IN THE COURT OF APPEAL OF BELIZE, A.D. 2004

CIVIL APPEAL NO. 5 OF 2004

BETWEEN:

CLEMENT WADE **APPELLANT**

AND

MARIA ROCHES **RESPONDENT**

—

BEFORE:

The Hon. Mr. Justice Mottley	**-**	**President**
The Hon. Mr. Justice Sosa	**-**	**Justice of Appeal**
The Hon. Mr. Justice Morrison	**-**	**Justice of Appeal**

Mr. Philip Zuniga, SC for the appellant.
Mr. Dean Barrow, SC and Mrs. Magali Marin Young for the respondent.

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12 October 2004: 9 March 2005.

MOTTLEY, P.

1. The respondent, who was unmarried, was employed as a teacher at the Santa Cruz Roman Catholic School in the Toledo District of Belize. This school was operated as part of the Catholic Public Schools by the Roman Catholic Church in Belize.

While there was dispute as to whether the respondent did in fact sign a written contract with the appellant, it can safely be implied that one term of her contract of employment was that she should be "exemplary in conduct and language and living Jesus' teaching in marriage and sex". In April of 2003, the respondent informed Mr. Benjamin Juarez, the Assistant Local Manager of the Toledo Catholic Schools, that she was pregnant. On June 26, 2003 Mr. Juarez wrote to the respondent informing her that, in view of the fact that she was not complying with the terms of the contract with the Toledo Catholic Schools Management, to live according to Jesus' teaching on marriage and sex, the Management was informing her that she would be released from her duties as a teacher with the Catholic School Management effective August 31, 2003. A dispute arises as to whether she was released or dismissed. A dispute has also arisen as to whether she was dismissed because she had informed Mr. Juarez that she was pregnant. I shall return to these two matters later in my judgment.

2. The respondent instituted an action in the Supreme Court in which she claimed, inter alia, a declaration that, her dismissal on June 26, 2003 by the appellant from her job as a teacher at the Santa Cruz Roman Catholic on the ground that she had become pregnant while unmarried, was in violation of Article 16 (2) of the Belize Constitution and infringed her constitutional right not to be discriminated against as a result of her sex. In addition, the respondent also sought an order for damages for breach of that constitutional right.

3. The learned Chief Justice found that the respondent was in fact dismissed from her job as a teacher because she was pregnant. He concluded that in such circumstances her dismissal violated her constitutional right under section 16 (2). In addition, he held that the refusal to reinstate the respondent after being required to do so by the Chief Education Officer, constituted an infringement of her right to work under section 15(1) of the Constitution. The Chief Justice went on to award the respondent damages in the sum of $150,000 pursuant to section 20(2) of the Constitution.

4. The appellant had filed eight grounds of appeals. Ground 7 was argued first. This ground related to an allegation that the respondent had brought the action against the wrong party.

5. Mr. Zuniga SC submitted that the respondent was in fact employed by the Roman Catholic Church and not the Managing Authority. The appellant and Mr. Juarez were in fact employees of the Roman Catholic Church. He contended that the respondent could not sue the Managing Authority of the Roman Catholic Church because the Managing Authority was not an incorporated body. He further contended that Mr. Wade and the Managing Authority would have been agents for the Roman Catholic Church. Mr. Wade was being sued as representing the Managing Authority of Catholic Public Schools.

6. The hearing of this matter in the Supreme Court proceeded by way of affidavit. There were no pleadings. In his judgment, the Chief Justice

adverted to the fact that Mr. Zuniga "was candid in both his oral arguments and submissions and in his written skeleton arguments that the actual respondent is the Roman Catholic Church of Belize on whose, Mr. Wade, the named respondent, generally administers Catholic Schools in Toledo District". At no stage does the Chief Justice make reference to any submissions by Mr. Zuniga that the wrong person was in fact sued and that the action ought to have been dismissed. At any rate, no application had been made by the appellant to dismiss the action on the basis that the proper party to the action was the Roman Catholic Church and not Mr. Wade.

7. In paragraph 19 of his judgment the Chief Justice identified the issues which arose for his determination. He stated:

> *"I believe that for a resolution of the issues in contention between the parties, it is necessary to determine first the following primary issues, namely:*
>
> *i) Is the respondent a person or authority amenable to the proscription against discrimination stipulated in section 16 of the Belize Constitution? And*
>
> *ii) Was the respondent's action in releasing/dismissing Ms. Roches from her position because of her pregnancy while unmarried, in fact and in law discriminatory?"*

8. In his judgment the Chief Justice stated that "the Roman Catholic Church on whose behalf Mr. Wade is sued in these proceedings as representing

the managing authority of Catholic Public Schools is as I have mentioned earlier, the largest Christian denomination". The appellant did not raise this issue before the Chief Justice and in my view it would be wrong to permit the Respondent to raise this issue at this stage, on the Appeal.

