THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2022-00320

BETWEEN

COLIN CHIN-ALEONG

Claimant

AND

(1) GIA LEID

(2) TARINI BHAGWANSINGH

Defendants

Before the Honourable Justice R. Rahim

Date of Delivery: May 20, 2025.

Appearances:

Claimant: R. Morton-Gittens instructed by A. Seebalack

Second Defendant: J. Jagroo instructed by A. Ramkissoon

JUDGMENT

1. This is a claim for defamation by a teacher and businessman (Colin) who operated a popular tutoring institution at Westmoorings known as Colin's Lessons or Extra Lessons or Xtra Lessons. The First Defendant (Gia) is a medical doctor who attended lessons between the years 2003 to 2012 and the Second Defendant (Tarini) is also a medical doctor. Gia owns an Instagram account and Tarini owns both Instagram and Facebook accounts. The complaint is that over the period October 4th to 7th 2021 they both published material consisting of words and photographs which imputed that Colin was a paedophile, was guilty of sexual harassment, sexual impropriety and sexual grooming of children.

2. The First Defendant has played no part in these proceedings and there is an application for judgment in default filed March 6, 2022 which has been deferred pending the decision in relation to the other defendant after trial. There has been good and proper service on the First Defendant. The defence of the Second Defendant is threefold. He claims justification, fair comment and public interest privilege.

3. There are facts which are either not in dispute or that have been admitted, so that the court does not have to make a finding thereon. It is not in dispute by Tarini that he posted the material complained of to his social media pages which had in excess of 5,000 followers, so that the act of publication has been established. It was also accepted under cross examination that the material referred to Colin by name, reference and photograph. Tarini also admitted that Gia sent the defamatory material to him and encouraged him to post the material on his own social media pages. He admitting that there were written messages exchanged

between the Defendants on WhatsApp, and that he had the knowledge and ability to "export the entire chat".

Case for the Claimant

Colin Chin-Aleong

4. Colin gave evidence on his case and called one other witness. He has carried on his lessons business for over 30 years providing tuition for SEA, CSEC, CAPE and STATS for about 250 students per year with high rates of academic success. Other tutors are also engaged by him to conduct classes in his business. As a consequence, he has forged and maintained many professional, social and friendly relationships throughout Trinidad and Tobago. He set out his employment history as an engineer and offices held by him over the years. He also set out his notable academic achievements.

5. During the period that Gia attended lessons at his business she fell into disciplinary issues on several occasions and caused disturbances inclusive of general disorderly conduct. On one occasion he lost his blackberry phone and subsequently found out that it was being used by an account owned by Gia. In 201,3 Gia verbally accosted him outside of lessons. He made reports to the police on all occasions. There has been a social media relationship between the two defendants which he has observed online.

6. From October 4, 2021 to October 7, 2021, Gia posted to her Instagram account a series of posts about Colin as follows:

TRIGGER WARNING
PEDOPHILLIA
SEXUAL ASSAULT
SEXUAL HARASSMENT

Who is Colin-Chin Aleong?

** A 55 year old Trinidadian Male who provided extra lessons at a Westmoorings home for 17 years since 1995*

** Children from primary school through secondary school attended ages 8 -17*

** Many accounts have alleged to witness or experience grooming both boys and girls from a young age. Allegedly telling boys to get girls when they were "ripe" which according to him was right after turning 15. Some have come forward describing that he would grope, make sexual comments and speak about his sex life with children.*

** He has scarred many girls and many boys were believed to be enabled to commit sexual assault during that period and later on*

** Despite multiple allegations and complaints, he has yet to be held accountable for anything due to the fear he instilled as well as the cover he presented that all of this was done as a joke thus making people feel isolated to speak up.*

He works at Waterloo Capital Advisors still running Xtra Lessons at https://www.xtralessons.com/contact/"

"Real rapey vybz right through

Allllll the time I used to think he just did it for the girls to be ok with the groping and feel sorry for him which just fucked with my head

That Colin guy told these 17 year old to go upstairs and "get in there" with girls "while they ripe" and I've heard a few cases where these enabled assholes took advantage of that vote of confidence and sexually assaulted…

Oblivious at that age to recognize it as sexual harassment and predatory behaviour Man talked about his ex wife all the time to CHILDREN. How bad his sex life was, how she was crazy, how he wanted to impregnate some girls to their faces as a "joke". How he was dating a new girl but her boobs weren't nice. I could go on forever."

7. The posts were accompanied by photos of Colin and his name. Within a short time, the posts were reposted and screenshots were shared on WhatsApp.

8. Gia also published a video on Instagram in which she stated:

No. I was about to say hi guys! No. Um. But I just want to hop on here to say I am really really proud of you guys for sharing and asking questions and for showing support. Good on ya.

Some of you may have realised the posts got deleted. And that is because someone claims that that man has a lot of money and power: Well, I have no money, and no power, but I'm still going to repost it.

Alright guys, did you know Colin actually has no money and no power?

Who said that? Oh my gosh, what's going on."

9. Tarini published the said material on October 4, 2021 on his Instagram and Facebook accounts and also made the statement "protect our kids" and also 'tagged' a popular Instagram account bearing the name "@sassofficialtt" which is widely known as a sexual assault survivor group which at the material time had 3,254 followers. He testified that the

tagging of the said "@sassofficialtt" account would have meant that persons visiting that account and/or followers of that account would have seen the material about him, as it was essentially thereby made a part of the "@sassofficialtt" page. This further broadened the audience of people who saw the material and were exposed to the allegations.

10. Shortly after the posts on or about October 4, 2021, a new Instagram profile by the name of 'To Catch a Predator Trinidad' which bore the username "@tocatchapredatortrinidad" emerged, and reposted the material. Tarini was one of the first of eight persons to follow the said Instagram profile.

11. The said newly created 'To Catch a Predator Trinidad' profile displayed what he referred to as a bizarrely altered photograph of his face as its profile picture. Under the cloak of anonymity, the said profile continued to repost the exact same material published by Gia and Tarini to their various social media accounts. The said account and its reposting attracted hundreds of likes, and quickly grew in followers, and attracted a plethora of comments from the public.

12. He testified that the allegations are completely untrue and that his life and livelihood have been irreparably affected in several ways.

Cross-examination

13. He was asked about the number of people who would have liked the posts as shown on the posts. These numbers varied and in some cases could not be ascertained. He admitted that in some cases where he testified as to how many people saw the posts this was an assumption on his part based on the total number of followers to the account. He assumed they would

all see it. He also spoke of persons who called him to speak about the allegations. He admitted that in his pre-action letter he asked for the posts to be removed, that a full retraction and apology be provided. He also asked for a proposal on damages. He accepted that the posts were removed and that an apology was offered. It was Colin's position that the apology offered was not good enough. Ultimately, the parties failed to agree on damages.

14. It was put to him that the allegations contained in the posts were based on true confessions of third parties and he disagreed.

15. A large part of the cross-examination related to the issue of damages so that same will be set out later on as and where appropriate.

Alejandro Guzman

16. Guzman holds a Bachelor's in Zoology from UWI and has known Colin for about 27 years. He was first engaged by Colin as a tutor of science and now holds the posts of Senior Tutor and Operations Manager. He set out the operations of the business having a structured curriculum spanning 15 classes daily. There have been an average of 12 tutors over the years with approximately 250 students per year. The wellbeing of the students is paramount.

