

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No CV 2007-02823

BETWEEN

Glen Roach

Claimant

AND

T&T News Centre Limited

Defendant

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES:

Mr. Keith Scotland and Mr. Anthony Manwah for the Claimants

Mr. Vasheist Maharaj for the Defendants

Judgment

The Claimant claims inter alia, damages including aggravated and exemplary damages for libel contained in a series of 3 articles “the Articles” captioned

- (a) “Senior officer’s WPC lover on sick leave for past two years”
“Deputy on promotion list.”
- (b) “On sick leave for past two years”
“WPC ‘deputy’ ducks promotion”
- (c) “Son of senior officer creates rumble within Police Service”
“Rogue Cop promoted – alleged links to underworld”

in the newspaper TNT Mirror of the 2nd, 4th, and 9th June, 2006 respectively, printed and published by the Defendant.

He also claims an injunction restraining the Defendant whether by itself, its servants or agents or otherwise, from further publishing or causing to be published the said or similar words defamatory of the Claimant.

It is not disputed that the defendant publishes the Trinidad and Tobago Mirror or that the words, photographs, and captions complained of were published by it.

At the time of the alleged libel the Claimant was the Deputy Commissioner of Police and Acting Commissioner of Police.

The Claimant alleges that in consequence his reputation has been seriously damaged and he has suffered distress and embarrassment.

The Defences

The Defendant in the defence filed on December 19th, 2007 admitted printing and publishing the series of articles. However it averred

- (a) the words photographs or captions were not capable of bearing the meanings alleged or any meaning defamatory of the Claimant and that the meanings contended for by the claimant did not flow from the articles when read within the context of the entirety of the articles
- (b) even if the articles were defamatory, there was no evidence that the articles were referable to the Claimant, and that readers of the articles would not identify the claimant as being their subject,
- (c) Even if they were defamatory and referable to the Claimant that the defences of
 - (i) justification
 - (ii) fair comment and
 - (iii) qualified privilegeare available to them in relation to the publication;

- (d) That the Defendant is otherwise immune from action by reason of the conjoint effect of statute, common law and the constitution.

The Claimants contend, however, that the words are clearly defamatory of the claimant and referable to him and there is no basis whatsoever for a plea of justification or fair comment. Further that the circumstances surrounding the publication of this article demonstrate clearly that it was not the product of responsible journalism and that the defence of *Reynolds* privilege does not apply in those circumstances.

Issues

The issues therefore are:

- (1) Whether the words in the articles complained of are defamatory;
- (2) Whether they are referable to the claimant
- (3) If so whether the publication of the articles is protected from an action for defamation by
 - (a) the defence of justification
 - (b) the defence of fair comment
 - (c) the defence of qualified privilege
 - (d) any other immunity of the type suggested
- (4) Assuming that the words are defamatory and their publication is not protected by the defences aforesaid, what, if any, damages is the Claimant entitled to.

Disposition

I find that some of the words in the article of June 9th 2006, though not the articles of June 2nd and June 4th 2006, are referable to the Claimant and defamatory of him. I find that the defences of justification, fair comment, and qualified privilege fail, and that the wider immunity suggested has no basis on the authorities.

Accordingly I order -

- (a) that there be judgment for the Claimant for damages in the sum of \$125,000.00 with interest thereon at the rate of 6% from the date of service of the fixed date claim form

- (b) that costs on the basis prescribed by the Civil Proceedings Rules be paid by the Defendant to the Claimant
- (c) that an injunction is hereby granted restraining the Defendant whether by itself, its servants or agents or otherwise, from further publishing or causing to be published the said or similar words defamatory of the Claimant alleging or to the effect that the Claimant's wife was promoted while the Claimant held the substantive post of Deputy Commissioner of Police or acted in the post of Commissioner of Police.
- (d) Parties to be at liberty to apply

The Evidence

The Claimant's Attorney-at-law filed a Witness Summary for the Claimant on March 5th, 2009 and subsequently, a Witness Statement was also served on June 12th, 2009. Application was made by the defendant's attorneys to have struck out portions of the witness statement. It was ruled that the majority of the witness statement would not be struck out but the issue of the weight to be ascribed to the challenged portions would be a separate matter for consideration.

It is not in dispute that between June 2nd, June 4th and June 9th, 2007 a series of articles were published by the Defendant, in consecutive issues of the TNT Mirror bi-weekly newspaper sold in Trinidad and Tobago, printed and published by the Defendant.

The Defendant served witness statements for its witnesses Wayne Chookolingo and Kirk Perreira on the December 10th and 15th 2008 respectively. However, at trial the Defendant called only Mr. Wayne Chookolingo, and failed to call the other witness Mr. Kirk Perreira. Accordingly the Defendant was not entitled to rely on the evidence of Mr. Kirk Perreira.

