

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No. **CV2017-00778**

**BETWEEN**

**BOXU POTTS**

**CLAIMANT**

**AND**

**CITADEL LIMITED (I 95.5 FM)**

**FIRST DEFENDANT**

**ANDRE ERROL BAPTISTE**

**SECOND DEFENDANT**

**GEM RADIO FIVE LIMITED**

**THIRD DEFENDANT**

**ONE CARIBBEAN MEDIA LIMITED**

**FOURTH DEFENDANT**

**Before the Honourable Madame Justice Margaret Y. Mohammed**

**Dated the 28<sup>th</sup> September 2018**

**APPEARANCES:**

Mr. Egon N. Embrack and Mr. Alexei N. McKell Attorneys at law for the Claimant.

Ms. Raisa Caesar Attorney at law for the First, Second and Third Defendants.

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## **JUDGMENT**

### **Introduction**

1. This matter concerns statements which were made on the talk show programme “*I Sports with the fearless one: Andre Errol Baptiste*” conducted by the Second Defendant on a radio station with the I 95.5 Radio Frequency about the Claimant on Thursday, 6<sup>th</sup> September 2012 (“the First Broadcast”), Saturday 2<sup>nd</sup> March 2013 (“the Second Broadcast”) and on Saturday 15<sup>th</sup> February, 2014 (“the Third Broadcast”). The programmes were conducted by panel discussions hosted by the Second Defendant. During the programmes, invitations were extended to call-in listeners, presenters and contributors, one of whom was Ms. Molly Boxhill. The Claimant is seeking compensation for loss and damages to his reputation caused by the Broadcasts. The Claimant also seeks an injunction restraining the Defendants from airing and/or repeating such further Broadcasts; special damages for loss of income in the sum of \$1,224,000.00; an order for aggravated and/or exemplary damages to be assessed; interest and costs.
2. The Defendants deny that the statements were defamatory. They contend that the Claimant’s cause of action with respect to the First Broadcast is statute barred. With respect to the words complained of in the Second and Third Broadcasts, the Defendants’ position is that the words complained of are fair comment and that the issues probed were pursuant to qualified/Reynolds privilege. The nature of the Defendants’ defences with respect to the Second and Third Broadcasts means that the Defendants have to prove that the impugned words were fair commentary based on facts or that the impugned words were statements of facts, which the Second Defendant reasonably believed to have been true after reasonable inquiries were made.
3. At the trial, the Claimant gave evidence on his own behalf. Ms. Molly Boxhill and Mr. Andre Errol Baptiste gave evidence on behalf of the First, Second and Third Defendants. The claim was withdrawn against the Fourth Defendant by Notice of Discontinuance dated 22<sup>nd</sup> June, 2018.

## The Broadcasts

### *The First Broadcast*

4. The Claimant contends that on or about 6<sup>th</sup> September 2012, Mr. Tariq Abdul-Haqq was invited as a guest speaker on the session hosted by the Second Defendant during which, the following defamatory statements were made and portions of which were repeated in the Second Broadcast:

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 5 lines 8-20 and page 25 lines 5-12:

*“Andre Baptiste: What happened? Why are you not in the London Olympics honestly?”*

*Tariq Haqq: Two simple words, Boxu Potts. Boxu Potts is like a cancer to Sport in Trinidad and Tobago. Boxu Potts in my opinion has tremendously I'm really just emotional right now because of the state of affairs that he has sport in Trinidad and Tobago in particular boxing. Boxu Potts has affected the sports in such a manner that it has caused irreparable damage I believe. There are so many things and so many situations that he has put athletes in or boxers in, in Trinidad and I think everything that he does is basically for his own self-interest and self gain and after a while you know it becomes really frustrating that you have to continue to deal with this and you have athletes suffering I myself” 13:01pm*

*Tariq Haqq: @35:23- Do I really want to go out there and represent Boxing, represent Trinidad and Tobago whilst Buxo Potts is in control, a guy like Buxo Potts who's selfish and egotistical? Um I would really um reconsider and think it over.*

*Andre Baptiste: Since your dad's departure have you had a chance to speak to Buxo Potts? Has he tried to approach you?*

*Tariq Haqq: Buxo Potts? I don't really want to speak to him. Nothing positive comes from his mouth. - 35:46*

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 26 lines 6-27:

*Tariq Haqq: @36:40- Only when I see him on the news am I really disgusted you know seeing Buxo Potts, um- and he always thinks that he could try to fool the public of Trinidad and Tobago. I really hope no one in the public really listens to what Buxo Potts is saying you know because he's -- in my opinion, Boxu Potts is a hustler with a suit on. That's Buxo Potts. I saw recently that he was speaking about reaching out to Corporate Trinidad and Tobago to get involved. Two people or two parties are going to suffer if that happens. One the Corporate individuals are going to suffer and the boxers are going to suffer, because as a--- what is going to happen is Boxu Potts does not conduct his affairs in a very transparent manner. 37:25*

*Andre Baptiste: What is your experience with that?*

*Tariq Haqq: Buxo Potts*

*Andre Baptiste: In terms of affairs in a transparent manner?*

*Tariq Haqq: Let me give you an example. I will leave it up to you to do the investigative work. Look at one of his cards that he has thrown, look at the amount of money that was allocated for him, ask him where it was spent and also if he can provide any receipts and you would see -- I am quite certain that you would find some discrepancy. 37:50*

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 pages 29 lines 1 to 10

*Tariq Haqq: @40:00-40:31- There is hope for me to come back in boxing but not as- not when Buxo Potts is there.*

*Andre Baptiste: So Boxu Potts has to leave?*

*Tariq Haqq: Buxo Potts has to leave leave, leave, leave. I don't want him to hold any role or portfolio because he is like poison. You know,-- if he's like poison, if you have poison in your arm he's gonna poison the entire body. You understand. He's like cancer. He spreads. Boxu Potts, in my opinion, is quite disgusting. Um so he has to leave boxing on a whole in order for me to get back into boxing at any level.*

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 40 lines 19 to 27 and page 41 line 1

*Tariq Haqq: @56:19- I hate Boxu Potts I swear I really hate Boxu Potts and the effect he has on boxing in Trinidad and Tobago. You know sooner or later the country has to become wiser as to the effect that he is having. Don't let this front that he has with Ria Ramnarine and all these other individuals make it seem as though he cares. He's doing it because he is gaining financially he's not gonna do anything unless he gains some sort of financial interest. So don't be swayed by all his press conferences and all of that. As a matter of fact if I were a member of the media I would boycott all his press conferences because he is a pack of lies and nonsense- 57:01*

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 41 lines 20-27 and page 42 lines 1-3

*Tariq Haqq: @58:18- I think Boxu Potts needs psychological help and he himself should probably see a social worker because I don't know if he is traumatized the reason- perhaps the way that- the reason why he's behaving the way that he is, is because he has issues, he has trauma issues he has psychological damage done or something of the sort. So an individual like this is gonna inspire and help other individuals with problems? Another part of the contract is "Inclusive would be motivational lectures". Who is Boxu Potts gonna motivate? What are you gonna motivate me and tell me? What can you possibly tell me?- 58:54*

Verbatim Statements taken from the Claimant's Transcript 2012.09.06 page 51 lines 2 to 25

*Andre Baptiste: 1:12:58- What advice would you give to anyone wanting to get involved in boxing right now?*

*Tariq Haqq: Get involved in boxing with Boxu Potts involved? Stay very far away. Stay very far away from boxing.*

*Andre Baptiste: In other words, parents who have young boys and young girls who might want to get involved in boxing right now?*

*Tariq Haqq: Young girls especially the young girls with Boxu Potts, stay very far away. Stay very far away from boxing as long as Boxu Potts is involved and that's for corporate Trinidad as well. Stay very far away be weary of the arrangements and the contracts that you have with Boxu Potts. I believe that, um- I mean, if you walk around Port-of-Spain, if you speak to 10 people ask them their perception of Boxu Potts, I guarantee about eight out of 10 is going to have something-*

*Andre Baptiste: Nah, nah, nine.*

*Tariq Haqq: Nine? I wonder if it's even possible to defame Boxu Potts?*

*Andre Baptiste: Nine... Nine....*

*Tariq Haqq: Because of the--*

*Andre Baptiste: Some people say ten eh.*  
*Tariq Haqq: Ten? (laughter)*  
*Andre Baptiste: But I think it close to nine honestly.*  
*Tariq Haqq: Nine. But it really is disgusting.- 1:13:53”*

5. The Claimant contends that the speaker being probed by the Second Defendant describes the Claimant as a destructive agent to the sport of Boxing whose motives are improper and who should not be trusted but avoided by the public, corporations and particularly young girls and parents and guardians of young girls regarding any arrangements or contracts involving the Claimant. The Claimant further contends that the statement with reference to young girls falsely suggests that the Claimant is a sexual predator predisposed to sexually or indecently engaging or preying upon young girls who may include female minors under his control which is immoral, illegal and a criminal act.
6. The Defendants deny that the statements made were defamatory or that they were repeated in the Second Broadcast. They contend that the claim in relation to the statements complained of in the First Broadcast is statute barred by the provisions on section 3(1) of the **Limitation of Certain Actions Act**<sup>1</sup> (“the Limitation Act”) since it has been brought more than four (4) years after the accrual of the cause of action. They also contend that the statements made are subject to the Defences of fair comment and qualified privilege since they relate to a matter of serious public interest namely, why a young accomplished boxer did not wish to attend the London Olympics. They also stated that the words used cannot be interpreted to suggest the meanings suggested by the Claimant in relation to young girls.

### ***The Second Broadcast***

7. There are three parts of the Second Broadcast which the Claimant alleges contained material which defames him. Firstly, the Claimant contends that on or about 2<sup>nd</sup> March 2013, Mr. Franchot Moore was invited as a guest speaker on the session hosted by the Second Defendant when the following defamatory statements were made:

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<sup>1</sup> Chapter 7:09 Laws of Trinidad and Tobago



Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 9 lines 17-27 and page 10 lines 1-4

*“Franchot Moore 14:10 to 15:06- and this [Boxing System] is being controlled by one individual who was appointed illegally while he was still a boxing promoter and it was only until Tansley and I and you, Andre, exposed that on this show over two years ago, then he went and submitted his resignation as a promoter after he had already established his position as a boxing advisor contrary to Article 7 of the Boxing Control Act which states that no promoter under no circumstances at any time should be associated with any decision making process in professional boxing. You see? And now it came to the point now where his own son who was colluding with him to even blacklist me, ran away from him, get fed up, realized that his own father is about to tarnish his reputation and image and he cut loose his father. The Minister have to see the light of the day and the Minister have to realize that Boxu Potts is going to bring him down. You see? - @15:06”*

8. The Claimant contends that to the notional, ordinary, reasonable listener, the following can be inferred:
  - a) The Claimant was illegally appointed as an Advisor to the Boxing Board while he was a Boxing promoter contrary to Section 7 of the Boxing Control Act.
  - b) The Claimant submitted his resignation as a promoter only after being exposed on the show two years prior.
  - c) The Claimant's conduct is corrupt, dishonest, illegal and/or fraudulent.
  - d) The Claimant was disowned by his own son who did so to protect his reputation and image.
  - e) That the Minister of Sport needs to do the same.
  
9. The Claimant also contended that at 30:00 to 30:24 minutes into the broadcast session, Mr. Matthew Noel declared that in accordance with the Rules and Constitution of the Boxing

Control Board, the Claimant is or was not a member of the Board and the Panel and the Second Defendant expressed no disagreement with same.

10. Secondly, the Claimant contended that during the Second Broadcast, a segment of the First Broadcast involving Mr. Abdul-Haqq were repeated as follows:

Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 34 lines 21 to 27, page 35 lines 1 to 3 and lines 23 to 26

*Andre Baptiste: All right. You know every time you bring up [inaudible] I remember something. listen to this.*

REPEAT SEGMENT:

*"Pre-recorded Interview:*

*Male Voice: And now, listen to this long sentence on I Sports*

*Mr. Tariq Abdul Haqq: "Boxu is like a cancer to sport in Trinidad and Tobago. Buxo Potts has affected, um, the sport in such a manner that it's – it has caused irreparable damage, I believe, and I think everything that he does is basically for his own self- interest and self-gain. That is a problem throughout sport in Trinidad and Tobago....I really hope no one in the public really listens to what Buxo Potts is saying, you know, because he's - I, in my opinion, Buxo Potts is a hustler with a suit on. That's Buxo Potts".*

11. The third part of the Second Broadcast which the Claimant alleges defames him are the following words:

*"Session continues @49:30 to 50:30:*

*Andre Baptiste: So there is no Boxing Board. I mean what does that mean? Mr. Moore you are the man with all the knowledge here of all of us in terms of boxing from an official point of view. With no Boxing Board, what does that mean?*

*Franchot Moore: I wouldn't say all the knowledge, but um some knowledge. It means that there is no boxing. Boxing is dead. There is no direction for our young people. There is nothing to -*

*Andre Baptiste: So how, how is it funded? Because we all know that funding took place for the Amateur Championship recently. It was widely publicized and it was widely promoted. How is that happening without a Boxing Board?*

*Franchot Moore: Well to be honest with you*

*Andre Baptiste: Is it an illegal event?*

*Franchot Moore: I would only think- the only thing that I could envision is Mr. Potts taking an envelope to Mr. Forde and saying "This is what we have for you."*

*Andre Baptiste: Well we heard Mario Robinson say that he sometimes carries cash or cheques-*

*Franchot Moore: Absolutely*

*Andre Baptiste: -to Mr. Forde. He did say that.*

*Franchot Moore: I was going to allude to that. -@50:30*

Verbatim Statements taken from the Claimant's Transcript 2013.03.02 page 51 lines 13 to 17 and lines 22 to 27 and page 52 lines 1-15

*Franchot Moore: ...And you know, let me just add something else and Tansley bought up a point, I think it was Tansley or Matthew about, um, somebody who spoke about the effects, the impact Boxu had on the lives of young women and these things?*

*Tansley Thompson: That came from Tariq Haqq and, and and -uhm...*

*Franchot Moore: Let me extend on that and this is a matter of public record. When I was the Technical Officer of the Trinidad and Tobago Boxing Board in the last bout with- the last bout with Giselle Salandy, a lady walked out as I was passing and*

*handed me a photostat copy of an editorial to the Editor. I forgot the date but it was in the Express and this was dated six years ago. And this is the premonition of a mother. She wrote to the Express and was asking why the former Minister of Culture and the former Minister of Sport was allowing- was giving Boxu Potts so much money. They also told them that Boxu Potts was -in that article she said Boxu Potts is responsible for my daughter languishing in a foreign jail transporting cocaine. She went on to say that Boxu Potts will be the death of Giselle Salandy and most importantly in that article she said, that by the time Boxu Potts got through with Giselle Salandy she will be worst off and I quote “worst off than a dog with mange”. This article is in the New York- not the New York I’m sorry- the Trinidad and Tobago Express at least six years ago. The lady has her name and she was from St. James. I have a copy of the article. Let any member of the public go and research that. And that is what that lady wrote six years ago telling us about this man and here were are six years into the future and a manifestation of that. You know?”*

12. The Claimant contends that to the notional, ordinary, reasonable listener, the following can be inferred from those statements:
  - a) The Claimant corruptly, illegally and/or fraudulently engaged in widely publicized and widely promoted fund raising activities for the Amateur Championship in Boxing without the exercise and/or authority of the Boxing Board by corruptly paying of Mr. Forde under the table in the form of cash or cheques;

- b) The Claimant engaged in corrupt, dishonest, illegal and/or fraudulent practices or conduct in the sport of Boxing as a whole by corruptly paying off Mr. Forde under the table in the form of cash or checks in an envelope;
  - c) The Claimant caused “the lady’s daughter” to transport cocaine abroad who was caught and held in a jail overseas.
  - d) The Claimant is in drugs and/or the drugs transportation business (which is criminal conduct in violation of the Dangerous Drugs Act and an indictable criminal offence);
  - e) The Claimant is the cause of, or responsible for the untimely death of the late Giselle Salandy;
  - f) That at the time of her death, the Claimant had the said Ms. Salandy in a despicable state or state of affairs.
  - g) That these facts or truths stated six years prior that have now manifested, crystallized or become proven.
13. The Defendants deny that the statements are defamatory. They contend that the programme focused on the future of Boxing and the contribution of vocations such as Boxing to curb crime and social problems in society. The panellists expressed the view that the Claimant was restricting the continuation of Boxing by preventing funding from reaching certain gyms which was not questioned by the Claimant. The Defendants contend that it was in the context of this uncontested fact that the panellists and callers expressed their views about the Claimant. They state that the statements are fair comment on an issue of public concern and are subject to qualified privilege.
14. With regards to the repeated segment, the Defendants deny that they were “verbatim statements” since the entire programme is not transcribed. They also contend that the statements were not stated as fact but as issues that required research. They contend that the statements made are fair comment on an issue of public concern which is the character of the Claimant and are subject to qualified privilege.

