



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **HOLDEN AT GEORGE TOWN, GRAND CAYMAN,**  
3 **CAYMAN ISLANDS**

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6  
7 **CIVIL DIVISION**  
8

9 **Cause No. 63 of 2011**

10  
11 **BETWEEN:**

12 **PAULINE EBANKS**  
13 **(As Personal Representative of the Estate of Bruce Lee G. Ebanks, deceased)**

14 **Plaintiff**

15 **and**

16 **(1) ALEXANDER CALLAN**  
17 **(2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

18 **Defendants**  
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21 **Appearances: Mr. Guy Dilliway-Parry of Priestleys for the Plaintiff**

22 **Ms. Suzanne Bothwell of the Attorney General's Chambers**  
23 **for the Attorney General**

24  
25 **Mr. Alexander Callan, a Defendant, did not appear**  
26 **nor did he need to appear**

27  
28 **Before: Hon. Justice Henderson**

29  
30 **Heard: March 27, 2013**  
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3 REASONS FOR JUDGMENT  
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5 1. Bruce Ebanks died on February 29, 2008 while riding as a passenger in a car driven by  
6 the First Defendant, Alexander Callan. This claim is brought by the mother of the  
7 deceased, Pauline Ebanks, as personal representative of the Estate. A judgment has  
8 already been obtained against Mr. Callan but remains unsatisfied.

9 2. The claim against the Second Defendant, the Attorney General, alleges that the actions of  
10 the Royal Cayman Islands Police Service just prior to the accident caused or contributed  
11 to it and to the death of Mr. Ebanks. The trial has been concerned with liability only.

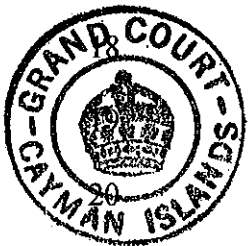
12 3. Around 11:30 p.m. on February 29, 2008 an RCIPS officer, Police Constable Mitchell,  
13 encountered Mr. Callan, Mr. Ebanks, and a third person in a vehicle in West Bay. The  
14 area was a known hangout of drug users and traffickers. The men were acting  
15 suspiciously. Police Constable Mitchell suspected that they were involved in a drug  
16 transaction. Because drug traffickers in the Cayman Islands are known to carry illegal  
17 firearms from time to time he also suspected that one or more of the men might be in  
18 possession of a gun. Police Constable Mitchell had no evidence which would justify an  
19 arrest for either a drug offence or a firearms offence. He was simply in the early stage of  
20 what he intended to be an investigation of the three people.

1 4. The car driven by Mr. Callan sped away from the scene and Police Constable Mitchell  
2 followed. It is conceded that he embarked upon what is termed a "pursuit". Like most  
3 police forces, the RCIPS had in effect a formal policy governing pursuits entitled the  
4 "Pursuit Policy and Procedures."

5 5. The question of substance during this trial was whether the RCIPS adhered to this policy  
6 and, if they did not, whether their failure to do so was an act of negligence which caused  
7 or contributed to the accident.

8 6. The pursuit lasted for about 6 minutes and 15 seconds, a relatively long pursuit according  
9 to the Plaintiff's expert. The two cars drove at high speed from Velma Banks Drive in  
10 West Bay along Fountain Road and Town Hall Road to the four-way crossing and then  
11 down West Bay Road until Mr. Callan swerved to avoid a collision with a vehicle in the  
12 turning lane and struck a light pole. Mr. Ebanks died of injuries suffered in the collision.  
13 Police Constable Mitchell acknowledges that he embarked upon a pursuit near Velma  
14 Banks Drive. I do not think he can be criticised for this initial decision.

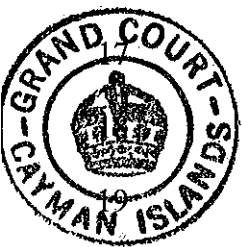
15 7. The policy requires that an officer embarking upon a pursuit "immediately" advise the  
16 911 communication centre of certain information, including the reason for the pursuit. It  
17 also requires that he request that a supervisor be notified. Police Constable Mitchell did  
not, at any time, request a notification of a supervisor. He did not immediately provide  
the reason for the pursuit either. Eventually, after being asked for the reason more than  
once, he said to the 911 operator that it was because some "males were acting suspicious  
there on Kings Road and saw the police car and they took off from us." This was said as



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1 he was driving past Silver Sands, a location which would be well over two-thirds of the  
2 way along the course of the pursuit. A reason was provided after the pursuit had carried  
3 on for about four and three-quarter minutes.

4 8. The need to notify a supervisor and provide the reason for the pursuit immediately lies at  
5 the heart of the policy which is intended to place the crucial decision as to whether to  
6 continue or abandon the pursuit in the hands of an experienced senior officer. Because  
7 the senior officer is not involved physically in the chase, he is able to exercise the sort of  
8 independent and considered judgment which circumstances may have denied to the  
9 officers doing the chasing. The superintendent is expected to weigh the reason for the  
10 pursuit, and particularly the gravity of the reason for it, against the potential danger to the  
11 public in conducting it. The policy says that the immediate apprehension of the suspect is  
12 "never more important" than the safety of the public and that no officer will be criticised  
13 for terminating a pursuit in the interest of safety although he will be held accountable for  
14 continuing one inappropriately. Thus, the superintendent must be placed in a position  
15 where he can take command and control of the pursuit. He must be given information  
16 about the speed of the vehicles, the driving and traffic conditions and the danger  
presented by continuing to pursue. All of that must be weighed in order to determine,  
moment by moment, whether the risk is justified by the gravity of the suspected  
wrongdoing. Any doubt is resolved in favour of public safety.



