

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE ¹²⁵ OF 2013

BETWEEN:

POLICE CONSTABLE CARDIFF ROBINSON

PLAINTIFF

AND

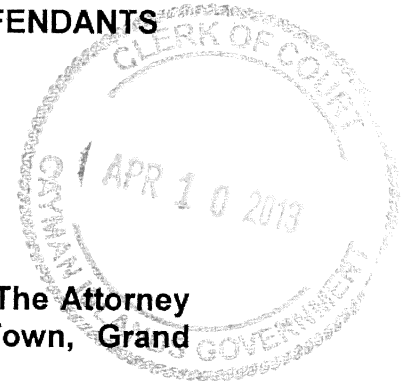
(1) CHIEF INSPECTOR FRANK OWEN

(2) THE COMMISSIONER OF POLICE

(c/o The Attorney-General of the Cayman Islands)

DEFENDANTS

WRIT OF SUMMONS



TO: Chief Inspector Frank Owen, the Commissioner of Police c/o The Attorney General of the Cayman Islands, Legal Department, George Town, Grand Cayman, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within (14 Days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Courts Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment of Service within the time stated, or if you return the Acknowledgement of Service without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and Judgment may be entered against you forthwith without further notice.

Issued this 10 April 2013

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by Order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

1. The Plaintiff is a Constable with the Royal Cayman Islands Police Force and a former member of the Jamaica Constabulary Force.
2. The First Defendant is a Chief Inspector with the Royal Cayman Islands Police ("RCIP"), in charge of the District of George Town.
3. The Second Defendant is the Commissioner of the RCIP appointed by the Governor of the Cayman Islands, and under the Crown Proceedings Law (1997 Revision), is defended by the Attorney-General.

Background

4. The Plaintiff is well liked by members of the community he has served, some of whom have taken the time to write to the Plaintiffs senior officers including the Second Defendant, praising the Plaintiffs approach to his work, his integrity, helpfulness and dedication. In turn the Plaintiff has been praised by the Second Defendant and other senior officers.
5. The Plaintiff complains that he has been assaulted twice by the First Defendant in two separate incidents and in addition has been verbally abused, bullied, intimidated by threats of his contract not being renewed, treated with disrespect in front of other officers, and unfairly reprimanded on other occasions by the same officer.
6. Further, the Plaintiff avers, despite reporting what can only be called criminal assaults and serious harassment through the RCIP internal complaints process, little or nothing has been done about the complaints and as a result, the Plaintiff complains he has been denied natural justice and his human rights under the constitution have been violated.

Complaints Procedure

7. All complaints against police officers by other police officers are currently dealt with internally by the RCIP's Professional Standards Unit ("PSU") headed by an officer at Inspector level or higher.
8. The complaint is initially investigated by the PSU Inspector who causes a file to be made up, recommends further action be taken if warranted and where necessary, if the matter is of a criminal nature, forwards the file to the DPP for further advice. The PSU Inspector then reports to a Deputy Chief Inspector or Deputy Commissioner of Police. The Deputy Chief Inspector or Deputy

Commissioner will then if appropriate, ultimately have the Second Defendant review the disciplinary proceedings, and the Second Defendant will make a decision under Section 99 of the Police Law, 2010.