15. In his Reply, the Claimant contended that statements made in the Second Broadcast were not fair comment or subject to qualified privilege on that basis that they were exclusively designed to destroy the Claimant's character, reputation and credibility.

***The Third Broadcast***

16. There are three parts of the Third Broadcast which the Claimant contends defames him. In the first part the Claimant contends that on or about Saturday 15<sup>th</sup> February, 2014, Mr. Claude Noel was invited as a guest speaker on the session hosted by the Second Defendant. Also present on the panel of speakers were Floyd Trumpet, Mario Robinson and Carlene McCarthy during which panel discussions the following defamatory statements were made:

Verbatim Statements taken from the Claimant's Transcript 2014.02.15 page 17 lines 23 to 27 and page 18 lines 1 to 4

*“Claude Noel: “.....Where he [Boxu Potts] was working in the horse racing paddock and he was fired, from the horse racing paddock for doping, using drugs on horses and horses is athletes because they are competing and he was using drugs, because he is a gambler and the more money he get to gamble good, he don't care who he destroy and here he come into boxing he even get himself involved in using drugs. Unfortunately he was exonerated because he didn't have a contract with Ria Ramnarine, he was just the promoter but he wanted Ria Ramnarine to take the place of Giselle Salandy...you understand?” Stopped 25:13*

17. The Claimant contends that to the notional, ordinary, reasonable listener the following can be inferred:
- a) The Claimant when he was working at the Paddock was doping/using drugs on horses;
  - b) When he was working at the Paddock he was using drugs;
  - c) The Claimant engaged in doping and/or using the drugs on athletes as horses are athletes and he was doing so to horses in order to earn more money to satisfy a gambling habit;

- d) The Claimant's services were terminated at the horse racing Paddock for doping/using drugs on horses;
- e) The Claimant was fired from the horse racing paddock for using drugs;
- f) The Claimant is a gambler and for that reason engaged in such nefarious activities to earn more money without any care as to whom he destroys;
- g) The Claimant came into Boxing as a drug user;
- h) The Claimant got involved in the sport of Boxing in order to support his habit as a gambler who simply wants to earn more money and as such would use drugs on boxers as he did to horses so that they could achieve success and that he in turn would earn an increased income;
- i) The Claimant, unlike being fired from the horse racing paddock for using drugs/doping horses, was exonerated in the matter of Ria Ramnarine a female boxer on the technicality that he was just her promoter;
- j) The Claimant practiced doping and/or the use of drugs on Ria Ramnarine;
- k) The Claimant practiced doping and/or use of drugs on the late Giselle Salandy.

18. The Defendants deny that the statements are defamatory. The First, Second and Third Defendants contend that the Third Broadcast focused on the Claimant's involvement with YANS Gym and the failure to pay coordinators, coaches and staff. It also involved the lack of funding for amateur Boxing and allegations have not been refuted by the Claimant. They argued that Mr. Claude Noel was speaking from his own experiences with the Claimant as were all the panellists. The Second Defendant stated that Claude Noel's comments were from "his perspective" therefore not adopting them as the views of the Defendants in accordance with Reynold's privilege.
19. In the second part of the Third Broadcast the Claimant contends that there was a call in session where Ms. Molly Boxhill was invited as a call-in contributor to the discussion and the following defamatory statements were made:

*"Molly Boxhill: Hello good evening Andre, Molly Boxhill here.*

*Andre Baptiste: Hi oh! Good evening.*

*Molly Boxhill: What happening?*

*Andre Baptiste: Alright.*

*Molly Boxhill: I so glad I get here. Because I, you know, I was the secretary of the Board for must be nearly 25 years. And I am now the executive member of the Amateur Association a very important piece of an executive. I'm the trustee and is years now we haven't had a meeting we had a meeting about three after that. From the time Boxu Potts came on the scene, no meeting. Everything is Boxu Potts.*

*Everything is Boxu Pott. Cecil [Ford] and Boxu Potts like 2 peas in a pod, and nobody could get between them. And I am saying here that the quicker they remove this man, even the Minister- a gentleman say to remove the Minister, I am in toto with that too.*

*Because how could the Minister associate with a man like Boxu Potts. My mother used to say "Show me your company and I tell you who you are." Let me tell you something. I am asking the young people in boxing the girls 13, 14, 15, 16 years old I am asking their parents to be more steadfast with them because when there is a boxing thing in Marabella south you see the certain person coming with a young girl 14, 15 years all eleven o'clock when the fight is near to finish walking in with that girl, that young girl.*

*What these parents doing? Why they're not checking on their daughters in these people gym? This certain person, not all gyms because there are some respected gyms, but this particular gym I am talking about, I could verify, because*



*when they bring those- when that person bring that girl, that young girl 11:00 half past 11:00 rumfle up, who he asking to drop them home? Me. I. Asking me, putting me in this thing so when the mothers and they hear what going on they go say "that is not true. Mrs. Boxhill dropped home my daughter. My daughter is there and Mrs. Boxhill" Therefore I'm asking these parents-*

*Andre Baptiste: So Ms. Boxhill can I ask you, why do you do it? Why would you drop them home then?*

*Molly Boxhill: Why I wouldn't do it?*

*Andre Baptiste: Okay*

*Molly Boxhill: Hear nah, ah tell that man flat, I say, you are not my friend, man. Why you asking me to drop children home? What you want to put me in confusion with their parents?*

*Andre Baptiste: Okay*

*Molly Boxhill: And I deny it. I- when I say deny it, I object to it I didn't do it.*

*Andre Baptiste: Okay fine*

*Molly Boxhill: Because these are young girls and these girls I don't know what happen to them, why they allow- why they let this man bring- and he don't bring two, eh, one at a time, one at a time, late, late in the night. You hear?*

*A night one was crying, one of the girls he brought, the girl was crying, I asking her she wouldn't say what she crying for. But she was crying.*

*Andre Baptiste: So while did- So Ms. Boxhill can I ask you why you didn't report it to the Police?*

*Molly Boxhill: How could I report to the Police? What I wouldn't- I didn't see nothing happen.*

*Andre Baptiste: She didn't tell you?*

*Molly Boxhill: I only see he bring in this young girl a time and he say that she now come out from training. This is what he said, he now brought her from training. So he brought her down to see the finishing up of the-*

*Andre Baptiste: No but if the girl is crying, she crying from the training?[panel laughs]*

*Molly Boxhill: I don't know what she was crying for. I trying to get it from her but she wouldn't talk. She wouldn't talk. I guess she under him. She was under him crying.*

*Andre Baptiste: So why didn't you talk to him?*

*Molly Boxhill: I don't meddle with that man. I doh have anything to do with him. I don't want no talk with him. I don't want to have anything to do with that man at all, because, hear nah, why you think we got into this amount of cross-thread and confusion? You remember Braithwaite, Wayne Braithwaite?*

*Andre Baptiste: A boxer?*

*Molly Boxhill: From Guyana.*

*Andre Baptiste: Yes."*

20. The Claimant contends to the notional, ordinary and reasonable listener, the words can be interpreted to mean as follows:
- (a) The Claimant is a sexual predator in the habit of engaging in sexual acts including committing the offences of statutory rape of minors and/or indecent assaults on underage young girls/female minors, one at a time to prevent testimony support, which minors are under his control during evening or night training periods.
  - (b) The Claimant engaged in sexual misconduct or an indecent assault on the young females who was much too afraid or under his control to speak out.
  - (c) The acts allegedly attributed to him are not only amoral acts but illegal or rather criminal.

21. The third part is where the Claimant contends that in response to the foregoing statements, an unidentified caller subsequently called in minutes after and said the following:

Verbatim Statements taken from the Claimant's Transcript 2014.02.15 page 71  
lines 3-11

*"Unidentified Caller: Yeah Jerry Springer [panel laughs]*

*Andre Baptiste: I don't think so eh. Because Jerry Springer does have some anyways, I don't- ent? Anyway anyway.*

*Unidentified Caller: How all yuh letting this woman come and talk about man want to carry young girl home and all kind of thing? When you asking she why she ain't go to the police she ain't see.*

*[Host Andre-Laugh/chuckles/giggles]*

*Unidentified Caller: You can't have people blaspheming [sic] people over the radio Andre. It disintegrating down to Jerry Springer. Watch yourself.*

*Andre Baptiste: Alright thank you very much sir-keep listening though"*

22. The Claimant contends that he has suffered considerable distress and embarrassment and his reputation has been seriously damaged. He has also incurred financial loss and damage as a direct result of the consequent damage to his reputation due to the defamation of his character published and/or promoted by the Defendants.
23. The Defendants deny that the statements are defamatory. They put the Claimant to strict proof that the comments made by Ms. Molly Boxhill carry the meanings suggested by the Claimant. They contend that the statements are fair comment on matters of public interest and in the second part of her comment, Ms. Boxhill did not refer to the Claimant. They state that the Second Defendant asked Ms. Boxhill probing questions to test the veracity of what she was stating and therefore not accepting them as fact in accordance with Reynolds privilege. They contend that the Claimant must prove that his reputation was or could be lowered due to the broadcast.

24. In his Reply, the Claimant also contended that during the Third Broadcast, the Second and Third Defendants failed to identify or transmit to their listeners that the statements being expressed as facts by Claude Noel were not indorsed or verified by the Second and Third Defendants. He further contends that the statements by Mr. Noel bore no connection with the issues involving YANS Gym but may be regarded as a digression from the subject topic calculated to destroying the reputation and character of the Claimant.

### **Issues**

25. The following issues arise on the pleadings between the Claimant and the Defendants:
- (a) Whether the Claimant's cause of action in respect of the First Broadcast is statute barred?
  - (b) If not, whether the First Broadcast bear any meaning defamatory of the Claimant?
  - (c) Whether the Second Broadcast bear any meaning defamatory of the Claimant?
  - (d) Whether the Third Broadcast bear any meaning defamatory of the Claimant?
  - (e) If the First, Second and/or Third Broadcasts are defamatory, were they published on an occasion of qualified or Reynolds privilege?
  - (f) If the First, Second and/or Third Broadcast are defamatory, have the Defendants made out a defence of fair comment?
  - (g) In the event that liability is established, what damages are payable to the Claimant?

### **Whether the Claimant's cause of action in respect of the First Broadcast is statute barred?**

26. The Defendants raised the defence of limitation against the Claimant with respect to the First Broadcast.

27. Section 3 of the Limitation Act provides that no action in tort shall be brought after the expiry of four (4) years from the date on which the cause of action accrued. In cases of libel, the cause of action accrues from the date of publication and each publication gives rise to a separate cause of action<sup>2</sup>. In the instant case the First Broadcast was published on the 6<sup>th</sup> September 2012 and the instant action was filed on the 2<sup>nd</sup> March 2017 which five (5) months after the expiration of the four (4) year limitation period.
28. In the closing submissions Counsel for the Claimant conceded that the cause of action with respect to the First Broadcast arose more than four (4) years before the instant action. In making this concession, Counsel for the Claimant asked the Court to exercise of its discretion to override the limitation period and allow the Claimant to pursue his action with respect to the First Broadcast. Counsel relied on section 9 of the Limitation Act which he submitted gives the Court a discretion to not apply sections 5 or 6 and allow the claim to proceed, even though the limitation period stipulated in that section has expired.
29. Counsel for the Defendants argued that the First Broadcast is statute barred unless the Claimant can prove a republication and that section 9 of the Limitation Act is not applicable for the tort of libel.
30. **Sections 5 and 6 of the Limitation Act** state:
- “5. (1) Subject to subsection (6), this section applies to any action for damages for negligence, nuisance or breach of duty where the duty exists by virtue of a contract or any enactment or independently of any contract or any such enactment where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person. (emphasis mine).*
- 6. (1) An action under the Compensation for Injuries Act shall not be brought if the death occurred when the injured person could no longer maintain an action and*

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<sup>2</sup> Duncan and Neill on Defamation, 3<sup>rd</sup> Ed, para 22.01

*recover damages in respect of the injury, because of a time limit in this Act or in any other enactment or for any other reason.” (emphasis added).*

31. **Section 9 of the Limitation Act** states:

*“9. (1) Where it appears to the Court that it would be inequitable to allow an action to proceed having regard to the degree to which –*

*(a) the provisions of section 5 or 6 prejudice the plaintiff or any person whom he represents and*

*(b) any decision of the Court under this subsection would prejudice the defendant or any person whom he represents,*

*the Court may direct that those provisions shall not apply to the action or to any specified cause of action to which the action relates.” (emphasis added).*

32. Mendonca JA in **Alana Mohan v Prestige Holdings Limited & Anor**<sup>3</sup> referring to **Hagley and Anor. v Babwah**<sup>4</sup> held that the word “inequitable” in section 9 (1) is a drafting error and renders the meaning of the section absurd and irrational and that the word “inequitable” should be substituted the word “equitable”. Notably in **Alana Mohan** the nature of the claim was for damages arising out of negligence. Mendonca JA did not state that section 9 of the Limitation Act applies to matters outside of section 5 and 6.

33. Sections 5 and 6 apply only to personal injury claims arising in negligence, nuisance, contractual or statutory breach of duty and pursuant to the Compensation for Injuries Act.

34. The importance of not equating a claim in personal injuries with a claim in defamation was noted by the authors of **Gatley on Libel and Slander**<sup>5</sup> when discussing the relevance of personal injury damages with that of damages for defamation claims. After examining the various approaches by the Courts the authors summed up the position as:

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<sup>3</sup> Civ. App. No. P-364 of 2017

<sup>4</sup> Civil Appeal 32 of 2015

<sup>5</sup> 12<sup>th</sup> ed at par 9.9

*“Ultimately, it has to be recognized that damage to reputation is very different from personal injury and any comparison between the two is of limited utility.”*

35. The Claimant’s cause of action is in libel and in my opinion it cannot be equated with the breach of a duty and therefore it does not fall within the purview of section 9 of the Limitation Act. As such, the Court is not bestowed with any discretion to extend or override the limitation period under section 9 of the Limitation Act. Therefore, the Claimant’s claim in libel in respect of the First Broadcast is statute-barred, having been raised after the expiration of the four (4) year limitation period.
36. However, the excerpt of the First Broadcast once proven that it was re-published in the Second Broadcast is not statute barred since this is a republication at a later date, and time, with respect to the limitation period for the rebroadcast, started to run from the 2<sup>nd</sup> March 2013.
37. Having found that the cause of action with respect to the First Broadcast is statute barred, the issue of whether the statements made therein were defamatory do not arise. I will treat with the excerpt from the First Broadcast under the Second Broadcast.