In the witness statement submitted by Mr. Wayne Chookolingo, Managing Director of the TNT News Center Limited, it was contended that the series of articles and the matters touched upon therein were published by the Defendant as they were of great public importance because of the long history of public servants and senior government employees being accused of and being associated with corruption and using their positions of authority to obtain personal favours as opposed to the public good. Mr. Chookolingo further submitted that the contents of the article were of concern to society as a whole and based upon the Defendant's "responsibility of responsible journalism" and "motivated by the role of a free press in maintaining democracy in a free society."

However under cross examination Mr. Chookolingo admitted while he kept track of the business side of the newspaper he had no editorial functions. He was not in a position to confirm from his own knowledge that anyone had tried to contact the Claimant or Ms. Salina. To date the Defendant is not in a position to confirm the contents in the disputed articles were fact. Consequently, the Defendant cannot assert that the matters in the disputed articles were true.

Analysis and Law

Issue -Are the words defamatory

It is necessary to set out below relevant portions of the text of the offending articles though of course this was examined in the context of the entire articles. (All emphasis and underlining mine)

The words complained of

On June 2nd, 2006 the Defendant printed and published an article on page 3 of the TNT Mirror which contained the following words, photograph and captions:

- Senior officer's WPC lover on sick leave for the past two years (Bold Print)
- "Deputy" on promotion list (Headline in Bold Print)

"The common-law wife of a very senior police officer has been listed for promotion despite being on sick leave for the past two years".

“No one knows for certain, but when you see the live-in lover of an ACP getting promoted and she is not even working, you have to start asking questions’.

The woman is a glorified housewife, being paid by the Police Service to be the concubine of someone who may one day become the Commissioner of Police (CoP).

As soon as she and the senior officer started making out, the woman was moved to one of those elite squads based at the Twin Towers’.

It does not look good because police constables who are bussing their tails in the line of duty are being overlooked, although some of them have been acting in the rank of corporal for years’.

The insider said it would be very interesting to hear what Acting CoP Glen Roach would say with respect to that oddity, that a WPC, who is apparently unfit for duty, has been earmarked for a promotion over a WPC who is actively working within the Service”.

- *A photograph of the Claimant with ‘Acting CoP Glen Roach’ in caption.*

On June 4th, 2006 the Defendant printed and published an article on page 7 of the TNT Mirror which contained the following words, photograph and captions:

- *On sick leave for past two years (in Bold Print)*
-
- *WPC ‘deputy’ ducks promotion (Headline in Bold Print)*

“This newspaper broke a similar story in last week’s edition of the Friday Mirror headlined ‘Deputy’ on promotion list, revealing a woman police constable who was living in a common-law relationship with a senior officer had been selected for promotion despite her being on sick leave for the past two years’.

- *A photograph of the Claimant with 'Acting Commissioner of Police GLEN ROACH'*

On June 9th, 2006 the Defendant printed and published an article on page 7 of the TNT Mirror which contained the following words, photograph and captions:

- *Son of senior officer creates rumble within Police Service (in Bold Print)*
- *Rogue cop promoted (Headline in Bold Print)*
- *.....alleged links to underworld (in Bold Print)*

"This is a clear case of nepotism", one veteran officer told TNT Mirror on condition of anonymity.

"Firstly we have seen the common-law wife of a deputy commissioner getting promotion'.....

"How can that be justified?"

"You have the wife of the Ag. Commissioner of Police (CoP) being promoted to Corporal while she is on sick leave".

"Meanwhile, the controversial promotion of Corporal Bernadette Salina, the common law wife of Ag. CoP Glen Roach, continues to be a bone of contention for officers who were bypassed for promotion."

"According to reliable sources, although Salina's name was removed from the original list of 302 constables for the promotion ceremony last week, she was still promoted despite missing the ceremony."

- *A photograph of the Claimant with "Ag. CoP Glen Roach.... Wife promoted" underneath.*

The Claimant contends that words in the articles in their natural and ordinary meaning bear the meanings hereinafter set out in full:

The meaning of the words

- the Claimant was in some way responsible for being the cause of promoting an officer in a dishonest manner
- the Claimant is responsible for a waste of police service money
- the Claimant used his position inappropriately by having his common law wife moved to an elite squad
- the Claimant is dishonest
- the Claimant abuses his position
- the Claimant is not someone worthy of respect

It is necessary therefore to consider whether the articles can bear any or all of the meanings ascribed to them by the Claimants. In this regard, before considering the alleged meanings themselves the following principles need to be borne in mind when considering whether or not words are defamatory.

Principles

- (1) The words are to be given the meaning that would be ascribed to them by the ordinary man *Lewis v Daily Telegraph [1963] 2 AllER 151*

“Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question.”

The Claimant sought via his witness statement to testify as to what he understood the words complained of to mean. I am satisfied that , as contended on behalf of the defendant ,that any such evidence by him would be of no weight- See Gatley on Libel and Slander (10th ed page 973 para 32.27)

- (2) It was a matter of impression to an ordinary person on first reading not later analysis *Hayward v Thompson [1981] 3 AllER 450*.
- (3) It is not necessary to analyse each word in detail but rather to consider the overall impact of the article.
- (4) The test is whether by their “Natural and ordinary meaning” the words used can be described as defamatory and this includes inferential meanings – *Lewis v Daily Telegraph [1964]AC 234 (@) 258*. See also *P.C. Ramdhan and others v Assang, Grant, and Trinidad Express Newspaper* Civil Appeal 54 of 2004 in particular paragraph 14. See also *Panday v Gordon* Civil Appeal 175 of 2000 per Hamel Smith J.A. paragraph 17-20 inclusive, paragraph 25, 57.