9. The Police Association which represents the interests of serving officers up to the rank of Superintendent, has publicly criticized the PSU pointing out that regardless of the fact that an investigation has commenced by the PSU, which is often not independently conducted, the Second Defendant and only the Second Defendant gets to decide whether an officer, especially a senior officer, is properly and independently investigated by the PSU, yet alone, punished for wrong doing within the force by the Second Defendant.
10. The Police Association at trial will aver that it has logged numerous complaints from a number of officers evolving from incidents with the First Defendant and to the Plaintiffs knowledge, there has never been any condemnation from senior officers of the First Defendants aggressive and unjustified approach with a number of junior officers and to the Plaintiffs knowledge, the First Defendant has never been known to have been officially reprimanded
11. Unlike the UK, there is currently no independent police complaints commission to handle internal complaints, although, the Police Law 2010 makes provision for the setting up of an independent 'Police Public Complaints Authority", which presumably would also officiate over internal complaints i.e. officers filing complaints against other officers.
12. The right to a fair hearing is guaranteed by Article 6 (1) of the European Convention on Human Rights, and by Section 7 (1) of our own Cayman Islands Constitution...*Everyone has the right to a fair and public hearing in the determination of his or her legal rights and obligations by an independent and impartial court within a reasonable time...*
13. This can be interpreted in the Plaintiff's case as the right to a fair and public hearing of his complaints which he is legally entitled to express, to be heard by and independent and impartial jury within a reasonable time period.
14. Section 19 of the Constitution reads... (1) *All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair...* (2) *Every person whose interests have been adversely affected by such a decision or act has the right to request and be given written reasons for that decision or act.*
15. For the sake of clarity, the Second Defendant under the Constitution is a public official.
16. Section 24 of the Constitution...*"It is unlawful for a public official to make a decision or act in a way that is incompatible with the Bill of Rights unless the public official is required or authorized to do so by primary legislation, in which*

case the legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified”.

17. The Plaintiff avers that because the PSU is not an independent body and is capable of being influenced by senior RCIP officers including and especially the Second Defendant, he is unable to receive a fair hearing on any of his complaints against the First Defendant, and seeks a declaration from the Court that the internal investigation system presently in place within the RCIP i.e. the PSU, produces a real danger of bias and thus is likely to breach its duty to act fairly without bias, whether that bias be imputed or apparent.
18. The Plaintiff further seeks a declaration that his personal constitutional rights under section 7 (1) of the Cayman Islands Constitution Order 2009 (the “Constitution”), have been breached by the Second Defendant who the Plaintiff claims has abdicated his duty under sections 19 and 24 of the Constitution in not properly investigating the Plaintiffs complaints, and by not implementing a fair and independent internal investigation procedure.

PARTICULARS OF CLAIM

The First Assault

19. On 1 June 2011, the First Defendant asked to see the Plaintiff and the vehicle he was driving. On reaching the vehicle in the car park, the First Defendant noted that the log book had not been updated and the Plaintiff replied that quite often the log book couldn't be found since a number of different officers were using the vehicle due to a shortage of vehicles and there was no proper system in place in any event.
20. The First Defendant aggressively threw the reasonably heavy log book at the Plaintiff through the open door of a police car as the Plaintiff was sitting in the driver's seat which caught the Plaintiff in the face and chest, exclaiming “you need to get this up to date”. The incident happened in full view of another police office and a number of civilians walking by.
21. After then calling the Plaintiff to his office, the First Defendant then made a number of other derogatory remarks about the Plaintiffs work assignments ending with the threat that “you are high on my radar” and would not explain what he meant.
22. The Plaintiff reported the incident to a Deputy Commissioner who promised to investigate and deal with the matter. To the Plaintiff's knowledge, the complaint was never investigated or if it was, a decision was made not to proceed with any disciplinary action against the First Defendant but the Plaintiff was never informed as to the decision made and the reason for the decision.

23. Shortly before the Second Assault on 8 February 2012 there was a further confrontation between the First Defendant and the Plaintiff, the First Defendant insisting repeatedly that the Plaintiff needed to give him something in writing from the Court for the Plaintiff to be able to attend court to give evidence.
24. In fact the Plaintiff was properly summoned by the Court and it is not customary for the Court to provide written authority for a policeman to give evidence. The meeting was conducted with some hostility against the Plaintiff on the part of the First Defendant and only concluded when another senior officer advised the First Defendant that the Plaintiff was correct in what he was asserting to the First Defendant.
25. By reason of the matters set out above, the Plaintiff was criminally assaulted, victimized and or harassed by the First Defendant and has suffered injury, loss and damage as a result.

