

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No CV2010-03657

BETWEEN

**CARL TANG**

Claimant

AND

**CHARLENE MODESTE**

Defendant

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**Before: Master Alexander**

**Appearances:**

**For the claimant: Mr Gerard Raphael**

**For the defendant: Ms Karen Reid**

**REASONS**

**I. Background**

1. The claimant and the defendant are both teachers at the Trinity College Moka, Maraval. By letter dated Friday 11<sup>th</sup> June, 2010 (wrongly dated) addressed to the claimant (hereinafter “Mr Tang”) and copied to the Principal II, Ms Alison Baisden, the Vice-Principal (Ag), Ms Janice Richards, and the Head of Department Business Studies, Ms Judith Richardson, the defendant (hereinafter “Ms Modeste”) published the following words:

*Unfortunately Mr. Carl Tang is one of the teachers that I have repeatedly noted has sexually harassed me on the school compound. He has been verbally disrespectful to me for a number of years; for that matter, it is only within recent times that Mr. Tang has stopped uttering the word “whore” as he passes my desk. For the time I have been at Trinity College, Mr. Tang may have called me a “whore” over 10,000 times; such has been the extent of that prolonged psychological/verbal abuse.*

*It is clear to suffice that over a nine (9) year period, with absolutely no evidence to the contrary, Mr. Tang has finally come to accept the fact that I am a decent human being who would not be coerced, overtly or covertly (as he has been doing), into sexual promiscuity.*

2. This letter formed the basis of a claim for damages for libel and an injunction restraining Ms Modeste from further publishing or causing to be published the said or any similar libel upon Mr Tang. The claim form and statement of case were filed on 7<sup>th</sup> September, 2010. On 7<sup>th</sup> November, 2011 judgment was entered by consent against the defendant for damages, including aggravated damages, for libel contained in the letter dated 11<sup>th</sup> June, 2010 (hereinafter “the June letter”) and for injunctive relief as claimed. This assessment relates to this claim for damages for libel perpetrated by Ms Modeste. The sole issue to be determined is the quantum of damages to be awarded to Mr Tang for the said libel.

### **Mr Tang’s Case**

3. Mr Tang claims that the words contained in the June letter were in their context defamatory and in their natural and ordinary meanings meant and were understood to mean:
  - a. That Mr Tang was guilty of persistent sexual harassment of Ms Modeste.
  - b. That Mr Tang was guilty of regularly molesting, annoying, abusing and repeatedly harassing Ms Modeste.
  - c. That Mr Tang was guilty of prolonged psychological, verbal and sexual abuse of Ms Modeste.
  - d. That Mr Tang was guilty of coercing or attempting to coerce Ms Modeste into sexual promiscuity.
  - e. That Mr Tang was guilty of dishonourable conduct and not fit to be treated or employed to carry out the work of a teacher at any school.
  - f. That Mr Tang was of dissolute or profligate character.
  - g. That the claimant was unfit to associate with teachers in a staff room or elsewhere and was unfit to remain a member of the teaching profession.
4. It is his case that as a result of this libel, he has been embarrassed; his character has been seriously injured; his professional reputation has been discredited; and he has suffered indignity, loss and damages. For this, he is seeking \$35,000.00 in damages.

### **Ms Modeste's Case**

5. On the other hand, Ms Modeste has sought to put forward a case of provocation, mitigating circumstances, qualified privilege and justification. Counsel for Ms Modeste has submitted that there is no real evidence of injury to the claimant's reputation, so nominal damages in the sum of \$1,500.00 should be awarded. In determining the quantum of damages, this court turned to the evidence. Both Mr Tang and Ms Modeste have given evidence in this matter.

