Claimant’s submissions that he considers himself as a person having a good reputation. He lists the numerous high profile

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<sup>27</sup> *Crane v Rees*, *supra* at 425.

positions he has held, and awards he was given over the years. The Claimant states that he “continue[s] to stand on [his] impeccable record as a professional and private citizen in Belize”, but that the comments and opinions of the members of the public show that the “reckless statements” made in the Report had an impact on the views of the public towards him, which has caused him “great distress as [he is] left feeling embarrassed and degraded”.

41. Considering the unchallenged assertions of the Claimant as to the level of distress and inconvenience caused to him as a result of the Commission’s findings, and having regard to *Barrow, Patt*, and the other precedents cited by the parties (especially *Bevans, Rudon*, and *Crane v Rees*), this Court finds that an amount of \$75,000 in compensatory damages is appropriate in this case.

#### *Vindictory Damages*

42. Vindictory damages are appropriate in the circumstances of this case. In this Court’s view, while the rights infringed are undoubtedly important and their breach grave, vindictory damages are particularly necessary in this case to reflect the sense of public outrage and deter future breaches. This Commission of Inquiry was not the first to take place in Belize, and will certainly not be the last. Commissions of Inquiry play an important role in our democracy. Where there are reasons for the public to be concerned by the conduct of public officials or the management of public institutions, Commissions of Inquiry offer the Government a means to investigate and make recommendations to end and prevent the further recurrence of wrongdoing.
43. However, the imperative to get at the truth must not come at the cost of the fundamental rights of those who are the subject of the inquiry. Under the *Commission of Inquiry Act*,<sup>28</sup> Commissions of Inquiry are given extraordinary powers which allow commissioners to gather the evidence needed to uncover wrongdoing. But Commissions of Inquiry do not suspend the natural and constitutional rights of those who are under inquiry. To the contrary, the exercise of those extraordinary powers requires heightened vigilance to ensure that those rights are protected and can be effectively exercised. Where the extraordinary powers given to Commissions of Inquiry are abused, as they were here, the important democratic goals they seek to achieve are threatened. The public nature and the potential impacts of findings of wrongdoing on an individual’s life and career require that conduct such as the conduct admitted in this case be condemned and deterred.
44. In addition, this case is one where there is a sense of outrage that is deserving of vindication. It was particularly outrageous for the Claimant not to have been made aware of allegations of wrongdoing against him, and not to be given an opportunity to be heard. It was all the more outrageous for the Claimant to learn of the Commission’s findings at the

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<sup>28</sup> Cap. 127 of the Substantive Laws of Belize.

same time as the public, via a media report. The fact that the Claimant was not given the courtesy of a “heads up” before the news broke is particularly reproachable.

45. Based on the precedents provided to this Court, vindictory damages in an amount of \$50,000 would generally be appropriate in circumstances such as those in this case. However, this Court acknowledges the Defendants’ readiness to admit and take appropriate action to remedy the breaches of the Claimant’s rights. While those breaches should have been avoided in the first place, the Defendants’ assumption of liability must be reflected in the amount awarded to the Claimant as vindictory damages. The Court also recognises that the Defendants were imposed vindictory damages in both *Barrow* and *Patt* for breaches arising from the same Report. As noted by the Privy Council in *JM*, vindictory damages are not meant to “inflict punishment”. In all of the circumstances, \$30,000 in vindictory damages is appropriate.

**IT IS HEREBY DECLARED AND ORDERED THAT**

- (1) The 1<sup>st</sup> through 3<sup>rd</sup> Defendants infringed the Claimant’s right to be heard by failing to issue a Salmon letter, disclose certain documents and provide the Claimant with the opportunity to respond to material that could cast an unfavourable light on him;
- (2) The Claimant’s constitutional right to the protection of the law has been infringed;
- (3) An order for *certiorari* quashing those parts of the Report of the Commission of Inquiry into the Sale of Government Assets dated the 6<sup>th</sup> January, 2022, more particularly: “[I]s it also more likely than not that the Honourable Godwin Hulse also acquired a 2013 Mahindra pickup (which he continues to regularly use) in the name of Carl Gillette during the relevant period. All these contracts were clearly on account of the public service” is granted;
- (4) Compensatory damages in an amount of \$75,000, and vindictory damages in an amount of \$30,000 shall be paid by the 4<sup>th</sup> Defendant to the Claimant;
- (5) Costs of this Claim in an amount to be agreed or assessed shall be paid by the 4<sup>th</sup> Defendant to the Claimant.

Dated June 26<sup>th</sup>, 2023

Geneviève Chabot  
Justice of the High Court