9. In ground 1, the appellant alleged that the Chief Justice erred in fact and in law in finding that the appellant was a person or authority or entity that is amenable to the prohibition against discrimination against Section 16 (2) and (3) of the Constitution of Belize. As stated above, the Chief Justice identified the first issue which he had to decide as is whether the appellant is "a person or authority amenable to the proscription against discrimination stipulated in Section 16 of the Belize Constitution".

10. Since December 1902 the Roman Catholic Church in Belize was incorporated under the Roman Catholic Church Act (the Ordinance). It has been for many years involved in the field of education in Belize. I share the view expressed by the Chief Justice that it "is in fact, the publicly avowed and acknowledged partnership between the Government of Belize and the Church (in the broad ecumenical sense of the word Church) in the field of education, popularly referred to as "the Church/State partnership"… This partnership spans every administration of Belize, from its colonial governance, to its successive independent administration, regardless of the hue of the political parties or the political divide. Every government had subscribed to this partnership."

11. This partnership between Church and State is expressly recognized by sections 3(1) and 7(1) of the Education Act Cap. 36 (the Act) where it is stated:

> *"The Ministry of Education, under the general direction of the Minister, shall work in partnership, consultation and cooperation with churches, communities, voluntary organizations, private organizations and such other organizations and bodies which the Ministry may identify and recognize as education partners for the sufficient and efficient provision of education in Belize."*

Section 7 (1) of the Act provides as follows:

> *"There shall be and is hereby established in and for Belize a Council to be called the National Council for Education, embodying the partnership between the state and its partners in education, such as Churches, communities, voluntary organizations and other partners in education."*

12. The Act provides for a system of grant – in aid from public funds. Schools which receive such grants are required to conform to the provisions of the Education Act and Rules made under the Act (the Rules). The religious denominations and grant-in-aid schools are required to appoint, inter alia, a manager or managing authorities.

13. The general functions of managers or managing authorities are set out in section 15. This section provides that managers and managing authorities shall "with assistance and in partnership with the Government under the conditions for Grant-in-aid as specified in this Act or the Rules ... of such

support systems required to deliver the appropriate education to students enrolled in school under their management."

14. Section 16 deals with the employment of teachers and state:

"The manager or managing authority of a government or government-aided school or institution shall have the authority to appoint, transfer, release, suspend or dismiss members of staff of their respective schools or institutions subject to the following conditions in so far as same are applicable:

(a) no teacher shall be appointed who does not possess the minimum qualifications for the post as may from time to time be prescribed by rules or regulations made under this Act;

(b) where the manager or managing authority proposes to terminate the appointment of or to release, suspend or dismiss a teacher, a statement in writing of the grounds for such action shall be served upon such teacher and copies to the Chief Education Officer;

(c) the teacher and/or his agent shall be given a reasonable opportunity to be heard in his own defence and a statement of the findings of the manager or managing authority shall be forwarded to the Chief Education Officer;

(d) Every teacher aggrieved by an order of release, suspension, dismissal or termination from service under this section may, within thirty days

of the receipt of such order, proffer an appeal to the Chief Education Officer:

Provided that the Chief Education Officer may entertain the appeal after the expiry of thirty days if he is satisfied that the appellant was prevented by sufficient cause from proffering the appeal within the said period of thirty days;

(e) if the aggrieved teacher is not satisfied with the decision of the Chief Education Officer, he may, within fourteen days of the receipt of the decision, submit the case to the Arbitration Panel constituted in accordance with section 46 of this Act."

15. The close-knit connection between the Government and the Church is further demonstrated in the Rules. By Rule 33(2) of the Rules the Managing Authority is charged with ensuring that the Act and the Rules are not violated. This sub-rule provides that the Managing Authority shall be responsible for any violation of the Act and Rules by any school which comes under its authority.

16. In the case of Government-Aided Schools, the managing authority is required to provide the Ministry of Education with quarterly financial statements and with a copy of an annual financial report. Rule 103(1) provides that Grant-in-aided schools will receive funding on an annual basis for recurrent and/or capital expenditure according to the schedules and conditions as established by the Minister of Education in consultation

with the National Council for Education as established under Section 77 of the Act. Under Rule 103(2) the payment of all grant-in-aid shall be subject to the provisions of the necessary funds by the National Assembly. Managing authorities are also required to submit to the Chief Education Officer for necessary action the annual increment form for each staff member (Rule 89 (2)).

17. Rule 104(3) states:

> *"Applications for government-aided status constitutes an agreement by the Managing Authority to abide by all conditions pertaining to the receipt from the Ministry of Education of a grant for the operation of schools and requirements under the Act, there Rules and other regulations made by the Ministry of Education relating to government-aided schools shall all be complied with during the duration of the receipt of such grant."*

18. Sections 3(1) and 7(1), 15, 16, along with Rules 33(2), 103(1) and (2), 89(2), 104(3) and Rules 108(a)(b) and (e) clearly demonstrate that the Church and State are inextricably woven in so far as the provision of education is concerned.