## **II. The Evidence**

6. Mr Tang states that he has been a teacher for 28 years (since 1984) and is currently the Head of Department Mathematics/IT and Technical Drawing at Trinity College, Moka, Maraval. He holds various qualifications, including a Masters of Education (Educational Leadership). It is his evidence further that he is also a part-time lecturer, teaching Mathematics at the Catholic Religious Development Institute; a member of the National Executive of the Trinidad Mathematic Olympiad; an Assistant Examiner (marker) with the Caribbean Examinations Council and Vice-Captain of the Air Rifle and Air Pistol Section of the Trinidad Rifle Association. He is also the Teacher/Co-ordinator of the Trinity College Air Rifle Club and has represented Trinidad and Tobago in several local and regional rifle competitions. He recently gained certification from Finland in the International Shooting Sport Federation C-Class Coaching Course. The above evidence is not contested. It is accepted, therefore, that he is a well-qualified member of the teaching profession and a professional sportsman, representing his country both locally and regionally in rifle competitions.
7. In evidence also is that on the morning of 17<sup>th</sup> June, 2010, he was having a conversation with another teacher near the administration office, during the school assembly, when he was chided by Ms Modeste for speaking while the prayers were being said on the public address system. He gave evidence that this public reprimand was done in the presence of other teachers. Subsequently, by letter dated 17<sup>th</sup> June, 2010 he wrote Ms Modeste about the incident and copied the Principal, Vice-Principal (Ag) and Head of Department, Business Studies. The June letter from Ms Modeste was her response to the above, wherein she made the several allegations as outlined above.

8. He claims further that the June letter was placed on his personal file at Trinity College and can be viewed by anyone with the authority to do so including, but not limited to, the School Supervisor, Principal and Vice-Principal. Also in evidence is that the secretary who filed the document would have had access to it in so doing. According to him, as a teacher and the Head of Department, he interacts on a daily basis with female students and teachers, which according to him, “require unquestioned high moral and ethical standards.” He states also that similarly high moral and ethical standards are required in his positions as a sportsman and as an Assistant Examiner, CXC.
9. It is his evidence further that Ms Modeste’s allegations are calculated to lower him in the esteem of his students, colleagues and wider society. He states that **all** members of the teaching and clerical staff at Trinity College are aware of the allegations and the newer female members of the teaching staff have since kept their distance from him. As a result, he has suffered injury to his character, credit and reputation and has been lowered in the estimation of right thinking persons generally. Of note is that he has brought no evidence to corroborate this claim. He does not state how **all** the members of the teaching and clerical staff came to the knowledge of the libel nor does he identify the newer female members who have allegedly been keeping their distance. There is also no evidence as to how these allegations have reached the wider society so as to lower him in the eyes of the general public. This court bears in mind, however, there is a presumption of damage and that whilst it is not mandatory that Mr Tang testifies or produces evidence in support of his claim, his quantum hinges on the evidence before the court (discussed below).

#### **IV. The Law**

10. Compensation in cases involving defamatory statements is a more complex concept than in negligence involving personal injury or property damage. See **Gatley on Libel and Slander**.<sup>1</sup> Generally, there are several factors that are to be considered in any assessment of damages in a defamation action including:
  - a. The extent/scale of the publication;

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<sup>1</sup> **Gatley on Libel and Slander** 9<sup>th</sup> edition at pages 201 - 202

- b. The gravity of the allegation; see *John v MGN*;<sup>2</sup>
- c. The impact upon the claimant's feelings, reputation or career as well as matters of aggravation or mitigation;
- d. The extent to which any reader believed the words to be true, see *Cleese v Clark*.<sup>3</sup>

These factors are to be considered against the backdrop of the purpose of this award of damages. Generally, there is a threefold purpose served by such an award (i) to compensate for the distress and hurt feelings; (ii) to compensate for any actual injury to his reputation, which must be proved or may reasonably be inferred; and (iii) to serve as an outward and visible sign of vindication. See *TnT News Centre Ltd v John Rahael*.<sup>4</sup>

#### *Measure of Damages*

11. The claimant is entitled in a defamatory action to recover compensatory damages for the wrong suffered. The law on the measure of general damages recoverable in a defamation action (namely libel) was set out in the judgment of Sir Thomas Bingham in *John v MGN* (supra) and adopted by the Court of Appeal in *TnT News Centre Ltd v John Rahael* (supra) to wit:

*The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people<sup>5</sup>.*

12. In assessing such damages, therefore, an assessing court can take account of all the factors listed above as well as take notice of the claimant's own conduct in arriving at the appropriate

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<sup>2</sup> John v MGN [1997] QB 586

<sup>3</sup> Cleese v Clark [2004] EMLR 3

<sup>4</sup> TnT News Centre Ltd v John Rahael Civil Appeal No 166 of 2006 at page 10 per Kangaloo JA

<sup>5</sup> Supra note 1 at page 11 per Kangaloo JA

figure. It must be borne in mind always that the purpose of such damages is compensatory and not punitive, with the evidence called being critical.

