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

ACTION NO. 132

	(MARIA ROCHES	**Applicant**
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BETWEEN	**(AND**	
	(	
	(	
	(CLEMENT WADE	
	(as and representing the Managing	
	(Authority of Catholic Public Schools	**Respondent**

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean Barrow S.C. with Mrs. Magali Marin Young for the Applicant.
Mr. Philip Zuniga S.C. for the Respondent.

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JUDGMENT

The applicant in these proceedings, Ms. Maria Roches, who will be 25 years in May, is a teacher by profession and has taught in Roman Catholic Schools mainly in the Toledo District. She began to teach in 1999, first at the Silver Creek Roman Catholic School, then at the San Pedro Columbia Roman Catholic School and finally at the Santa Cruz Roman Catholic School. It was while a teacher at the latter school that she received a letter dated 26 June 2003 from Mr. Benjamin Juarez, who is the Assistant Local Manager of the Toledo Public Catholic Schools. This letter in effect, Ms. Roches claims, dismissed her from her position as a teacher.

2. This letter is, I think, central to this case. It states as follows:

"June 26, 2003

Dear Miss Maria Roches,

In view of the fact that you are not complying with the contract you made with the Toledo Catholic Schools Management to live according to Jesus' teaching on marriage and sex, this management is hereby informing you that you will be released from your duties as a teacher in this management effective August 31st, 2003. Thank you for the services rendered over the past years.

Sincerely yours,

Benjamin Juarez

Benjamin A. Juarez
Assistant Local Manager
Toledo Catholic Schools"

3. This letter, according to Ms. Roches, was prompted by the fact that sometime in April 2003, she told Mr. Juarez that she was pregnant. She was then not married, and I believe is, up to these proceedings, still unmarried. (That might have changed, I am not sure). In April 2003, she had informed Mr. Juarez about her condition and wanted to talk about arrangements for maternity leave; but when she finally saw Mr. Juarez on 26th June 2003, the letter in question was handed to her.

4. As a consequence, Ms. Roches has launched these proceedings by way of redress pursuant to section 20(1) of the Belize Constitution against Mr. Clement Wade, who is really only a nominal respondent, representing the Managing Authority of Catholic Public Schools. Mr. Philip Zuniga S.C. for the respondent 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 behalf, Mr. Wade, the named respondent, generally administers Catholic Schools in the Toledo District.

5. I must at the outset however, make it pellucidly clear that these proceedings are not about religion or against any particular religious denomination or group as such. The respondent represents the Roman Catholic Church which is, arguably, the largest Christian denomination in Belize accounting for over half of the population professing the Christian faith. But Belize is a multi-ethnic, multi-faith and secular state, with a written Constitution which, among other things, provides in its Chapter 11 for the protection of fundamental human rights and freedoms. The Constitution itself in its preamble affirms the belief in and the supremacy of God as well as faith in human rights and fundamental freedoms including the equal and inalienable rights with which all members of the human family are endowed by their Creator.

6. In her application to this Court, Ms. Roches claims that her dismissal from her position as a teacher with the respondent infringes certain of her constitutional rights: it amounts she says, to a violation of section 16(2) of the Belize Constitution, as her dismissal was because of her pregnancy without being married; and that this amounts to discrimination against her because of her sex as a woman. This is so, she avers, because the respondent does not dismiss male teachers merely for impregnating women out of wedlock or fathering children out of wedlock. Therefore she claims, the respondent's action in dismissing her for being pregnant and unmarried constituted bias against her and meted different treatment to her as against male teachers in a similar situation.

7. Ms. Roches claims also that the refusal of the respondent to reinstate her to her position as a teacher after being required to do so by the Chief Education Officer of Belize in accordance with the Education Act – Chapter 36 of the Laws of Belize, Revised Edition 2000, and the Rules made thereunder, is illegal and in breach of its

statutory duty and violation of section 15(1) of the Belize Constitution in that it is an infringement of her right to work as well.

Was Ms. Roches dismissed as a teacher?

8. The respondent, has however, denied dismissing Ms. Roches, because its letter of 26 June talks only of "releasing" her from duties as a teacher; and Mr. Wade in his affidavit of 31 March 2004 (opposing Ms. Roches' application) says in paragraph 10 that Ms. Roches was "released and not dismissed"; and Mr. Zuniga S.C. for the respondent, argued that indeed, Ms. Roches was "released" and not dismissed by the respondent. I am satisfied however, that, for all practical purposes, the respondent's action was in fact, a dismissal of Ms. Roches. Section 16 of the Education Act which provides for the power generally of managing authorities of schools to employ teachers speaks of appointing, transferring, releasing, suspending or dismissing teachers by these authorities without any distinction. This of course is not to say that releasing of a teacher by a managing authority of a school is not different from suspending or dismissing that teacher. There are no doubt, legal and practical consequences follow from this. But section 16 sets out the procedure to follow in **releasing**, **suspending** or **dismissing** a teacher by a school management authority, with a right of appeal to the Chief Education Officer and ultimately to an Arbitration Panel set up under section 46 of the Act.

9. Indeed, it came out in evidence during the cross-examination of Mr. Juarez by Mr. Dean Barrow S.C., the attorney for Ms. Roches that she was not free to return to the employ of the respondent.

10. I therefore find that, in the circumstances of this case, Ms. Roches was, as a matter of plain common sense, and in fact, dismissed from her position as a teacher with the respondent. I therefore do

not think that for the purposes of this application anything turns on whether Ms. Roches was "released" or dismissed by the respondent: she just cannot go back because of the respondent's action.