19. The appellant also contended that there was no evidence to show what kind of school Santa Cruz School was. It was said that there was nothing to show whether the school in which the respondent taught was maintained wholly from general revenue. Also, it was submitted that there was nothing to show that the school was receiving grant-in-aid from the Government pursuant to Section 2 (9) of the Act and as such was a

"Government Aided School". But this completely ignores that Mr. Juarez agreed in cross-examination that the Toledo Catholic Schools are Government Aided Schools.

20. This last submission may be dismissed summarily as it appears from the judgment of the Chief Justice that it was "common ground that the primary school in Santa Cruz in Toledo District from which Ms. Roches was released/dismissed is a grant-in-aid school though run and managed under the denomination aegis" of the appellant..

21. Counsel submitted that, even though it may appear that the Managing Authority was performing public functions, this did not make it a public authority. He submitted that "the degree of public funding of the activities of the School was relevant to the nature of the functions it was performing but it was not by itself determinative of whether the functions were public or private". In support of this submission counsel relied on **R (on the application of Heather & Others v Leonard Cheshire Foundation and another [2002] 2 ALL ER 936** and **Poplar Housing and Regeneration Community Association Ltd. v Donoghue [2001] 4 ALL ER, 604**.

22. In **Poplar Housing and Regeneration Community Association Ltd. v Donoghue** (supra), Lord Woolf C.J. said at para 58:

> *"……..The fact that a body performs on activity which otherwise a public body would be under a duty to perform cannot mean that such performance is necessarily a public function. A public body in order to perform its public duties can use the services of a private body".*

23. Later in his judgment the Chief Justice said at para. 65:

> *"In addition, even if such a body performs functions that would be considered to be of a public nature if performed by a public body, nevertheless such acts may remain of a private nature for the purpose of Section 6 (3) (b) and (5), (v). What can make an act, which would otherwise be private or public, is a feature or a combination of features which impose a public character or stamp on the act. Statutory authority for what is done can at least help to make the act as being public; so can the extent of control over the function exercised by another body which is a public authority. The more closely the acts what could be of a private nature are enmeshed in the activities of a public body, the more likely they are to be public. However, the fact that the acts are supervised by a public regulatory body does not necessarily indicate that they are of a public nature. This is analogous to the position in judicial review, where a regulatory body may be deemed public but the activities of the body which is regulated may be categorized private."*

24. In **R (on the application of Heather and others v Leonard Cheshire Foundation & another)** (supra) Lord Woolf expressed the view that "the fact that LCF is a large and flourishing organization does not change the nature of its activities from private to public". It was possible for an organization to perform some public function even though it was private". The degree of public funding for a private organization is relevant in

deciding the nature of its functioning. However such funding does not in itself determine whether the functions are public or private.

25. As pointed out earlier, a closely interwoven relationship has existed between the State and Church in Belize. The extensive control by the Ministry of Education over the Grant in Aid Schools is set out under the provision of the Act and Rules. For the reasons set out in this judgment it is my view the Roman Catholic Schools of Belize are brought into the public domain. The schools are required to follow a regulatory pattern that is contained in the rules if they are to maintain their Grant in Aid status.

26. The issue whether the relationship between Church and State in the education field is sufficient to make the Church a public authority recently received the attention of the Judicial Committee of the Privy Council in **Bishop of Roman Catholic Diocese of Port Louis & Others v Sattyhudeo Tengur & Others**; **Privy Council Appeal No. 21 of 2003** (unreported). By agreement with the Government of Mauritius, the appellants had made 50% of places in the first year of the Catholic colleges available to the Government for pupils who had passed the examination for the Certificate of Primary Education. Roman Catholic pupils had to compete with pupils of other religions for award of places within the Governments 50% of places in the Catholic Colleges. The remaining places have been allocated by the Catholic colleges themselves. This is done to ensure that 50% of the intake are Roman Catholics. The father of an 11 year Hindu girl feared that the allocation

might prejudice his daughter's admission to one of the Catholic Colleges if she did not score highly enough in the examination to win a place with the Government's 50% allocation. The father challenged the constitutionality of the arrangements made and operated by the Minister of Education and Scientific Research and the State of Mauritius.

27. Lord Bingham of Cornhill in commenting on the role of the Church in the provision of education said:

> *"In modern democratic states, the provision of an efficient and high-quality educational system has come to be seen, for reasons too well known to require exposition, as one of the prime functions of government. But in many countries this was a function to which governments came relatively late. The earliest steps towards establishing schools and providing teachers were often taken by religious and charitable groups and bodies inspired, no doubt, by a belief in the virtue of education for its own sake but also by a desire to rear the young, at an impressionable age, within the tradition of a particular faith or system of belief. This was so in Britain, and it appears (from material before the Supreme Court and the Board which was not contradicted) that it was so in Mauritius."*

28. It is safe to conclude that the same is true in Belize because of the closely interwoven relationship between the State and the Church in the provision of education. This is demonstrated by the provisions of the Act and the Rules as indicated earlier.