## V. **The Evidence Required**

13. According to the learning,<sup>6</sup> once someone is libelled without any lawful justification or excuse, the law presumes that there will be injury to the person's reputation and his feelings for which he may recover damages. Often, the claimant need not testify or produce any evidence to prove such injury.<sup>7</sup> This was confirmed by Kangaloo JA who stated that, "*although the claimant starts off with a presumption of damage and is not required to testify, evidence of damage should still be presented since a claimant offering no evidence at all may find himself with a small award of damages. To attract more than this small award for injured feelings and the distress associated with the libel, **evidence is required.***"<sup>8</sup>
  
14. It is accepted that to attract a substantial award for injured feelings and distress, Mr Tang must bring the necessary evidence as the quantum to be awarded is influenced by the evidence produced to the assessing court. Thus, a claimant who fails to provide evidence in support of his claim for damages in a libel action can only recover a small award or even nominal damages. See *Hayward v Hayward*<sup>9</sup> involving a circular distributed by the defendant at a trade fair, which painted the plaintiff and his business in a disparaging light to injure his business. Only a nominal award was given since the plaintiff's evidence was deemed to be far too vague and imprecise to justify a substantial award.
  
15. In the instant case, Mr Tang alleges "serious" injury to his character and professional discredit but, save his viva voce evidence and his witness statement, has not provided any real evidence of this or any corroborative evidence to buttress his claim. He has not called any co-worker, colleague or principal to bolster this claim. There is also no documentary or any other type of evidence showing he has lost standing in his professional life or job opportunities (part time or

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<sup>6</sup> Halsbury's Laws of England 4<sup>th</sup> edition volume 28 at paragraph 18

<sup>7</sup> Halsbury's Laws of England 4<sup>th</sup> edition volume 28 at paragraph 18, "Damages on libel: If a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as "general damage." Thus a plaintiff in a libel action is not required to prove his reputation, nor to prove that he has suffered any actual loss or damage. The plaintiff is not obliged to testify, although it is customary for him to do so, but having proved a statement defamatory of him and not excused by any available defence he is always entitled to at least nominal damages."

<sup>8</sup> *TnT News Centre Ltd v John Rabaal* page 13

<sup>9</sup> *Hayward v Hayward* (1887) 34 Ch D 198

otherwise) as a result of this libel. To my mind, his viva voce evidence and witness statement were at best self-serving.

16. On the other hand, counsel for Ms Modeste has asked that an award of nominal damages be made in the instant case on the grounds that Mr Tang has suffered no actual damage to his character or profession and no repercussions whatsoever. She has produced no evidence to confirm or bolster her claim that there was no injury to Mr Tang's profession or character and no repercussions flowing from the libel. She relies on Mr Tang's evidence and has submitted that under cross-examination, he states that he knows of no-one being sent Ms Modeste's letter other than the persons he himself has informed of the letter. The court was asked to note that it was Mr Tang, himself who was publishing the letter, sending it to Service Commission and the Ministry. Counsel also relies on the witness statement of Ms Modeste where she alleges provocation as contained in a letter dated 17<sup>th</sup> June, 2010 from Mr Tang. In that letter Mr Tang who took umbrage with the manner/ tone in which he was addressed by Ms Modeste during assembly described it as "this act of misconduct relative to work" to be addressed through "a process of progressive disciplining" and threatened her with a "charge of misconduct" and possible "dismissal" from the Teaching Service. It is Ms Modeste's evidence that this letter, which was copied to the same 3 persons as the June letter stated it was going to be placed on her file as evidence of misconduct; purported to take disciplinary action against her without giving her an opportunity to be heard or defend herself; purported to find her guilty and to impose punishment and that she became upset as a result. It is her evidence further that the June letter was a direct response to this attack. Counsel then submitted that Mr Tang, based on the evidence, should be awarded \$1,500.00 as there was no injury to his reputation and given the provocation.