**Whether the Second Broadcast bear any meaning defamatory of the Claimant?**

38. Sir Thomas Bingham MR in **Skuse v. Granada Television Limited**<sup>6</sup> laid down the approach to be adopted by a Judge in the determination of the defamatory meaning of the words complained of where the Judge is sitting without a jury. He stated that:

*“(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985.*

*(2) ‘The hypothetical reasonable reader [or viewer] is not naive but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking.*

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<sup>6</sup> (1996) EMLR 278 at 285-287

*But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.’(per Neill L.J., Hartt v. Newspaper Publishing PLC. unreported, 26<sup>th</sup> October, 1989 (Court of Appeal (Civil Division) Transcript No. 1015): our addition in square brackets).*

(3) *While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. In the present case we must remind ourselves that this was a factual programme likely to appeal primarily to a seriously minded section of television viewers, but it was a programme which, even if watched continuously, would have been seen only once by viewers many of whom may have switched on for entertainment. Its audience would not have given it the analytical attention of a lawyer to the meaning of a document, an auditor to the interpretation of accounts, or an academic to the content of a learned article. In deciding what impression the material complained of would have been likely to have on the hypothetical reasonable viewer we are entitled (if not bound) to have regard to the impression it made on us.*

(4) *The court should not be too literal in its approach. We were reminded of Lord Devlin's speech in Lewis v. Daily Telegraph Ltd. [1964] A.C. 234 at 277: ‘My Lords, the natural and ordinary meaning of words ought in theory to be the same for the lawyer as for the layman, because the lawyer's first rule of construction is that words are to be given their natural and ordinary meaning as popularly understood. The proposition that ordinary words are the same for the lawyer as for the layman is as a matter of pure construction undoubtedly true. But it is very difficult to draw the line between pure construction and implication, and the layman's capacity for implication is much greater than the lawyer's. The lawyer's rule is that the implication must be necessary as well as reasonable. The layman reads in an implication much more freely; and unfortunately, as the law of defamation has to take into account, is especially prone to do so when it is derogatory.’*



(5) *A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (Sim v. Stretch [1936] 2 All E.R. 1237 at 1240) or would be likely to affect a person adversely in the estimation of reasonable people generally (Duncan & Neill on Defamation, 2nd edition, Paragraph 7.07 at p. 32).*

(6) *In determining the meaning of the material complained of the court is "not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words" (Lucas-Box v. News Group Newspapers Ltd [1986] 1 W.L.R. 147 at 152H).*

(7) *The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear? (Slim v. Daily Telegraph Ltd. above, at p. 176.)”*

39. The aforesaid principles were approved and adopted by the Privy Council in **Bonnick v Morris**<sup>7</sup>. Further, in **Bonnick**, Lord Nicholls (in dealing with the single meaning rule) stated the law at paragraph 21 as:

*“The ‘single meaning’ rule adopted in the law of defamation is in one sense highly artificial, given the range of meanings the impugned words sometimes bear: see the familiar exposition of Diplock L.J. in Slim v. Daily Telegraph (1968)2 QB 157, 171-172. The law attributes to the words only one meaning, although different readers are likely to read the words in different senses. In that respect the rule is artificial. Nevertheless, given the ambiguity of language, the rule does represent a fair and workable method for deciding whether the words under consideration should be treated as defamatory. To determine liability by reference to the meaning an ordinary reasonable reader would give the words is unexceptionable” ...*

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<sup>7</sup> (2002)UKPC 31

40. In this jurisdiction the Court of Appeal in **Kayam Mohammed and ors v Trinidad Publishing Company Limited and ors**<sup>8</sup> laid down and approved of the following principles after citing **Bonnick v Morris**:

*“11. The Court should therefore give the article the natural and ordinary meaning the words complained of would have conveyed to the notional ordinary reasonable reader, possessing the traits as mentioned by Lord Nicholls, and reading the article once. The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words. Thus in Lewis –v- Daily Telegraph Ltd, [1964] AC 234, 258 Lord Reid stated:*

*‘What the ordinary man would infer without special knowledge is generally called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them and that is also regarded as part of the natural and ordinary meaning.’*

12. *And Lord Morris in Jones v Skelton [1963] 1 W.L.R. 1363, 1370-1371 stated:*

*‘The ordinary and natural meaning of words may be either the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words....The ordinary and natural*

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<sup>8</sup> Civ Appeal No 118 of 2008

*meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not filtered by any strict legal rules of construction would draw from the words.'*

13. *It is also relevant to note that the words have only one correct natural and ordinary meaning. So that for example in Charleston v News Group Newspapers Ltd [1995] 2 AC 65 Lord Bridge, after referring to the fact that the natural and ordinary meaning of the words may include any implication or inference stated (at pg 71):*

*'The second principle, which is perhaps a corollary of the first, is that although a combination of words may in fact convey different meanings to the minds of different readers, the jury in a libel action, applying the criterion which the first principle dictates, is required to determine the single meaning which the publication conveyed to the notional reasonable reader and to base its verdict and any award of damages on the assumption that this was the one sense in which all readers would have understood it.'*

14. *Where, as in this jurisdiction, the Judge sits without a jury, it is his function to find the one correct meaning of the words. Although when considering the defence of Reynolds privilege the Court must have regard to the range of meanings the words are capable of bearing as I will mention below, it is still the function of the Judge as regards the meaning of the words complained of to find the single meaning that they do convey. That does not mean that where an article levels a number of allegations as is the case here, that it has only one meaning. What it does mean is that where there are possible contradictory meanings, the Court cannot recognise, what may be the reality, that some reasonable readers will construe the words one way and others another way. The Court must*

*determine the one correct meaning out of all the possible conflicting or contradictory interpretations.*

*15. What meaning the words convey to the ordinary reasonable reader is a question of fact to be found by the Judge.....”*

41. The proper approach the Court is to apply when determining the natural and ordinary meaning of the words is that the Court is to proceed on the basis that the ordinary reasonable reader would not necessarily select the most scandalous meaning possible<sup>9</sup>. In ascertaining the natural and ordinary meaning of the words complained of in the Second Broadcast the entire broadcast for the programme must be examined to determine the context of the words complained of<sup>10</sup>.
  
42. The Second Broadcast from the Claimant’s Transcript is 58 pages with 27 lines per page. The format of the Second Broadcast is that the Second Defendant introduced the programme by stating that the topic is about Boxing and a major event is taking place concerning Boxing. He introduced his three panellist namely, Mr. Franchot Moore, a former officer of the Trinidad and Tobago Boxing Board, Mr. Tansley Thompson, a promoter of Boxing and Mr. Matthew Noel, an owner of a gym where persons train in Boxing. All three panellists were involved in the sport of Boxing. The Second Defendant used the following words “*We welcome both men to I 95.5 FM as Boxing is about to explode, some say, with information that’s coming forward on Monday*”<sup>11</sup>. After introducing the panellist, each was permitted to speak about the reasons he was on the programme. After each spoke, there was a discussion and the Second Defendant frequently interjected with pointed questions. The nature of the questions by the Second Defendant was to guide the discussion and in some cases in the direction of the Claimant. Mid way and close to the end of the programme, the Second Defendant received telephone callers from listeners who expressed their views. During the discussion the Second Defendant played four pre-recorded segments.

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<sup>9</sup> See paragraph 31 of the judgment

<sup>10</sup> Gatley on Libel and Slander 12 ed at paragraph 3.31

<sup>11</sup> Claimant’s Transcript for Saturday 2<sup>nd</sup> March 2013 at page 1 lines 15- 16.

43. Mr. Thompson stated that he was on the programme since he wanted to inform the public that a group called the “ Friends of Boxing” of which he was a part, and which consisted of many persons involved in Boxing, were having a meeting on the following Monday, inviting all stakeholders of Boxing to attend. He described in great detail the nature of the problems that persons involved in both Amateur and Professional Boxing were experiencing. According to him, a substantial part of the problem was lack of funding by the State and victimization by the Claimant. He described the importance of the role of Boxing in the reduction of crime. He questioned the Claimant’s role as Adviser to the Boxing Board and the Claimant being paid a large salary for this role when funding for gyms, coaches and the promotion of fights were non-existent.
44. Mr. Moore stated the same reason as Mr. Thompson for the Monday press conference. He too spoke about the lack of funding in both amateur and professional Boxing and the adverse effect it was having on young persons who were involved in Boxing. He highlighted the names of young persons who were involved in Boxing and who were success stories. He also stated that since the term of the then Government from 2010 to 2013, about five to six boxers had returned to prison. He stated that Boxing was dead.
45. Mr. Moore made several accusations against the Claimant. He accused the Claimant of having a monopoly on Boxing in Trinidad and Tobago. He stated that the Claimant had dominance over the persons who were running the administration of both amateur and professional Boxing and that amateur Boxing was lacking direction since the Claimant and the President of the Trinidad and Tobago Amateur Boxing Association, Mr. Forde had forged a very close relationship. He speculated that the Claimant gave Mr. Forde an envelope. He stated that coaches in Boxing who were not associated with the Claimant were not paid their stipend but that the Claimant’s gym, Universal Productions and the coaches whom were associated with the Claimant were paid. He accused the Claimant of having a negative effect on the sport of Boxing and that the Minister of Sport must be made aware of it. According to Mr. Moore the Claimant could also attend the stakeholders meeting on the Monday and he labelled the Boxing Board as “*Boxu Board of Control*”.

46. Matthew Noel also spoke about the importance of the stakeholders meeting scheduled for the Monday. He expressed similar concerns as Mr. Moore and Mr. Thompson on the state of Boxing in Trinidad and Tobago at the time. He described how he had crossed paths with the Claimant and that coaches at his gym were not paid their stipend. He also stated that he and the Claimant had several disagreements on the sport of Boxing.
47. The first pre-recording<sup>12</sup> was played mid-way through the programme where the Second Claimant had conducted a previous interview with Mr. Mario Robinson, General Secretary of the Amateur Boxing Association of Trinidad and Tobago. This pre-recording concerned the paying of stipends to boxers and the close relationship between the Claimant and Mr. Forde. After the pre-recording ended the Second Defendant indicated that Mr. Robinson was removed from his post as General Secretary after the said interview.
48. The second pre-recording<sup>13</sup> appears to be a song. This pre-recording was played shortly after there was a discourse between the Second Defendant and Mr. Matthew Noel. The best way to convey this pre-recording is to set it out as:

*“Mr. Baptiste: All right, hold on hold, hold, hold, hold. Hold on,*

*“Singing Voice: You won’t believe me, all you would see is a guy you once knew, although he dressed up in suits, at sixes and nines with you, I had to let it happen, I could not say it, could not say at all my life gone and see you, so I choose running around trying everything new, nothing impresses the population at all I expected it to.*

*So, don’t cry for me Boxu- “Anil Roberts: He has cried many times in the Ministry. You all don’t even know that”-the truth is I never loved you. All through my wild days, my mad existence, I kept my promise. Don’t keep you [Inaudible], they are illusions. Don’t cry for me Boxu. [Inaudible]. I said don’t you cry. Have I said too much? There is nothing more I can think of to say to you. Don’t you cry, don’t cry for me, Boxu. Don’t you cry, Ask Anil.”*

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<sup>12</sup> Claimant’s Transcript for 2013.03.02 from page 25 line 15 to page 27 line 10

<sup>13</sup> Claimant’s Transcript for 2013.03.02 from page 33 line 10 to line 27

*Anil Roberts: He does get emotional. He has cried many times in the Ministry. You all don't even know that. I say what, you're afraid? Well you give me it. You okay?"*

49. The third pre-recording<sup>14</sup> was played shortly after Mr. Thompson spoke about two young boxers who were not involved in Boxing namely Tariq Abdul-Haqq and Suarez. The pre-recording was part of an interview with Tariq Abdul-Haqq which was an excerpt of the First Broadcast. The statements made by Mr. Abdul-Haqq about the Claimant which I have set out previously were included in the third pre-recording and which the Claimant has claimed are defamatory of him.

50. The fourth pre-recording<sup>15</sup> was played at the end of the programme. The following is the pre-recording:

*"Pre-Recorded Interview*

*Fearless One Productions*

*Male Voice: Just when you thought it was safe, Boxu Potts called The Fearless One and, yes, he was angry and confused.*

*[Music played "Pop Goes The Weasel"]*

*Mr. Potts: Well, this is Boxu Potts. I heard you and I heard you loud and clear. Let me say this to you, Andrew Baptiste, you know, I mean, Andrew, come on, is it that you have a problem, with me being in charge or being advising?*

*Mr. Baptiste: No hold on, hold on, hold on, hold on, hold on.*

*Mr. Potts: Or being-trying to-*

*Mr. Baptiste: [Inaudible] Boxu, you are in charge of Boxing?*

*Mr. Potts: No, no, no I'm not only in charge.*

*Mr. Baptiste: No-[Crosstalk]*

*Mr. Potts: No, no, all right, all right, why you jump on the word "in charge"?*

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<sup>14</sup> Claimant's Transcript for 2013.03.02 from page 34 line 23 to page 35 line 27

<sup>15</sup> Claimant's Transcript for 2013.03.02 from page 56 line 25 to page 58 line 15

*Mr. Baptiste: But you just said you're in charge.*

*Mr. Potts: I retract the word "in charge".*

*Mr. Baptiste: Or, you retract it? All right, retract it.*

*Mr. Potts: Yeah.*

*Mr. Baptiste: Go ahead.*

*Mr. Potts: I retract the word in charge.*

*Mr. Baptiste: All right.*

*Mr. Potts: Or being the advisor of Boxing. So understand that.*

*[Song played "Pop Goes The Weasel"]*

*Male Voice: So who's really in charge of Boxing?*

*Mr. Potts: Is it that you have a problem with me being in charge, [Pop], in charge?*

*[Song played "pop Goes The Weasel"]*

*Male Voice: Boxu Potts in under pressure, is under pressure, under pressure. Boxu Potts is on the back foot, on the back foot. Boxu Potts is crying foul. But Boxu Potts can be comforted. At least he has someone on his side.*

*Mr. Anil Roberts: I agree. Boxu Potts, you either love him, hate him, like him, don't trust him or lots of things. So my position is you talk, okay boss man, I would say if they ask me, I endorse your appointment.*

*Male Voice: That was Minister Anil Roberts talking with The Fearless One in November 2010, November 2010, and, unless we hear different, that is still so.*

*Mr. Anil Roberts: In endorse your appointment."*

*[Musical interlude]*

*Mr. Baptiste: So this song courtesy Rian Ramkissoon and myself."*

51. There was one call-in segment for listeners, which was about three quarters into the programme. The callers expressed their views on the state of Boxing. Generally, the callers



were sympathetic to the plight set out by the panellists and they were negative towards the Claimant.