PARTICULARS OF CLAIM

The Second Assault

26. On Wednesday 15 February 2012 the Plaintiff reported for duty at the George Town Police Station. The Plaintiff was assigned to Operation Bat duties which called for high visibility police foot patrols throughout the George Town Business area checking on shops, restaurants, banks and other business premises.
27. At 2.15 pm the Plaintiff heard over the police radio that the First Defendant wished to verify the location of officers assigned to Bat control in the George Town area, to which the Plaintiff replied that he was at the Cayman National Bank building in central George Town making routine checks at the premises. The Plaintiff believes he was the only officer assigned to Bat at that time.
28. The Plaintiff made his way along Dr. Roy's Drive and cut through the Thompson Building and headed towards the Digicel building opposite the Post Office to meet up with the First Defendant.
29. On his approach he saw the First Defendant, standing on the pavement outside the Digicel premises. The First Defendant who was using his cell phone at the time, called out to the Plaintiff to join him. The Plaintiff waited for the First Defendant to complete his phone conversation.
30. When the Inspector had finished he said to the Plaintiff "*where are you coming from*"? The Plaintiff pointed in the direction of Edward Street and explained to the First Defendant that he was at the Cayman National Bank doing routine checks.

31. The First Defendant responded aggressively "*there is no Cayman National Bank in town*". The Plaintiff responded "*yes sir, there is a Cayman National Bank right across from the Court House*"
32. The First Defendant in a loud voice insisted again that there was no Cayman National Bank in Georgetown and told the Plaintiff he must be referring to First Caribbean Bank.
33. Anyone passing by could now hear and see that the First Defendant had become extremely agitated, and the Plaintiff was extremely embarrassed because the First Defendant seemed impervious to how loud his voice had become.
34. The Plaintiff determined to keep calm again asserted that there was indeed a Cayman National Bank and proceeded to point out the locations of the other banks in town such as First Caribbean, Butterfield bank, Royal Bank and again the location of Cayman National Bank.
35. The Plaintiff then offered to escort the First Defendant to the CNB bank and invited the First Defendant to follow him "*come sir let me show you the Cayman National Bank we are talking of.*"
36. The Plaintiff walked off ahead of the First Defendant along Edward Street and on reaching the food stalls at the rear of Scotiabank and the Court House car park stopped and gestured towards the direction of the Cayman National Bank.
37. As the First Defendant caught up with the Plaintiff, the Plaintiff said "*sir, can you see the bank sign*". The First Defendant grumbled "*yes I see it*"
38. The First Defendant then raised his voice again and said to the Plaintiff "*What were you doing in the Bank*". The Plaintiff replied saying "*I went to the bank to make checks to ensure everything was alright as per my duty briefing...followed by "Sir if you disbelieve me you can ask the security officer or you can check the cameras to be verified that I went to the bank to make checks when the Inspectors call came over the radio".*"
39. The First Defendant immediately with one swift movement turned and quickly made two aggressive steps towards the Plaintiff with his head pushed in towards the Plaintiff's face an inch away from the Plaintiff's nose with his finger also pointing into the Plaintiff's face and screamed, "*don't try me, don't try me Cardiff*". The Plaintiff had to move his head to one side to avoid spit from the First Defendants mouth catching him in the face.
40. The Plaintiff stepped back anticipating the First Defendant was going to hit him, the First Defendant's face being livid with rage, but the First Defendant still advanced on the Plaintiff in full view of people passing by.

41. The Plaintiff with his hands stretched up to ward off any further attack cried out to the First Defendant and tried to remind the First Defendant that people were walking past and watching and listening. The town was crowded with cruise ship passengers and workers out for lunch. The Plaintiff remembers a number of girls walked past him and sniggered amongst themselves as they witnessed the commotion.
42. A gentlemen who sells food at the food stall witnessed the whole incident and was appalled at the attitude of the First Defendant, even to the extent of informing other officers who were in the Court house car park of what had happened, and telephoning the Police Department stating that he had never seen anything like it from a senior policeman before or words to that affect.
43. Another witness, a shop assistant, viewed the confrontation from across the road and later gave her particulars to the Plaintiff agreeing to assist him with whatever she needed to do.
44. The Plaintiff, badly shaken, in tears and thoroughly disgusted, reported the matter by telephone to a deputy Commissioner and the then Chairman of Legal Affairs for the RCIP, and then later logged a report at the George Town Police Station.
45. The then Chairman of Legal Affairs was compelled to immediately send an email to the Second Defendant complaining about the worsening attitude of the First Defendant.