108 (a) the school fails to comply with the provisions of the Act of these Rules or other regulations governing the operation of a school or with the conditions for grant-in-aid specified by the Minister;

(b) there is a change in the particulars under which grant-in-aid was approved without the prior approval of the Chief Education Officer;

(e) the proprietor or Managing Authority fails within a specified time to take the necessary corrective action to rectify deficiencies in the provisions for schooling as requested by the Chief Education Officer as a result of a school inspection.

29. Section 11 (3) of the Belize Constitution provides as follows:

"Every recognized religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it maintains; and no such community shall be prevented from providing religious instructions for persons of that community in the course of any education provided by that community whether or not it is in receipt of a government subsidy or other form of financial assistance designed to meet in whole or in part the cost of such course of education."

In order to be afforded the protection, provided by this subsection it is necessary that the religious community establish and maintain the education institute at its own expenses.

30. The Chief Justice concluded that:

"….in the light of the provisions of the Education Act and the Education Rules in S.1. 92 of 2000, coupled with the fact that the respondent runs and manages government-aided schools, such as the Roman Catholic Primary School at Santa Cruz, it cannot be doubted that it is a person or authority, or entity if you will, that is amenable to the prohibition against discrimination in section 16 (2) and (3) of the Constitution of Belize. It is undoubted that in the Church-State partnership in the field of education, the respondent has perforce, come to play and perform an important role in the public domain and will continue to do so for the foreseeable future in an area that is so vital to the nation's wellbeing, that of providing education, including both the provision of the schools as well as the teachers who teach in them."

Later in his judgment the Chief Justice said:

"I find and hold that the respondent is in the field of education in Belize, in the public domain and therefore a person or authority, for the purposes of constitutional redress in virtue of its powers and functions under the Education Act and Rules, and its action against Ms. Roches is clearly susceptible of redress under the Constitution."

31. I agree with this conclusion. By section 3 of the Act the Ministry of Education, under the general direction of the Minister, was required to work "in partnership, consultation and cooperation with Churches". It reinforces the close relationship between the State and Church. Section

14 requires every religious denomination having one or more government schools to appoint a managing authority.

32. Complaint was also made that the judge erred in holding that the appellant exercised coercive (under the provision) powers of section 16 of the Act. Section 16 deals with the employment, termination and suspension of such employment. It also deals with the release of teachers from such employment. It provides for a system of due process where the powers set out in the section are being exercised.

33. The Act requires every religious denomination having one or more government aided school to appoint a managing authority (Section 19). The managing authority is entrusted with the proper and efficient organization and management of schools. This is to be performed in partnership with the Government under the Conditions for Grant-in-aid as set out under the Act (section 15). In my opinion the powers given to the managing authority to exercise control over the appointment, suspension, release or dismissal of a teacher are coercive.

34. In ground 5 the appellant complained that the Chief Justice erred in fact in finding that the appellant had a policy of releasing teachers on account of pregnancy. Mr. Juarez took issue with the allegation that she was dismissed. He nonetheless, admitted, under cross examination by Mr. Dear Barrow, SC that the letter of release was provoked by her being pregnant. He eventually conceded that “her reputation plus her pregnancy” were reasons for her dismissal. He stated that her reputation,

about which he was unable to give positive proof, and her pregnancy, were both against the terms of her contract.

35. The respondent alleged that she was dismissed after she had informed Mr. Juarez that she became pregnant at a time when she was unmarried. The appellant denied any discrimination against the respondent and stated that she was released/dismissed from her position as a teacher not because of her pregnancy but because she was in breach of one of the fundamental terms of her contract which required her "to live according to Jesus' teaching on marriage and sex".

36. Section 16 (2) of the Constitution prevents a person from being discriminated against:

> "*(2) Subject to the provisions of subsection (6), (7) and (8) of this Section no person shall be treated in a discriminating manner by any person or authority."*

Subsection (3) defines what is meant by discriminatory. It states:

> "*(3) In this section, the expression 'discriminatory' means 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 of another such description."

37. In view of the evidence, the Chief Justice, came to the conclusion that:

"……it is undoubted that it was the fact of Ms. Roche unmarried pregnancy that manifested what the respondent calls her failure "to live according to Jesus' teaching on marriage and sex". So for all practical purposes, it was Ms. Roches' pregnancy while unmarried that was the issue."

Later in his judgment he held:

"that her treatment by the respondent in dismissing her because of her pregnancy while unmarried, does not accord with the protection afforded by Section 16 (2) and (3) of the Constitution against non-discrimination on account of sex."

38. Whether "dismissed" or "release", in my opinion, makes no difference as the reason for such treatment was the fact that she was pregnant. Having found that she was released/dismissed, because of her pregnancy, this was conduct which on my view amounted to discrimination on the respondent, that her constitutional right not to be treated in a discriminatory manner was infringed. Mr. Zuniga rightly conceded that if she was released from her employment as a teacher that that would be discriminatory. Indeed he went further in his concession and said that whatever was done as a result of her pregnancy would be wrong as it is discriminatory.