The issues in contention between the parties

11. Ms. Roches claims that the action of the respondent violates her constitutional rights not to be discriminated against because of her sex. She claims that her dismissal because she became pregnant without being married is discrimination against her on account of her sex. This, she further claims, denies her constitutional right to work as provided for in section 15(1) of the Belize Constitution. Moreover, she claims that the refusal of the respondent to reinstate her after being required to do so by the Chief Education Officer is illegal. She therefore seeks an order from this Court to restore her to her position as a teacher with the respondent. Alternatively, she claims an Order for damages against the respondent for the violation of her constitutional rights and for the respondent's breach of its statutory obligations to her as a teacher.

12. The respondent's position on the other hand is that the Roman Catholic Church in Belize is not a public authority but a private corporation and that as such, it was in relation to Ms. Roches, a private employer. It was in this context that Ms. Roches entered into a contract with the respondent as a teacher the respondent insists. According to the respondent, Ms. Roches had a written contract with it as a teacher, in which she undertook to live her life according to the teaching of Jesus Christ on marriage and sex. The respondent says that it was because Ms. Roches failed to live up to this undertaking that led to her being given the letter of 26 June 2003, resulting in the termination of her engagement as a teacher with the respondent: the respondent in fact expressly states

that it acted against Ms. Roches pursuant to this contract. This I believe is the pith and substance of the respondent's case and this "contract" is central to it.

13. For a fuller appreciation of the respondent's case, I reproduce here this "contract" which was exhibited as **"BAJ 4"** to Mr. Benjamin Juarez's affidavit of 31st March 2004 –

"CONTRACT WITH Toledo CATHOLIC SCHOOLS

I, Maria Roches, wish to become a teacher in this Catholic Public School Management. In doing so, I accept the task of not only giving all pupils a good education, but also give pupils a good Catholic education.

As a Roman Catholic teacher, I must be regarded as a professional and a witness who exercises leadership in the church, school and community.

As a professional, I will use every opportunity to make myself better (attend seminars, teacher training courses, etc.) I will take part in the extra curricular activities of the school and be punctual, thereby setting an example to pupils.

As a Catholic Christian witness, I will take pride in my profession by willingly observing the teaching of the Roman Catholic Church, such as, attendance at mass and other church services, being exemplary in conduct and language, and living Jesus' teaching on marriage and sex.

I accept that if I fail to live up to theses (sic) *terms, I may be released from this Management.*

In case of dispute, I accept the Roman Catholic Bishop of Belize City and Belmopan, as the final judge of my compliance.

Maria Roches	*Sept. 28, 2000*
Teacher's Signature	*Date*
Benjamin Juarez	*28/9/2000*
Manager's Signature	*Date*
_____	_____
Witness Signature	*Date"*

14. There is however some strong disagreement between the parties concerning this document. Although the document bears the printed name *"MARIA ROCHES"*, Ms. Roches vehemently denied ever signing it. (I shall say more on this later).

15. Moreover, the respondent denies any discrimination against Ms. Roches and avers instead, as posited in paragraph 7 of Mr. Wade's affidavit and paragraphs 25 and 26 of Mr. Juarez's affidavit, that in so far as the impregnation out of wedlock by or of teachers is concerned, it treats male and female teachers the same way: they would be released as teachers from its service. Therefore, the respondent has sought to parry the thrust of Ms. Roches' claim for constitutional redress by arguing that it should have been directed primarily at the Government of Belize, and not against the respondent.

The evidential value and import of Exhibit BAJ4

16. This document of course is a central plank of the respondent's case. Having studied it carefully and having had the benefit of seeing and hearing both Ms. Roches and Mr. Juarez from the witness box, I am not convinced that Ms. Roches was a party to **Exhibit BAJ 4**. In the first place, on the face of the document where it says "Teacher's Signature", only the printed or written name "Maria Roches" appears instead of a signature. This is in stark contrast to the section in the document for "Manager's Signature". There, Mr. Juarez's signature, the same as in his affidavit, legibly and clearly appears. Secondly, there is clearly a place for a witness to attest both signatures, but this is inexplicably blank. However, Mr. Juarez said under cross-examination that it was not the practice to have signed contracts with teachers witnessed. This practice, if it is one, in my view, I find is unhelpful

and not quite proper. It may well detract from the evidential weight of the document, if there is a dispute, as there is in the instant case, of it being signed by one of the alleged parties to it. Thirdly, there is in evidence before me as **Exhibit MR 8** a University of Belize Identification Card belonging to Ms. Roches. This clearly bears a signature which she testified is her usual signature. But this is strikingly different from the writing on **Exhibit BAJ 4** which, I find, in view of all the circumstances, is nothing more than a scrawl purporting to be the signature of Ms. Roches.

Additionally also, **Exhibit BAJ 4** is clearly not in conformity with **Rule 70** of the Education Rules 2000 (S.I. No. 92 of 2000) on teacher's employment contract. This provides in sub-rule (1) as follows:

> *"70.(1) For every person employed on the teaching staff of a school there shall be a contract of service between the Managing Authority and such member of staff, which shall be signed and executed by both parties and witnessed by a third party. A copy of a standard contract form shall be included in the Handbook of Policies and Procedures for School Services."* (emphasis added)

17. The form of a teacher's employment contract pursuant to Rule 70 of the Education Rules is to be found at page 380 of the **Handbook of Policies and Procedures for School Services**, published by the Ministry of Education in August 2000. This form is markedly different from what is contained in **Exhibit BAJ 4**.

18. I am therefore not satisfied that Ms. Roches signed or subscribed to the alleged contract exhibited to Mr. Juarez's affidavit.

However, more fundamentally, even if **Exhibit BAJ 4** (the alleged contract) were good and proper, could it avail the respondent in law, to warrant it to release, dismiss, terminate or call it whatever

you will, the services of Ms. Roches as a teacher because of her pregnancy out of wedlock in the circumstances of this case?