17. He gave evidence of the stellar reputation of Colin and his integrity, exemplary moral compass and steadfast values. He spoke of Colin's interactions with students in a professional and nurturing manner and his going the extra mile to ensure success while prioritizing the individual needs of the student. He also testified about Colin's ethical conduct and his genuine concern for the well-being of others.

18. Beginning on October 4, 2021 he came across the material posted on social media which is set out earlier in this judgment. The posts swiftly gained traction, becoming a subject of widespread discussion among students and the community at large. The speed at which it spread was truly astonishing and deeply concerning. He promptly alerted Colin to the posts and was forced to deal with phone call after phone call from concerned parents, some acting as spokespersons for groups of parents expressing concerns about the well-being of their children being tutored by an alleged pedophile. Regrettably, following the dissemination of this material, he observed a notable decline in student enrolment. He received numerous unsolicited screenshots of the defamatory material from students, acquaintances, parents, and other individuals within his social and professional circles.

19. He was of the view that the posts have significantly undermined the trust the public held in Lessons leaving an enduring mark on its once unblemished reputation and educational service. In that regard, he compiled a report which he claimed depicted the financial repercussions of the incident. In summary, prior to the publication of the defamatory material in October 2021, Colin's Lessons maintained a monthly revenue averaging $110,000.00 per month. Subsequent to this incident, the monthly earnings have dwindled to an average of $40,000.00 per month.

Cross-examination

20. He testified that he did not view the Lessons operation as a large one and it did not provide full time employment for him, in that he worked for eight hours per day there but had other sources of income. In that regard, it was his second main stream of income. It was his evidence that although he would properly investigate complaints or matters relating to the well being

of students he did not say that he took any steps to investigate the allegations made against Colin. However, they did in fact investigate and the information appeared to be patently false. The information was also confusing. He admitted that he has not said the names of the parents who called him or the groups and has not disclosed screenshots of any texts from any such persons.

21. In relation to the contents of the report he admitted that although the information was derived from receipt books and spreadsheets, he disclosed no such material in court. Neither was he aware as to whether the business produces annual financial statements. He has no formal training in financial reporting and he accepted that less students did not necessarily equate to less classes or teachers. Less students may also mean less operating costs but that is not always the case. Finally, he admitted that he did not provide the average or net income of the business.

Case for the Defendant

Tarini Bhagwansingh

22. Tarini has been a medical doctor since September 2021 and is an outspoken advocate for animal rights, human rights, an advocate against gender-based violence and the right of the LGBT+ persons. He is also a member of the LGBT+ community as a transgender person and is particularly engaged in issues of sexual harassment, abuse, gender inequality and discrimination. He testified that having experienced sexual harassment and discrimination and feeling the sense of hopelessness and depression, he made it his life long mission to stand up against perpetrators of sexual misbehaviour. He has actively participated in peaceful protests and movements that have taken place nationwide in the

recent years with respect to these causes. He has also vocalized his belief in justice and fairness for all through his social media platforms. One of his platforms is his Instagram account and the other is his Facebook account. For reasons of privacy the court has not set out the handles and it is also not in real factual dispute that he reposted material posted by Gia.

23. For the sake of completeness, the court enquired of Tarini as to his preferred method of reference and he indicated that he prefers to be referred to by the masculine gender hence this decision contains such references.

24. He knows Gia through interacting with her on social media and in her capacity as a medical doctor. According to him, she has since migrated to Ireland. Around the 5th October 2021, he came upon Gia's posts which he interpreted as Gia saying that Colin had been abusing his position as a lessons teacher by taking advantage of students. He testified that Gia spoke of her own experience of sexual abuse as a past student. Further, she provided support for the assertions with written accounts from unnamed past students.

25. He then reached out to Gia with great concern, as he considered the contents touched and concerned the very serious issue of sexual harassment and/or abuse concerning minors. They spoke and Gia asked him to share the posts. The posts were sent to him via WhatsApp Messenger and he felt that it was in the public's interest that the said posts be brought to light through his social media platforms.

26. On October 6, 2021, he reposted the pictures and comments made by Gia and sent by her to him. He posted them on his Instagram as a post, on his

Instagram as a story and as a post on Facebook. He subsequently saw other people on social media sharing the posts made by Gia. Approximately four hours later at about 6:00 p.m. he deleted the posts because he was preparing for exams and did not want to be distracted by social media. He did, however, speak to Gia afterwards about it via telephone conversation and consoled her, but did not further engage in any other postings.

27. He also made a post some hours thereafter with the words "Mischief level today: medium". However, this post was in no way related to the previous posts concerning Colin which he said were made in the public's interest. Instead, he was referring to his desire to go out with some friends, as opposed to having to study. Therefore, the post complained of at paragraph 18 of the Statement of Case has no relation to the present case, according to him.

28. He stated clearly that he did not deny that the posts referred to Colin, but denied that the words complained of, were capable of bearing any of the meaning(s) alleged in the Statement of Case or any meaning defamatory to Colin. He testified that he called for an investigation. He also set out that he did not hold any malice to Colin in reposting the material and that the publications were fair and honest comment made in good faith and in the public's interest. This was so because he received the information from Gia who had first-hand experience of the wrongdoings. He was approached by Gia, who he believed to be a credible young lady to post the words complained of, as it should be highlighted in the public's interest. She had also indicated that she had statements from other former students confirming the contents of the posts but that these people did not wish to be identified for fear of retaliation or embarrassment. The comments were made after making inquiries and conducting the

necessary investigations to ascertain that the allegations were genuine and truthfully made as opposed to baseless and malicious. He did this by speaking to other persons and former students privately who confirmed the contents of the posts as accurate. Other persons subsequently commented on the posts and confirmed the position stated in the posts.

29. He testified that he did not admit liability in the correspondence between his lawyer and Colin's lawyer but that he has offered the following apology which was not accepted:

> "*I humbly apologize to one Colin Chin Aleong for publishing the statements made against him regarding his conduct with past students at his Lessons Business. I have since noted that it was not the forum to address such and it was not done with any malicious intent, however I seek humble resolution to the misunderstanding between us and wish him the best in his endeavors. I will further cease from any postings regarding Mr. Aleong*"

Cross-examination

30. He understood that on Instagram, an account, is able to follow another account which can in turn be followed by other accounts and matters of the like, which will not be set out in this decision as the evidence relates to damages. Suffice to say, that he admitted that his account was an open one and that he at the time had 2264 followers who could have seen his posts and others who could view although they were not followers. He agreed that as a passionate and outspoken person he would want to use the most effective method of spreading his message. He also accepted that the number of his friends on Facebook was 2445 and 633 people who merely view his posts without being a friend on Facebook. In

total,therefore, he agreed that over 5000 people would view his posts on Facebook and Instagram.

31. He was taken through the meaning of different categories of sexual behavior and agreed to their meanings. He testified that they are all topics he speaks about because they are important topics and not trivial. He accepted that paedophilia is one of the most taboo things in society and very serious, as it is common.