Whether any allegations are referable to the Claimant and if so which.

I agree that the articles must be read for their meaning in their entirety to provide the appropriate context. Having considered the first article I find that applying the above tests the words and context of the articles of June 2nd and June 4th do **not** obviously refer to the claimant. Although the claimant's photograph and name appear in these articles they are not published in a context which indicates that he, and not some other senior police officer, is the subject of the article. His name and photograph appear simply in the context of his being the then Acting Commissioner of Police. This demonstrates why the test is not what the Claimant understood the words to mean. The ordinary casual reader would not have the essential knowledge that the claimant even had a “common law wife” who was a police officer.

This is not the case with respect to the article of June 9th 2006 (the third article). It is there made perfectly clear that the claimant is the one whose "common law wife" is alleged to have been promoted, possibly undeservedly.

It is not apparent from a reading of the article however that the rogue cop referred to therein might be the son of the Claimant.

I note the defendant's witness answers under cross examination when asked re article of June 9th 2006 - Rogue Cop promoted -

Q: Son spoken of in this article Rogue cop - is son of Glen Roach?

A: That is what is said here

Q: And his son limed with Rogue elements?

A: That is what is said.

But in fact this is not what is said in the article. Claimant testified that senior police officer could refer to any one above the rank of corporal. Even the reference to "the son of one of those top cops" does not convey that the claimant is his father.

This allegation required specialised knowledge not available to the ordinary reader that the Claimant had a son who was a police officer in order for it to be referable to the claimant.

Further the articles of June 2nd and June 4th 2006 require specialised knowledge not contained within these articles, that the claimant's common law wife was a police officer. While the claimant averred that he understood the words to refer to him there is no evidence of any weight to this effect, notwithstanding paragraph 14, 15 and 16 of the claimant's witness statement.

I consider that it may in some circumstances be appropriate to look at a series of articles to determine from their context whether, taken together, a claimant is being referred to. In this case that would not be necessary as there is no doubt that in the third article the claimant is the person being referred to.

I do not consider that the articles of June 2nd and June 4th, which were not defamatory of the claimant when they were published, would necessarily become defamatory retroactively when the article of June 9th was published identifying the claimant.

I consider it would be a question of fact and degree as to whether any specific matter in one of the earlier articles would so stand out, as to remain in the memory of the ordinary reader, and be reinterpreted in the light of the subsequent disclosure of the identity of the senior officer being referred to.

Meaning

Having considered the articles in the context of the above principles I set out the meanings contended for by the Claimants and my own conclusions thereon immediately after each.

Alleged meaning 1

1. The Claimant was in some way responsible for being the cause of promoting an officer in a dishonest manner

Finding

In relation to this alleged meaning I find that the article does bear this meaning and was intended to convey this impression as demonstrated by the juxtaposition of the word nepotism with this allegation

Alleged Meaning 2

- the Claimant is responsible for a waste of police service money.

Finding

In relation to this alleged meaning I find that words in the article read as a whole do bear this meaning. In fact this is a meaning supported by the defendant's own defence at paragraph 18 (1), (2) and (5) -

Promoting an officer who is not turning up for work would obviously be a waste of police service money.

Alleged Meaning 3

- the Claimant used his position inappropriately by having his common law wife moved to an elite squad

This allegation was made in the article of June 2nd 2006 which I have found was not obviously referable to the claimant at the time of publication. I do not consider that the ordinary person, not unusually suspicious, would, on learning the identity of the person referred to in the June 9th article then refer back to the earlier articles and analyse them in light of this knowledge.

I have indicated that it would be a question of fact and degree as to whether a matter in one of the earlier articles would so stand out, as to remain in the memory of the ordinary reader, and be reinterpreted in the light of the subsequent disclosure of the identity of the senior officer being referred to. The allegation that claimant moved his common law wife to an elite squad would not in my view be such an allegation that would remain within the consciousness of the ordinary reader, especially given that the focus on the articles is rather her alleged promotion while on very extended sick leave.

Alleged meaning 4 and 5

- the Claimant is dishonest
- the Claimant abuses his position

Finding

I find that the words in the article read as a whole could be so understood. The intent of the article is to convey nepotism, favoritism and abuse of office, and it does so.

Alleged Meaning 6

- the Claimant is not someone worthy of respect

Finding

I find that the article is in fact capable of bearing this interpretation.

I find that the third article is therefore capable of bearing some of the meanings ascribed to them by the Claimant in the Statement of Case as I have set out above.

Further I find that most of those are meanings which leap out at the reader.

THE DEFENCES

Justification

In order for the defence of justification to succeed the Defendant must show that the words complained of were true in substance. The Defendant has failed to prove that the allegations that were published about the claimant are true. Yet it did not at any time seek to withdraw this defence.