The determination of the issues in contention between the parties

19. 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 amendable 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?

i. Is the Respondent a person or authority for the purposes of section 16 of the Constitution?

20. 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 in Belize. It was formally constituted into a corporation in Belize over a hundred years ago by the Roman Catholic Church Act (then Ordinance) of 4th December 1902. In addition to its important spiritual mission, the role, position and contributions of the respondent in the field of education in Belize cannot be doubted or underestimated. The respondent has over the years, provided the backdrop and the engine for the educational advances and development of this country. It is reasonable to say that the role and contributions of the respondent and others like it, who pioneered the educational system of Belize and, still continue to provide its main-stay, will continue for some time to come into

the future. There 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 has been a constant motif and an enduring feature in the architecture, structure, system and provision of education in this country. This partnership spans every administration of Belize, from its colonial governance, to its successive independent administrations, regardless of the hue of the political parties or the political divide. Every government has subscribed to this partnership.

In this regard, I adopt with respect, the statement of Lord Bingham of Cornhill in the Privy Council case of **Bishop of Roman Catholic Diocese of Port Louis and Others v Suttyhudeo Tengur and Others (Mauritius) (2004) UKPC 9** delivered on 3rd February 2004 apropos the Church/State relationship or partnership in Education. At page 3 of the Advance Copy of the Board's decision, which I am fortunate to have been provided with, Lord Bingham states:

> *"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* (I may include Belize) *this was a function to which government 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."*

Today, the partnership of Church and State in education in Belize is expressly recognized and stated in section 3 of the Education Act, Chapter 36 of the Laws of Belize, Revised Edition 2000. Subsection (1) of this section provides in terms as follows:

> *"3(1) 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."* (emphasis added)

21. This concept of Church/State partnership in education is more fully articulated and provided for under **Part IV** of the Education Act which deals with the **Establishment and Management of Schools**, and **Part V** which deals with funding or **Grant-in-Aid**.

22. In concrete terms, this Church/State partnership is illustrated, for example, in a publication entitled **National Gender Policy: Belize (July 2002)**, prepared for the National Women's Commission, where at page 55 the following is recorded:

> *"Belize's education system depends upon active cooperation between government and the churches. Various denominations manage 74% of primary schools and 49% of secondary schools, with government generally meeting the costs of school operations, paying 100% teacher salaries and 70% maintenance costs at the primary level and 70% of teacher salaries, 50% of maintenance costs and 100% of student tuition costs at secondary level."*

23. However, this Church-State partnership in the field of education notwithstanding, the Education Act and the Rules in S.I. 92 of 2000 reflect the secular nature of Belizean society as affirmed and provided for in the Constitution of Belize.

24. Through the system of grant-in-aid public funds are provided by the government to schools approved by the Chief Education Officer. It is common ground that the primary school in Santa Cruz in the Toledo District, from which Ms. Roches was released/dismissed, is a grant-in-aid school, though run and managed under the denominational aegis of the respondent. Every school in receipt of a grant-in-aid must conform to the provisions of the Act or Rules made under it – see sections 22 and 23 of the Act, and Rules 103, 104 and 108 of the Education Rules.

25. Section 14 of the Education Act provides in subsection (1) as follows:

> *"14(1) Every religious denomination, body or institution having one or more government-aided school or institution shall, after consultation with the Chief Education Officer, appoint a manager, managing authority or board of governors or trustees as may be appropriate."*

It is, I think, unarguable that **qua** managing authority, the respondent is within the purview and provisions of this section and the next two following sections, that is, sections 15 and 16 of the Education Act.

Section 15 of the Act spells out the general functions of managers, managing authorities or boards of school with the assistance and in partnership with Government under the conditions of the grant-in-aid scheme, in making available adequate provisions for such

support systems required to deliver appropriate education to students. (see para. 22 above that I have already read out).

26. Section 16 of the Act governs the employment of teachers and it provides in terms as follows:

> *"16. 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 copied 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 preferring 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."*

27. The Education Rules 2000 (S.I. No. 92 of 2000), in Rule 92, empower managing authorities of schools, such as the respondent,

to prescribe and enforce regulations and standards governing the dress and conduct of staff of schools. Paragraph (1) of Rule 92 provides as follows:

> *"92.(1) Managing Authorities shall have the authority to prescribe and to enforce regulations and standards governing the dress and conduct of staff, provided that such regulations:*
>
> *(a) are approved by the relevant Regional Council;*
>
> *(b) do not seek to impose restrictions or requirements outside the parameters of generally acceptable behaviour and standards;*
>
> *(c) are clearly stated and made explicitly known to staff in writing; and*
>
> *(d) are not prejudicial to the fundamental rights of the person."* (emphasis added)

28. Mr. Zuniga S.C. the learned attorney for the respondent has, on its behalf, argued forcefully that the statutory provisions cited above and, notwithstanding the receipt of public funds by the respondent under the grant-in-aid scheme, do not make it a public authority for the purposes of the application of the Constitution's prohibition against discrimination, inter alia, on the grounds of **sex**. He relied principally on the authority of the decision of the Court of Appeal in the case of **Alonzo v Development Finance Corporation 1 Bz. L.R. (1984) 82**. In that case, the Court of Appeal held that the fundamental right and freedoms protected by the Constitution were not intended as guarantees of purely private rights. They are intended as protection afforded to individuals against any contravention of their rights by the state or some other public authority endowed by law with coercive powers. The corporation, that is, the Development Finance Corporation in the Alonzo case, not being a public authority endowed by law with coercive powers was in exactly the same position as any private employer according

to the Court of Appeal. Nothing in the Constitution fetters the rights of the parties to contract freely as they see fit and it was merely in exercise of a right freely agreed between the parties that Mr. Alonzo's, the appellant in that case, contract of employment was terminated. Mr. Alonzo had sought a declaration under section 20 of the Constitution of Belize, as Ms. Roches has done in the instant case before me, that the termination of his employment as head of the Economics Division of the Development Finance Corporation, by reason of his membership of the United General Workers Union, was unconstitutional. The Court of Appeal dismissed Mr. Alonzo's appeal and found no favour with it.