39. In **Bishop of Roman Catholic Diocese of Port Louise and Others v Suttyludeo Tengur & Others, Privy Council Appeal No. 21 of 2003,** (unreported), Lord Bingham dealt with the issue of discrimination. In pointing out that differentiation without more did not necessarily amount to discrimination, he referred to the judgment of Rault J in **Police v Rose [1976] MR 78** where at p. 81 he said:

> *"To differentiate is not necessarily to discriminate. As Lysias pointed out more than 2,000 years ago, true justice does not give the same to all but to each his due: it consists not only in treating like things as like, but unlike things as unlike. Equality before the law requires that persons should be uniformly treated, unless there is some valid reason to treat them differently. In* ***Kedar Nath v State of West Bengal AIR 1953 SC 404*** *the Supreme Court of India held that it is permissible to apply different measures to different classes of persons if the classification is based on an intelligible principle having a reasonable relation to the object which the Legislature seeks to attain.*
>
> *There is inherent in the term discriminate and its derivatives as used in the Constitution a notion of bias and hardship which is not present in every differentiation and classification … The difference of treatment will be justified when it pursues a legitimate aim and there exists at the same time a*

reasonable relationship of proportionality between the means employed and the aim sought to be realized."

He pointed out that this approach was expressly approved by the Privy Council in **Matadeen v Pointu [1999] 1 AC 98, 109** and **117**.

40. Section 14 of the Act requires every religious denomination having one or more government-aided school to appoint a managing authority. Section 15 mandates that the managing authority "with assistance and in partnership with the Government under the Conditions for Grant-in-aid as specified under the act or rules" to deliver appropriable education to the students. Section 16 authorizes the managing authority "to appoint, transfer, release, suspend or dismiss members of staff". The section also sets out a regime to deal with the teacher which in short ensures that they have due process before they are release suspended or dismissed. In these circumstances there can be little doubt that having regard to the provisions of the Act and the various bodies established thereunder that the Government would have been aware of the term of the contract under which the appellant employed its teachers.

41. Lord Bingham expressed the opinion that:

If, as originally established and maintained, the Catholic colleges were still entirely self-financing, the appellants' admission policy would not attract the operation of section 16(2) since although some potential pupils would still be treated in a discriminatory manner such treatment would not be "by any

person acting in the performance of any public function conferred by any law" or "otherwise in the performance of the functions of any public office or any public authority". The appellants would be exercising their right under sections 3 (b) and 14(1) to maintain denominational schools at their own expense, and they would be free in running private schools, independent of the state, to give preference to Roman Catholic pupils. As section 16(2) makes clear, it is discrimination in the public domain, through the involvement of the state, which brings the prohibition on discriminatory treatment into play. Thus the father's fourth contention summarized in paragraph 15 above is crucial. In the Board's opinion, that contention is made good. If a Government secondary school were to follow an admission policy such as the appellants', it would clearly fall foul of section 16(2). That result is not avoided where the minister, whose powers are delegated to the PSSA, channels public funds to the Catholic colleges in knowledge that such an admissions policy is followed. Such a conclusion would be to substitute form for substance."

42. Under section 16(2) of the Mauritius Constitution, the discrimination must be in the public domain through the involvement of the state. There is no such requirement under the Belize Constitution. In any event, in my opinion, the Government and the Church are closely interwoven in the provision of education under the Act and Rules. In such circumstance, it

may be said that, in view of this involvement, the Roman Catholic Church, for the purposes under the Education Act and Rules, was an authority under section 16(2) of the Constitution.

43. Mr. Zuniga relied on the case of **Eileen Flynn v Sister Mary Anna Power and the Sisters of The Holy Faith [1985] IR 648**. In that case, Costello J who accepted the provisions of the Unfair Dismissal Act 1977 were different from the Human Right Code of British Columbia nonetheless considered certain observation made by the Supreme Court of Canada in Re Caldwell and Stuart (1985) 15 D.L.R. (4th) 1. Costello J observed that the issue in that case was the "reasonableness of the requirement that Roman Catholic teachers should conform to the religious tenets taught in a Roman Catholic School and to the difference between a secular and a religious school". The test to be applied was said to be: "Is the requirement of a religious conformance by Roman Catholic teachers, objectively viewed, reasonably necessary to assure the accomplishment of the objectives of the church in operating a Roman Catholic School with its distinct characteristic for the purpose of providing a Roman Catholic education for its student." McIntyre J in answering this question in the affirmative said at p. 18:

> *"The board (that, is the Board of Inquiry under the Human Rights Code) found that the Roman Catholic school differed from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its*

very heart and colors all its activities and programmes. The role of the teacher in this respect is fundamental to the whole effort of the school, as much in its spiritual nature as in the academic. It is my opinion that, objectively viewed, having in mind the special nature and objective of the schools, the requirement of religious conformance including the acceptance and observance of the Church's rules regarding marriage is reasonably necessary to assure the achievement of the object of the school."