32. He accepted that he is listed as a personal trainer on his Instagram account and that he has not claimed to be a member of any organization that deals with topics of sexual harassment or that he is sanctioned by any such organization or belongs to an NGO involved in advocacy of that type, nor of he having given any speeches at any symposium on the topic. He admitted, therefore, that his advocacy is limited to posts on his social media and attendance at marches and peaceful protests.

33. He admitted that he is not a journalist and does not work for a media house. He was referred to his Instagram post (page 55 TB B) and admitted that the post was in relation to Colin and that it had been liked by 79 people. It was the same post uploaded to his Facebook page. He admitted that the post contained allegations that Colin engaged in groping, sexual assault, and after much resistance in the face of logic, paedophilia. He admitted that he created the caption for the said post “This situation has been brought up recently check out the screenshots of the disturbing accounts”. He testified that by “accounts” he meant the words of others who were sexually abused including children. He admitted that he did not know Gia well and was unaware whether she did an investigation. He admitted that he did not state that he tried to reach out to the alleged

victims or that he even asked Gia for their names. He admitted that he did not independently verify the allegations before posting. He admitted that he did not have a transcript of the conversation between he and his witness in this case when she messaged him after the post was made.

34. He was referred to another post of his with his picture (page 83 TB A). He accepted that his subsequent post (page 88 TB A) in which there is a caption on his picture "Mischief Level today: medium" was made on the same day as the former post. The former post was those in which Colin was accused of paedophilia, sexual assault and sexual harassment. He accepted that his post about mischief level was light hearted. Attorney for the Claimant attempted to make a link between both posts being on the same day as being reflective of the malice against Colin on the part of Tarini but this was not accepted by Tarini.

35. In relation to the proposed rejected apology he admitted that he did not say in the apology that the post was not true and that he had retracted what he said in the post but maintained that it was a true apology.

<u>Katherina Mosca</u>

36. This is a former student of Colin who attended his lessons during the period 2007 to 2009. She recalled that Colin would usually make comments about the physical appearance of females, sometimes female students or the female language teacher. He expressed the view that his new girlfriend's breast weren't nice, he made comments about the bodies of female students such as the size of their breast or as she put it "backside". He made comments about what he would do to certain females if he were younger, he spoke about his sex life and made comments about students

being “ripe” and would tell the boys in the class to “get in there” with the girls in the class “while they ripe”.

37. It was her evidence that she never thought much about Colin’s comments as he would make the comments on a regular basis in front of the entire class. She would also regularly interact with her class mates and other students and based on these interactions she formed the view that it was common knowledge amongst the students that that was just how Colin spoke and behaved. She, therefore, became accustomed to the types of comments he would make. Additionally, from her recollection, Colin usually would laugh after making these comments so she formed the view that he was joking.

38. Finally, she knew Tarini as they attended medical school together. She saw the post and reached out to him to confirm that the contents of the posts were “more or less true”.

Cross-examination

39. When shown the post at page 55 of TB B this witness testified that she had not seen that post but another one (the posts that followed at pages 56 and 57 of TB B) and was unaware that the post she saw in October 2021 was written by someone else originally. She accepted that the words of which she spoke was not a direct quotation from Colin, that it was a description of what was said as best as she could recall as it was some 17 years before. She could not recall the exact words about women that were used and admitted that this was her interpretation. She also accepted, when read to her, that most of the allegations she made, in her evidence were the same as those set out in the post at page 56 of TB B

The Law

Is the material defamatory

40. There is clear and controverted evidence of publication by Tarini as he has accepted and it is equally clear that the published material refers to Colin. This has also been accepted by Tarini.

41. The court has, therefore, directed itself in terms of the following law when applied to the facts of this case. In assessing whether a statement amounts to defamation, the test is an objective one. In ***Sim v Stretch***[1] Lord Atkin posited the well-known test to determine whether words in their ordinary signification are capable of being defamatory as being the question of whether the words tend to lower the plaintiff in the estimation of right-thinking members of society generally.

42. In the recent case of ***Phillip Edward Alexander v Andrew Gabriel***[2] a decision of the Court of Appeal, Their Lordships helpfully set out the guidance provided by the Privy Council at paragraph 10 of their decision:

> [10] Guidance has been provided by the courts as to the approach to determining what meaning is to be attributed to the words used. The test is an objective one. The respondent at paragraph 27 of his submissions cited the case of ***Skuse v Granada Television Limited*** [1996] EMLR 278 per Sir Thomas Bingham MR where the applicable principles for determining what meaning is to be attributed to impugned words, and whether that meaning is defamatory of the complainant, were helpfully summarised as follows (All emphasis added):

[1] [1936] 2 All ER 123
[2] Civil Appeal P215 of 2019 delivered on November 30, 2023

"(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** …

(2) The hypothetical reasonable reader [or viewer] is **not naïve** 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**. 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 nondefamatory meanings are available** ...

(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 … 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** ... or would be likely to affect a person **adversely in the estimation of reasonable people generally**...

(6) In determining the meaning of the material complained of the court is '**not limited by the meanings which either the claimant or the defendant seeks to place upon the words'**...

(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?** ..." (All emphasis added)

43. Their Lordships of the Privy Council set out in ***Ramadhar v Ramadhar***[3], at paragraphs 30 and 32 as follows:

"30. The meaning of words alleged to be defamatory is a question of fact. The judge must decide on the basis of the totality of the facts the meaning that the words would have to an ordinary reasonable person…

32. As to guidance on the method of finding meaning, Lord Kerr JSC approved in Stocker, at para 35, the following list of the "essential criteria" of meaning set out by Sir Anthony Clarke MR in Jeynes v News Magazines Ltd [2008] EWCA Civ 130 at [14]: "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve, 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, 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. (3)

[3] [2020] UKPC 7

> Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation': see Eady J in Gillick v Brook Advisory Centres approved by this court [2001] EWCA Civ 1263 at [7] and Gatley on Libel & Slander 10th ed, para 30.6. (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense': Nevill v Fine Art and General Insurance Co Ltd [1897] AC 68, 73, per Lord Halsbury LC."

44. Justice of Appeal Jamadar in ***Faaiq Mohammed v Austin Jack Warner*** [4] stated:

> "[4c] ... free speech - freedom of thought and expression, even in the political 'Gayelle', is constitutionally to be held in balance with the protection of the freedom and dignity of the person and to the right to respect for the individual. As a matter of principle, all of these sets of constitutional values and rights deserve special, if not equal, constitutional regard and respect. And, it is the task and duty of courts, as the ultimate guardians of the Constitution, to uphold these constitutional rights and values, and in so doing, to uphold the supremacy of the Constitution and thereby the rule of law. Therefore consequentially, though not by virtue of any declared

[4] Civ App No. 252 of 2014

constitutional value or right per se, but derivatively, free speech is also subject to the restraint of unlawful tortious assaults on the character of a person by untrue, unwarranted and/or unjustifiable defamation.

[5] The tort of defamation can be no less injurious than that of assault to the person, though in very different ways. Both can cause pain, suffering and distress. Both can result in irremediable trauma and damage to a person. In a democratic society governed by the rule of law, neither one of these two torts enjoy some utterly special or privileged status, which places either in some unreachable position above or beyond the rule of law. Freedom of expression, even in the political arena, is subject to the rule of law. The law must both protect free speech and also prevent the unjustified (ab)use of free speech to harm and violate others."