The Defendant admitted that it never had an opportunity to review the merit list of police officers eligible for promotion in June 2006, and consequently could not confirm

that Ms. Bernadette Salina was ever on the list as an officer to be promoted to the rank of Police Corporal.

Under cross examination the Claimant testified that he was responsible for the generation of the merit list of police officers eligible for promotion during that period.

The Claimant also testified, under cross-examination, that the name of his common law wife, Bernadette Salina, was in fact not on the merit list in June 2006 or the promotions list and that in fact she was never promoted to the rank of Corporal.

It is apparent that there is no evidence that the Defendant made any attempt to verify the information that it published before publishing it. It chose instead to rely solely on the uncorroborated statements of an informant. Further there is no reliable evidence that it made any attempt to contact either the claimant or his common law wife when the simple issue of whether she was listed for promotion could have been rebutted or confirmed. In the circumstances the plea of justification fails.

Qualified privilege/the *Reynolds* defence

I therefore consider, having found the words are defamatory as alleged by the claimant, whether or not a defence of qualified privilege applies. In particular, I need to consider whether the variation of qualified privilege that was established in the case of *Attorney General v Reynolds* [1994] 4AllER 609 applies in this case. (See also Civ. Appeal 54 of 2004 P.C. *Ramdhan v Assang*)

In ascertaining whether that defence applies, a Court needs to be convinced that principles of responsible journalism were followed. If the Publisher or Journalist acted responsibly but an error was made then even if a story resulted which was defamatory, the Defendants would be exonerated from liability. In *Reynolds*, the House of Lords clearly considered that there was tension between the individual's right to privacy and the right of a free press to investigate.

Per Lord Nicholls of Birkenhead at page 1023 para C-G:

“Likewise, there is no need to elaborate on the importance of the role discharged by the media in the expression and communication of information and comment on political matters. It is through the mass media that most people today obtain their information on political matters. **Without freedom of expression by the media**, freedom of expression would be a hollow concept. **The interest of a democratic society in ensuring a free press weighs heavily in the balance in deciding whether any curtailment of this freedom bears a reasonable relationship to the purpose of the curtailment. In this regard it should be kept in mind that one of the contemporary functions of the media is investigative journalism. This activity, as much as the traditional activities of reporting and commenting, is part of the vital role of the press and the media generally. Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser. For it should not be supposed that protection of reputation is a matter of importance only to the affected individual and his family. Protection of reputation is conducive to the public good. It is in the public interest that the reputation of public figures should not be debased falsely.**

Per Lord Hobhouse of Woodborough Page 1059 para D-G:

“**The liberty to communicate (and receive) information has a similar place in a free society but it is important always to remember that it is the communication of information not misinformation which is the subject of this liberty. There is no human right to disseminate information that is not true. No public interest is served by publishing or communicating misinformation. The working of a democratic society depends on the members of that society being informed not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being**

misinformed. These are general propositions going far beyond the mere protection of reputations.

It considered that this tension was best resolved on a case-by-case basis rather than permit a general defence of qualified privilege in relation to all reporting which had political overtones. Accordingly, it set out the following as relevant considerations in determining whether an offending article was the product of “responsible journalism”,

Per Lord Nicholls of Birkenhead at page 1027 para C-E:

“Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

1. *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.*

The allegation was extremely serious. The allegation of nepotism in the police force and promotion on a basis other than merit was a serious indictment on the Claimant.

2. *The nature of the information, and the extent to which the subject matter is a matter of public concern.*

This would have been a matter of legitimate public interest and concern if true.

3. *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 their stories.*

In this case the defendant should have been alive to the fact that the single uncorroborated source might have had an axe to grind. This was especially so as the articles contained within themselves indicators that this was a possibility. They specifically mentioned that the system of promotions was a subject of controversy and the subject of High court injunction. In such a situation a publisher following the tenets of responsible journalism had a duty to ensure

that it was not used as a mouthpiece for the publication of false matters to advance the agenda of others. Hence the importance of the step below.

4. *The steps taken to verify the information.* –

It was alleged by Mr Chookolingo that he asked to see a copy of the promotion list but this was not available. No other step appeared to have been taken. I take into account the realities that a journalist, especially investigative journalists, may have to contend with. For example, a journalist would not be likely (as in the Jameel case) to have the luxury of five separate corroborative sources. In the case of *Bonnick v Morris* [2002] 3WLR 820 the Privy Council accepted that a single source could be acceptable.

I also accept that neither can a journalist at all times expect to receive confidential documents.

In such circumstances it may be, as it was in this case, a judgment call as to whether an uncorroborated source or sources would be reliable enough to (a) truthfully confirm the existence of the list and (b) accurately reproduce the relevant contents verbally. In some cases, this process may result in misinformation or even wrong information. In such circumstances it may be all the more necessary to obtain comment from the subjects of the story against whom serious allegations are going to be made and provide a reasonable opportunity for their response.