44. Later in his judgment Costello J identified the issue which he had decided in this way:

"In adjudicating on this dispute it is important to appreciate that two of the important circumstances in which the dismissal occurred are these. Firstly, the appellant was employed in a religious, not a lay, school and the evidence establishes that such a school has long established and well known aims and objectives as well as requirements for its lay staff which are different to those of a secular institution. Secondly, the evidence establishes that the dismissal occurred not as a punishment for breach of a code of conduct taught in the school, but arising from an assessment made of the effect on the school and its pupils of a continued breach of that code by the appellant."

45. Costello J concluded:

"But in considering a claim under the Act the test is: in all the circumstances were there substantial grounds to justify the dismissal? And not: was the

conduct relied on to justify the dismissal prohibited by contract? In reaching a conclusion on this issue the terms of an employee's contract are part of, but only part of, the overall circumstances to be considered by the Court. In the present case, the appellant knew from her own upbringing and previous experience as a teacher the sort of school in which she sought employment, and should have been well aware of the obligations she would undertake by joining its staff. Even if the contract of employment was silent on the point, (a), she must have known that objection could be taken that her conduct violated her obligations to the school and, (b), she was in any event given an opportunity to alter it. It cannot therefore be said that in this case the absence of an express or implied contractual term relevant to the matters of complaint tainted with unfairness a dismissal which otherwise was justified."

46. These cases may be distinguished from the instant case. The respondent was employed in a religious and not a lay school. Regard must be had to the closeness between the Church and the Government in the provision of education and the provision of Grant-in-Aid which in my view brought the Santa Cruz Roman Catholic School into the public domain. The respondent alleged that she was dismissed because she became pregnant. Her dismissal in my view could not be justified on this ground. While the appellant sought to put forward other grounds for her dismissal these were rejected by the Chief Justice. The Chief Justice found that she was dismissed because of her pregnancy. While the appellant is forced to

teach the Roman Catholic doctrine, the school comes within the public domain and must observe the Rights and Freedoms as guaranteed by the Constitution.

47. Finally, if further authority were needed for the proposition, that dismissing a female employee on the grounds that she became pregnant was discriminatory, reference should be made to the judgment of the Court of Justice of the European Community in **Webb v Emo Air Cargo (U.K.) Ltd. [1994] QB, 718** at p 746 where it was stated:

> *"18 Article 2(1) of the Directive states that:*
>
> > *"the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to material or family status."*
>
> Under Article 5(1):
>
> > *"Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex."*

48. The appellant also appealed against the award by the Chief Justice of $150,000. This court has to decide whether in all the circumstances of this case we consider this award to be excessive.

Section 20 (2) of the Constitution dealing with breach of Fundamental Rights provides as follows:

"(2) The Supreme Court ….may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution".

The Court is mandated to take whatever measures it considers appropriate for purpose of enforcing or securing the enforcement of the fundamental provisions. This clearly includes the award of damages.

49. The function of the Court of Appeal in reviewing of the award of damages by the High Court were set out in **Crane v Rees [2001] 3 LRC 510** at p 529 where the Court of Appeal of Trinidad said at p 529:

"It may be helpful to reiterate the principles on which an appellate court will interfere with an award of damages by a trial judge. In ***Bernard v Quashie*** *(C v A No 159 of 1992, unreported) de la Bastide CJ set them out quite succinctly. He said that unless the trial judge has misdirected himself on the law or on the facts, or the award is a wholly erroneous estimate of the damage suffered, an appellate court should not interfere. It is not sufficient, he said, for a court of appeal to substitute its own award simply because it considers that award by the trial judge to be too high or too low. The gap, he said, between what the Court of Appeal considers to be within the range of a proper award, and the award actually made by the judge, must be so great as to render the latter a wholly erroneous estimate of the loss suffered."*

In **Crane v Rees** (supra) Hamel-Smith J.A. in the Court of Appeal of Trinidad and Tobago, had this to say at page 524 about the way a court should approach its task in assessing judgment for breach of a person's Fundamental Right under the Constitution of Trinidad and Tobago:

> *"Damages for breach of one's fundamental rights is not as of right. This section (s 14 (2)) gives the court a discretion as to which relief it considers appropriate, including relief in the form of monetary compensation. In this case, there was a clear exercise of that discretion that compensation be assessed. In order to determine the amount, however, the appellant would have to furnish facts from which distress and inconvenience could be determined and, in addition, prove the pecuniary loss suffered as a result of the breach. Damages are not at large in this latter regard."*

50. We must therefore have regard to what was said by Lord Diplock in **Ramesh Lawrence Maharaj v Attorney General 30 WIR 310** in respect to the award of damages for breach of Fundamental Right as guaranteed by the Constitution of Trinidad & Tobago which resulted in the deprivation of his liberty:

> *"Finally, their Lordships would say something about the measure of monetary compensation recoverable under s 6 where the contravention of the claimant's constitutional rights consists of deprivation of liberty otherwise than by due process of law. The claim is not a claim in private law for damages for the tort of false imprisonment (under which the damages recoverable are at large*

and would include damages for loss of reputation). It is a claim in public law for compensation for the deprivation of liberty alone. Such compensation would include any loss of earnings consequent on the imprisonment and recompense for the inconvenience and distress suffered by the appellant during his incarceration. Counsel for the appellant has stated that he does not intend to claim what in a case of tort, would be called 'exemplary' or 'punitive' damages. This makes it unnecessary to express any view whether money compensation by way of redress under s 6(1) can ever include an exemplary or punitive award."