DO THE PUBLISHED WORDS AND PHOTOGRAPHS BEAR MEANINGS DEFAMATORY TO THE CLAIMANT

45. The posts that were published by Gia (and reposted by Tarini) when given their natural and ordinary meaning when conveyed to the ordinary reasonable reader demonstrates clearly in the view of the court (and accepted by Tarini) that Gia was saying at the beginning of the post that the reader should be aware that the post contained potentially distressing information. Hence, she used the words "Trigger Warning" together with a danger sign within an inset in red next to the picture of Colin with Marilyn Munroe (renowned Hollywood actress since deceased) superimposed next to him leaning forward while at the same time what appears to be Colin's hand is outstretched under her bosom. This is a clear signal to the

reasonable viewer that what they are about to read may be salacious. The said inset then goes on to list various terms indicating that the reader may be distressed because the information contains allegations of paedophilia, sexual assault and sexual harassment. This red insert, it must be observed is placed immediately next to the face of Colin. The juxtaposition of these words and the picture singularly and together make a clear statement that the person in the picture would have committed one or more of the acts set out in the insert namely, paedophilia, sexual assault and sexual harassment. And who was that person, well the next line written in red in bigger font and written under the picture of the male face is the full name of Colin. So that the top half of the post makes it clear from the get go, as it were, that Colin Chin-Aleong is considered a paedophile and someone who has committed sexual assault and sexual harassment. To state that one has to draw an inference of same would be to stretch the bounds of the obvious direct statements made in the post.

46. But the first post proceeds into much more detail in finer print. It gives his age, the fact that he gives lessons and where he gives lessons, the fact that children from 8 to 17 years old, all children in the true legal sense, attend those lessons. Left at that, the post makes very serious allegations of sexual and by extension criminal impropriety on the part of Colin. These statements are of course derogatory to the character of Colin and would tend to lower him in the estimation of right thinking members of society generally. It gives the reader the clear statement that Colin either sexually harasses children who attends his lessons at the lowest and has an attraction to children at the highest. Society and the reasonable reader will not have recourse to dictionary meanings of paedophilia and in the court's view will associate Colin with sex with children. These are soul damning allegations that touch the essence of the ethics and morality of the human

being. They are some of the worst things that could be said about man or woman.

47. But the post goes further. It alleges that many people have either witnessed or experienced Colin grooming both boys and girls from a young age. Examples of his behavior are given, such as telling boys to get the girls when they are ripe, and the posts sets out that persons have come forward and described his groping, his sexual comments and his speaking about his sex life with children. It says that he has scarred many girls and has enabled many boys to commit sexual assault. The last bullet point says that he is yet to be held accountable despite multiple complaints and allegations because of the fear he has instilled and his cover up that it was all a joke. Finally, at the end of the post in the bottom of the red border his place of employment and website of his lessons business is set out. Much can be said of this. Of course, there is no doubt in the mind of the court that the words are equally accusatory of him being a sexual predator which would tend to lower him in the estimation of right thinking members of society. The result is that the reasonable reader would say to themselves that Colin the lessons man is a sexual predator of young girls and boys and children who attended his lessons and who presently attend.

48. The cross-examination of Tarini showed that the first post admitted into evidence was one of many as the dashes at the top of the post page are symbolic of rolling posts continuing for as long as each dash takes to be exhausted. In other words, there are 12 dashes on the screenshot so there would have been 12 posts. There is, of course, no evidence that all 12 posts were about Colin. The first post is the sixth dash and so would have been the sixth picture or video post on that page at that time.

49. The second post is an amplification of the first and shows primarily the photograph of Colin and Marilyn Munroe save that an emoji face is pasted over Munroe's face. However, Colin's entire arms and hands are now visible and they are outstretched towards the bosom of Munroe. There is a caption in black writing against a white background in larger font than the first post and it gives Colin's name and the fact that he gave lessons. It gives as the reason for him not being in jail, the fact that iPhones were not around to record him. The writer says "we were kids some of us only 12". The court finds this post to be equally capable of bearing defamatory meanings as the first post.

50. The third post spoke of Colin speaking to children all the time about his ex-wife, of how bad his sex life was, how crazy his wife was, how he wanted to impregnate some girls, which he told to the girls as a joke. These statements impute gross misbehavior by having inappropriate conversations with minors about sexually related matters. That is abundantly clear. The fourth post also spoke to like behavior. There could in the court's view be no clearer words, accusatory of reprehensible sexually deviant behavior than those contained in the posts and the court so finds.

Defences

<u>Justification</u>

51. Section 3 of **The Libel and Defamation Act** Chapter 11:16 provides for the defence of justification as follows:

> *"In any action for defamation or libel, the defendant may plead the truth of the matters charged by way of justification in the same manner as he might do in a like action in a Court in England and the*

plea shall be a sufficient answer in law to any such action; and if, on the issue joined on such plea, a verdict is given for the defendant, the defendant shall have final judgment and recover his costs of the suit."

52. **Gatley on Libel and Slander**, in discussing ***Chase v News Group Newspapers Ltd*** [5] noted the English Court of Appeal's assertion that in order for the defence of justification to succeed, the defendant does not have to prove that every word he or she published was true. He or she has to establish the ''essential'' or ''substantial'' truth of the sting of the libel.

53. Justification means truth. For this reason, the Faulks Committee recommended that the defence be retitled "Truth". It is an absolute defence in a civil defamation claim that the statement in question is true or substantially true. It is irrelevant for the purposes of defamation that its publication constitutes a gross breach of privacy or confidence, or that it is contrary to the public interest. The purpose of the civil law is to compensate a claimant, not to punish a defendant. A claimant is not entitled to be compensated for a reputation that he does not deserve. Thus, the most malicious defendant, who publishes allegations believing them to be wholly false, solely with the intention of injuring the claimant, will successfully defend the claim if it emerges that he has accidentally stumbled upon the truth. Furthermore, even if the statement is untrue at the date of publication, subsequent misconduct of the Claimant before the claim is tried may be relied on by the Defendant to prove the truth of the publication[6].

[5] [2002] EWCA Civ 1772; [2003] E.M.L.R. 218
[6] Defamation law, procedure and practice by Price and Duodu, 3rd ed. at 8-01

54. For purposes of defending a libel claim, there is a fundamental difference between a statement of fact and a statement of opinion. The defence of justification protects statements of fact, and the defence of fair comment protects statements of opinion. A publication may contain a number of defamatory allegations, some fact and some opinion, in which case justification should be pleaded to the facts, and fair comment pleaded to the opinions. In addition, there are common disputes over whether a particular allegation is fact[7].