52. In my opinion, the context of the Second Broadcast was that due to the existing state of professional and amateur Boxing in Trinidad and Tobago a group known as “ Friends of Boxing” was convening a meeting on the following Monday for all the stakeholders to attend. From the contributions made by all the panellists and the pre-recordings which were strategically inserted during the discourse by the Second Defendant, the inescapable impression which the ordinary listener would have formed was that the source of all the woes in professional and amateur Boxing was due to the Claimant’s involvement. This was borne out by some of the responses from the callers to the programme who made negative comments about the Claimant.
53. In cross-examination the Second Defendant was asked about his interpretation of the meaning word *"hustler"* since Tariq Abdul-Haqq had described the Claimant as a *"hustler in a suit"*. He was deliberately very evasive in his answer and jokingly responding that a hustler was someone who always wants to have his own way.
54. The Second Defendant admitted in cross-examination that he agreed with the definition of a *"cancer"* as being a terminal disease yet he remained deliberately evasive in accepting that when Mr. Abdul-Haqq referred to the Claimant as a cancer to the sport of Boxing that spreads and that the Claimant will lead to the death of the sport.
55. In my opinion the words complained of by the Claimant in the Second Broadcast are defamatory of him. The sting in the statements are the use of the words: *"appointed illegally while still a promoter"*. In this society the ordinary listener would have understood this to mean that the Claimant was involved in corruption. The words: *"his own son who was colluding with him to even blacklist me, ran away from him, get fed up, realized that his own father is about to tarnish his reputation and image and he cut his father loose"* and the words *"the Minister have to realize that Boxu Potts is going to bring him down. You see?"* The ordinary listener would have understood this to mean that the Claimant was so much involved in corruption and nefarious activities that he was disowned by his own

son who did so to protect his reputation and image and that the Minister of Sport needs to do the same. The words: "*Boxu Potts is like a cancer to sport in Trinidad and Tobago*" The use of the word "*cancer*" in this society is associated with a terminal disease and it is seen as negative. The words suggest that the Claimant was like a terminal disease to the sport of Boxing and if he remained involved he would cause the eventual death of the sport in Trinidad and Tobago. The words "*Buxu Potts is a hustler with a suit on*". The word "*hustler*" in this society again carries a negative connotation. It gives the impression that a hustler is about his own business to achieve his own ends to the detriment of others. The words "*the only thing that I could envision is Mr. Potts taking an envelope to Mr. Forde and saying 'This is what we have for you'*". The impression the listener would get is that the Claimant was passing money illegally to Mr. Forde for the Claimant's own gain. The words "*Boxu Potts was responsible for my daughter languishing in a foreign jail transporting cocaine*". The ordinary listener would have understood this to mean that the Claimant caused "the lady's daughter" to transport cocaine abroad who was caught and held in a jail overseas and that the Claimant is involved in the drugs and/or the transportation of drugs transportation which is criminal conduct. The words "*Boxu Potts will be the death of Giselle Salandy*" and "*by the time Boxu Potts got through with Giselle Salandy she will be worst off and I quote 'worst than a dog with mange'*". These words impute that the Claimant was involved in the death of Giselle Salandy. In this society a dog with "mange" is seen as an ill kept, sickly looking dog which is homeless. Again, a very negative term used in this society. The impression given was that the Claimant has Giselle Salandy looking ill kept and unhealthy. The Claimant was responsible for the untimely death of the late Giselle Salandy and that at the time of her death, the Claimant had the said Ms. Salandy in a despicable state or state of affairs and that these were facts or truths which were stated six years prior that have now manifested, crystallized or become proven.

56. In my opinion all the all the terms used would lower the opinion of the Claimant in the mind of right thinking individuals in society.

**Whether the Third Broadcast bears any meaning defamatory of the Claimant?**

57. The Claimant's Transcript of the Third Broadcast is 81 pages with 29 lines per page. There were primarily two parts of the Third Broadcast which the Claimant complained was defamatory. The first part is statements arising from the discussion and the second part is from callers to the programme. In the Third Broadcast the host of the programme, the Second Defendants invited four persons to discuss the then existing state of Boxing in Trinidad and Tobago. The persons were Mr. Claude Noel, a well-known public figure, sportsman and retired boxer who received several accolades over his Boxing career; Mr. Floyd Trumpet, a former national boxer, owner of gym where amateur boxers train and a Boxing Promoter, Mr. Mario Robinson, Secretary of the T&T Amateur Boxing Association, and Ms. Carlene McCarthy a former employee of YANS Academy. At the beginning of the programme the Second Defendant referred to a previous programme he had on the sport of Boxing in Trinidad and Tobago in April 2013 and he stated that he had invited the four persons on the panel to discuss the then state of Boxing in Trinidad and Tobago.
58. Ms. McCarthy's contribution was that she was employed at YANS academy for twenty seven (27) months. It was operated by the Claimant and his family. YANS Academy was part of Unified Promoters which was funded by the Government. At YANS Academy there was a Youth Talent Identification Programme for Boxing and football. She stated that it was an excellent initiative however, the Claimant's involvement caused the staff not to be paid. She said that she and other employees encountered problems in not being paid their salaries by the Sport Company of Trinidad and Tobago. When she made enquiries, the Claimant called her and issued threats. She was accused by the Claimant of leaking information to the media about YANS Gym after an article was in the newspapers.
59. Mr. Claude Noel was asked by the Second Defendant about his role in YANS Academy. Mr. Noel's contribution was that the Claimant did not want him working at YANS Academy but he was so employed since it opened in 2010. He was not paid his salary of \$5000.00 per month for a year. Even after he signed a contract to earn \$2500.00 per month

he was still not paid but he continued working. Mr. Noel stated that the Claimant told him that he was not prepared to work with him although the Minister of Sport had indicated otherwise to him. He was clear that the Claimant did not want him to be working at YANS Academy and that he and the Claimant did not have a good relationship. In addition to the words which the Claimant has alleged which Mr. Noel stated about him which were defamatory, Mr. Noel stated that he told the Claimant that he was a businessman who did not know anything about Boxing. He spoke about how the Claimant tried to isolate him from being involved in the sport of Boxing and how this adversely affected his work. He also stated that the Claimant did not treat him with the respect of a former Commonwealth Boxing champion.

60. The Second Defendant asked Mr. Trumpet about his involvement in promoting Boxing in Trinidad and Tobago. Mr. Trumpet stated that he is the owner of Ultimate Gym but that he was no longer involved in promoting Boxing in Trinidad and Tobago since he did not receive any funding from the Boxing Board of Trinidad and Tobago although he had applied several times for funding. He spoke about being involved in promoting certain fights with the Claimant and not receiving funding from the Boxing Board.
61. Mr. Robinson stated that he was on the programme since he wanted clarity on who appointed the Claimant as Technical Advisor to the Trinidad and Tobago Amateur Association for Boxing. He stated that as Secretary to the Trinidad and Tobago Amateur Boxing Association he was not informed of matters involving the said Association but he read in the newspapers about the Claimant being involved in matters concerning Amateur Boxing. He was not paid for his services as Secretary. He said that he was aware of a raffle which the Trinidad and Tobago Amateur Association for Boxing had obtained permission to use to raise funds for a national female team for a competition. However, he saw an advertisement in the newspapers with the Claimant's telephone number as the contact for tickets and the wrong number for the President of the said Association was also on the advertisement. He also spoke about the delays in having elections for various positions in Trinidad and Tobago Amateur Association for Boxing.

62. The Second Defendant also invited listeners to call into the programme. The majority of the callers made very negative comments about the Claimant and his involvement in Boxing in Trinidad and Tobago. There were even physical threats issued by some callers to the Claimant. There were also negative comments made by the callers about the then Minister of Sport, Mr. Anil Roberts in the context of his hiring of the Claimant as an adviser to the Boxing Board.
63. The overall discussion in the entire Third Broadcast was not about the sport of Boxing in Trinidad and Tobago but it was about the demise of the said sport due solely to the Claimant's involvement in the aspects which the members of the panel highlighted namely, the training of amateur boxers, the promotion of fights for amateur boxers and the funding of the sport both at the amateur and professional level. All of the panellists painted a picture that the Claimant abused his authority as an adviser to the Minister to only advance his role in Boxing for his benefit to the detriment of the sport and the wider Boxing community. The criticism of the then Minister of Sport Mr. Anil Roberts was linked to him empowering the Claimant.
64. With respect to the words complained of used by Mr. Claude Noel, in my opinion they are defamatory of the Claimant. The sting in the words complained of are with the use of the words "*doping using drugs*"; "*using drugs on horses and horses and athletes*"; and "*he is a gambler*" are all negative terms to be associated with in this society and would lower the opinion of the Claimant in the mind of right thinking individuals in society. In my opinion, a reasonable listener would have arrived at conclusion that the Claimant came into Boxing as a drug user and a drug addict since he was involved with the use of drugs and doping of horses when he was working at the Paddock as a jockey; the Claimant used of drugs and engaged in doping of horse in order to earn more money to satisfy a gambling habit; the Claimant was fired at the horse racing Paddock for doping or using drugs on horses; the Claimant is a gambler; the Claimant got involved in the sport of Boxing in order to support his habit as a gambler; the Claimant continued the use of drugs and the use of drugs with athletes in Boxing and he practiced doping and /or the use of drugs on Ria Ramnarine and the late Giselle Salandy.

65. I now turn to the call in segment of the Third Broadcast where the Claimant alleges that the Second Defendant permitted Ms. Molly Boxhill to make defamatory statements about him. It was not in dispute that Ms. Molly Boxhill was invited as a call-in contributor to the discussion. Ms. Boxhill described her involvement as the Secretary of the Boxing Board of Trinidad and Tobago and her involvement in the sport for over twenty five (25) years. In addition to the words complained of in the Third Broadcast, Ms. Boxhill also described several incidents which she had with the Claimants which caused her to have a very negative opinion of the Claimant.
66. After Ms. Boxhill's contribution, the Second Defendant took calls from several other listeners. Apart from three callers, all of the other callers made very negative comments about the Claimant and the then Minister of Sport, Mr. Anil Roberts with respect to his association with the Claimant. One of the callers called in and indicated to the Second Defendant that he permitting the programme to be like the American television programme "Jerry Springer" since the Second Defendant had permitted Ms. Boxhill to make statements which the caller referred to as "*blaspheming people all over the radio*".
67. One of the issues which arose is whether from the Third Broadcast the Claimant was identified. According to **Duncan and Neill on Defamation**<sup>16</sup> a necessary ingredient for an action in libel is that the article must be published about the claimant. The question in all cases where the identity of the Claimant is in issue is whether reasonable people reasonably understand the words to refer to the Claimant. The test is therefore an objective one.
68. In the Third Broadcast, Ms. Boxhill started of speaking about the Claimant's involvement in Boxing and she expressed her strong opinion that because of the Claimant's association with the then Minister of Sport, Mr. Anil Roberts, she was in agreement that the said Minister should also be removed. Immediately after she expressed that opinion Ms. Boxhill then made certain accusations about an unnamed person involved in Boxing who was also involved with young girls under the guise of Boxing. While Ms. Boxhill did not name the Claimant in the Third Broadcast, during cross-examination she readily admitted that it was

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<sup>16</sup> 3<sup>rd</sup> ed para 6.1

the Claimant whom she was speaking about. Even if Ms. Boxhill did not make that admission, based on the context of her statements, it is reasonable to conclude that she was speaking about the Claimant.

69. Therefore, there is no merit in the Defendants submissions that the Claimant has failed to prove that Ms. Boxhill was referring to him.
70. In my opinion the words complained of made by Ms. Boxhill are defamatory of the Claimant. The sting in the statements come from the words “*when that person bring that girl, that young girl, 11:00 half past 11;00 rumfle up*”; and “*A night one was crying, one of the girls he brought, the girl was crying. I asking her she wouldn’t say what she crying for. But she was crying*”. The use of the word “rumfle” is local parlance for dishevelled or unkempt. In the context of a young girl looking dishevelled and unkempt at 11:00 pm, the ordinary listener would have associated that the reason for her being unkempt was due to some sort of sexual activity instigated by the Claimant. Further the words that a young girl crying at night would have been understood by the ordinary listener as this was due to some type of abuse. In my opinion, a reasonable ordinary listener would have easily formed the impression that the Claimant is a sexual predator who used his role in Boxing to lure young female boxers into engaging in sexual acts and that they were too afraid or under his control to speak out. As such, the Claimant was involved in committing the offences of statutory rape of minors and/or indecent assaults on underage young girls/female minors. The acts allegedly attributed to him by Ms. Boxhill are illegal and criminal and are highly decried in this society by the public at large.

**If the First, Second and/or Third Broadcasts are defamatory were they published on an occasion of qualified or Reynolds privilege?**

71. Having found that the Second and Third Broadcasts are defamatory, I now turn to the Defence of qualified or Reynolds privilege.

72. The defence of Reynolds privilege arose from the House of Lords decisions in **Reynolds v Times Newspapers Limited**<sup>17</sup> where the defence of qualified privilege was extended to cover the situations where a media organization sought to communicate information regarding matters of public concern. In **Reynolds**, the House of Lords established a new variant of qualified privilege in which less emphasis was placed on the traditional, reciprocal duty and interest test, and more on the question of whether the publication was on a matter of public interest and whether it was the product of responsible journalism (with the issue of malice subsumed within this latter element).
73. To determine whether the **Reynolds** privilege applies there are three questions to be posed:
- (a) whether the subject matter of the publication was of sufficient public interest;
  - (b) whether it was reasonable to include the particular material complained of and,
  - (c) whether the publisher met the standards of responsible journalism.
74. It is only if the Defendant satisfies all three questions can it successfully rely on the **Reynolds** privilege defence. The aforesaid test was approved by the Privy Council in **Bonnick Morris**<sup>18</sup> and the Supreme Court in **Flood v Times Newspapers**<sup>19</sup> and endorsed by the Court of Appeal in **Kayam Mohammed**<sup>20</sup>.

**Whether the subject matter of the defamatory material was of sufficient public interest**

75. In considering the **Reynolds** privilege defence, the first question for the Court to determine is whether the subject matter of the publication concerned a matter of public interest. What is in the public interest is a matter of law to be determined by the Court (**Gatley on Libel and Slander**<sup>21</sup>). Lord Hoffman in the House of Lords decision of **Jameel (Mohammed) v**

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<sup>17</sup> [2002] 2 AC 127

<sup>18</sup> [2003] 1 AC 300

<sup>19</sup> [2012] UKSC 11

<sup>20</sup> Civ Appeal 118 of 2008

<sup>21</sup> 12<sup>th</sup> Ed at para 15.6



**Wall Street Journal Europe SPRL**<sup>22</sup> stated that the approach to be adopted by the Court in determining the first question is:

*“The first question is whether the subject matter of the article was a matter of public interest. In answering this question I think that one should consider the article as a whole and not isolate the defamatory statement...”*

76. In determining what matters are of public interest and those which are not, the Courts have recognised that not all matters that the public may be interested in are matters of public interest. As Lord Hoffman put it (at paragraph 49) in **Jameel**:

*“The question of whether the material concerned a matter of public interest is decided by the judge. As has often been said, the public tends to be interested in many things which are not of the slightest public interest and the newspapers are not often the best judges of where the line should be drawn. It is for the judge to apply the test of public interest.”*

77. Baroness Hale of Richmond (at paragraph 146) in **Jameel** confirmed that:

*“there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public - the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it.”*

78. Lord Bingham of Cornhill in the Court of Appeal decision in **Reynolds TD v. Times Newspapers Limited**<sup>23</sup> described matters that are of public interest as:

*“By that we mean matters relating to the public life of the community and those who take part in, including within the expression ‘public life’ activities such as the conduct of government and political life, elections ... and public administration, but we use the expression more broadly than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give*

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<sup>22</sup> [2006]UKHL 44

<sup>23</sup> [1998]EWCA Civ 1172 at Part XIX Lines 2-5

*rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no interest in their disclosure.”*

79. The subject matter of the defamatory material complained of by the Claimant in the Second Broadcast were namely: (a) the allegations made in the pre-recording where Tariq Abdul-Haqq compared the Claimant as a cancer to the sport of Boxing in Trinidad and Tobago and that he was a hustler in a suit; (b) the statements made by Mr. Moore that the sport of Boxing was being controlled by the Claimant who was illegally appointed as an advisor to the Boxing Board while he was still a promoter for Boxing contrary to the provisions of the Boxing Control Act of Trinidad and Tobago; (c) the statements made by Mr. Moore concerning public funds for an amateur Boxing championship event and where he alleged that the Claimant gave an envelope containing something to Mr. Forde; (d) and the statements made by Mr. Moore about the contents of a letter to the Editor of the Express Newspapers dated six years before, where the writer of the letter made certain allegations about the Claimant’s involvement in having her daughter in a foreign jail for transporting drugs; his role in the ill treatment of and death of the late Giselle Salandy.
80. In my opinion, information concerning the sport of Boxing in Trinidad and Tobago, the use or misuse of public funds for the sport, the funding or lack of funding of the sport, the legality of a person holding public office where he is paid from the public purse are matters of public interest. It is also a matter of public concern if a person is involved in the trafficking of drugs. However, the public cannot and ought not to be interested in such matters where the allegations are unsubstantiated and therefore untrue. I will address the truthfulness of the allegations later under the heading of responsible journalism.
81. The words complained of in the Third Broadcast were serious allegations that the Claimant was a drug user when he was a jockey at the Paddock and that he was involved in the doping of horses; he engaged in doping of horses as a jockey in order to earn more money to satisfy a gambling habit; he was fired at the horse racing Paddock for doping or using drugs on horses; he continued the using drugs with athletes in Boxing and he practiced doping and/or the use of drugs on Ria Ramnarine and the late Giselle Salandy; and the

Claimant is a gambler who got involved in the sport of Boxing in order to support his habit as a gambler.