51. No direct evidence was given of pecuniary loss other than the fact that it may be suffered since she was released/dismissed from her employment as a teacher at the Santa Cruz Roman Catholic School. However there is no evidence of her monthly salary, whether she actually lost salary and if so, how long she remained with a salary. The affidavit of Mr. Wade stated that the respondent had obtained employment as a teacher at the Laguna Government School in the Toledo District of Belize. No date for the commencement of such employment was given. He pointed out that the reason why" she was released and not dismissed was that the management did not wish to breach her service but wanted to leave her free to find employment elsewhere without any change in her salary or status".

52. The respondent did in my view "furnish facts from which distress and inconvenience could be determined". In her affidavit, she stated that, in April 2000, she had informed Mr. Juarez that she was pregnant. She went on to state that he told her "you never done until you get it". It was never explained what he meant by these words or what she understood him to mean. However, she said that Mr. Juarez did not inform her what would be "her fate". She again went to see Mr. Juarez but did not see him as he was out. On this occasion, she was accompanied by the President of the Belize National Teachers Union, Mr. Anthony Fuentes. He had, however, left word that she could stay on in her position as a teacher until June, presumably to the end of the school year. In June she was handed her letter of release/dismissal. The effect of the letter was she was no longer employed by the appellant. At that time she would have been in an advanced state of pregnancy since she gave birth to the baby in September 2003.

53. Also relevant is the fact that she appealed her dismissal to the Chief Education Officer in accordance with the scheme set out in the Rules. The Toledo Regional Council, after considering her appeal, recommended her reinstatement after the birth of her child. On 18 November 2003 the Chief Education Officer wrote to the appellant informing her that, based on the review by the Toledo District Regional Council, the Council had recommended that the respondent "be reinstated in her post as a teacher as reasons stated for release are not supported by the Education Rules

2000". The Chief Education Officers urged the appellant to ensure that the respondent was reinstated in her post as teacher with immediate effect. She prayed in aid his assistance. However this entreaty fell on deaf ears as the appellant informed the Chief Education Officer that the Managing Authority felt itself justified by virtue of Rules 92 and 93. The appellant also resisted the intervention of other non-governmental agencies such as Women's Issue Network, National Trade union Congress of Belize and Belize National Teachers' Union. While I refer to the conduct of the appellant I am mindful that the damages awarded are to be compensatory and not intended to punish the appellant.

54. Bearing in mind the admonition of de La Bastide C.J. in **Bernard v Quashie** referred to above, I am nonetheless of the opinion that this is a case in which the Court should intervene on the ground that the award is a wholly erroneous estimate of the damage suffered by Ms. Roches. Indeed the Chief Justice did not give any reason for arriving at his award of $150,000. While compensation may include loss of earning consequent upon being dismissed/released, there was no evidence of any such loss. The plaintiff would have suffered from some distress at being treated in this manner, especially at an advanced stage of her pregnancy.

In all the circumstances, I consider an award of $60,000.00 to be adequate compensation. The respondent will have 75% of her costs, to be agreed or taxed.

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MOTTLEY, P

SOSA JA

On 15 October 2004 I agreed that the appeal should be allowed to the extent that the award of damages in the sum of $150,000.00 made by the court below should be set aside and an award in the sum of $60,000.00 substituted therefore; and that the appellant/defendant should have 75 per centum of his costs, to be taxed if not agreed. I concur in the reasons for judgment of Mottley P, which I have read in draft.

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SOSA JA

MORRISON JA

1. I have had the advantage of reading in draft the judgment of the learned President in this matter. I agree with it and do not wish to add anything to the reasons he gives for dismissing the appeal with respect to the liability of the respondent to the appellant for the breach of her constitutional rights. Since we are differing from the Chief Justice on the question of damages, however, I do wish to add a few words of my own on that aspect of the matter.

2. The learned Chief Justice awarded the sum of $150,000.00 as damages to the respondent as being, pursuant to section 20(2) of the Constitution, "appropriate for enforcing her constitutional rights" (paragraph 62 of his judgment). He did not state his basis for arriving at this figure.

3. It was contended on behalf of the appellant in this court that there was "no sufficient evidence upon which the learned Chief Justice could have awarded the sum of $150,000.00 or any sum whatsoever".

4. The relevant provision of the Constitution is section 20(2), which reads as follows:

> "(2) The Supreme Court … may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 19 inclusive of this Constitution."