55. The learned authors of Halsbury's say the following[8]:

> *It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.*
>
> *Since the law presumes that every person is of good repute until the contrary is proved, where a defendant relies on such a defence, they must specify the imputation they contend is substantially true and give details of the matters on which they rely in support of that contention. Whether it is admissible to rely on subsequent events in support of a plea of truth will depend on the nature of the defamatory allegation and the nature of the subsequent events. Truth may be pleaded as a defence to the whole of the defamatory statements or in the alternative as a defence to a severable part of them.*
>
> *Failure to establish the defence at trial may properly be taken into account in aggravation of damages.*

[7] Defamation law, procedure and practice by Price and Duodu 3rd ed at 8-02
[8] Halsbury's Laws of England, Vol 32, para. 581

56. In ***Carolyn Seepersad-Bachan v Kishore Ramadhar***[9], Boodoosingh J.A. opined:

> *9. Justification provides a complete defence to a claim of defamation. Once the meaning is found to be defamatory, a defendant has to establish the essential or substantial truth of the imputation conveyed by the statement. Every material part of the imputation must be shown to be true. The defamatory sting of the allegation complained about must be shown to be objectively true as a matter of fact: Chase v News Group Newspapers Limited [2002] EWCA Civ 1777, para 45, per Brooke LJ. The sting of the libel may be capable of one of the three levels or categories of justification identified as the Chase levels. These are (a) proof of guilt; (b) proof of the fact of an inquiry; or (c) proof of reasonable grounds for the inquiry. On the road to determining whether the defence succeeds, the court has to determine the meaning that the publication conveys to the notional reasonable reader or listener: see Charleston v News Group Newspapers Ltd [1995] 2 AC 65 per Lord Bridge. The reasonable person infers the meaning from the natural and ordinary meaning of the words. In Lewis v Daily Telegraph [1964] AC 234, Lord Devlin noted that a publication that the fraud squad was investigating the affairs of a company and its Chairman might imply that there is a suspicion of fraud, but not that the company and Chair were guilty of fraud.*
>
> *19 The statement had to be taken as a whole including any bane and antidote. The test was whether the allegation was true in substance and in fact. It was not necessary to prove that every*

[9] Civil Appeal No. P024/2016

single detail of the statement was true as long as when the statement was taken as a whole it was accurate.

57. The Second Defendant bears the burden of proof on the issue of justification. In that regard, he argued that he made no conclusive inference concerning Colin's involvement in the nefarious activities described (despite him holding that honest belief). He merely published allegations made by a victim who was a former student of the Claimant on account of him being an active crusader for justice. In that regard, he relied on a message sent by him to another person which read:

> *Hey karen, I'm not on a witch hunt for Mr Aleong, I don't personally know him or Gia. However regardless of whatever Gia's record may be it cannot allow me or others to ignore the fact that numerous people messaged me with accounts of feeling uncomfortable because of Mr Aleong's behaviour. Of course we can say that they have no evidence but victims rarely have evidence its up to us not to victim blame. What would they gain from lying on a lessons teacher they had years ago? And why would there be so much different persons making this up.*
>
> *Nevertheless I have not created or plan on creating any content targeting the pics that that were already circulating which I have removed from my profile.* [Page 61 Bundle B]

58. Further, Tarini argued that he did not accuse the Claimant of committing the crimes in his post, despite his honest belief that he did. But the facts to justify his belief, such that it satisfied the Defendant that this post was appropriate to share, is as follows:

i. A WhatsApp message from the 1st Defendant.

ii. Multiple victims confiding in the 1st Defendant the truth of the allegations.

iii. The victims producing messages in person for the Defendant regarding the truth of their allegations.

iv. The Claimant's intricate knowledge of the persons involved, both the victims and the accused.

v. The confirmation from Ms. Mosca that the Claimant habitually made sexually inappropriate comments to his students.

vi. The comments from the public on social media "*Look as a former student of Colin, I just want to say that there is 2 sides to a story and* ***Im really not tryna discredit anything that happened to anyone but I attended his lessons for at least 2 years and despite his insensitive jokes I*** *would never accuse him of sexual assault or pedophilia*. [Page 146 Bundle B].

59. Finally, on this issue he argued the very least, he has been able to demonstrate on a balance of probabilities, that the Claimant did in fact make sexual comments to minors and/or students and engaged in general inappropriate behaviour toward students. He was, therefore, justified in believing the statements by the victims and messages he saw, and formed the view that the Claimant was properly alleged as a perpetrator in the scandal.

60. The Claimant has argued that the only evidence of justification led by Tarini is that of the witness Mosca who admitted she never witnessed any behaviour from the Claimant that could be considered inappropriate or

that would substantiate the defamatory accusations of sexual misconduct or being a paedophile. The inability of the witness to corroborate the serious allegations obliterates the justification defence, as there is no other evidence whatsoever. Her testimony, which the Second Defendant must have intended to bolster his justification defence, instead does the opposite by confirming that Ms. Mosca never witnessed any of the conduct alleged in the defamatory statements.

Discussion on the issue

61. The argument of Tarini appears with the greatest of respect not to accord with the law on justification/truth. The burden lay with him to prove the substantive allegations in relation to Colin's involvement in paedophilia, and sexual harassment and interference with children and other students. He ought to have established the essential truth of the imputation to succeed on this aspect of his defence. In that regard, the court does not accept as he has argued that he merely published an allegation and called for an investigation. In fact, the evidence shows and the court finds that he adopted the posts wholesale, as it were, so that the contents became his in substance. By repeating them he was saying, as admitted by him that these imputations about Colin were true. In fact, his legal argument seems inconsistent with itself because on the one hand he is alleging that he simply reposted someone else's allegation and on the other hand he is saying that he held an honest belief in its truth.

62. He has attempted to rely on evidence that has been struck out and this he cannot do. In this regard, it is to be noted that Tarini, of course, had the opportunity to call the First Defendant as a witness but has failed so to do and has not given a reasonable explanation for so not doing. The fact that she resides in Ireland is not a reason having regard to the Judiciary's

regular day to day use of virtual evidence. Additionally, the message he himself sent to the person named Karen set out above is, of course, a self serving one but comes after his publication and appears to be an afterthought, he having already removed the posts. In the court's view, it is not reflective of his intention when he reposted the original posts and the court so finds. In fact, this brings the court to the issue raised on the evidence of his posts on the very same day when he described his own mood as mischief level medium. His answer to the allegation that this showed malice is that he was speaking about liming with friends that day and not the fact that he had posted these statements about Colin. In the court's view, there is no real basis for linking the two events other than the facts that the posts were made on the same platform the same day and the court so finds.

63. Whether he has therefore proven the truth lies with the evidence of Mosca and this is what the court must examine. In that regard, Mosca admitted that she never witnessed any behavior from Colin that would substantiate the defamatory accusations of sexual misconduct or being a paedophile. This much is pellucid on her evidence. The court, in that regard, understands that in a general sense acts of paedophilia and sexual assault are of such a nature that there seldom are witnesses to such behavior. In such cases, absent the victim, it is difficult to prove such actions. This, of course, is the dilemma in which Tarini finds himself in this case. Paedophila is a specific act for which there must be proof whether direct or by inference and there simply is none on the evidence before the court. So too is sexual assault and there is no evidence from Mosca which proves the act of sexual assault on the part of Colin.

64. In fact, her evidence appears to be very general and wide in nature and content. No specific persons are identified and no specific occasions and dates or words used. The court, therefore, finds that the evidence, in that regard, is unreliable, it coming so long after the alleged incident, if at all true. It is not that the court does not appreciate that memory fades with the passage of time, in this case about 15 years, but the court is nevertheless a court that must act on evidence and such evidence must be reliable.