20 9. Police Constable Mitchell said in evidence that he did not request a supervisor because he  
21 believed that the 911 operator would do that. The communication transcript shows that an  
22 unidentified person was asking the sort of questions that a supervisor would ask.

1 10. The Attorney General's position is that Acting Sergeant Forth took on the role of  
2 supervisor and was asking these questions. Acting Sergeant Forth, who is no longer with  
3 the force, did not give evidence. In his witness statement, he makes no mention of having  
4 assumed the role of supervisor although he does say he listened to the radio  
5 communications and asked for the reason for the pursuit. No witness has said  
6 affirmatively that he or any other officer acted as a supervisor of this pursuit.

7 11. The policy requires that a supervisor notify the communication centre of his name and  
8 number and that he is monitoring the pursuit. There is no evidence this was done by  
9 anyone.

10 12. The policy requires that the supervisor debrief the officers involved afterwards and then  
11 file a pursuit incident report. Such a report was not filed.

12 13. Given this state of the evidence, I consider that no one was supervising the pursuit in the  
13 manner contemplated by the policy.

14 14. Near the beginning of the pursuit, Police Constable Mitchell said he was travelling at 60  
15 to 65 miles per hour. A bit later on Town Hall Road he said he was going about 90 miles  
16 per hour. Since Police Constable Mitchell was trying to keep up with Mr. Callan's vehicle  
and was succeeding, I infer that both were travelling at these speeds. The evidence is  
equivocal about how fast the two cars were going during the latter part of the chase on  
West Bay Road but there is no doubt that it was well in excess of the speed limit in all  
locations. One eyewitness, Mr. Eric Bush, estimated the speed of both cars as in excess of  
20 80 miles per hour just before the accident.  
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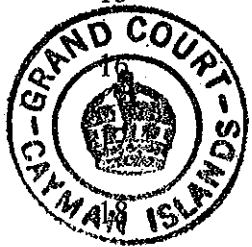
2 15. Police Constable Mitchell reported to the 911 communications centre that the traffic was  
3 light. He said that light traffic means a few cars but not many. As the pursuit continued  
4 down West Bay Road the cars passed a popular roadside bar and restaurant, Calico  
5 Jack's, and the Public Beach area. The pursuit occurred on a Friday night around 11:30  
6 p.m.

7 16. In summary, had there been a supervisor in effective control of the pursuit he would have  
8 had to weigh the following question: is the apprehension of three men who might have  
9 been carrying out a drug transaction and who could possibly be in possession of a firearm  
10 enough to justify the risk inherent in driving at speeds up to 90 miles per hour on roads in  
11 West Bay and at very high speeds on West Bay Road itself?

12 17. Given the paramountcy in the policy accorded to the safety of the public, it is more  
13 probable than not that a supervisor who was given the pertinent information in a timely  
14 manner would have answered this question in the negative. He would have terminated the  
15 pursuit because he would have considered that the risk to the public could not be justified  
by the reason for it. I agree with the Plaintiff's expert that the pursuit would have been  
terminated on Town Hall Road after Police Constable Mitchell reported that the cars  
were travelling at 90 miles per hour.

19 18. I am satisfied that Police Constable Mitchell's failure to provide the reason for the pursuit  
20 and request a supervisor immediately, and the failure of the RCIPS to ensure that a senior  
21 officer supervised the pursuit in accordance with the policy, were omissions which

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1 violated the letter and the spirit of the policy in a fundamental way. In essence, this was  
2 an unsupervised pursuit. The policy represents a self-imposed standard of care which the  
3 RCIP is expected to follow. The failures I have mentioned taken together amount to an  
4 act of negligence.

5 19. Police constables on patrol are likely to encounter difficult and dangerous situations  
6 which require them to make hard decisions very quickly. It is to be expected that errors in  
7 judgment will occur. A simple error in judgment is not, by itself, an act of negligence.  
8 Something more is needed. However, when an error in judgment is so erroneous as to  
9 represent a departure from the usual standard of care expected of trained police officers in  
10 the Cayman Islands, then it does amount to negligence as well.

11 20. Police Constable Mitchell's decision to follow a vehicle travelling at speeds up to 90  
12 miles per hour for the reason given above was a clear error in judgment. The desire to  
13 investigate a drug offence, or even a firearms offence, cannot justify the pursuit which  
occurred. On the balance of probabilities, I am satisfied that this error also represents a  
departure from the usual standard of care expected of trained police officers in the  
Cayman Islands and was an act of negligence.

17 21. Police Constable Mitchell was an agent of the RCIPS at the time and was acting in the  
18 course of his duty, so his act of negligence is attributed to his employer.

19 22. The Attorney General has placed causation in issue. Ms. Bothwell says that the  
20 continuation of the pursuit did not cause the accident. It was caused by the  
21 "unforeseeable" fact of the car in the turning lane.

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1 23. This submission has no merit. The accident was contributed to, if not caused by, the  
2 speed at which Mr. Callan was driving. He was doing so because a police car was chasing  
3 him. Had the pursuit been terminated, it is more probable than not that Mr. Callan would  
4 have slowed down to a normal speed so as to avoid attracting further police attention.  
5 Consequently, the negligent failure to end the pursuit was one factor which contributed to  
6 the accident.

7 24. For these reasons, I grant judgment and costs on the standard basis to the Plaintiff.

8 Dated this 27<sup>th</sup> day of March, 2013

9 *Henderson, J.*



10 Henderson, J.  
11 Judge of the Grand Court