82. Again, it must be a matter of public interest if any person involved in any sport, including horse racing or Boxing, was taking drugs, involved in doping of horses or facilitated the use of drugs by boxers. It is also a matter of public interest if a person who is involved in sport has a gambling habit since there is a danger of fixing the outcome of events for monetary gain. But it cannot be in the public's interest to be informed of matters which have not been substantiated. I will address the truthfulness of the allegations later under the heading of responsible journalism.

**Whether it was reasonable to include the particular words complained of**

83. The next question is whether it was reasonable to include the words complained of. In **Jameel** Lord Hoffman explained the approach to be taken by the Court when examining this question as:

*“51. If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article... But whereas the question of whether the story as a whole was a matter of public interest must be decided by the judge without regard to what the editor's view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the*

*defence. That would make the publication of articles which are, ex hypothesis, in the public interest, too risky and would discourage investigative reporting.”*

84. It can only be reasonable to include the words complained of in the Second and Third Broadcasts if they statements were substantiated and truthful since the meaning of the defamatory words were damning of the Claimant. It will be more appropriate for me to examine this heading in greater detail after I have examined responsible journalism.

### **Responsible Journalism**

85. In determining whether the Defendants have met the standards of responsible journalism, the Court must consider the non-exhaustive list of considerations in **Reynolds** which were listed at paragraph 62 in **Kayam Mohammed** (supra) namely:
- (a) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
  - (b) The nature of the information and the extent to which the subject-matter is a matter of public concern.
  - (c) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind or are being paid for the stories.
  - (d) The steps taken to verify the information.
  - (e) The status of the information.
  - (f) The allegations may have already been the subject of an investigation which commands respect.
  - (g) The urgency of the matter. News is often a perishable commodity.
  - (h) Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
  - (i) Whether the article contained the gist of the plaintiff’s side of the story.
  - (j) The tone of the article. A newspaper can raise queries or call for an investigation.
  - (k) It need not adopt allegations as statements of fact.
  - (l) The circumstances of the publication, including the timing.

86. The Court of Appeal in **Kayam Mohammed** also provided the following guidance in relation to the application of the **Reynolds** considerations:

*“63. These are not intended to be tests that the journalists must pass (sic) or hurdles (sic) that he must overcome before he can successfully rely on the defence. There (sic) are intended to be broad based pointers that may be of relevance and should in suitable cases be taken into account in assessing whether the journalist has met the standard of responsible journalism. This standard of conduct must be applied in a practical and flexible manner. It must have regard to practical realities (see Bonnick, supra, para 24 and Jameel at para 56).*

*64. This approach to the standard of responsible journalism has manifested itself in the following which are relevant to this appeal. First, in assessing the responsibility of the article weight must be given to the professional judgment of the journalist or editor. In Jameel, Lord Bingham said (at para 33):*

*‘Lords Nicholls recognised (in Reynolds at pp 202-203 inevitably as I think that it has to be a body other than the publisher, namely the court which decided whether a publication was protected by qualified privilege. But this does not mean that the editorial decisions and judgments made at the time, without the knowledge of falsity which is the benefit of hindsight, are irrelevant. Weight should ordinarily be given to the professional judgment of an editor or journalist in the absence of some indication that it was made in a casual, cavalier, slipshod or careless manner.’*

*65. Second, the newspaper in making the decision whether to publish will need to have regard to the full range of meanings that a reasonable reader might attribute to the article..... It should however be noted that in Bonnick v Morris, supra, it was held that in assessing whether the defence of Reynolds privilege is available,*

*the Court should not penalise the journalist for ‘making a wrong decision on a question of meaning on which different people might reasonably take different views’ (see paras 24-27). In Flood v Times Newspapers Ltd [2012] UKSC 11 Lord Mance stated (at para 129) that the principle endorsed by the Privy Council in Bonnick:*

*‘appears to be, therefore, that a responsible journalist would have had in mind the less damaging of the possible meanings that reasonable persons might attach to the article and would have been entitled to focus in that direction when checking and reporting the relevant subject matter.’*

*66. Thirdly, even though the journalist’s conduct may be open to legitimate criticism it does not necessarily follow that he has acted irresponsibly.....”*

87. The evidence of the Second Defendant was that he commenced his career in journalism at the Catholic News in 1993. He was engaged in the profession for some fourteen (14) years. He admitted to not having a qualification as a journalist but he stated that he worked at a newspaper while he was studying in London. He stated that he was first employed by the radio station aired on the Radio Frequency, Power 102 FM. He was asked if he understood the meaning of the term "responsible journalism". He stated that based on his experience as a working journalist he said he understood the term which he explained *“as giving someone a chance to speak the truth and if you have doubts ask questions and by doing research in advance.”* He was asked if it was incumbent upon him to fact check or correct any misnomers, false accusation or insinuations. He responded *“where possible”*. It was suggested to the Second Defendant that the term *“fearless one”* meant that he could say whatever he wanted. He responded that it meant trying to get the truth in all matters but there were boundaries.

88. I formed the opinion that the Second Defendant, though not academically trained in journalism, from his years of experience in the field, was well aware of his basic duties as a responsible journalist and in particular as a talk show host of a radio programme.

**The seriousness of the allegation**

89. The more serious the allegation, the more the public is misinformed and the individual is harmed, if the allegation is not true.
90. In my opinion, the allegations in the words complained of in the Second Broadcast were of a very serious nature against the Claimant with serious harm for misinforming the public since it concerned allegations of misconduct in public office, misfeasance and criminal conduct in relation to drugs. Further, the allegations made against the Claimant in the Third Broadcast were also of a very serious nature since they involved allegations that the Claimant was a gambler, drug user, involved in doping of horses, involved in facilitating drug use by boxers and using the sport of Boxing to support his gambling habit. In the absence of substantiating any of the allegations the degree of harm to the Claimant would have been substantial.

**The source of the information**

91. According to the Second Defendant's evidence the source of the information for the defamatory words in the Second Broadcast was Mr. Franchot Moore who is a former Boxing Board of Trinidad and Tobago Official. An examination of the Second Broadcast, demonstrates that Tariq Abdul-Haqq was also a source of the pre-recorded segment.
92. With respect to the Third Broadcast, the Second Defendant stated that Mr. Claude Noel and Ms. Molly Boxhill were the sources of the information. The Second Defendant testified that Mr. Claude Noel was Trinidad and Tobago's Boxing champion and he was speaking from his own experiences with the Claimant. He explained to the listeners that Mr. Claude Noel's comments were from "his experience" and therefore he did not accept them as his own or of the radio station. The Second Defendant testified that Ms. Boxhill's statements

were from her personal relationship with the Claimant. She was not an invited guest but called in to the programme.

**The steps taken to verify the information**

93. There were three groups of defamatory words which the Claimant complained of in relation to the Second Broadcast. I will deal with the steps taken by the Second Defendant to verify the information based on each group. In the first group of defamatory words uttered by Mr. Franchot Moore in the Second Broadcast, he alleged that the Claimant was illegally appointed as an adviser to the Boxing Board while he was still a promoter contrary to section 7 of the Boxing Control Act; the Claimant only submitted his resignation as a promoter after being exposed on the *“I Sports with the fearless one: Andre Errol Baptise”* two years ago; the Claimant is corrupt and dishonest and the Claimant was disowned by his own son who did so to protect his own image and reputation.
94. The Second Defendant testified that he understood the law is that a person cannot be a Boxing promoter and be involved in the Boxing Board. In cross-examination the Second Defendant explained that he had done investigations and that Mr. Moore was ‘in charge’ of the Boxing Board of Control – Professional and Amateur and that professional Boxing was getting no funding at the time.
95. The **Boxing Control Act**<sup>24</sup> is the legislation which governs the holding of Boxing contests in Trinidad and Tobago and it deals with the regulation of professional Boxing. Section 2 establishes the Trinidad Boxing Board of Control. Section 3 disqualifies any member of the Board from being involved in the administration or executive of any promoting body involved in professional Boxing. Section 4 empowers the Board to appoint officers and employ and pay other persons.
96. While there is no specific provision in the **Boxing Control Act** which prevents a Special Adviser from also being a promoter, it is clear from section 3 that it was the intention of the Legislature that due to the regulatory powers exercised by the Trinidad Boxing Board

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<sup>24</sup> Chapter 21:52



of Control, it would be a conflict of interest for anyone involved in the workings of the said Board to also be a promoter.

97. The duty on the journalist is not to fact check every minute detail. I was therefore satisfied that the Second Defendant had also done some research on the law and that he was satisfied that Mr. Moore was involved in the Boxing Board and therefore he would have been aware that the Claimant was still a promoter while he was an adviser to the Boxing Board. Therefore, the Second Defendant acted responsibly by permitting Mr. Moore to make the statements with respect to the Claimant's involvement as a promoter and being a special adviser to the Boxing Board.
98. However, that was the extent of the Second Defendant's evidence on steps he took to verify the allegations by Mr. Moore in this part of the Second Broadcast. Notably absent from the Second Defendant's evidence was any steps he took to verify the statements by Mr. Moore with respect to the Claimant's son disassociating himself from the Claimant and in this regard I find that the Second Defendant acted irresponsibly by permitting Mr. Moore to make those statements when the former knew that it was unsubstantiated.
99. The second group of defamatory statements in the Second Broadcast was where the Second Defendant played part of the pre-recorded interview done on 6<sup>th</sup> September 2012 he did with Tariq Abdul-Haqq where the latter made defamatory statements that the Claimant was a cancer to the sport of Boxing; he has caused irreparable damage to Boxing; the Claimant is only about self-gain and that the Claimant is a "*hustler in a suit*". Bearing in mind that this pre-recording was done about six (6) months before the Second Defendant chose to repeat it, the Second Defendant would have had the opportunity within the six (6) month period to verify the very serious allegations made by Tariq Abdul-Haqq before he repeated it. However, the Second Defendant's evidence was notably silent on any steps which he had taken to verify anything Mr. Tariq Abdul-Haqq said. It is therefore not difficult for me to conclude that the Second Defendant who testified that he understood the term 'responsible journalism', acted responsibly by playing a pre-recorded segment which contained information which was not verified and which was damning of the Claimant.

100. The third group of defamatory statements in the Second Broadcast was where Mr. Moore in speaking about the legality of the Amateur Championship in Boxing which had already taken place, stated he envisioned the Claimant taking an envelope to Mr. Forde who was the president of Amateur Boxing Association and saying “ *this is what I have for you*”; where he referred to a letter to the editor of the Express newspapers written about six years ago where a mother complained that her daughter was in a foreign jail for transporting cocaine because of the Claimant; and that the Claimant would have caused the death of Giselle Salandy and that because of the Claimant, Giselle Salandy would “ worst off than a dog with mange”.
101. The Second Defendant’s evidence on the steps he took to verify these allegations were that he did not caution Mr. Moore when he spoke about the article about the mother because he saw the newspaper article since Mr. Moore had produced it in studio. He explained that he did not know it was relevant and due to lapse of time he could not produce the said article in Court. There was no letter to the editor of the Express adduced into evidence which the Second Defendant said he saw. In any event, even if the Second Defendant had produced the said letter, he should not have permitted Mr Moore to repeat the very serious allegations in the letter since he knew that they were not fact checked. Further, the Second Defendant should not have permitted Mr. Moore to make the allegation about the envelope passing to Mr. Forde since Mr. Moore was clear that he did not witness this. In my opinion Mr. Moore was involved in speculation.
102. Apart from the Second Defendant’s research with respect to the allegation of the Claimant illegally being a promoter and an advisor to the Boxing Board at the same time, there was no verification of the defamatory statements by the Second Defendant.
103. I now turn to the steps taken by the Second Defendant to verify the defamatory statements in the Third Broadcast. There were two groups of defamatory statements in the Third Broadcast. In the first group, Mr. Claude Noel made statements that when the Claimant was working at the Paddock he was drug user; he was involved in doping horses and he was so involved to support a gambling habit; he was fired from the horse racing Paddock

for using drugs and doping horses; when he got involved in Boxing he continued using drugs and he was also involving in doping of boxers including Ria Ramnarine and Giselle Salandy.

104. The Second Defendant's evidence on Claude Noel's statements was when Mr. Noel made those statements he ended the conversation immediately and never discussed it again. He admitted in cross-examination that he did not inform his listeners that the views expressed by Mr. Claude Noel were not his views or those adopted by the radio station.
105. It was clear from the Second Defendant's evidence that he knew that the statements made by Claude Noel were defamatory. There was no evidence that the Second Defendant had fact checked the statements and he did not even issue a disclaimer so that the listeners would have known that those were not his views or the radio station's views.
106. The second group of allegations were the statements made by Ms. Boxhill that the Claimant was a sexual predator and he was engaged in sexual misconduct with young girls who were afraid to speak up since they were under his control.
107. In cross-examination the Second Defendant admitted that the statements made by Ms. Boxhill were serious and that was the reason he asked her why she did not report those matters to the police. He admitted that he was not aware of any articles that spoke of any investigation into the Claimant being a sexual predator to young girls.
108. Again, it was clear from the Second Defendant's evidence that he knew that the statements made by Ms. Boxhill were defamatory but there was no evidence that he had fact checked or that he had information that her statements were true and he did not even issue a disclaimer so that the listeners would have known that those were not his views or the radio station's views.
109. It was clear to me that the Second Defendant knew about his responsibilities as a journalist to fact check and verify the information which he permitted to be aired on the Second and Third Broadcasts. He did so with respect to the allegation about the legality of the Claimant being a promoter and a special adviser to the Boxing Board. However, he failed to do so

with respect to the other defamatory statements. While it is not expected that every minute fact would be verified, where there are serious allegations there is responsibility to fact check that information. The information from the sources must be verified to determine the truth. Relying on the persons who made the statements without fact checking is in effect permitting the publication of the defamatory statements. In my opinion, the Second Defendant acted reckless by permitting the defamatory words in the Second and Third Broadcasts (save and except the statement with respect to the legality of the Claimant's appointment as an adviser to the Boxing Board) to be broadcast without any proper verification of the serious allegations.