65. In relation to the comments she testified that he made, even if it was true that he did so, at the highest this is reflective of inappropriate commentary and information being passed on to students. But the problem with that is that the witness also stated that he appeared to be joking or at least Colin thought he himself was joking. The difficulty is that the imputation in the posts went much further than inappropriate jokes. They were clear statements that he was a paedophile and had committed acts of sexual assault.

66. There was also one disturbing feature of the evidence of Mosca. Under cross-examination it was demonstrated that the incidents about which she spoke of generally appeared to match word for word one of the comments made on the post. While the court does not find that her evidence sheds credibility as a result, it is concerned when all her other evidence is weighed about the reliability of her evidence. As a consequence, the court formed the view that her evidence did not meet the standard required to prove justification/truth. It follows that the court finds that Tarini has not fulfilled the burden placed on him on this issue.

Fair comment

67. The defence of fair comment protects expressions of opinion on matters of public interest, provided these opinions are based on true facts and are made without malice. The defence must show that the comments were based on truth and that the comments were honestly and genuinely held by the Defendant[10]. Comment has been said to be something which is or can reasonably be inferred to be deduction, inference, conclusion, criticism, remark, observation[11]. The defence of fair comment legally recognises the right of a citizen to express his genuine opinion on a subject of public interest, however wrong or exaggerated or prejudiced that opinion may be[12]. In the case of ***Tse Wai Chun Paul v. Albert Cheng***[13] Lord Nicholls set out the elements of the defence in that there must be a basis in fact as opposed to commentary, the subject matter must be of public interest, the comment must be recognizable by the audience as an opinion and not a statement of fact and the statement must be made without malice. In the present case the defence fails *ab intio* on the first limb as the Defendant has failed to prove that the statements are factual. Further and in any event it is the finding of the court that the fulcrum of the first post speaks nothing of opinion.

68. The defence of honest/fair comment cannot and does not therefore succeed.

[10] See ***Ramlakhan V T&T News Centre Ltd And Anor*** Civ. App. No. 30 Of 2005.
[11] **Gatley on Libel and Slander** (10th Edition) paragraph 12.6.
[12] **Telnikoff V Matusevitch** [1991] 4 All ER 817 per Lord Ackner.
[13] [2001] EMLR 777 at paragraph 19.

Public interest defence/Reynolds privilege

69. This well-established defence springs from the fairly recent authority of ***Reynolds v Times Newspapers Ltd***[14] in which the law was developed so as to give greater weight to freedom of expression and freedom of the press other than had previously been the case. In that regard, there is no gainsaying that freedom of expression and freedom of the press (and the concomitant right of the public to know which these freedoms support) are important pillars of democracy. For our democratic societies to function properly, we require strong and independent news media that report fearlessly (but not irresponsibly) on matters of genuine public interest. It is a guiding principle of the ***Reynolds*** public interest defence that any incursion into freedom of expression and freedom of the press (and the concomitant right of the public to know which they support) should go no further than is necessary to hold a balance with the protection of reputation of the individual. In that regard Lord Nicholls stated as follows[15]:

> *"The elasticity of the common law principle enables interference with freedom of speech to be confined to what is necessary in the circumstances of the case. This elasticity enables the court to give appropriate weight, in today's conditions, to the importance of freedom of expression by the media on all matters of public concern."*

70. The ***Reynolds*** defence seeks to strike the balance between freedom of the press and protection of reputation by applying a three stage cumulative test to the publication. The court is required to consider whether:

[14] [2001] 2 AC 127
[15] [2001] 2 AC 127 at 204

i. The publication as a whole, concerned matters of public interest.

ii. The inclusion of allegedly defamatory material in the publication was justifiable; and

iii. The publication met the standard of responsible journalism.

71. These principles were affirmed and clarified in ***Jameel v Wall Street Journal Europe SPRL***[16]. At paragraph 38 of Jameel Lord Hoffman stated:

> *"Until very recently, the law of defamation was weighted in favour of claimants and the law of privacy weighted against them. True but trivial intrusions into private life were safe. Reports of investigations by the newspaper into matters of public concern which could be construed as reflecting badly on public figures domestic or foreign were risky. The House attempted to redress the balance in favour of privacy in Campbell v MGN Ltd [2004] 2 AC 457 and in favour of greater freedom for the press to publish stories of genuine public interest in Reynolds v Times Newspapers Ltd [2001] 2 AC 127. But this case suggests that Reynolds has had little impact upon the way the law is applied at first instance. It is therefore necessary to restate the principles."*

72. It is the law that the establishment of the defence of Reynold's Privilege outside of the sphere of media and journalism has come a long way. Reynold's Privilege is not reserved for the media, but it is the media who most likely take advantage of it. In light of social media and the power to

[16] [2006] UKHL 44

send a message at the fingertips of every person, the Reynold's Privilege defence now extends far beyond traditional journalists[17].

Did the publication as a whole concern matters of public interest

73. In relation to the public interest test, the article or post must be considered as a whole and not isolate the defamatory statement. Further, Lord Hoffman set out at paragraph 49 of ***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."*

74. In the court's view the most helpful statement of the test is to be found in the Court of Appeal's dicta in ***Reynolds***:

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

[17] See ***Jwala Rambarran v Dr. Lester Henry*** CV2014-03990

75. There is no gainsaying that there is a real public interest in the information as to whether a teacher who for many years has been entrusted with the education of the children of the nation, many children, has indulged in paedophilia and sexual impropriety with the very children. Very few acts can be considered to be worse both in terms of morality, safety and the mental well being and health of the children themselves and their families by extension. The welfare of the child is of paramount importance in this society and so it must be vigorously and jealously guarded and applied. It is, therefore, pellucid that the publication would have concerned a matter of very high public interest and the court so finds.

Was the inclusion of allegedly defamatory material in the publication justified and whether the publication met the standard of responsible journalism

76. The Defendant has admitted that he is not a journalist and is not employed by nor was he retained to write a story. Further, it is his case that he advocates for causes he deems fit by posting on his social media platform. He has not, however, produced any other posts for any other causes that he has ever posted on which may fall into the category he seeks to avail himself of or at all. The nature and content of the posts amount to a clear frontal attack on the Claimant in that the entire post is about him and his conduct. Of course, had Tarini done his own research and satisfied himself of the bona fides of the words set out in the posts, the inclusion of the material may have been justifiable.

77. But the evidence in a nutshell is that he did nothing to attempt to investigate or verify the information. In ***Jameel*** Lord Hoffman explained at paragraph 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 hypothesi, in the public interest, too risky and would discourage investigative reporting."

78. The learning above applies equally to the individual who claims to be an advocate and outspoken person on issues of national concern even though his only method of advocating is the public posting on his social media pages. He is bound by the same standards. In this case, it is not to say that Tarini wrote a story on paedophilia and sexual assault which identified Colin within the general scheme of the article or post. It was a post about Colin solely as being a paedophile and sexually assaulting children. Without therefore having verified the contents of the post himself, the defamatory

material ought not to have been included. In that regard, it is the evidence of Tarini that Gia informed him that she had spoken to persons who were the victims of the actions of Colin. There is no evidence that Tarini actually investigated these claims so as to satisfy himself that the claims were in fact being made by alleged victims. This brings the failure to call Gia to testify on his case into sharp focus. Her absence has deprived him of possible probative evidence. The court has already commented on the non-reliability of the evidence of Mosca so that all we are left with is the evidence of Tarini, which is unhelpful as having no proper basis for him to include those direct allegations in his post.