17. Is this a case where an award of nominal damages would suffice? Mr Tang's evidence speaks largely to damage to character, personal and business reputations. He has provided no specific details of this alleged injury to his professional life save to say that newer members of staff have been avoiding him and he has been lowered in the estimation of right thinking persons generally. He has provided no specific names of these newer members of staff; no indication as to the number of new staff members; no dates when these instances of avoidance occurred; no witnesses to these occurrences or any other corroborating evidence of these displays. There is also no concrete evidence of how, if at all, the allegations have affected his position as an

Assistant Examiner, CXC or with the Catholic School or any instances of how this June letter has impacted negatively on his professional life at Trinity College or elsewhere. Further, in his evidence, he has provided no specifics of the alleged “serious” damage to his character or of the impact of this libel (if any) on his personal life and social relationships. I concluded that his references to new teachers (unnamed) avoiding contact with him were vague and lacking in specificity. I also bear in mind his evidence that **all** members of staff knew of the June letter but the dearth of evidence as to how such knowledge by them came about, and if this pool consisted of teaching as well as non-teaching clerical members of staff only or included cleaners, maintenance and security staff. I also note the dearth of evidence as to the precise impact of such knowledge on his reputation and its extent. I concluded that based on the evidence before me, the injury to the reputation of Mr Tang was at best negligible. I bear in mind, however, that his feelings were injured and he is entitled to compensation for this damage. I also bear in mind that it was Ms Modeste who published the libel to at least 3 colleagues at Trinity College and it can reasonably be inferred that he may have suffered some injury to his professional reputation as a consequence. I note, however, that this libel was essentially contained within the school circle as there is no evidence of damage to his personal reputation or social standing in the eyes of the general public.

18. In trying to determine an appropriate award, I considered Kangaloo JA statement in *TnT News Centre Ltd v John Rahael* (supra) that although the trial judge only dealt with the impact of the libel on the respondent’s professional life<sup>10</sup>, the damage to the character or personal reputation of the respondent in the eyes of the ordinary members of the public can be presumed to be serious, given the pernicious nature of the libel. He went on to opine further that, where the injury to the claimant’s reputation is negligible, the evidence in relation to the claimant’s injured feelings assumes prominence in the assessment exercise. In support of this is the case of *Fielding v Variety Incorporated*<sup>11</sup> where a claimant, a theatrical impresario, brought a libel action against the defendant newspaper which ran an article claiming that his latest London production was a disastrous flop. The musical was actually a resounding success and continued to play to sold out audiences even after the article was published. The court set

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<sup>10</sup> The trial judge had stated that, “by the fact of his continuing in office and the confidence with which he has continued to carry on with his ministerial, social and political duties, it can fairly be said that the article has not had serious impact on his reputation as a high office holder.” Para 29 of judgment

<sup>11</sup> *Fielding v Variety Incorporated* [1967] 3 WLR 415



aside the award of £5,000.00 on the basis that the article did not seriously affect the claimant's reputation and replaced it with an award of £1,500.00 to compensate him for the anxiety and annoyance which he naturally felt by having his play erroneously described in such inelegant terms.

19. Another case that demonstrates the importance of a claimant's injured feelings in assessing damages for libel is *Cleese v Clark* (supra). This matter arose out of an article published by the defendant alleging that the claimant (a legendary comedian) was "a perma-tanned Bob Hope wannabe" who must be humiliated by his latest TV flop which had seriously injured his reputation with American audiences. The court held that the evidence presented did not show any damage to the reputation of Mr Cleese, both in the UK and abroad, and in fact he was still held in high esteem by millions of people. In *Cleese's* case, the major element considered by the court in assessing compensation was the impact of the publication on the claimant's feelings. In making an award of £13,500.00 to compensate the claimant for his injured feelings, the court took into account his undue sensitivity; his evidence that he was badly upset; and that his hurt feelings were genuine. As the defendants had made the unpleasant attacks on someone of particular sensitivity and vulnerability; they must take their victim as they found him.
  