5. *The status of the information. The allegation may have already been the subject of an investigation which commands respect.*

6. *The urgency of the matter. News is often a perishable commodity.* The last article was published a week after the first. A week was sufficient time to have at least sought corroboration from another source and obtain comment from the Claimant and Constable Salina.

7. *Whether comment was sought from the claimant. He may have information*

others do not possess or have not disclosed. An approach to the claimant will not always be necessary.

Because of the scarcity of actual verifiable information and the seriousness of the allegation I find in the circumstances of this case that it should have been obvious to a responsible publisher that before publishing an article with an allegation that could severely damage the reputation and credibility of a senior police officer, it was a requirement of responsible journalism to have sought comment from the Claimant and his common law wife.

8. Whether the article contained the gist of the claimant's side of the story.

It most definitely did not. These allegations were made in a series of 3 articles commencing on June 2nd 2006 and culminating in the article of June 9th 2006. There would have been sufficient time to make enquiries of the claimant and his wife if it were intended to name them one week later, to get their side of the story before identifying them in the final article.

9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

In the article of June 9th 2006 the promotion of Ms Salina to Corporal was stated as though it were an established fact.

10. The circumstances of the publication, including the timing”.

I have found that this is not the case of repeated publication of defamatory statements but rather publications of allegations not referable to the Claimant culminating in a single defamatory publication referable to him.

These considerations were also applied by the Privy Council in the case of **Seaga v Harper P.C. Appeal 90 of 2006** from Jamaica.

It has also been established in the case of *Loutchansky v Times* [2002] 1 ALLER 662(a)-(c),

*“The interest is that of the public in a modern democracy in free expression and, more particularly, in the promotion of a free and vigorous press to keep the public informed. The vital importance of this interest has been identified and emphasised time and time again in recent cases and needs no restatement here. The corresponding duty on the journalist (and equally his editor) is to play his proper role in discharging that function. His task is to behave as a responsible journalist. He can have no duty to publish unless he is acting responsibly any more than the public has an interest in reading whatever may be published irresponsibly. **Unless the publisher is acting responsibly privilege cannot arise.**”*

667 (g)-668 (f)

“In deciding in any given case whether the standard of responsible journalism has been satisfied, the following considerations are likely to feature prominently in the court’s thinking. (i) If the publication is held privileged, that, to all intents and purposes, will provide the publishers with a complete defence..

Accordingly, if the defence is established, that, as Gray J pointed out in his judgment below ([2001] EMLR 898 at 905 (para 16), has ‘the effect of denying any remedy, whether by way of compensation or other vindication, to a person who has been libelled’. The damaging consequences of that, not merely for the aggrieved individual but for society at large, are highlighted by Lord Nicholls in Reynolds’ case:

‘Reputation is an integral and important part of the dignity of the individual...’

(ii) Setting the standard of journalistic responsibility too low would inevitably encourage too great a readiness to publish defamatory matter. Journalists should be

rigorous, not lax, in their approach. In the interests of the public as well as the defamed individual that, whenever possible, truths and not untruths should be told. This is in the interests of the media too: once untruths can be published with impunity, the public will cease to believe any communications, true or false.

- (iii) *Setting the standard too high, however, would be no less damaging to society. This would deter newspapers from discharging their proper function of keeping the public informed. When determining in respect of any given article whether or not it should attract qualified privilege, the court must bear in mind the likely impact of its ruling not only upon the case in hand but also upon the media's practices generally. Qualified privilege ordinarily falls to be judged as a preliminary issue and before, therefore, the truth or falsity of the communication is established. The question to be posed is accordingly whether it was in the public interest to publish the article, true or false, rather than whether it was in the public interest to publish an untruth. Even, moreover, when the untruth of the article is established (or when, as here, it is not formally disputed), it is important to remember that the defence of qualified privilege tolerates factual inaccuracy for two purposes: first so as not to deter the publication sued upon (which might have been true): and secondly so as not to deter future publications of truthful information.*

These being the relevant principles and considerations I would normally turn, therefore, to the evidence as to what was the investigative process followed by the writer of this article. In this case there was no such evidence by the writer, who did not attend for cross examination on his witness statement.

I take into account the following observation made in *Reynolds*.

*Further, it is elementary fairness that, in the normal course, a serious charge should be accompanied by the gist of any explanation already given. **An article which fails to do so faces an uphill task in claiming privilege if the allegation proves to be false and the unreported explanation proves to be true**".*

Per Lord Nicholls of Birkenhead at page 1028 para C-F:

Above all the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a bloodhound as well as a watchdog. The court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know, especially when the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication".

[p1027 G-H]

Per Lord Hobhouse of Woodborough Page 1060 para B-C:

*"To attract privilege the report must have a qualitative content sufficient to justify the defence should the report turn out to have included some misstatement of fact. It is implicit in the law's insistence on taking account of the circumstances in which the publication, for which privilege is being claimed, was made that the circumstances include the character of that publication. **Privilege does not attach, without more, to the repetition of overheard gossip whether attributed or not nor to speculation however intelligent**".*

I find that in relation to the Claimant, no attempt was made to contact him.