29. Mr. Zuniga S.C. has therefore urged me to decline Ms. Roches' claim, and he has argued and submitted instead that, if Ms. Roches has any redress, it should be against the Government of Belize because she claims, pursuant to section 20 of the Constitution, violations of her rights under section 16 and not the respondent who, he argues, rather attractively, is a private entity.

30. Mr. Zuniga S.C. also submitted that the fact that the respondent, under the grant-in-aid scheme to schools receives public funds, is not of itself and in itself, necessarily determinative of the issue of whether or not it is a public authority for the purposes of amenability to the Constitution's prohibition against discrimination on the grounds of sex. He sought to distinguish what is, in my view on this score, a clear conclusion of the Privy Council in the case of the **Bishop of Roman Catholic Diocese of Port Louis supra** which I had already mentioned above. That case concerned an interpretation and application of the provisions of the Constitution of Mauritius against discrimination. Those provisions are not surprisingly, almost **ipsissima verba**, the same as section 16 of the Constitution of Belize. I say not surprisingly because, both

Constitutions, that is Mauritius's and Belize's, like those of most Commonwealth countries that gained independence in the recent past from the United Kingdom, were inspired and informed by the European Convention of Human Rights 1950. In the Mauritius case, the father of an 11-year old Hindu girl then approaching the end of her primary education and awaiting placement in a secondary school had brought proceedings challenging an allocation system that seemed to give an edge to pupils of the Roman Catholic faith in the allocation of pupils in 12 Secondary Schools which were referred to as "the Catholic Colleges" as compared to pupils of other faiths. The Catholic Colleges were established originally by the Roman Catholic Diocese without expense to the State. However, by the time of the father's challenge, they had ceased to be so maintained. They were then maintained very largely, if not wholly, at the expense of the State. The Privy Council concluded from this as follows at paragraph 21 of its judgment:

> *"If, as originally established and maintained, the Catholic colleges were still entirely self-financing, the appellant's admission policy would not attract the operation of section 16(2) on discrimination 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 or any public authority'. The appellants would be exercising their rights 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 discrimination into play."

31. Mr. Zuniga S.C. also sought to pray in aid section 11(3), similar to section 3(b) of the Mauritius Constitution, to have me hold that the receipt of public funds by the respondent is not indicative of its amenability to the Constitution's prohibition on discrimination. This subsection, that is subsection 11(3) of the Constitution, provides as follows:

> *"(3) 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 instruction 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."*

32. I do not think hat this provision advances, with respect, the case for the respondent any further on this score. Subsection (3) of section 11 deals, in my view, with the right of a recognized religious community at **its own expense**, to establish, maintain and manage a place of education for the adherents of its faith, and the right to provide religious instructions for the members of the particular religious community during the course of the education so provided. This shall be regardless of whether the religious community receive funds from the state or not. I think that this is no more than an affirmation of the right to freedom of religion and the right to propagate that religion in educational institutions run by a religious

community. This right should not however, be taken as granting immunity from suit for allegation of discrimination as contained in section 16 of the Constitution.

33. I am however, of the considered view that in the light of the provisions of the Education Act and the Education Rules in S.I. 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 amendable 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.

34. Can it be doubted that the powers conferred on the respondent by section 16 of the Education Act regarding the employment of teachers is not in the public domain, in that it has coercive powers, whatever one takes "coercive powers" to mean? I can conceive of nothing more coercive in relation to an employee than having the power over her to terminate her appointment, or release, suspend or dismiss her as a teacher, as paragraph (b) of section 16 enables the respondent to do in appropriate cases.

35. Moreover, by Rule 98 of the Education Rules it is expressly provided as follows:

"98. The suspension, release, dismissal or termination of service of a teacher or other member of staff shall be in accordance with section 16 of the Act."

36. In the light of all this, I find that it does not take a leap of faith to hold that in the field of education today in Belize, the respondent carries out important functions of enormous public ramifications and impact that it can reasonably and properly be regarded as the **alter ego** of the government, or its emanation, such as to make it a person or authority for the purposes of the Constitution's prohibition against discrimination, and therefore amenable to redress for any alleged violation of the constitutionally guaranteed fundamental rights and freedoms.

37. I must confess and admit however, that seemingly attractive and plausible though Mr. Zuniga's arguments may be, I am unable to accede to them. I find and hold that the respondent is in the field of education in Belize, in the public domain and therefore a person of 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.

38. I find support for this conclusion as well from cases in other Commonwealth jurisdictions where the issue of whether or not a body that is not formally a part of the Government or Executive (against whom of course, an action for constitutional redress is undoubtedly available), is susceptible to redress for alleged breaches of fundamental human rights:

Sumayyah Mohamed v Moraine and Another (1995) 49 WIR 371

Eldrige and Others v Attorney General of British Columbia and Another (Attorney General of Canada and Others, intervening) (1998) 1 LRC 351

Regina (A and Others) v Partnerships in Care Ltd. (2002) 1 WLR 2610

In the **Sumayyah Mohamed** case, the applicant who had wanted to wear her school uniform in order to have it conform with her religious tenets was suspended by the board and the principal of the school until she could wear the regular uniform. She brought an application for judicial review of the decision to suspend her and a claim for redress for contravention of her constitutional right to enjoyment of property, her right to equality before the law and her right to equality of treatment by public authorities as required by the Constitution of Trinidad and Tobago. It was held that although not all the activities of the board were of governmental nature but when it together with the principal refused admission to the applicant on account of her not wearing the ordinary school uniform, they exercised functions of a governmental nature and coercive in nature and were accordingly susceptible to proceedings for redress of constitutional rights.