Complaint sent to the office of the DPP

46. The Plaintiff's complaint file with regard to the assault was eventually sent to the Director of Public Prosecutions ("DPP") on 26 March 2012 for a ruling on whether a criminal charge of assault could be made out.
47. A Common Assault can be defined as ...*"an assault is any act which intentionally or possibly recklessly causes another person to apprehend immediate and unlawful violence"* (Archbold 19-166a and 19-174 to 19-175).
48. The DPP wrote to the RCIP on 30 July 2012 ruling that although a criminal charge of common assault had been made out against the First Defendant, it was not in the public interest to prosecute the First Defendant and recommended that the matter be dealt with through the RCIP's disciplinary process.
49. The Plaintiff although verbally being informed of the DPP's decision was denied a copy of the DPP's ruling and access to the DPP's file, even after an application to the Grand Court to release the documents, the judge ruling that the Plaintiff had no standing with the DPP's decision to not prosecute and withhold the ruling.

50. The (PSU) commenced their investigation of the incident in August of 2012 and some 8 months later have still not reported their findings.
51. Further the Plaintiff will provide evidence at trial that his right to choose a friend from within the RCIP ranks to accompany him in meetings with the ("PSU") was initially rebuffed by the Inspector in charge of the PSU and that he was approached and intimidated several times by another Chief Inspector with no involvement in the investigation, who suggested to the Plaintiff that he would be wise to 'choose' another friend for the meetings other than the one the Plaintiff had decided on.
52. The Plaintiff in support of his claim in previous paragraphs that he will not receive a fair hearing by the PSU points to the fact that the Second Defendant speaking before the Legislative Assembly's Finance Committee in March of 2012, when asked about the George Town assault incident with the Plaintiff and the First defendant stated, "*Certainly, from the nature of it, no assault has taken place, even though there is somebody suggesting it has taken place and yet it has hit the media*".
53. The Public Relations officer for the RCIP also issued a press release saying no assault had taken place.
54. These comments by the Second Defendant and the Public Relations officer were made prior to the file being sent to the office of the DPP for a ruling as to whether a criminal assault had taken place, and the DPP eventually ruling that a criminal assault had in fact taken place.
55. The Plaintiff is now afraid to be alone with the First Defendant for fear the First defendant will trump up some charge to get the Plaintiff in trouble.
56. The Plaintiff during the course of these proceedings will request the DPP's ruling and file, and rely on the contents therein as evidence of the criminal nature of the second assault by the First Defendant.
57. By reason of the matters set out above, the Plaintiff was criminally assaulted by the First Defendant and has suffered injury, loss and damage as a result of that assault.

Vicarious Liability

58. The First Defendant as a senior officer and employee of the Second Defendant had a duty to the Plaintiff to conduct himself in a professional, dignified and responsible manner.
59. In breach of that duty the First Defendant intentionally criminally assaulted the Plaintiff within the scope of his employment with the Second Defendant and in the premises the Second Defendant is vicariously liable for that assault.

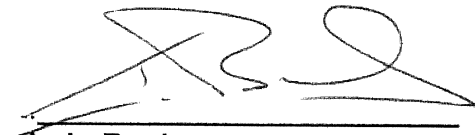
PARTICULARS OF INJURIES

60. Since the incident with the First Defendant the Plaintiff was referred to professional psychiatric services by the employee assistance program counselor.
61. The psychiatric report will be made available during the exchange of documents between the parties.
62. On assessment, the Plaintiff was found to have prominent symptoms of depressed mood and sleep disturbance along with symptoms of significant anxiety which affected his family life and work performance.
63. Despite improvements partially due to a month's leave of absence, the Plaintiffs symptoms flared up again in anticipation of further meetings with the First Defendant. These continuing symptoms requiring treatment are flashbacks to the February incident with the First Defendant, and mounting anger when in close proximity to the First Defendant.
64. The Plaintiff was placed on medication to relieve these symptoms of depression, insomnia.
65. The Plaintiff continues on medication and the prognosis is that
66. The Plaintiffs psychiatrically recognized disturbance has caused significant clinical distress and impairment in the Plaintiffs social, occupational life and other important areas of functioning.
67. The Plaintiff will further rely on professional psychiatric report (paragraph 60 above), indicating that the Plaintiff is suffering from mild post-traumatic stress disorder which flares acutely whenever the Plaintiff is in close proximity to the First Defendant.
68. Further the Plaintiff claims interest on damages and costs at the prevailing rate in accordance with the Judicature law and the Judgment Debts (rates of interest 2010).