These, therefore, are the primary facts that relate to the *Reynolds* test.

I find that:

- (a) the allegations against the Claimant were serious.

- (b) The subject matter was decidedly of public concern relating as it did to the operations of the police service whose operations were matters of which the public were entitled to be informed.
- (c) The tone of the article was extremely critical of the claimant.

The article of June 9th was the only one referable to the Claimant. It named him directly and alleged as fact that his common law wife was promoted despite being on sick leave. It referred to the Claimant in his public capacity as the allegation related to the effectiveness and functioning of police administration and morale. It would have been a proper subject for investigative journalism.

But investigative journalism is not an excuse for the publication of unsubstantiated rumours, gossip, or speculation. It requires fact checking to the extent practicable in the circumstances, from whatever other sources may be available. In the Jameel case 5 sources were available. In the case of **Kayam Mohammed and others v Trinidad Publishing Company and others H.CA. 3552/2003** (delivered June 28 2008) only one source, previously found to be reliable, was available. The court in that case recognised that journalists would not always have the luxury of multiple sources, and reliance on one source may be compatible in some cases with responsible, investigative reporting. However as recognised in the case of Reynolds there would have to be a very convincing explanation for the failure to report an explanation even more so therefore for a failure to even seek, far less secure, comment from the subject of the investigation.

It would have been a simple matter to seek such comment from the Claimant or his common law wife, Constable Salina, on the simple issue of whether her name was on the merit list or the promotion list. I am mindful of the dangers of setting the bar too high or too low. I do not consider that it would be setting the bar too high to expect an explanation as to why no comment was sought from the Claimant or an opportunity provided to him to respond to the allegation. I find in this case the failure to seek comment, was a departure from a fundamental requirement of responsible journalism. In all the circumstances, I find that on balance the article of June 9th 2006 was not the product of responsible journalism in that a reasonable opportunity had not been provided to the subjects of the investigation to comment on the allegation that

Constable Salina had been promoted. In this case it removes the cloak of qualified privilege or its variant, Reynolds privilege.

Fair Comment

For the defence of fair comment to succeed the Defendant must establish, through its evidence, that the matter commented on was one of public interest; that the statements made were comments or opinions and not assertions of fact; that the comments or opinions were based upon true facts; that the comments were honestly made; and that any such comment was not be actuated by malice.

Fair comment

No attempt to obtain comment from the claimant was made.

The matters were of public interest. However they were not mere comment but assertions of fact which, despite the plea of justification maintained up to trial, have not been established as being true facts. Further in light of the paucity of investigations made before rushing to publish these allegations it is difficult to say that any comment made was honestly made. The defendant has therefore failed to satisfy the requirements of the defence of fair comment.

Other Pleaded Defences

The defendant also contended further, that the subject matter of the article fell within an exception to the general right to institute legal proceedings for Libel which applied to governmental institutions, and by extension to the claimant, and still further that the publisher should be exonerated because of the role of a free press in a democratic society arising from the conjoint effect of the constitutional provisions protecting freedom of thought and expression and freedom of the press, the common law and the Libel and Defamation Act Chapter 11.16 Sections 2 and 3.

I have considered the written submissions in relation to these contentions and am satisfied that the authorities do not support these propositions or modify the position

from that set out in the previous extensive extracts from the authorities cited quoted above.

In fact arguments to this effect were expressly rejected by the Privy Council in the well known case of **Panday v Gordon** No. 35 of 2004 - an appeal from this jurisdiction.

DAMAGES

I turn to the question of damages. I have found that the final article was defamatory in that it in effect alleged nepotism, favouritism and abuse of office on the part of the claimant. I have further found that the article does not fall within the ambit of responsible journalism, and is not protected by qualified privilege, justification or fair comment.

Damages

In paragraphs 14 to 24 inclusive of his witness statement the Claimant explained the extent to which his reputation was damaged and the extent of the distress and embarrassment that he suffered in both his personal and professional life.

14. *“After the publication of those articles people began to call me and tell me what they saw on the papers and enquired about whether or not the contents of the papers are true. I experienced people who I knew for years calling about the articles and questioning me about its accuracy, which indicated to me that on some level they believed. I found myself then having to continuously **explain to a number of people** that my wife never even sat the promotion exam.*
15. *I also remember being called by the Commissioner of Police, Mr. Trevor Paul, a short time after the publication asking me about the accuracy of the publication. He instructed that we go through the merit list again to ensure that my common-law wife's name was not*

on the merit list. He also questioned me about the qualification of my son and I had to produce those qualifications.