In the **Eldrige and Others** case **supra**, it was the failure of two Acts, under which a hospital and a Medical Services Commission were administered, to make provision for the payment for sign language interpretation that was challenged by the two deaf applicants as violative of the guarantee of equal treatment without discrimination under section 15(1) of the Canadian Charter of Rights and Freedoms 1982. It was held on appeal that although hospitals were not considered to fall within the definition of "governmental" for the purposes of section 32(1) of the Charter, but

since hospitals were in effect carrying out a specific government objective (that of providing medically necessary services) and the Commission were implementing the government policy of ensuring that all residents should receive medically required services free of charge, both bodies were clearly agents of government and were as such, considered to be subject to the provisions of the Charter in the provisions of those services. Therefore, both the hospital and the Commission had to conform with the Charter in exercising their discretion under the Acts.

In the case of **Regina (A and others) supra**, the managers of a registered private psychiatric hospital decided to change the focus of treatment of the claimant, who had been detained pursuant to the United Kingdom Mental Health Act 1983, from the provision of care and maintenance of sufferers from personality disorders to that of care and treatment for patients suffering from mental illness. The claimant brought judicial review proceedings of the decision. It was held that since the applicant was detained compulsorily, the manager's decision was an act of a public nature made in relation to the exercise of a public function and they were therefore functional public authority for the purposes of section 6 of the United Kingdom Human Rights Act 1998 and therefore amenable to process for judicial review.

I am therefore satisfied that under the Education Act and Rules, the respondent is clearly amenable to redress for breaches of the Constitution as alleged by Ms. Roches.

39. I now turn to consider the other main issue in contention between the parties.

ii. *Was the action of the Respondent discriminatory against Ms. Roches?*

Ms. Roches has alleged that her dismissal by the respondent from her position as a teacher on the ground of her pregnancy without being married is a violation of section 16(2) of the Belize Constitution as it infringes her constitutional right not to be discriminated against on account of her sex.

40. Section 16(2) of the Constitution provides as follows:

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

Subsections (6), (7) and (8) are not of immediate relevance to these proceedings. Subsection (3) of section 16 of the Constitution however, goes on to define what discriminatory means and to spell out the categories to which the Constitution's interdiction on discrimination applies. 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 privileged or advantages which are not accorded to persons of another such description."*

41. Ms. Roches elaborated and gave the factual matrix of her claim of discrimination in the following paragraphs of her affidavit in support of her application:

"7. In April of 2003, I had informed Mr. Juarez of the fact that I was pregnant. I was unmarried and was so at the time I became pregnant and at the time I informed Juarez of my pregnancy.

8. When I told him of my pregnancy Mr. Juarez said words to the following affect: 'You never done until you get it.' I had informed Juarez of my pregnancy because he was the operational manager of the Toledo division of the Catholic Public School system.

9. Mr. Juarez did not at that time, however, specifically tell me what was to be my fate as a result of my unmarried pregnancy.

11. It was when I went back to see him in June that he gave me the letter of dismissal dated June 26th, 2003, which I now attach and mark ***MR 2****.*

21. I further say that the said dismissal and refusal to reinstate me is a violation of Article 16(2) of the Belize Constitution. The said dismissal is on ground of my pregnancy without being married, and that amounts to discrimination against me because of my sex.

22. I also say my dismissal is discrimination on the basis of my sex because no male teacher has ever been dismissed by the Respondent, or is subject to dismissal by the Respondent, merely on ground of impregnating a woman out of wedlock or fathering a child out of wedlock. The Respondent's action re male comparators are thus not gender neutral and its actions against me as a woman constitute bias and different treatment from the action or non-action it accords to men in obverse but comparable situations to mine."

42. The respondent for its part, has denied any discrimination against Ms. Roches. It says instead, that she was released/dismissed from her teaching position not because of her pregnancy but because she breached her contract with the respondent which required her "to live according to Jesus' teaching on marriage and sex". This supposed contract is contained in **Exhibit BAJ 4** annexed to Mr. Juarez's affidavit. I have already in paragraphs 12, 13, 14, 15, 16, 17 and 18 of this judgment, stated this Court's opinion of this

document. In any event, it is undoubted that it was the fact of Ms. Roches' 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.

43. The respondent further maintains that it operates and applies an even-handed non-discriminatory practice or policy of releasing or dismissing **any** teacher, **male** or **female**, who while unmarried, impregnates someone or becomes impregnated. That is to say, it is the position of the respondent that, on the issue of unmarried pregnancy, male and female teachers are treated in the same way. Mr. Juarez says in his affidavit in support of the respondent's contention of non-discrimination at paragraphs 25 and 26, *"that there have been many instances where men have been released because similar to the Applicant they have failed to comply with their contracts"*. He annexed as **Exhibits BAJ 8 and 9** two identically worded letters and dated the same day as the one handed to Ms. Roches, addressed to a Mr. Alberto Coy and Mr. Juan Cuz, respectively.