#### **The allegations may have been the subject of an investigation**

110. There was no evidence that any of the allegations made in the Second and Third Broadcasts were the subject of any investigation.

#### **The urgency of the matter**

111. The reason for the discussion in the Second Broadcast was to create an awareness of the problems in Boxing since the Claimant's involvement and to invite stakeholders in Boxing to a meeting on the following Monday, which was two days after the Second Broadcast. In my opinion, there was no need to make the defamatory statements against the Claimant in order to create an awareness of the problems in Boxing and to invite stakeholders in Boxing to a meeting on the following Monday.
112. There was no evidence that there was any urgency in permitting the publication of the defamatory words in the Third Broadcast.

#### **Whether comment was sought from the Claimant**

113. According to the Second Defendant's evidence he had interviewed the Claimant previously and that the Claimant had also called into the programme. In the Second Broadcast the

Second Defendant played a pre-recording at the end of the programme where he had done a previous interview with the Claimant. In my opinion, this cannot be considered to be a comment from the Claimant since it was a pre-recorded before the allegations made in the Second Broadcast.

114. There was no evidence from the Second Defendant that he sought to contact the Claimant to get his comment with respect to the allegations made in the Second and Third Broadcasts.

#### **Whether the Second and Third Broadcast contained the Claimant's side of the story**

115. From an examination of the Second and Third Broadcasts it was clear that the Claimant's side of the story was not presented.

#### **The tone of the Second and Third Broadcasts**

116. Lord Mance at paragraph 136 in **Flood v Times Newspapers** described the approach the Court is to adopt in assessing the tone the Broadcasts. Lord Mance approved the dictum of Lord Rodger in **Re Guardian News and Media Ltd**<sup>25</sup> and stated:

*“Lord Hoffman observed in Campbell v MGN Ltd, para 59, ‘judges are not newspaper editors.’ See also Lord Hope of Craighead in In re British Broadcasting Corpn [2010] 1 AC 145, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.”*

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<sup>25</sup> [2010] UKSC; [2010] 2 AC 697

117. Lord Mance (at paragraphs 137) concluded:

*“The courts therefore give weight to the judgment of journalists and editors not merely as to the nature and degree of the steps to be taken before publishing material, but also as to the content of the material to be published in the public interest. The courts must have the last word in setting boundaries of what can properly be regarded as acceptable journalism, but within those boundaries the judgment of responsible journalists and editors merits respect. This is, in my view, of importance in the present case.”*

118. The tone of the Second Broadcast is sensational, negative of the Claimant and borders on ridicule. Although the Second Defendant testified that it was not his intention for the Third Broadcast to be sensational in its tone, in my opinion, he failed to achieve his intention since it was clear that the tone of the Third Broadcast is also sensational and negative towards the Claimant.

**The circumstances of the Second and Third Broadcasts including the timing**

119. It was submitted by Counsel for the Claimant that the First, Second and Third Broadcasts were timed so that a negative image of the Claimant was placed in the public domain in order to impact on the Claimant not having his contract as a Special Adviser to the Trinidad and Tobago Boxing Board be renewed.

120. The Second Broadcast was in March 2013 and it took place two days before a scheduled meeting of the stakeholders of Boxing and which the panellist on the programme were involved in. The Third Broadcast was in February 2014. There was no evidence that there was any particular reason for the timing of the Third Broadcast. In my opinion, the Third Broadcast appeared to be a follow up discussion on the state of Boxing in Trinidad and Tobago and how the Claimant had an adverse impact on it.

121. From the evidence, I was not persuaded that the timing of the Second and Third Broadcasts were deliberately done by the Second Defendant to influence the Claimant's contract as a Special Adviser to the Trinidad and Tobago Boxing Board not being renewed.
122. Therefore, apart from the statement by Mr. Moore that the Claimant was illegally a promoter and an Adviser to the Boxing Board, there was no evidence that the statements made in the other defamatory statements were true. As such, it was not in the public interest to be informed of scandalous untruth. For the same reasons, it was not reasonable to permit the words complained of in the Second and Third Broadcasts.

**If the First, Second and/or Third Broadcasts are defamatory have the Defendants made out a defence of fair comment?**

123. In **Theodore Guerra v Trinidad Publishing Co Ltd and anor**<sup>26</sup> Kokaram J explained defence of fair comment at paragraphs 4 to 7 as:

*“4. The defence of fair comment strives to strike that balance between the public interest in promoting the fundamental right to free speech to comment and evaluate matters in the public domain, with the public interest in the protection of the character and reputation of men and women in our society from unjustified attacks. It is a defence, once properly made out, which is open to all. It provides a greater degree of latitude for the publication of personal opinions and comments, recognizing the vital role played by reviewers and commentators and critiques in a society.*

*5. Not all observations will be positive and some can be positively vitriolic. In our society it is important that we understand that fair comment is a fundamental feature of our democracy. Lord Denning's remarks in 1967 are still relevant today and provide the signpost for fair comment when he said: “...the right of fair comment is one of the essential elements which go to make up our freedom of speech. We must ever maintain this*

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<sup>26</sup> CV 2007-02612

*right intact. It must not be whittled down by legal refinements. When a citizen is troubled by things going wrong, he should be free to "write to the newspaper": and the newspaper should be free to publish his letter. It is often the only way to get things put right. The matter must, of course, be one of public interest. The writer must get his facts right: and he must honestly state his real opinion. But that being done, both he and the newspaper should be clear of any liability. They should not be deterred by fear of libel actions."*

6. *The law has expanded with the nature of the society which formed the backcloth to seminal judgments of the past such as **Kemsley v Foot** [1951] 2 KB 34. The most recent treatment of fair comment in the modern era referred to the Court by attorney for the Defendant is **Spiller and another v Joseph and others** [2010] UKSC 53. The Supreme Court in that case, advocating reform of the defence, re-examined the role of the defence of fair comment and confirmed the concept in simple terms. The defence is available to one who has done no more than express his honest opinion on publications put before the public. It is sufficient that the comment in general terms identifies what it is that led the commentator to make the comment, so that the reader can understand what the comment is about. This is the fair balance struck between the freedom of expression and requiring the person to identify to others, why he or she is making the comment or criticism. The writer had to be expressing his honest opinion on a matter of public interest.*

7. *This simplification of the test is, however, by no means a get-out-of-jail-free card for the media, as the defence of fair comment is no licence for the media to disseminate irresponsible publications of commentaries either in print or electronic format that can be construed as malicious. The writer must still get his facts right. The law now underscores this right to comment with the touchstone of an honesty of belief. Comments made on the public*



platforms provided by the media must not therefore be abused by members of the public who publish defamatory statements of fact or comment which does not pass “fair comment” muster.” [Emphasis added]

124. The Court must examine the statements to determine if they are comments or imputations of facts and if they are comments, the Court must consider the common law defence. In **Ramlakhan v T&T News Centre Ltd**<sup>27</sup> Mendonca JA described the applicable principle for the defence of fair comment as:

*“(40) The position at common law is that the defendant may rely on the defence of fair comment only if he proves every fact on which the comment is based is true or is the subject is privilege. The question of privilege is not relevant to this case. In Kemsley v Foot [1952] 1 All ER 501, supra, Lord Porter stated at [506]:*

*“In a case where the facts are fully set out in the alleged libel, each fact must be justified and if the defendant fails to justify one, even if it be comparatively unimportant, he fails in his defence.”*

125. Counsel for the Defendants argued that they have made out the defence of fair comment with respect to the allegation of conflict of interests of the Claimant in the Second Broadcast since they had proven that it was true. Further the statements by Mr. Moore in the Second Broadcast on the editorial which was read was protected by the defence of fair comment since he was calling on the public to look into the matter and he was not asserting it as the truth.
126. In the Second Broadcast there were three groups of defamatory statements. The first group is the statement by Mr. Moore that the Claimant was illegally appointed as an adviser to the Boxing Board while he was still a promoter and that the Claimant only submitted his resignation as a promoter after being exposed on the *“I Sports with the fearless one: Andre Errol Baptise”* two years ago; the Claimant is corrupt and dishonest and the Claimant was disowned by his own son who did so to protect his own image and reputation.

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<sup>27</sup> Civ Appeal 30 of 2005 (15<sup>th</sup> February 2008 unreported)

127. The Claimant's evidence in chief was that during 2007-2010 he worked as the promoter, trainer, manager and match maker for the late Giselle Salandy. Between 2008-2010 he also worked closely with Ms. Ria Ramnarine, another female boxer. In 2009 he resigned as a Boxing promoter. In 2010 he was offered the position of Special Adviser to the Trinidad and Tobago Boxing Board of Control which he accepted. It was for an initial period of two (2) years with the option of renewal for the period beginning 1<sup>st</sup> October 2010 to 30<sup>th</sup> September, 2012. As Special Adviser he also served as an ex-officio member of the Trinidad and Tobago Amateur Boxing Association.
128. The Claimant also testified that with respect to the relationship between Unified Promoters Boxing Association of Trinidad and Tobago (Unified Promoters) and YANS Academy, to the best of his knowledge Unified Promoters started the initiative of a Boxing academy to teach Boxing, academics and two add-ons sports (in this case track and field). The programme successfully ran for a life of six (6) months with payments adequately disbursed by the State to the Unified Promoters and which were then responsible for making payments to its workers. The athletes were trained for a six (6) month term and began Boxing in the Amateur leagues. These boxers could not "box off" under Unified Promoters since it was deemed by the Trinidad and Tobago Amateur Boxing Association as a professional entity which meant that it would contravene Amateur International Boxing Association (AIBA) bye laws. Therefore, YANS Academy was formed to comply with AIBA requirements and enable the amateur boxers to participate in AIBA's tournaments.
129. The Claimant stated that the second six-month term ran successfully and all the workers were paid. At the beginning of the third term he was informed by his daughter, Amanda Potts, one of the three co-ordinators of the Unified Promoters and Manager of YANS Academy that she and two other coordinators met with the line Minister, Mr. Anil Roberts at his constituency in D' Abadie/O'Meara in order to discuss the defaults in payments to the workers. His daughter informed him that they were assured of their continued payments. They worked and when the payments went into arrears, the Minister directed them to the Sport Company of Trinidad and Tobago (SportTT). SportTT paid the workers approximately 40% of their salaries in accordance with SportTT policy for the type of

services rendered and the actual time on the job based on SportTT coordinators' Reports which turned out to be far less than the workers expected.

130. In cross-examination, the Claimant stated that after 2009, he did not renew his promoters licence and therefore he did not agree with a Trinidad Guardian newspaper article dated 10<sup>th</sup> December 2011 stating that he and his son, Giovanni Potts, were Boxing promoters. He stated that he was not involved with United Promoters during the time he was Special Adviser and ex officio member of the Boxing Board.
131. However, the Claimant admitted in cross-examination that he was familiar with some of the inner workings of the Unified Promoters which came to his knowledge working at the Boxing Board of Control since he read the information that came to the Board. However, he also admitted that his daughter, Amanda Potts informed him of the information concerning Unified Promoters as well.
132. It was submitted by Counsel for the Defendants that the Claimant knew a lot about the running of the YANS Gym and Unified Promoters although he claimed to have left their operations to his children and that the inconsistencies in his evidence in chief and cross-examination undermined his credibility on this issue.
133. The Claimant did not provide any documentary proof to corroborate his evidence that he had resigned as being a promoter in 2009 and before he took up his post as Special Adviser to the Boxing Board. In this regard his evidence may appear to be self-serving. Even if the Court accepted the Claimant's evidence that he did so resign, based on his own evidence he was well aware of the inner workings and the operations of Unified Promoters and YANS Gym which was in direct conflict with his position held as Special Adviser to the Boxing Board. In this regard, I am satisfied that the Defendants have proven that the statement that the Claimant was both an adviser to the Boxing Board and a promoter to be true. Therefore, Mr. Moore's comment on the legality of the Claimant holding the position of Special Adviser to the Boxing Board and acting as a promoter was fair in the circumstances since it was in the public interest to be so informed and it was on a proven fact. They have made out the defence of fair comment for the defamatory statement of Mr.

Moore on the illegality of the Claimant being a promoter while he was holding the post as Special Adviser to the Boxing Board.

134. The pre-recording from Tariq Abdul-Haqq were unsubstantiated statements made by Mr. Abdul-Haqq about the Claimant. In my opinion they were not comments made by Mr. Abdul-Haqq but imputations of facts by him. Further, there was no evidence that the statements made by Mr. Moore about the Claimant corruptly passing an envelope to Mr. Forde or that the Claimant was involved in drug trafficking or the death of Giselle Salandy were based on proven facts. Again they were not comments but imputations of facts by the makers of the statements. Having examined the Transcript I do not accept the contention by Counsel for the Defendants that Mr Moore was calling on the public to look into the matter and he was not asserting it as the truth. In my opinion, Mr. Moore's reference to the contents of the alleged document was paraded as if they were statements of fact about the Claimant. Therefore, the Defendants have not made out the defence of fair comment on these matters.
135. With respect to the statements made by Ms. Boxhill in the Third Broadcast, Counsel for the Defendants submitted that they were based on what Ms. Boxhill saw and that this was supported by the Claimant's evidence that he was seen with young girls at Boxing events.
136. Ms. Boxhill testified <sup>28</sup> that the radio station did not invite her to call in but she did so on her own. She called into the programme to speak about what she knew. She mentioned the Minister because the Claimant informed her that he and the Minister were good friends.
137. Ms. Boxhill stated that she did not call the Claimant's name regarding the girls. She called the Claimant's name regarding the Minister and that in the second portion regarding the girls, she did not mention a name and she spoke about incidences that she saw personally. According to Ms. Boxhill, that the main point that she was saying was that parents should

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<sup>28</sup> Witness statement of Molly Boxhill filed 27<sup>th</sup> November, 2017.

check up on young girls and not drop them at gyms or any other place for training without knowing what was happening and that parents should be there with their children.

138. She further stated that the focus of her comment was not on the “certain person” who was in the presence of the girl but on the parents who needed to have greater supervision of their children when they dropped them off at Boxing.
139. However in cross-examination, Ms. Boxhill’s evidence was discredited since she admitted that although she did not name the Claimant, she was referring to him. Therefore, clearly anything Ms. Boxhill stated with respect to parents’ supervision of their young girls involved in Boxing at night was with respect to the Claimant.
140. In cross-examination the Claimant stated that Ms. Boxhill was referring to him when she called into the Third Broadcast. He admitted that Ms. Boxhill did see him with young girls at the gym late at night. He agreed with Counsel for the Defendants that Ms. Boxhill was making a comment on what she had seen. However, he stated that her comment was that he was seen at a specific Boxing event, not at training at the gym, with a young girl as if he was out with the girl and coming late to the event. He disagreed that Ms. Boxhill’s comment was addressed to parents of young girls with regards to the girls’ supervision. His position was that Ms. Boxhill was inferring that people should be careful putting young girls with him because he would do negative things to them as sexual molestation and that it was unsafe to put their young girls with him.
141. In my opinion, part of Ms. Boxhill’s statements were based on her observations, which the Claimant admitted, namely that she saw the Claimant with young girls late at night at boxing events and in this regard her comments were warning parents to supervise their young girls at the gym. To this extent, the Defendants have made out the defence of fair comment only with respect to this aspect of Ms. Boxhill’s statement.
142. However, Ms. Boxhill went further than just making this comment to parents based on her observations. When she described certain incidents where she saw young girls looking dishevelled and crying at night after they visited the gym with the “certain person” whom

she admitted she was referring to the Claimant, she was stating as a fact that the Claimant was the cause of the condition of the young girls. She was not making a comment. She was imputing this as a fact. In this regard, the Defendants have failed to make out the defence of fair comment with respect to the girls crying or looking dishevelled since they failed to prove as a fact that the Claimant was the cause of the said girls' condition. Ms. Boxhill may have observed this, but her comment on the reasons for the young girls in that condition was purely speculative and not based on facts proven to be true.