20. In the instant case at bar, I considered that the spread of this libel was not broad-based in terms of the general population but was contained mainly within his professional circle at the Trinity College. To my mind, this does not diminish the injury done to his feelings and its impact upon him. I note that in his witness statement, Mr Tang gave evidence of his qualifications and achievements and that he was an accomplished rifle sportsman, both locally and regionally as well as of his academic qualifications, part-time teaching position and his position of Assistant Examiner, CXC. Whilst his evidence was threadbare and imprecise as to the impact of the libel on his public life and reputation, I bore in mind that he clearly feels that his reputation was attacked and that this reputation is important to him, sufficient as to cause him hurt feelings. Further, although there is no clear evidence as to how the June letter negatively affected this aspect of his life, I bear in mind that it was published at least to 3 named persons, and possibly the principal's secretary who filed it away. Further, I formed the view that given the nature of the allegations, the libel presumably would have done some damage to his reputation at the school, particularly in the eyes of those to whom it was published. To my mind, it was a libellous attack against his personal integrity and professional reputation so was serious. Whilst

the extent of this publication is to be considered, this does not negate the injury done to his feelings, which is given some leverage in this assessing exercise. This is balanced against the absence of cogent and compelling evidence from him as to how the offending June letter did “serious” damage to his social and professional life and reputation.

## VI. Authorities

21. Counsel for the parties cited one case each for the guidance of the court:

- ***Bobby Persad, Tara Persad and Budget Hardware Supplies Limited v water and Sewerage Authority***<sup>12</sup> where Ventour J had to consider the effect of a prominently painted red arrow measuring 26 inches x 16 inches in front of the premises of the plaintiffs. The plaintiffs alleged that by the said drawing and writing in their natural and ordinary meanings the defendant meant or was understood to mean that (a) the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs’ premises and the 3<sup>rd</sup> defendant’s registered office were ear-marked for disconnection; (b) the plaintiffs had not paid their water and sewerage bills; (c) the plaintiffs were delinquent customers of the defendant corporation. Ventour J in commenting on what the prominently displayed red arrow conveyed to the public who daily passed and re-passed on the said road way observed that it must have lowered the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in the “estimation of right thinking members of society generally and in the view of this court such a statement is libellous.”

In that case, the arrow was visible to the public at large and remained in its permanent form on the roadway for a considerable length of time before it was eventually obliterated when the road was repaved. In our present case, the extent of the publication was limited and Ms Modeste was prevented by injunctive order to refrain from further publication. Counsel for Mr Tang has submitted, however, that the libel at bar and/or the allegations are far more serious than in the ***Persad case*** (supra) and the award should be reflective of this. The court was also asked to note that despite the injunctive order, Ms Modeste has repeated in her witness statement, which is a public document, the said allegations.

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<sup>12</sup> *Bobby Persad, Tara Persad and Budget Hardware Supplies Limited v water and Sewerage Authority* HCA S-723 of 1998

This court was also asked to note the stark absence of any hint of an apology or remorse from Ms Modeste in her witness statement and directed to the comments of Ventour J in the *Persad case* (supra). In that case, Ventour J stated that in assessing damages for defamation he had regard to all the circumstances of the case which included the plaintiffs' conduct; their position and standing; the nature of the libel; the mood and extent of the publication; the defendant's refusal of any retraction or apology and its conduct generally. In similar manner, this assessing court has taken into consideration Mr Tang's conduct; his professional standing; the nature of the libel, which to my mind was more serious than in the *Persad case* (supra); the extent of the publication; the provocation as well as Ms Modeste's general conduct including her refusal of a retraction or apology. All these circumstances were to my mind germane in arriving at a fair determination of the award. Thus, I considered that it was Mr Tang who wrote initially a letter about Ms Modeste's alleged professional misconduct and which served as a trigger to the June letter. Whilst this does not excuse the June letter, its content and tone; it goes towards some degree of mitigation.