44. Mr. Clement Wade also in his own affidavit in support of the respondent contention, denies discrimination against Ms. Roches. He says at paragraph 7 of his affidavit that:

> *"7. In June, 2003, the said Mr. Juarez* (that is the local manager of the respondent) *consulted me about the Applicant as well as about two male teachers, namely, Mr. Alberto Coy, and Mr. Juan Cuz. It was decided that all three would be released from their duties as teachers in the Toledo Catholic School Management. Of the said three teachers that were released Alberto Coy and Juan Cuz are both males while the Applicant is a female. Therefore, all accusations of discrimination are unjustified. All teachers male and female are dealt with in accordance with their contracts, and without any kind of discrimination."*

He repeats his denial of discrimination further in paragraph 11 of his affidavit:

> *"11. Paragraph 22 of the Applicant's affidavit is not true because it has never been the policy of Catholic Public Schools to discriminate against anybody. In fact, males have been released in similar circumstances, to the Applicant's. As an example I exhibit hereto marked "CW3" and "CW4", respectively, two letters; one dated November 18th, 1996 addressed to Mr. Alejandro Palacio, and the other dated August 7th, 1997 addressed "to whom it may concern"."*

45. I have carefully considered the arguments of the respondent that in so far as its unmarried teachers and pregnancy are concerned, it does not discriminate between male and female teachers, it treats both genders the same way: it has a policy of releasing such teachers on account of pregnancy. But there is however, this immovable object in the way of such a policy being ever even-handed or non-discriminatory. And this is biology, gender or sex.

46. In the nature of things, by biology, gender and indeed sex, the policy if I may so call it, of the respondent of dismissing any teacher, male or female, who impregnates or is impregnated out of wedlock, would more assuredly, naturally and readily impact or affect a teacher of the gender or sex of Ms. Roches, that is, the female of the species. At the risk of sounding trite, men do not get pregnant and they (together with so-called biological advances as in-vitro fertilization or the so-called artificial insemination) impregnate women. But if they, that is the men, do not tell or are not reported or caught out somehow, which they can even deny, the respondent would not ever, ever know, in all probability, know of a male unmarried teacher being responsible for any pregnancy which, it is even possible, could be of several women by that unmarried male teacher at the same time. In this event, there is possibly no likelihood of ever applying the respondent's policy of dismissing this unmarried male teacher.

Indeed, the circumstances of how the respondent came to learn of the situation of the male teachers mentioned in the affidavits of Messrs. Wade and Juarez are not clear, in particular, if it was they who volunteered the information that they, while unmarried, had impregnated some females.

But this is not so in the case of the unmarried female teacher such as Ms. Roches: the fact and evidence of impregnation speaks in her case for itself with each passing day. Increasingly, the evidence grows and often manifests itself in the daily symptoms associated with pregnancy. The most obvious of these, and which can hardly be ignored or hidden, is the increasingly distending stomach of the mother-to-be, as the fetus grows daily in size to full-term before delivery. The evidence in the case of the unmarried female teacher is there for the whole world, including, of course, the respondent, to see. This is not so for the male unmarried teacher who might have impregnated someone.

Moreover, the resulting evidence of pregnancy, the new-born infant, is at least immediately after birth, the direct physical, emotional and psychological responsibility of the newly-delivered mother, whether she be married or unmarried as Ms. Roches.

47. I am therefore of the considered view that this state of affairs makes the unmarried female teacher more directly open and vulnerable to the policy of the respondent of releasing unmarried teachers because of pregnancy. In practice and, more self-evidently, the respondent's practice impacts more readily and directly on unmarried female teachers.

48. Mr. Juarez in fact under relentless cross-examination by Mr. Barrow S.C. admitted in evidence that the letter of 26 June 2003 dismissing Ms. Roches was precipitated by her pregnancy.

49. I therefore find that the respondent's policy is inherently and in fact, capable of affording different treatment to different persons, in this case male and female teachers, attributable wholly to their respective sex or gender: unmarried female teachers are the prime if not the exclusive targets of such a policy.

50. I find, in the circumstances of this case, that Ms. Roches was, as she claims, discriminated against as a result of her pregnancy while unmarried.

I am not persuaded that Messrs. Coy and Cuz, referred to in the affidavits of Mr. Wade and Mr. Juarez were dismissed as a result of their pregnancy while being unmarried: a physical and biological impossibility, although the respondent speaks of their failure to live according to Jesus' teaching on marriage and sex. But in the case of Ms. Roches, the fact of being female, unmarried and pregnant speaks for itself. I therefore hold 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.

51. The Greek philosopher Lysia pointed out more that 2000 years ago that true justice does not give the same to all but to each his due: it consists not only in treating like things alike, but unlike things as unlike (per Rault J in **Police v Rose (1976) MR 79** at p. 81; also mentioned in **Bishop of Roman Catholic Diocese of Port Louis supra** at paragraph 17). Therefore, as I have tried to show, the respondent's policy, such as it is, of treating male and female teachers for the purposes of pregnancy the same way is flawed and inherently discriminatory of unmarried female teachers such as Ms. Roches: male and female teachers for the biological function of

conception and resulting pregnancy are **unlike** and different. Men do not, and I do not want to sound facetious, conceive and therefore cannot get pregnant. The so-called policy of the respondent inevitably therefore impacts more on female unmarried teachers who even without letting on, become progressively and visibly pregnant. This automatically subjects them to the respondent's policy of dismissal.

Their male unmarried counterparts on the other hand with their built-in biological incapacity to conceive and therefore get pregnant can, cavalierly ignore with impunity (some would say promiscuity) the respondents injunction of living according to Jesus' teaching on marriage and sex, without the slightest prospect of sanction, unless they are foolish enough by themselves to tell: they will carry on their person no tell-tale signs for none will be there on them to be visible to the respondent to apply its sanction.

I am not even told or sure of how the respondent came to find out that Messrs. Coy and Cuz had wandered or strayed away from Jesus' teaching or how for that matter it came to know of Mr. Alejandro Palacio who is said to have impregnated a fellow teacher out of wedlock (as stated in paragraph 11 of Mr. Wade's affidavit and **Exhibit CW 3**). I can safely say that **1 Corinthians 6:9**, on which I will say more later, which Mr. Zuniga S.C. relied on as the basis of the respondent's policy, covers more than fornication or adultery, it includes as well practicing homosexuality. Therefore, I think, to apply its policy of dismissal to both male and female unmarried teachers in case of pregnancy, is to treat unlike alike and therefore, I find, discriminatory of Ms. Roches to dismiss her because of her unmarried pregnancy when no male teacher can rationally be dismissed for being unmarried and pregnant.