16. *I remember asking the Commissioner whether or not it seemed to him that I was dishonest. **He replied that he was just checking based on the article and that it was his duty to check.***
17. *I felt very ashamed about this encounter with the Commissioner of Police, as it seemed to me that even he questioned my honesty by asking me to produce **my son's qualifications and to ensure that my common-law wife was not promoted.***
18. *The matter was even raised by the Police Executive Board.*
19. *There were a lot of **rumours especially amongst my colleagues** who I was sceptical to even be around. When I would pass and greet people even though **they** would usually respond, **they** would stop what they were doing, and then **I would see them give me a second look when I passed and would start snickering. I would hear them whisper** when my back was turned that I promoted my wife.*
20. *As a result of these publications **I felt** that I was not invited to meetings at the Ministry of National Security for a while after the publication. Normally, there would be weekly conferences which I would normally attend. I was not invited for three or four weeks directly following the publication.*
21. *(Struck out) I was next in line for promotion to Commissioner of Police. I acted in the Acting post several times and the then Commissioner Paul would have been due to leave shortly after the publication. Mr. Paul's position as Commissioner was extended for one (1) year. (Struck out) I believe that the publications detrimentally affected my consideration to the post of Commissioner of Police.*

22. *I felt very ashamed that people would think that I was dishonest and would abuse my position. I therefore, found myself shying away from people to avoid the confrontation, questioning looks and in a few instances the direct hostility.*
23. *My children were very concerned. The publications brought a very difficult strain in my relationship with my common-law wife, which lasted for as long as six to eight weeks after the publication.*
24. *There were also a lot of talk shows and opinion polls about me after the publication of the articles. I went to the radio station Power 102 fm on Abercromby Street about two weeks before the publication and after the publication **that same show made some very terrible comments about me. People would constantly call and tell me to listen to one station or the other where the commentators would be saying very negative things about me based on the publications. I remember in particular that the comments of Umbala Joseph on 95.5 were very scathing.***

The law

In the case of *Kenneth Gordon v Basdeo Panday*, Civil Appeal 175 of 2000 Honourable Justice of Appeal Hamel-Smith indicated that damages in libel were to be awarded for the purposes of compensating the Claimant for injury to feelings and re-establishing his reputation. He considered that because of the outpouring of media support, the Claimant in that case had not had his reputation irreparably damaged to any degree. On Appeal to the Privy Council the award of \$300,000.00 was upheld.

According to **Gatley on Libel and Slander 9th Ed. Page 201 paragraph 9.2** (also cited in the **Owen Serrette** case infra)

“The purpose of general damages is to compensate the claimant for the effects of the defamatory statement, but compensation ... is a more complex idea than it is in the case of injury to person or

property by negligence. It has been said that general damages serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation.”

At pg.202 the author continues:

“Our system does not regard the claimant’s reputation as vindicated by a symbolic award of a token or conventional sum of damages and the jury in a serious case is entitled to award a large sum perhaps equalling or exceeding the damages in a case of serious personal injury...”

In the case of ***Pan Trinbago and Owen Serrette v Maharaj*** HCA: 1071 of 1995 delivered by Bereaux J December 20th 2002 an award of \$90,000.00 was made to Pan Trinbago, being for damages for vindication of reputation and without the element of compensation for hurt feelings, and in respect of Owen Serrette, the sum of \$100,000.00 was awarded to include the additional element of damages of hurt feelings.

I also consider the case of ***Moore-Miggins v TNT News Centre*** (CV/38 of 2001 Delivered by Ventour J. July 17 2007 where allegations were made against an Attorney at Law including that she had abandoned her legal practice to the detriment of her clients. She was awarded the sum of \$130,000.00 as compensatory damages.

I take into account the case of ***Stanley Ryan v T& T News Centre Limited*** HCA S-820 of 2001 a decision by the Honourable Justice Judith Jones where she awarded the sum of \$70,000.00 which, however, included an element of \$20,000.00 for aggravated damages, in respect of a libel involving allegations of lack of rectitude in financial affairs.

I also note also the comments of the Court of Appeal - in particular the observations of the Honourable Justice of Appeal Kangaloo in the recent case of ***Rahael v Tn T News Centre Limited Civ. App. No. 166 of 2006 Delivered July 9 2009 @ para. 10***

The purpose of an award of damages in a defamation action is threefold in nature: first, to compensate the claimant for the distress and hurt feelings, second, to compensate the claimant for any actual injury to reputation which has been proved or which may reasonably be inferred and third, to serve as an outward and visible sign of vindication. Thus in the assessment of damages several important factors fall to be considered. In

John v MGN [1997] Q.B. 586. *it was noted that in assessing damages regard*

must be had to the extent of the publication and the gravity of the allegation. The following passage from the judgment of Sir Thomas Bingham is worthy of note:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it touches the plaintiff’s personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be.”

Further citing Halsbury’s Laws of England 4th ed Vol.28 at para 18 “

Damages in libel.

If a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as “general

damage.” Thus a plaintiff in a libel action is not required to prove his reputation, nor to prove that he has suffered any actual loss or damage.”

Para 13

Although the claimant starts off with a presumption of damage and is not required to testify, evidence of damage should still be presented since a claimant offering no evidence at all may find himself with a small award of damages. To attract more than this small award for injured feelings and the distress associated with the libel, evidence is required.