143. Having concluded that the Defendants can only rely on the defence of fair comment and qualified privilege with respect to the defamatory statements made in the Second Broadcast that the Claimant was acting illegally by being involved as a promoter of Boxing while he was a Special Adviser to the Boxing Board and that Ms. Boxhill's comments advising parents to supervise young girls who went to the gym at night for Boxing, I now turn to if all the Defendants or only the Second Defendant are liable for the damages which I will deal with next.
144. It was submitted on behalf of Counsel for the Defendants that the First Defendant is not liable for the actions of the Second Defendant since there was no evidence to prove that the Second Defendant was employed by the First Defendant.
145. The Claimant pleaded that the Second and Third Broadcasts were aired on the First Defendant's Radio Frequency I 95.5 FM and that on the 15<sup>th</sup> October 2012 the Third Defendant took over the concession for the said Radio Frequency. The Defendant averred that the said Radio Frequency was taken over by the Third Defendant on the 14<sup>th</sup> October 2012. Therefore, the First Defendant is not a proper party with respect to any broadcast after the 14<sup>th</sup> October 2012. According to the Second Defendant's evidence, the Third Defendant took over the business of the First Defendant and that he was then employed by the Third Defendant. The Second Broadcast was in March 2013 and the Third Broadcast was in February 2014. Both were after the Third Defendant took over the concession for said Radio Frequency.

146. As the talk show host, the Second Defendant is liable since he was responsible for permitting the defamatory words to be aired. In my opinion, the Third Defendant is liable since it permitted the Second Defendant, who based on the undisputed evidence of the Second Defendant, was its employee, to use the said Radio Frequency to broadcast the defamatory statements for which it had the concession. Further, there was nothing in the Transcripts which stated that the views expressed in the defamatory statements were not that of the Second and Third Defendants.

**In the event that liability is established, what damages are payable to the Claimant?**

147. It was submitted on behalf of the Defendants that the Claimant has failed to prove a causal connection between his failure to have his contract as an adviser to the Minister of Sport and the statements made in the First, Second and Third Broadcasts. The Defendants also submitted that in light of the Claimant's evidence he did not submit any loss and that even if the Defendants are found to be liable the Court should only award nominal damages.

148. The Claimant pleaded a claim for special, general, aggravated and/or exemplary damages. It was submitted on behalf of the Claimant that the Court should award the sum of \$1,224,000.00 as special damages and the sum of \$1,200,000.00 as general damages inclusive of aggravated and/or exemplary damages.

**Special damages**

***Business losses***

149. According to **Mc Gregor on Damages**<sup>29</sup> “*the principal type of pecuniary loss which constitutes special damage, is loss to the claimant of a contract, of an employment or of business whether existing or intended*”.

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<sup>29</sup> 19<sup>th</sup> ed at page 1702, paragraph 44-005 (a)

150. The Claimant has alleged in the instant proceedings that as a result of the defamatory words in the First, Second and Third Broadcasts his contract as special adviser to the Boxing Board was not renewed. According to the Claimant's evidence, his monthly salary under the contract was \$25,000.00 per month inclusive of allowances.
151. The Claimant testified that in 2009 he resigned as a Boxing Promoter. In 2010 he was offered the position of Special Adviser to the Trinidad and Tobago Boxing Board of Control (TTBC) which he accepted. It was for an initial period of two (2) years with the option of renewal for the period beginning 1<sup>st</sup> October 2010 to 30<sup>th</sup> September, 2012. As Special Adviser to TTBC he was engaged to provide Expert Technical Services with special focus on all aspects of training development and which also involved accessing social work and psychological services as necessary in regard to the enhancement of boxer's performance. Among other duties, this also included the organisation of motivational lectures, planning and organising workshop sessions for boxers, coaches, officials and other stakeholders involved in the sport. As Special Adviser he also served as an ex-officio member of the Trinidad and Tobago Amateur Boxing Association. In 19<sup>th</sup> October 2010, he executed a Retainer Agreement and earned a fee of \$25,000.00 inclusive of allowances. When this contract expired on 30<sup>th</sup> September 2012, it was renewed on 1<sup>st</sup> October 2012 for a period of three (3) years. His contract as Special Adviser again provided for salary and allowances in the sum of \$25,000.00.
152. The Claimant testified at paragraph 13 of his witness statement that:  
*"After these broadcasts, my contract as Special Adviser to the Board of the TTBC was not renewed and I have lost the benefit of my stated monthly earnings in this position from the 1st October 2015 which I legitimately expected to have been renewed as was done at the end of the first term. I recall being asked by the then Minister of Sport, Mr. Brent Sancho "why I was disliked by so many people?" I told him that it was because of all the lying propaganda on these talk shows hosted by Andre Errol Baptiste."*
153. In cross-examination the Claimant explained that the then Minister of Sports asked him why he was disliked by so many people. The Claimant said he told the then Minister that



he could not say but that is what happens when you are in public office. The Claimant also testified that Ministers have a department in the Ministry for communication and they listen to all the talk shows and they report back to the Minister. Therefore the Minister would have gotten information from the radio stations I95.5, Power 102 and the other stations from the information department in the Ministry of Sport. The Claimant admitted that he did not state this in his witness statement and this was the first time he was making that assertion.

154. When questioned that even in Parliament Ms. Donna Cox, former Member of Parliament, in her presentation in giving an example of conflict of interest referred to him and his involvement in the Boxing Board of Control and she mentioned the newspaper reports as being the avenue of same, the Claimant indicated that:

*“Yes and unfortunately I would say that Ms. Cox did not seek to get the relevant information from the Boxing board before she expounded in the parliament one and neither did the newspaper seek any clarification from the Board before they write their article.*

*Attorney: But Ms. Cox did not mention anything about the radio or particularly the Defendants show giving her that information did she?*

*Mr Potts: Well I didn't hear her say anything like that.”*

155. The Claimant also stated that as a result of the broadcasts, his character and reputation and personal life have been severely and irreparably damaged. His position as Special Adviser was not renewed after the expiration of his second contract in September 2015. It became difficult for him to promote fights, raise individual and corporate sponsorship and work with and develop potentially great fighters. The broadcasts have also had a negative international impact on him as the World Boxing Council (WBC) chairman. In 2015, the Ministry of Sport issued a disclaimer of an event being promoted by his daughter, Ms. Amanda Potts. He testified that the contract of all contract workers employed at TTBC were retained and renewed except for his. He also stated that the allegations and statements disseminated in the broadcasts were so bad as to put the sport of Boxing itself in disrepute

both locally and in the wider world because they were broadcast on the internet. He noted that several people have called him a “scamp” publicly and even to his face and he contends that this has significantly hurt his credibility in negotiating contracts with fighters who wanted him to manage them as well as with promoters who wanted him to assist in managing their fights. He stated at the trial that he only manages one boxer and he is struggling to make a living.

156. There was no evidence presented on behalf of the Claimant to corroborate his evidence that Mr. Sancho had indeed uttered such statements to the Claimant. There was also no corroborating evidence that even if Mr. Sancho had made such statements, the defamatory words in the Second and Third Broadcasts were the basis for his statements. In the absence of such corroborating evidence I find the Claimant’s evidence to be self -serving. In my opinion, the Claimant has failed to establish a causal link between the decision by the then Minister of Sport, Mr. Sancho, not to renew his contract and the defamatory words in the Second and Third Broadcasts.
157. The Claimant also testified that as a result of the defamatory statements in the Second and Third Broadcasts “ *it became very difficult and appeared almost impossible for me to succeed at what I did before, that is, promote fights, raise individual and corporate sponsorship, work with and develop potentially great fighters (male or female), not to mention the negative international impact that these broadcasts have occasioned on me as a WBC Chairman.*”
158. In my opinion, the Claimant’s evidence was bare. He did not set out the names, types and when he attempted to host fights which were unable to come off due to lack of sponsorship. He failed to adduce any evidence from sponsors whom he requested for financial assistance with respect to these fights and who refused to assist him.
159. In the absence of such evidence I have not been persuaded that the Claimant suffered such a loss.

## General Damages

160. **Gatley on Libel and Slander**<sup>30</sup> states that:

*“In case of libel and slander actionable per se the law therefor presumes damage arising from the publication and the claimant is entitled to look to an award of damages sufficient to vindicate his reputation according to the seriousness of the defamation, the range of its publication and the extent to which the defendant persisted with the charge.”*

161. Therefore, once a person is libelled, without any lawful justification or excuse, it will be presumed that he suffered injury to his reputation and his feelings, for which he may recover damages. It follows that there is no explicit requirement for the person libelled to produce any evidence to prove such injury as he starts off with a presumption of damage. However, to attract a substantial award of damages evidence must be provided.

162. In **TnT News Centre Ltd v John Raphael**<sup>31</sup> Kangaloo JA stated that the purpose of an award of damages in a defamation action is threefold in nature:

- (a) to compensate for the distress and hurt feelings;
- (b) to compensate for any actual injury to reputation, which must be proved or may reasonably be inferred; and
- (c) to serve as an outward and visible sign of vindication.

Sir Thomas Bingham in **John v MGM**<sup>32</sup> stated:

*“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,*

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<sup>30</sup> 12<sup>th</sup> Edition paragraph 9.4

<sup>31</sup> Civ Appeal No 166 of 2006

<sup>32</sup> [1997] QB 586

*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 relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.*

*There could never be any precise, arithmetical formula to govern the assessment of general damages in defamation, but if such cases were routinely tried by judges sitting alone there would no doubt emerge a more or less coherent framework of awards which would, while recognising the particular features of particular cases, ensure that broadly comparable cases led to broadly comparable awards." [Emphasis added]*

163. In the 12<sup>th</sup> edition of **Gatley on Libel and Slander** published in 2013 the authors stated at page 335 paragraph 9.5 that the following matters affect the level of the award:

*"Damages are "at large" in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula and they are peculiarly the province of the jury (where there is a trial by that method). The jury (or the*

*judge if sitting alone) is entitled to take into consideration a wide range of matters including the conduct of the claimant, his credibility, his position and standing, and the subjective impact that the libel has on him, the nature of the libel, its gravity and the mode and extent of its publication, the absence or refusal of any retraction or apology and the conduct of the defendant from the time the libel was published down to the verdict....the conduct of the claimant in the course of litigation.”*

164. In assessing the award of damages which the Claimant is entitled to I will examine the evidence under the following factors:
- (a) The extent of the publication;
  - (b) The gravity of the allegation;
  - (c) The impact upon the Claimant’s feeling, reputation and career.

***The extent of the publication***

165. The Second Broadcast was aired on the 2<sup>nd</sup> March 2013 and the Third Broadcast was aired on the 15<sup>th</sup> February 2014. Due to the nature of the programmes, it is reasonable to conclude that the listeners were persons who were interested in sports. There was no evidence from the Claimant of the popularity of the talk show programme “*I Sports with the fearless one: Andre Errol Baptiste*” and there was no evidence of the market share which this programme captures in Trinidad and Tobago. However, according to the Second Defendant’s evidence, before 2012 he had been hosting the programme for six or seven years and the shows were broadcast on a Tuesday and Saturday. This means that the programme has been aired since around 2005 to 2006. In my opinion, for a talk show radio programme on sports to remain on air consistently for six to seven years prior to 2012 means that it has a large listening audience to sustain its viability. If not, the programme would not have survived the test of time. Therefore, based on the Second Defendant’s evidence, I have concluded that the reach of the Second and Third Broadcasts was wide and the programme “*I Sports with the fearless one: Andre Errol Baptiste*” had a large listening audience.

166. The Claimant also pleaded that the programme “*I Sports with the fearless one: Andre Errol Baptiste*” was transmitted on the internet. In cross-examination the Second Defendant stated that he was not sure that the programme was transmitted on the internet but that the radio station I 95.5 had internet “access”. I do not believe that the Second Defendant was being truthful with the Court since as a talk show host in this modern age where information is streamed live via the internet, I have no doubt that he was well aware that he knew the extent of his audience since this determines the success of his programme and the volume of advertisers attracted to finance it. In my opinion, the Second Defendant was aware that at the material time the Second and Third Broadcasts were streamed via the internet. In any event, the Court can take judicial notice that in the modern age, with the advent of Google and other internet search engines it is commonplace for persons to conduct a search using these internet search engines to find out information about any person. Therefore, programmes streamed via the internet are easily accessible and as such the reach of the Second and Third Broadcast went beyond the local shores.

***The gravity of the allegation***

167. In **John v MGM**<sup>33</sup> the Court took the position that in assessing the appropriate damages for injury to reputation, the most important factor to be considered is the gravity of the libel. The more closely it touches the Claimant’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.

168. The content of the Second and Third Broadcasts concerned the Claimant’s personal and professional integrity. I have already stated in great detail above that the allegations made in the defamatory words in the Second and Third Broadcasts were of an extremely serious nature. Therefore, in determining the quantum of damages to the Claimant, I have attached significant weight to this factor since the very nature of the defamatory statements went to the core of the Claimant as a person (gambling and allegations of sexual misconduct), as person involved in sport (drug use, doping of horses, drug use

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<sup>33</sup> [1997] Q.B. 586.

with boxers) and as a person who held public office (misuse of public funds and abuse of authority).

***The impact upon the Claimant's feeling, reputation or career***

169. In **TnT News Centre** Kangaroo JA pointed to the need for evidence to portray the full extent of the Claimant's hurt, humiliation and distress. At page 14 it was stated as follows:

*“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.”*

170. And at page 15:

*“However, a major element in the assessment exercise was conducted based solely on the presumption of damage in relation to injury to feelings and distress. There was however no evidence before the learned judge as to the full extent of the respondent's hurt, humiliation and distress.*

171. According to the Claimant's evidence<sup>34</sup> he currently holds the position of Chairman of the World Boxing Council, Central American and Caribbean Amateurs and Youth Pro-League. During 2007-2010 he worked as the promoter, trainer, manager and match maker for the late Giselle Salandy. Between 2008-2010 he also worked closely with Ms. Ria Ramnarine, another female boxer. The broadcasts have also have a negative international impact as the WBC chairman. In 2015, the Ministry of Sport issued a disclaimer of an event being promoted by his daughter, Ms. Amanda Potts. Several people have called him a “scamp” publicly and even to his face and he contends that this has significantly hurt his credibility in negotiating contracts with fighters who wanted him to manage them as well as with promoters who wanted him to assist in managing their fights. As of now, he only manages one boxer and he is struggling to make a living.