79. Lord Nicholls in ***Reynolds*** provided the now well-known non-exhaustive list of considerations which may be of relevance in deciding whether the test of responsible journalism is satisfied. They are:

> 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.
>
> 2) The nature of the information, and the extent to which the subject matter is a matter of public concern.
>
> 3) The source of the information. Some journalists have no direct knowledge of the event. Some have their own axes to grind, or are being paid for their stories.
>
> 4) The steps taken to verify the information.

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

6) The urgency of the matter. News is often a perishable commodity.

7) 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.

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

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.

10) The circumstances of the communication, including the timing.

80. The charge in this case as stated before could rarely be more serious. Colin has been accused of not only having a penchant for odious behavior of the worst kind but of committing acts of the worst kind. The public was, therefore, greatly misinformed and the harm done to Colin was great in the circumstances. Such a post is highly likely to attract many views as has been shown in cross-examination as the topic is one which must hold keen interest bearing in mind the nature of the allegations and the extent to which Colin was apparently known in his field over many years. There has been no reliable source of the information on the evidence before the court and equally no steps taken to verify the information. Neither did Tarini pause and speak with Colin before making the post to get his side of

the story. He seemed to be interested more in the exposé than being fair and even balanced. Finally, it cannot be in the public interest to make such debilitating statements of the character of a person without grounding it in fact. Freedom of speech is not absolute and is always constrained by the rights of others and the law.

81. The court, therefore, finds that the Defendant has equally failed to prove his defence of Public Interest/Reynold's Privilege.

Damages

General damages

82. In ***TnT News Centre Ltd v John Rahael***[18] the Court of Appeal at paragraph 10 stated:

> *"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 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*

[18] Civil Appeal No. 166 of 2006

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

83. In recent times Their Lordships of the Court of Appeal have had cause to comment on awards in defamation cases and have indicated that the time has perhaps come to revisit the scale of awards. In ***Phillip Edward Alexander v Andrew Gabriel***[19], the court set out the position as obtained within the last two decades by reference to the case of ***Panday v Gordon*** as follows:

> *[100] In the case of **Panday v Gordon** Civil Appeal 175/2000 the Court of Appeal reduced the damages that had been awarded to three hundred thousand dollars and conducted an analysis which was upheld on appeal to the Privy Council. Hamel Smith JA in Panday v Gordon considered the issue of damages in defamation cases in October 2003. He found that the test as to whether an award was excessive of not was whether the quantum was*

[19] Civil Appeal No. P215 of 2019 delivered on November 30, 2023

necessary to compensate the plaintiff and reestablish his reputation.

[101] He therefore considered a) the evidence as to any direct insult by third persons or any suggestion that anyone had held him in contempt or ridicule, b) that there was no evidence to suggest that subsequent to the publication the claimant had remained anything else but a successful businessman and highly respected. That while there was no doubt that his feelings were seriously injured and his reputation tarnished to some extent, it was difficult to accept that his reputation in the eyes of the ordinary reasonable person would have suffered to the extent of the claimant in a case from Jamaica where the plaintiff's business had been ruined and his health had suffered irreparable harm and an award of $35 million Jamaican Dollars had been awarded. Taking that into account Hamel Smith JA noted that the trial judge in Panday v Gordon had been prepared to award what would have been regarded as the highest sum in this jurisdiction to inter alia vindicate the loss of reputation but in the circumstances of that case that was not right given the actual evidence of effect on reputation. (See paragraphs 83-84, 85-89 Panday v Gordon Civil Appeal 175/2000)

83. Neil LJ in Rantzen v Mirror Group Newspapers (1986) Ltd [1994] QB 670 propounded a test to determine whether an award was excessive or not. While he may have been dealing with awards made as a result of a jury trial I see no reason to differ from that approach where a judge sitting alone makes the award.

84. The test is whether the award (i.e. the quantum) was "necessary to compensate the plaintiff and to re-establish his reputation". I

have enumerated the several factors taken into account by the trial judge in making his award. Those factors however seem to me to be concerned more with the manner of publication rather than the effect, in the sense that it appears to me that he did not give sufficient consideration to what extent the respondent's reputation suffered.

85. Applying the test in Rantzen, I would think that, apart from the isolated outburst made by one of the respondent's friends the following morning to the effect that the appellant had called him a big racist, there was no evidence of any other direct insult by third persons or any suggestion that anyone had held him in contempt or ridicule. However, because I am of the view that to call someone a racist, or worse, as in this case, a pseudo racist, is offensive it would of necessity lead to the implication that the respondent's reputation would have been lowered in the eyes of a substantial number or persons in society. The evidence does not reveal that the respondent, subsequent to the publication remained anything else but a successful businessman and highly respected throughout the Caribbean in the media field. There is nothing to suggest otherwise. I have no doubt whatsoever that his feelings were seriously injured and his reputation tarnished to some extent but whatever loss he may have experienced would have been cushioned by the out-pouring of support he received from the media, both by the press and television, here and abroad. This was an unusual case in that the press, subsequent to the publication of the speech, were strongly condemnatory of the appellant and sympathetic to the respondent and probably, rightly so. In the result, it cannot be suggested that the injury to his reputation was irreparably

damaged to any degree, with the result that I find the award to be on the higher end of the scale.

86. While acknowledging that the words must have been offensive and insulting to the respondent and his good name sullied, it is difficult to accept that his reputation in the eyes of the ordinary reasonable person would have suffered to the extent as for example as happened to the plaintiff in the case of The Gleaner & anor v Eric Abrahams, P.C Appeal #86 of 2001(unreported). There, the plaintiff's business was ruined and his health suffered irreparable harm and the Courts in Jamaica felt that, at least in that jurisdiction, an award of J$35,000,000.00 was an adequate sum to vindicate the plaintiff's reputation. Such a high award is obviously reserved for the most serious cases. It appears that the trial judge in the instant appeal was prepared to award what would have been regarded as the highest sum in this jurisdiction to, inter alia, vindicate the loss of reputation. This, in the circumstances of this case, was not right, given what I have already said about the loss of reputation.

88. It is of little surprise therefore that the Court of Appeal, no doubt aware of these developments, decided to raise the bar in the Frank Solomon case. The award in Forde followed shortly thereafter. These awards were made some 13 to 14 years ago and the libels were considered "very serious". In Solomon, there was evidence to show that the plaintiff's law practice had taken a serious blow as a result of the publication of the libel. In Forde, the accusation alone resulted in a shunning of the plaintiff by her friends and acquaintances. Given the passage of time, the relentless pursuit by the press for sensationalism with little concern for reputation and

the fall in the value of money over the ensuing period, if both cases had to be decided today it is quite likely that the respective awards would have been in the vicinity of the award made by the trial judge in the instant appeal.

89. While the allegation made against the respondent is also considered to be very serious, the loss to reputation could not be considered as severe and irreparable as in those two cases. In the circumstances, I would consider an award of $300,000 to be more appropriate and fair to compensate the respondent and re-establish his reputation, bearing in mind that the test in Rantzen sets out to achieve both objectives of compensation and vindication of reputation and the latter in this case had already largely been achieved.