AND THE PLAINTIFF CLAIMS:

- (a) General damages (to be assessed);
- (b) Special damages (to be assessed);
- (c) A declaration that the internal investigation system presently in place within the RCIP (i.e. the PSU), produces a real danger of bias and thus is likely to breach its duty to act fairly without bias whether the bias be imputed or apparent;

- (d) A declaration that the Plaintiffs individual rights have been breached and violated through the lack of progress of the investigations into two separate assaults (one of them recognized as criminal) and a number of complaints of harassment and bullying by the First Defendant against the Plaintiff.
- (e) Pre-judgment interest on damages and costs in accordance with the Judicature Law (2007 Revision) and the Judgment Debts (rates if interest 2010);
- (f) Post- judgment interest on damages and costs in accordance with the Judicature Law (2007 Revision) and Judgment Debts (rates of interest 2010) until settlement;
- (g) Court fees and legal costs; and
- (h) Such further and other relief as this Honourable Court may deem just and equitable.



Irvin Banks
Attorney-at-Law for the Plaintiff
10 April 2013

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE

OF 2013

BETWEEN:

POLICE CONSTABLE CARDIFF ROBINSON

PLAINTIFF

AND

(1) CHIEF INSPECTOR FRANK OWEN

(2) THE COMMISSIONER OF POLICE

(c/o The Attorney-General of the Cayman Islands)

DEFENDANTS

**ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS

FORM MAY HAVE TO BE RETURNED. Delay may result in Judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a Stay of Execution against any judgment entered by the Plaintiff (tick box)

Yes No

Service of the Writ of Summons is acknowledged accordingly

(Signed) _____
Attorney for

NOTE ON ADDRESS FOR SERVICE

Attorney: Where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he/she must give his post office box number and the physical address of his/her residence or, if he/she does not reside in the Cayman Islands, he/she must give an address in Grand Cayman where communications for him/her should be sent. In the case of a Limited Company "residence" means its registered or principal office.

Indorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his/her name, address and reference, if any, in the box below.

Irvin Banks
Attorney-at -Law
14 Rosemont Close
George Town Box 1643
Grand Cayman KY1-1109
Cayman Islands
Cell Phone 325 6395
Fax 945 9169
irvin.banks@candw.ky

Endorsement by Defendant's Attorney (or by Defendant if responding in person) of his/her name, address and reference, if any, in the box below.

**DIRECTIONS FOR ACKNOWLEDGEMENT OF SERVICE OF
WRIT OF SUMMONS**

1. The accompanying form of ***Acknowledgment of Service*** should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion, it must be delivered or sent by post to the Law Courts, PO Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the Proceedings ***must also serve a Defence*** on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for Judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter Judgment against him without further notice.

3. A ***Stay of Execution*** against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any Judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a Stay, Execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, ***issue a Summons*** for a Stay of Execution, supported by an Affidavit of his Means. The Affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for Notes of Guidance

Notes for Guidance:

1. Each Defendant (if there are more than one) is required to complete an Acknowledgement of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a Writ served on the Defendant personally is treated as having been served on the day it was delivered to him/her.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a **FIRM** and an Attorney is not instructed, the form must be completed by a **PARTNER** by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual **TRADING IN A NAME OTHER THAN HIS OWN**, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a **LIMITED COMPANY** the form must be completed by an Attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on his behalf.
7. Where the Defendant is a **MINOR** or a **MENTAL PATIENT**, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.