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<sup>34</sup> Witness statement of Boxu Potts filed 27<sup>th</sup> November, 2017

172. Although the Claimant did not have any evidence to corroborate his allegation that locally he has been called a “scamp” in public and he has had a negative image publicly because of the Second and Third Broadcasts, I accept this evidence since from a perusal of the statements made by the callers into the Second and Third Broadcasts it was evident that their opinion was very negative of the Claimant.
173. With respect to the Claimant’s allegation that his reputation has been hurt abroad, the Claimant did not adduce any evidence to demonstrate this. On the contrary, the Claimant boasted during cross-examination that despite the defamatory statements, he was still well received and recognised abroad. Indeed, this is borne out in the Claimant’s own evidence that he was holding the position of Chairman of the World Boxing Council, Central America and the Caribbean, Amateurs and Youth Pro-League. Therefore, I have concluded that the Claimant’s loss was limited locally and did not expand to internationally.
174. Based on the aforesaid assessment of the Claimant’s evidence, I am not of the opinion that an award of nominal damages is adequate to compensate the Claimant for his loss as a result of the Second and Third Broadcasts. In particular, I have attached weight to nature of the defamatory statements, the gravity of the allegations and the consequences they had on the Claimant’s personal and professional life.
175. In determining the award of damages to compensate the Claimant for his loss, the guidance by Kokaram J in **Faiiq Mohammed v Jack Austin Warner**<sup>35</sup> was instructive. The Court outlined three guidelines which ought to be taken as:
- “[53] First for the award to be proportional it would be a good practice for the Court after conducting the above analysis to step back and conduct a “self check” recognising that the level of damages should not be pitched to high so as to create the chilling effect of the constitutional right to freedom of expression, nor should it be so low as to reduce the significance of the purpose of the award. One’s desire to punish another member of the public therefore in*

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<sup>35</sup> CV 2013-04726 at paragraphs 53, 56 and 57



*making defamatory remarks should be sufficient to send the signal that unjustifiable remarks would not be tolerated in a democratic society but not be interpreted to stifle in the slightest degree stern debate, heated criticism and boisterous comment. See Tolstoy Milsolavsky v United Kingdom [1995] 20 E.H.R.R. 442.*

.....

*[56] Second it is entirely legitimate for the Court to draw comparisons to other decided cases in defamation and can strive to bracket the level of award in certain categories. A suitable bracket for a defamatory remark of corruption against a public official from the survey of cases is from \$150,000.00 to \$800,000.00. Even in the search for an appropriate bracket the Court must be alive to the peculiarities of the reputation under review and the reasons for the inconsistencies....*

*[57] Finally the Court can legitimately make a reality check by examining comparative awards in personal injury cases where the Court has attempted to compensate pain and suffering and hurt feelings. See John v MGN (supra)''*

176. In the instant case I am assessing the award for general damages inclusive of aggravated damages. In addition to the aforesaid evidence, I also considered the sums awarded in the following cases:

(a) **Dr. Keith Rowley v Michael Annisette**<sup>36</sup>

The Claimant, who was the then Opposition Leader was awarded four hundred and seventy-five thousand dollars (\$475,000.00) inclusive of aggravated damages for accusations made against them that he was involved in corrupt activities, an improper relationship, perjury and misbehaviour in his public life.

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<sup>36</sup> CV2010-04929 delivered 12<sup>th</sup> February 2014

(b) **Anand Ramlogan v. Jack Austin Warner**<sup>37</sup>

The Claimant was the then Attorney General of Trinidad and Tobago who brought a defamatory action for words complained of. The defamatory statements were publicly made by the Defendant and were later broadcasted in the media. The Court awarded the sum of six hundred thousand dollars (\$600,000.00) inclusive of aggravated damages and an award of exemplary damages in the sum of two hundred thousand dollars (\$200,000.00).

(c) **Seebalack Singh v. Trinidad Express Newspapers Limited, Omatie Lyder & Ors.**<sup>38</sup>

The Claimant in his capacity as CEO of the Estate Management & Business Development Company (EMBDC) was accused in two articles published by the Express of a lack of accountability, transparency and poor governance. The Court awarded general damages including aggravated damages in the sum of \$450,000.00 plus interest as well as Exemplary Damages in the sum of \$100,000.00.

(d) **Ricardo Welch a.k.a. "Gladiator" v. P.B.C.T. Limited & Ors.**<sup>39</sup>

The Defendants were accused of and found liable for unsubstantiated statements about the Claimant's who was a well-known radio personality's sexual orientation. The Court made an award of damages as against the Third, Fourth and Fifth Defendants in the sum of \$700,000.00 with interest to be paid at the statutory rate from the date of the Claim Form to the date of judgment.

(e) **Jwala Rambaran v. Dr. Lester Henry**<sup>40</sup>

The Court awarded the then Governor of the Central Bank \$550,000.00 inclusive of an uplift for aggravated damages for the Defendant's insinuations that he had *inter alia*, caused the Central Bank to spend millions of dollars on his private

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<sup>37</sup> CV 2014-00134 delivered 30<sup>th</sup> July 2015

<sup>38</sup> CV2013-04366 delivered 12<sup>th</sup> May 2016

<sup>39</sup> CV2011-00751 delivered 25<sup>th</sup> April 2017

<sup>40</sup> CV2014-03990 delivered 28<sup>th</sup> September 2017

residence as well as other allegations of impropriety and misbehaviour in public office.

177. In determining the quantum of the award of damages for the Claimant, I considered that the Claimant was well known in the sport of Boxing and he became a national public figure when the then Minister of Sport, Mr. Anil Roberts appointed him a Special Adviser to the Boxing Board. I also considered the very serious nature of the allegations against the Claimant which impugned both his personal and professional life. The attacks in the Second and Third Broadcasts spanned the period of one (1) year between March 2013 and February 2014 culminating into the most damning and damaging of allegations; ranging from the use, possession, involvement and trafficking of illegal and/or dangerous drugs, to being a sexual predator and paedophile. In my opinion the sting in the defamatory words caused serious harm to the Claimant. I also took into account that the harm to the Claimant was limited locally and not abroad. The impact of the Second and Third Broadcasts were that persons called him a “scamp”.
178. In my opinion an appropriate range for damages in the instant case is between the sum of \$450,000.00- \$700,000.00. I do not think that the award should be the same as in **Ramlogan v Warner; Rowley v Annisette; and Rambaran v Dr Henry** since the respective Claimants in those matters had a much more significant public profile than the Claimant in the instant case. I also do not think that the award of damages should be as high as in **Welch v PBCT**. While the Claimant’s suffering in **Welch** was exacerbated because the defamatory remarks were made on air to a wide listenership which is similar to the instant case, I am not of the view that the Second Defendant was motivated by malice.
179. In my opinion, the level of the Claimant’s public profile is more in line with **Seebalack Singh v Trinidad Express Newspapers Limited** and there were two publications and in the instant case there were two Broadcasts. In light of awards of damages given to persons I award the Claimant the sum of \$450,000.00 general damages which includes and uplift for aggravated damages.

### *Exemplary damages*

180. I now turn to the claim for exemplary damages.
181. Exemplary damages are punitive and are not intended to compensate a claimant any loss but rather to punish the defendant<sup>41</sup>. The threshold for the award of exemplary damages is high. Lord Devlin in **Rookes v Barnard**<sup>42</sup> outlined three accepted situations in which the award of exemplary damages would apply, namely in cases:
- (i) of oppressive, arbitrary or unconstitutional acts by government servants;
  - (ii) where the defendant's conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff;
  - (iii) where expressly authorised by statute.
182. According to the Court in **Rookes v Barnard** even in those three accepted circumstances, a larger sum should only be awarded for the purpose of exemplary damages if the sum which the court has in mind to award as compensation (which might of course be aggravated by the defendant's behaviour to the claimant) was inadequate to punish and deter the defendant.
183. **McGregor on Damages**<sup>43</sup> explained that it was most likely in defamation actions that evidence of the second situation as outlined by Lord Devlin in **Rookes** would result in the award of exemplary damages. At para. 1928 of that text it is explained that:
- “Indeed in Broom v. Cassell, Lord Wilberforce said that defamation was ‘normally thought of as par excellence the tort when punitive damages may be claimed’. In practice, awards are likely to be made only where the Defendant has calculated that he would profit from the defamation thereby bringing Lord Devlin’s second common law category into play.”*

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<sup>41</sup> Halsbury's Laws of England, Damages, Vol. 12 (1) Reissue at para. 811

<sup>42</sup> (1964) AC 1129

<sup>43</sup> 16<sup>th</sup> edn

184. Lord Devlin's explanation of the second common law category in **Rookes** of the words "***calculated to make a profit for himself***", refers to not only to actual monetary or financial profit but also to some coveted property which the Defendant could only obtain from defaming the Claimant's character. Lord Devlin at page 1226 to 1227 stated:

*"Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.....**one man should not be allowed to sell another man's reputation for profit.** Where a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to moneymaking in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object - perhaps some property which he covets - which either he could not obtain at all or not obtain except at a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay."* (Emphasis added)

185. Thus, for exemplary damages to be awarded, the Defendant must have acted in the hope of a material gain; it is not enough that the Defendant is motivated by desire to injure or ruin the Claimant, though that is equally deserving of punishment.

186. I have concluded that an award of \$100,000.00 as exemplary damages is suitable in the instant action. The Court cannot ignore that in this society, a large section of right thinking members of the public still receive their information from radio talk show programmes. In this regard, the role of talk shows are important in keeping the public informed. But talk show hosts like the Second Defendant owe a duty and responsibility to their audience to act responsible when conducting their programmes and not structure their programmes to defame persons just to maintain popularity. Based on the Second Defendant's evidence, it appeared to me that he has carved out a niche as a popular talk show host specialising in sport.

187. Having reviewed the Transcripts for the Second and Third Broadcasts it was clear that the Second Broadcast was a format which was designed to defame the Claimant. In particular, the pre-recordings which were played by the Second Defendant were designed to ridicule the Claimant, utilizing a series of pre-recordings of previous segments which was a tactic specifically designed to taunt, antagonize, provoke and denigrate the Claimant in the mind of the listening audience.
188. In my opinion, the Second Defendant is a clever talk show host who knew the benefit he derived by inserting the pre-recordings and by deliberately guiding his panellists and callers which was to increase his popularity and his audience for his programme. In my opinion, gaining listenership or popularity should not have been pursued at the costs of lowering the Claimant's reputation, exposing him to ridicule in the mind of right thinking members of the public in circumstances where the Second Defendant had not verified the statements. Further, the Second Defendant knew that he had not verified the defamatory statements made by Tariq Abdul-Haqq yet he chose to repeat part of it as one of the pre-recordings in the Second Broadcast.
189. With respect to the Third Broadcast, the Second Defendant by changing the topic after Mr. Claude Noel uttered the defamatory statements about the Claimant, demonstrated that he knew that the words uttered were defamatory of the Claimant, yet he did not act in a responsible manner by issuing a disclaimer of the views expressed by Mr. Claude Noel. By failing to do so the Second Defendant permitted right thinking persons who were listening to the Third Broadcast to think that he and the radio station that accepted Mr. Claude Noel's views as true. Therefore, the Second Defendant's gain in defaming the Claimant was to gain listeners, market share and popularity for his shows.

### **Conclusion**

190. *"The God term of journalism-the be-all and end all, the term without which the entire enterprise fails to make sense-is the public".*<sup>44</sup> Journalism's first objective is to the truth

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<sup>44</sup> James W. Carey 1987

and a publisher of journalism should strive to put the public interest and the truth above his own self-interest or assumptions.<sup>45</sup>

191. In this claim, the Claimant complains that certain statements which were made on the talk show programme “*I Sports with the fearless one: Andre Errol Baptiste*” conducted by the Second Defendant were defamatory of the Claimant. These statements were made in three separate broadcasts on Thursday 6<sup>th</sup> September 2012, Saturday 2<sup>nd</sup> March 2013 and Saturday 15<sup>th</sup> February, 2014.
192. With respect to the First Broadcast, the Claimant’s claim in libel is statute barred having been raised after the expiration of the four (4) year limitation period.
193. In the Second Broadcast, the words complained of by the Claimant are defamatory of him. In this broadcast, the Second Defendant introduced the programme by stating that the topic is about boxing and that a major event concerning boxing is taking place. He introduced three panellists namely Mr. Franchot Moore, Mr. Tansley Thompson and Mr. Matthew Noel all of whom were involved in the sport of Boxing.
194. The context of the Second Broadcast was that due to the existing state of professional and amateur boxing in Trinidad and Tobago, a group known as “Friends of Boxing” was convening a meeting for all the stakeholders to attend. From the contributions made by all of the panellists and the pre-recordings which were strategically inserted during the discussions by the Second Defendant, the impression which the ordinary listener would have formed was that the source of all the woes in professional and amateur boxing was due to the Claimant’s involvement in the sport.
195. From the sting of the statements the ordinary listener would have understood it to mean that the Claimant was involved in corruption and nefarious activities; that he was disowned by his own son who did so to protect his own reputation and that the Minister of Sport should do the same. The use of the word “*cancer*” in reference to the Claimant suggested that the Claimant was like a terminal disease to the sport of Boxing and would cause the eventual death of the sport in Trinidad and Tobago. Further, from the statements

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<sup>45</sup> The Elements of Journalism, The American Press Institute

complained of in this broadcast, the ordinary listener would have gotten the impression that the Claimant was passing money illegally to Mr. Forde for his own gain; that the Claimant was involved in drugs and/or the transportation of drugs and that the Claimant was involved in the death of the late Giselle Salandy.

196. All of these terms would lower the opinion of the Claimant in the mind of right thinking individuals in society.
197. In the Third Broadcast, the Second Defendant invited four persons to discuss the then existing state of boxing in Trinidad and Tobago. These persons were Mr. Claude Noel, Mr. Floyd Trumpet, Mr. Mario Robinson and Ms Carlene McCarthy all of whom were also involved in boxing. Their discussions, however, were not about the sport of Boxing in Trinidad and Tobago. On the contrary, it was about the demise of the sport due to the Claimant's involvement in it, in the training of amateur boxers, the promotion of fights for amateur boxers and the funding of the sport both at the amateur and professional level. The panellists painted the picture that the Claimant abused his authority as an adviser to the Minister to advance his role in boxing for his own benefit.
198. In this broadcast, the words complained of by the Claimant which were used by Mr. Claude Noel are defamatory of the Claimant and would lower the opinion of the Claimant in the mind of right thinking individuals in society. The reasonable listener would have arrived at the conclusion that the Claimant came into boxing as a drug user and drug addict and that he practiced doping and/use of drugs on Ria Ramnarine and the late Giselle Salandy.
199. Further, the words complained of made by Ms. Boxhill are defamatory of the Claimant and Ms. Boxhill admitted in cross-examination that she was referring to the Claimant in her statements. From Ms. Boxhill's comments, the reasonable and ordinary listener would have formed the impression that the Claimant is a sexual predator who used his role in Boxing to lure young female boxers into engaging in sexual acts and they were afraid to speak out against him.
200. While the sport of Boxing in Trinidad and Tobago, the issue of public funds for the sport and the legality of a person holding public office who is paid from the public purse are



matters of public interest, it is not in the public interest to be informed of matters which have not been substantiated.

201. Apart from the statement by Mr. Moore that the Claimant was illegally a promoter and an adviser to the Boxing Board, there was no evidence that the statements made in the other defamatory statements are true. As such, it was not in the public interest to be informed of scandalous untruths.
202. In these circumstances, the Second and Third Defendants are liable in damages against the Claimant. The Second Defendant is liable since he was responsible for permitting the defamatory words to be aired and the Third Defendant is liable since it permitted the Second Defendant, its employee, to use the said radio frequency to broadcast the defamatory statements for which it had a concession.

**Order**

203. Judgment for the Claimant.
204. The Second and Third Defendants to pay the Claimant general damages in the sum of \$450,000.00 which includes an uplift for aggravated damages.
205. The Second and Third Defendants to pay the Claimant the sum of \$100,000.00 as exemplary damages.
206. The Second and Third Defendants to pay the Claimant prescribed costs pursuant to Rule 67.5(2) (a) CPR quantified in accordance with the scale of prescribed costs at Appendix B CPR Part 67 the sum of \$75,250.00.

.....  
**Margaret Y Mohammed**  
**Judge**