- *Persad v Trinidad Express*<sup>13</sup> involving a report in a national newspaper, with nationwide circulation where an award of \$35,000.00 was made in a case where there was evidence of the 2<sup>nd</sup> defendant's flagrant disregard for the procedures and finding of the media complaints authority and his refusal to correct the newspaper report even after it was proven to be wrong.

22. In giving consideration to the 2 cases supplied, I formed the view that the extent of the publication in both was greater than the instant case. To my mind, however, the libel of Mr Tang, which had a limited rather than nationwide publication, was more serious. I bear in mind also that there was no evidence of any irreparable damage to Mr Tang's professional reputation or fall out in his career advancement and position. I accept that the evidence of the impact of the publication on the claimant's professional reputation was surprisingly vague and non specific but find that based on the nature of the allegations, some damage to the claimant's reputation can be presumed. I also accept the claimant's evidence, despite its generality, as to the distress and injury to his feelings. Further, I accept that Mr Tang is entitled to

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<sup>13</sup> *Persad v Trinidad Express* CV2007-00981

compensation for his hurt feelings but felt that whilst the vindication in the instant case required more than an award of nominal damages, it did not require an overly substantial award to do justice.

23. As stated above, I considered the law as to the measure of damages and all the circumstances of the instant case including but not limited to Mr Tang's injured feelings; the fact that there would have been, given the nature of the libel, some injury to his professional standing; the dearth of clear and cogent evidence of such injury; the spread of the publication; the provocation of Ms Modeste as well as her refusal of a retraction and or to realize the serious implications of her allegations on Mr Tang's reputation and career. In particular, I considered the evidence of Ms Modeste as to her fortified position on the issue. In so doing, I considered her unbending stance on Mr Tang's request for a retraction and apology, "The Claimant also wanted me to write a letter denying what I wrote in the letter to him but it was difficult to deny what I had written because what I wrote was truly how I felt. I sincerely believe that I have been subjected to years of abuse from him. I also felt that I should not have to pay the Claimant any money at all because of the harassment that I have sincerely felt subjected to by him." I concluded that provocation is not a justification for the injury that can flow from such a libel, given its serious nature, though it may mitigate the damages. In this assessing exercise, after considering all the circumstances of this case, I did not accept the suggested award of either counsel as being fair and reasonable. I bore in mind that the assessment of damages in a libel action is a compensatory not punitive exercise and that, "*there must be a reasonable relation between the wrong done and the solatium applied.*"<sup>14</sup> Further, I considered the principles stated by Sir Thomas Bingham MR in *John v MGN* (supra) as adopted by Kangaloo JA into our jurisdiction that:

*Any legal process should yield to a successful plaintiff appropriate compensation, that is, compensation which is neither too much nor too little. ... No other result can be accepted as just. But there is continuing evidence of libel awards in sums which appear so large as to bear no relation to the ordinary values of life. This is most obviously unjust to defendants. But it serves no public purpose to encourage plaintiffs to regard a successful libel action, risky though the process undoubtedly is, as a road to untaxed riches. Nor is it healthy if any legal process fails*

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<sup>14</sup> Knuppfer v London Express Newspapers Limited [1943] KB per Goddard LJ at page 91

*to command the respect of lawyer and layman alike, as is regrettably true of the assessment of damages by libel juries.*<sup>15</sup>

24. Bearing in mind all the relevant factors of this case, including the extenuating circumstances of the provocation as well as the refusal of a retraction, I concluded that an award of \$18,000.00 would vindicate his hurt feelings and meet the justice of this case.

### **ORDER**

25. It is hereby ordered that the defendant do pay to the claimant –

- (i) General damages in the sum of \$18,000.00 with interest at the rate of 7% per annum from 7<sup>th</sup> September, 2010 to 13<sup>th</sup> March, 2013.
- (ii) Costs on the prescribed basis in the sum of \$2,858.66.
- (iii) Stay of execution of 28 days.

Dated 13<sup>th</sup> March, 2013

**Martha Alexander**  
**Master**

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<sup>15</sup> John v MGN at page 611