Belize's obligation to Eliminate Discrimination Against Unmarried Pregnant Women

52. I cannot be unmindful of this. Belize has been a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since the 7th March 1990, and it ratified it on 16 May of the same year. This convention addresses some of the invidious position of women on account of their sex and it contains certain stipulations and undertakings by states parties to it, to remove some of the extensive discrimination which has existed against women. One such undertaking in the context of these proceedings before me, to which Belize has subscribed, is contained in Article 11, paragraph (2) subparagraph (a) of CEDAW and this states:

> *"2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*
>
> *(a) To prohibit, subject to the imposition of sanctions, dismissal on grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of martial status."*

53. I find therefore, that to allow the respondent's action against Ms. Roches on account of her unmarried pregnancy to stand, would as well seriously undercut Belize's obligation under CEDAW, and there is nothing in law that I can find to justify what can only be a material breach of this obligation by Belize, if the respondent's action were to stand. I approve, with respect, in this context, the dictum of Anand C.J. of India in the case of **Apparel Export**

Promotion Council v Chopra (2002) 1 LRC, 563. At page 577 where it says as follows:

> *"In cases involving violation of human rights, the Courts must forever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and domestic law occupying the field."*

54. There is nothing I find under the Education Act and its Rules which conflicts with the provisions of Article 11(2)(a) of CEDAW. In fact, the Act and Rules promote gender sensitivity and equality in their several provisions. And nothing in them justifies the respondent's action against Ms. Roches.

The Right to Work of the Applicant

55. The respondent has however through its learned attorney, Mr. Zuniga S.C., invoked the authority and weight of the Scriptures to justify its dismissal of Ms. Roches. Mr. Zuniga S.C. relied on St. Paul's Letters to the Corinthians, in particular **1 Corinthians Chapter 6 verse 9**. This in the **King James' Version of the Holy Bible** reads:

> *"Know ye not that the unrighteous shall not inherit the Kingdom of God? Be not deceived: neither fornicators nor idolaters, nor adulterers, not effeminate nor abusers of themselves."*

Mr. Zuniga S.C. was kind and helpful to supply me with an extract from the **New American Bible** in which the same scriptural text is, I venture to say, rendered in perhaps more contemporary English as follows:

"Do you not know that the unjust will not inherit the Kingdom of God? Do not be deceived; neither fornicators nor idolaters nor adulterers nor boy prostitutes nor practising homosexuals."

56. Though this is not an ecclesiastical Court, I have however, nothing but the greatest respect and sensitivity for the respondent's position as a spiritual and moral guide and guardian. Perhaps, some support for its position could be found in the Education Rules (S.I. 92 of 2000). Rule 93(1)(a) and (g) address the situation of an errant teacher (if Ms. Roches' situation as an unmarried pregnant teacher can be so regarded). I have no opinion on that. These Rules empower the managing authority of a school, such as the respondent, to institute disciplinary proceedings against any teacher or member of staff who behaves in a manner which brings the teaching profession into disrepute or is considered inimical to the interest of education or for activities involving moral turpitude. This Court makes no judgment or finding on these issues. But it perhaps may be expected that given the respondent's spiritual and moral standing as the Roman Catholic Church, it could or would regard as beyond the pale, to have an unmarried teacher on its staff become pregnant, and that that teacher should, in the estimation of the respondent, be visited with disciplinary proceedings. This is not for me to decide. Even if this position of the respondent were to be prescribed into a code of conduct for its teachers which, as I have pointed out above in paragraph 27 of this judgment, it is clearly entitled to make, any such code or regulations it makes must not be prejudicial to the fundamental rights of the teachers. Also, I should say this: the procedure for instituting such disciplinary proceedings, if any, is clearly provided for in Rule 93(2) of the Education Rules. From the evidence in this case, this procedure was not even observed or followed at all in the

case of Ms. Roches. She was dismissed somewhat summarily by the respondent on account of her pregnancy. This cannot be right or correct.

57. The failure to live according to Jesus' teaching on marriage and sex as the reasons advanced or put forward by the respondent for dismissing Ms. Roches would in her case be readily manifested in her pregnancy. But not so in the case of Messrs. Coy and Cuz. To dismiss her because of that can only be discriminatory. The alleged failure of Messrs. Coy and Cuz to live up to the teaching of Jesus on marriage and sex need not be pregnancy which they are no doubt, incapable of experiencing. It could cover the vast canvas of the teaching of the Church on marriage and sex but in Ms. Roches' case, her pregnancy while unmarried speaks visibly if I may say so.