5. In his judgment in the case of **George Enrique Herbert v The Attorney General** (Action No. 398 of 2003, judgment delivered 24 October 2003), the learned Chief Justice observed as follows:

> "The [breadth] and potential of this provision in the hands of the court cannot be underestimated. It enables the court, in a case where a contravention of fundamental rights is established, to fashion a remedy in order to do whatever it thinks appropriate for the purpose of enforcing or securing the enforcement of any of the Constitution's provisions dealing with fundamental rights. It must also be remembered that this power to fashion, as it were, a remedy for enforcing or securing the enforcement of fundamental rights, is discretionary, but a discretion which must nevertheless, like any discretion conferred on a Court, be exercised judicially, having regard to all the circumstances of a particular case."

6. This approach to the award of remedies for breaches of constitutional rights was described by the Chief Justice in the **Herbert** case as a "utilitarian approach", which relieves the judge in a constitutional case, from having to enter into "swirling judicial debates as to the proper categorization of damages in such cases and to award compensation in each case that is appropriate to its particular circumstances." In this regard, the Chief Justice was in express agreement with the views of de la Bastide CJ in **Jorsingh v The Attorney General (1997) 3 LRC 333, 338**, who described section 14(2) of the Constitution of Trinidad and Tobago,

which is in its terms similar to section 20(2) of the Constitution of Belize, as "releasing the court from the constraints of common law rules governing the award of damages". de la Bastide CJ was of course in that case considering the vexed question of whether exemplary damages were available as a remedy in constitutional cases (as to which, see now as well **Siewchand Ramanoop v The Attorney General of Trinidad & Tobago** (Civil Appeal 52 of 2001, judgment delivered on 21 March 2003), but it appears to me that his comment describes in general terms an acceptable approach to the assessment of damages under section 20(2). This is how Conteh CJ very helpfully summarized the appropriate approach in the **Herbert** case:

> "Therefore, I think, a court should be astute in the making of making of awards of damages for breaches of fundamental rights in order to ensure both a vindication of those rights and to register disapprobation for their violation. Therefore, I think the more egregious the violation and, especially if accompanied by contumely or callous disregard, the more serious or condign the award of damages should be. For it is only by awarding an **appropriate** level of damages, where the court so decide to make an award, for breaches of fundamental rights, can the courts fulfill their role as sentinels of these rights and thereby induce respect for them and their observance. Every case, of course, would depend on its own facts and circumstances."

7. The question of what is an "appropriate level" of damages may, of course, be simplified in the case of the breach of a constitutional right which also has some private law analogy. For despite Lord Diplock's oft cited statement in **Maharaj v Attorney General of Trinidad and Tobago (No. 2) [1978] 2 All ER 670**, **680** that a claim for breach of a constitutional right (in that case deprivation of liberty) was not one in private law for the tort of false imprisonment under which the damages recoverable were "at large", as Sharma CJ has recently observed in the **Ramanoop** case, "It may be helpful to use the Common Law as a starting point but it should in my view be just that" (page 17). The truth is that in order to arrive at the appropriate award in each case, whether there is a private law analogy or not, "a new jurisprudence has to be developed" (per Sharma CJ, again at page 17 of the **Ramanoop** case; cf. the New Zealand case of **Dunlea v Attorney General [2000] 5 LRC 566**, **583**).

8. As this question was not argued in any depth on this appeal (although the Court was referred to all of the material cited above), it would not be appropriate to express any concluded view on the broad general issues of principle, save to say that the facts of each case will obviously merit careful attention, as will the nature of the breach and the egregiousness of the conduct complained of by the citizen, always bearing in mind Sharma CJ's observation that "There is something solemn and sacred about the Constitution" (the **Ramanoop** case, page 18).

9. In the instant case, the learned Chief Justice was confronted with a case without any private law analogy (indeed, it is arguable that given the terms of her contract, whether express or implied, Miss Roches may have had no private law remedy in respect of her dismissal). While the conduct of the appellant may not have been characterized by the Chief Justice as "egregious" (referring, as he did, to "the undoubted spiritual and moral position of the respondent, for which I have every sensitivity and respect" - see paragraph 62), the conclusion by him that the conduct towards Miss Roches was clearly discriminatory and a violation of her right to work speaks to serious breaches of constitutional rights of the highest importance.

10. In these circumstances, it might have been helpful to the parties, and to this Court, to know the Chief Justice's reasons for thinking that an award of $150,000.00 was appropriate in this case. In the absence of those reasons, but assuming that he took all the relevant considerations into account, I came to the conclusion, in common with the other members of this court, and with the greatest of respect, that his award was manifestly excessive and ought to be reduced to $60,000.00. In so doing, I had regard to the evidence of Miss Roches' subsequent employment as a teacher by the Government of Belize, as well as the Chief Justice's own previous award of damages of $30,000.00 (varied by consent on appeal to $50,000.00) in the **Herbert** case, a case of deprivation by the police of the

liberty of a citizen without colour of any legal or moral justification whatsoever.

11. In all the circumstances, I also agreed with the order proposed by the learned President that the respondent should have 75% of her costs of this appeal.

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MORRISON JA