*14. The effect of the failure to provide evidence in support of a claim for damages in a libel action is illustrated in *Hayward v Hayward*. [1887] 34 Ch.D. 198 Here the plaintiff was unable to recover substantial damages in relation to a circular that was distributed by the defendant at a trade fair which cast the plaintiff and his business in a disparaging light. The court held that only a nominal award of damages should be made because the plaintiff had given no evidence of damage save that in his affidavit he deposed that the publication of the circular was calculated to injure and had injured him in his business which has fallen off since the issue of it. Despite the presumption of damage, North J felt that the evidence dealing with the issue of general damages was far too vague and imprecise to justify a substantial award. Nominal damages in the amount of £5 was considered sufficient compensation.*

An award of \$250,000.00 was there made

- (i) for the injury to the respondent's feelings and reputation, in the absence of any direct evidence as to full extent thereof .
- (ii) to vindicate the respondent and to compensate for the obvious damage to his reputation other than his professional reputation (which had been held by the learned trial judge not to have been seriously affected.)
- (iii) to include an element for distress and injury to his feelings as a result of the widespread publication of the offending libel.

He expressed the view that:

" If there were evidence which demonstrated the full extent of the injury to his feelings and his distress over and above what can be assumed, this award would have been higher and the sum of \$400,000.00 or more, might have been deserved".

Conclusion

The Claimant has established without refutation that his common law wife's name was never on any promotion list. In addition there is no evidence that the Defendant performed any checks to substantiate the claim that she was promoted or ever made any attempts to contact the Claimant to ascertain the veracity of the claim before publishing the said articles.

I have found the article of June 9th 2006 defamatory of the Claimant. At best, it portrayed Claimant as abusing his office - At worst it portrayed him as being unprincipled and corrupt. I have found that the pleaded defences of justification, fair comment and qualified privilege do not apply.

I find that the evidence of the impact of the publication of the defamatory statement on the claimant to be surprisingly vague and non specific. I consider that I am entitled to and in fact required to take into account the evidence in this regard and assess it. Examination of the evidence leaves one with a sense of uncertainty as to any

specific impact on the claimant's reputation and the impression that much of the evidence in this regard is conjecture, speculation, and reconstruction. This is illustrated for example for example by some of the aspects of that testimony in his witness statement, including those that I have underlined, and the striking generalisations about unspecified persons.

Nevertheless I find as follows:

- (a) The nature of the allegation is such that damage to the Claimant's reputation can be presumed.
- (b) Similarly, notwithstanding its generality, distress and injury to feelings can be inferred from the Claimant's testimony, for example at paragraph 22 of his witness statement; and
- (c) Vindication of the Claimant's reputation also requires a substantial award.

I consider that damages for hurt feelings in respect of an allegation of this nature would not be in the same league as the award in the Rahael case. In that case the award made, which included compensation for vindication of personal reputation and some element of hurt feelings,(taking into account the absence of evidence as to the full extent of this element), was for a far graver libel than instant one.

I take into account that some of the claimant's alleged injury to feelings and reputation stemmed from his perception that the first 2 articles referred to him and that the reference to the "rogue cop" in the third article was a reference to his son. I am satisfied that without specific knowledge that the ordinary reader would not possess, these aspects of the articles would not have been referable to him and any evidence of injury to feelings or reputation arising therefrom must be discounted. I find the evidence of the Claimant in relation to his alleged conversation with the Commissioner of Police in relation to his son's qualifications devoid of the specificity which would be expected for such an allegation. I do not accept that any such alleged conversation in relation to the claimant's son has been established or demonstrated to be referable to the

contents of the article of June 9th 2006. No specific evidence was produced by any party that the claimant's son was a police officer or had been promoted.

I do not find there to be particular aggravating factors in respect of this libel. On the evidence it is sloppiness rather than malice which is the hallmark of the journalism which produced the libel I have found.

Neither do I find any basis on the evidence to support the claim for exemplary damages.

I consider that in the light of the trend established by the local authorities an appropriate award of damages in this case based on the nature of the evidence adduced in relation to injury to reputation and feelings, for the single article and allegation which I have found to be defamatory, would be \$125,000.00.

Such an award of \$125,000.00 would in my view be appropriate

- (a) to compensate the Claimant for distress and hurt feelings,
- (b) to compensate the Claimant for injury to reputation
- (c) for vindication of reputation without an element of aggravation.

The defendant is to pay the claimant's costs on the basis prescribed by the Civil Proceedings Rules.

Disposition

I order that:

- (a) that there be judgment for the Claimant for damages in the sum of \$125,000.00 with interest thereon at the rate of 6% from the date of service of the fixed date claim form
- (b) that costs on the basis prescribed by the Civil Proceedings Rules be paid by the Defendant to the Claimant
- (c) that an injunction is hereby granted restraining the Defendant whether by itself, its servants or agents or otherwise, from further publishing or causing to be published the said or similar words defamatory of the Claimant alleging or to the effect that the

Claimant's wife was promoted while the Claimant held the substantive post of Deputy Commissioner of Police or acted in the post of Commissioner of Police.

(d) Parties to be at liberty to apply

Dated this 18th day of September 2009

Peter A. Rajkumar
Judge