58. The dismissal of Ms. Roches by the respondent, I find therefore, violated her right to work by pursuing her occupation as a teacher, contrary to section 15(1) of the Constitution of Belize which states:

> *"No person shall be denied the opportunity to gain her living by work which s(he) freely chooses or accepts, whether by pursing a profession or occupation or engaging in a trade or business or otherwise."*

59. Mr. Zuniga S.C. valiantly sought to rely on and find support in the Irish case of **Eileen Flynn v Sister Mary Anna Power and The Sisters of The Holy Faith (1985) 1 E.H.C.1, (1985) I R 648**. This case, however, was a claim for unfair dismissal under the Unfair Dismissal Act 1977 of Northern Ireland. The claimant was a teacher at a secondary convent school for girls. Her work as a teacher gave rise to complaints, and the principal of the school learnt from formal complaints by parents of the school children that she had formed an association with a married man whose wife had

left him. This man also operated a publican house, drinking house. Despite repeated requests to the claimant by the school authorities to desist and warnings that otherwise her contract would be terminated because of the religious nature of the school, she continued her relationship and later in fact moved in with the married man and became pregnant by him. She was asked to resign or have her contract terminated. She did not resign and her contract was terminated. Her claim for unfair dismissal was rejected. The judge found that her dismissal did not result from her pregnancy but from her refusal to terminate a relationship of which the respondents had complained long before the fact of her pregnancy was known to them and that the pregnancy merely confirmed (if confirmation was needed), the nature of the claimant's relationship, but the warning of dismissal had been given before such confirmation had been obtained and had the relationship continued dismissal would have occurred in any event. I must be cautious, this is a case from Ireland which we all know the position of Ireland on religious issues.

However, it is the reference of the judge in that case to the decision of the Supreme Court of Canada in the case of **Re Caldwell and Stuart (1985) 15 DLR (4th) 1**, that I think, is of some significance to the issue regarding the teachings of the Church and the conduct of Ms. Roches in this case before me. **Re Caldwell** was a case in which the contract of employment of a Roman Catholic teacher in a Roman Catholic school was not renewed after she had married a divorced man in a civil ceremony. She instituted proceedings by way of a complaint to the British Columbia Board of Human Rights. At issue in the case was whether or not it was contrary to the Human Rights Code of British Columbia for a denominational school to refuse to employ a teacher who had personally

disregarded the teaching of the Church. Section 8 of the Code on which the complainant relied, deals with equality of opportunity with respect to employment and freedom from discrimination. The case turned in the Canadian Supreme Court on 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 religious school in such matters. The Canadian Supreme Court stated the test for such purposes in the question:

> *"Is the requirement of 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 characteristics for the purpose of providing a Roman Catholic education for its students?"*

In answering this question in the affirmative McIntyre J. who delivered the judgment of the Court stated at p. 18 as follows:

> *"The board (that is the Board of Inquiry under the Human Rights Code of British Columbia) found that the Roman Catholic school differed from the public school. This difference does not consist of the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and colours 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 … objectively view, having in mind the special nature and objectives of the school, 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 objects of the school."

60. I find the decisions in these two cases of **Re Caldwell** and **Flynn** of significance and weight not to be lightly ignored. But, I am compelled however, to note that in the present proceedings before me, notwithstanding the denominational appellation of the respondent's school from which Ms. Roches was dismissed, as the **Santa Cruz Roman Catholic School**, it is in fact a different institution from the schools in both **Re Caldwell** and **Flynn supra**. The respondent school in these proceedings is not a private school with doctrinal or religious emphasis on Roman Catholicism in its curriculum but a grant-in-aid school maintained largely out of public funds though proprietorially owned and managed by the Roman Catholic denomination. In the field of education in Belize, I find that both the Education Act and Rules, reflect largely the secular and gender-neutral values that permeate the national Constitution – see sections 24 and 25 of the Education Act on admission to schools, and gender-sensitivity and Rule 114 of the Rules. The grant-in-aid to the respondent's schools imports, I think, certain statutory obligations on it, one of which is the observance and compliance with the requirements of the Education Act and its Rules. It is also incumbent on the management of grant-in-aid schools to carry out a lawful directive from the Ministry of Education arising out of a charge, for example, against the school generally – see Rule 104(3) and Rule 108(g).

61. I find therefore, that the failure of the respondent to reinstate Ms. Roches even after representation in that regard from the Chief Education Officer and others subsequent to the recommendation of the Toledo District Regional Council, is not in keeping with the respondent's responsibilities and obligations under both the

Education Act and Rules. (See **Exh. MR3** to Ms. Roches' affidavit).

Conclusion

62. In the light of my findings in this case I ineluctably grant the declaration Ms. Roches seeks in her motion that her dismissal on 26 June 2003 from her job as a teacher at the Santa Cruz Roman Catholic Primary School on the ground of having becoming pregnant without being married, is a violation of her constitutional rights under section 16(2) of the Belize Constitution. And I so declare.

I declare as well that the refusal of the respondent to reinstate Ms. Roches after being so required to do so by the Chief Education Officer of Belize is not in keeping with the statutory duties of the respondent and constitute as well an infringement of Ms. Roches' right to work as provided for in section 15(1) of the Constitution.

However, I am unable, given the facts of this case and the undoubted spiritual and moral position of the respondent, for which I have every sensitivity and respect, and coupled with the fact that Ms. Roches' contract is one of personal service as a teacher, to order her reinstatement in the respondent's employ. I cannot do this.

But Ms. Roches' attorney has, wisely in my view, prayed in the alternative an Order for damages for the violation of her constitutional rights. Therefore, though I am not able to order her reinstatement with the respondent, I think that an award of damages in the sum of $150,000.00 will, pursuant to section 20(2) of the Constitution be appropriate for enforcing her constitutional rights.

I also award the costs of these proceedings fit for two counsel to Ms. Roches. These are to be taxed if not agreed.

Finally let me say this, it is a matter of regret that the Attorney General did not avail himself of the opportunity to make representation to this Court in these proceedings. In view of the importance of the Constitutional and legal issues raised by this case and the ramifications for a national gender policy, the Court had hoped for some assistance which the learned Attorney General's office is no doubt, in a position to proffer. But this was not forthcoming even after an invitation to do so. This was regrettable.

I must however, record with gratitude the help and assistance both Mr. Barrow S.C. and his junior Mrs. Marin Young and Mr. Zuniga S.C. for the able manner in which they presented their respective cases and the enormous assistance they afforded the Court.

A. O. CONTEH
Chief Justice

DATED: 30th April, 2004.