84. In ***Phillip Alexander*** the court went on to add at paragraph 107 and 108:

[107] It may be noted further that in Panday v Gordon the Privy Council equated the award of three hundred thousand dollars (to approximately twenty-seven thousand pounds) on a strict currency conversion basis. While that might have been the rate of exchange, and the amount of pounds that could be purchased for that amount, when so converted this is likely to mislead.

[108] The proper sense of the purchasing power of a Trinidad and Tobago dollar cannot be obtained by a straight forward conversion at the rate at which for example, pounds sterling or US dollars can be purchased. The purchasing power of the Trinidad and Tobago dollar can more accurately be gauged by reference to what can

actually be purchased with it within the country, for example, housing.

85. Both parties in this case have submitted in the extreme, on the issue of damages. With the greatest of respect to them both, the Claimant seems to have over estimated his entitlement and the Defendant has artificially reduced his liability down to a bare minimum. The court must, however, apply the principles set out above. This court has already commented that the allegations are exceedingly grave and that very few allegations come close to such contemptuous behaviour. Society not only frowns on such behaviour but vilifies the person so accused to the extent where it may debilitate not only the person but also those around him and his business. Persons shun these individuals, and treats that person as a pariah and even as criminal. In this case, it is even more egregious as the very nature of the business of the Claimant is that of teaching children who are entrusted into his care by their parents.

86. Tarini was followed by about 5,000 people on his social media platforms combined and the evidence is that he posted on both platforms. There is however, having regard to the cross-examination, the potential for the posts to have been viewed by thousands more people who were friends and followers of his friends and followers. The scale of publication was therefore huge.

87. In relation to the career of the Claimant, he set out in his evidence:

I have also achieved prominence in the field of business and technology, with my professional career including the following employment history:

i. Clerk - Republic Bank Limited - 1984 to 1985;

ii. Computer Engineer - Fijitsu ICL - 1988 to 1989;

iii. Well Logging Engineer – Schlumberger Limited – 1989 to 1992;

iv. Network Engineer - First Citizens Bank Limited - 1992 to 1995; and

v. Director - Waterloo Capital Advisors Limited - 2017 to 2019.

Throughout my professional career, I have forged and maintained countless professional and personal relationships with colleagues and the like, to whom I am known as a person of excellent standing.

I am well-educated and possess a substantial academic resume. My notable achievements include placing first in the Common Entrance examinations in Port-of-Spain in the year 1978. I thereafter attended St. Mary's College during the years 1978 to 1984 and have been an active member of the St. Mary's College Old Boys Association subsequent to graduation. Many of these colleagues have over the years, given their trust in my abilities and given my reputation, sent their own children to Lessons."

88. In that regard also, the court was not satisfied that the drop in revenue after the post as testified to by Guzman was solely as a result of the posts. There is no real evidence of this link but it is, of course, a reasonable inference that there would have been fallout by way of a drop in attendance thus resulting in a drop in income. The court has also considered the immense injury to the feelings of the Claimant, and the consequent hesitation and shame to interact with the public and those

who know him. The court has also considered that the first post was in fact removed hours after it was posted.

89. While the court accepts the argument of Attorney for the Defendant that Colin was not a national figure, the evidence shows that he was a well-known lessons teacher for many years. In the school circles, good lessons teachers are well known and well valued so that national figure he may not have been but certainly he was a well known figure in his professional field.

90. Additionally, the court has considered the awards in the following cases to be relevant:

    a. H.C. 3039 of 2008 **Robin Montano v Harry Harrinarine** in which the claimant was called a racist and a hypocrite and these claims attracted an award of $250,000.00.

    b. H.C. 185/2009 (Antigua) **Lester Bird v Winston Spencer**. In this case, the Defendant, the then Prime Minister of Antigua accused the Claimant, another former Prime Minister of theft of public funds, corruption and vote padding in the local government elections at a public rally carried live on national radio. The court in that case found the words complained of to be of a serious nature and that they impugned the character of the Claimant and awarded the Claimant $75,000.00 EC or $190,000.00 TT.

    c. CV2018-02405 **Alfred I. Pierre v Francis Morean** in which the Claimant was awarded the sum of $900,000.00 inclusive of aggravated damages. This case concerned defamatory statements made of the Claimant via a Facebook post.

d. CV2014-00134 **Anand Ramlogan v. Jack Austin Warner**. The Claimant was the then Attorney General of Trinidad and Tobago and the Court awarded the sum of $600,000.00 inclusive of aggravated damages and an award of exemplary damages in the sum of $200,000.00.

e. CV2020-01531 **Davlin Thomas v Naresh Siewah**, in which judgment was given on September 28th 2023, the court ordered general damages (inclusive of aggravated damages) in the sum of $800,000.00 with interest against the Defendant. In that case, the Defendant made multiple posts (in excess of 20) on the Facebook page "TringadoLivesMatter" and "THE VOICE OF TnT 99%" which were defamatory of the Claimant who is the CEO of the NWRHA. The Judge in the matter found that the posts were published to a minimum of 249[20] persons.

91. The Claimant has submitted that there should be an award of $800,000.00 to $1,200,000.00 in general damages against Tarini. In the view of the court this is wholly unjustified. The Claimant also submits that there should be a separate award for aggravation. Quite an unconventional approach in the court's view. The court accepts, though, that the injury to the proper feelings of the Claimant, his feelings of pride and dignity has been substantial and therefore an uplift for aggravation is appropriate. Attorney for the Second Defendant submits that the award should be a nominal sum or $25,000.00 as there is no evidence that the posts affected the personal integrity, professional reputation, honour, courage by and loyalty to the Claimant. This is in the court's view a wholly unmeritorious submission.

[20] See paragraph 122 of the judgement.

92. The court will therefore make an award of general damages inclusive of an uplift for aggravation in the sum of $400,000.00.

Exemplary damages

93. In ***Faaiq Mohammed v Jack Warner***[21] Jamadar J.A. stated:

> *[101] One purpose that exemplary damages serves is that of punishing a tortfeasor for unacceptable and unlawful egregious conduct. Another is as a deterrent against any future similar conduct (whether by that tortfeasor or anyone else). It is a policy intervention, in the form of an award of damages, to make a public statement that certain kinds of offensive conduct are punishable because of the sense of public outrage that the conduct evokes in the minds of reasonable and law abiding persons. It is a statement that these kinds of conduct are inimical to the common good in a democratic society. Once this is made clear, the concern about its 'chilling' effect on free speech, which is vital in a democratic society, will not arise. This is because, in cases such as this one, exemplary damages begin at the point where the boundary of constitutionally permissible free speech ends.*

94. The brazen and uncaring manner in which the Second Defendant carried out his reposting is wholly unacceptable and entirely egregious. In one fell swoop the Second Defendant recklessly and without regard for the truth and the effects of such destructive allegations decimated the name and reputation of the Claimant. For this, the tortfeasor must be punished, so that he will refrain from similar conduct in the future. The court will therefore make an award of $50,000.00 as exemplary damages.

[21] C.A.CIV.252/2014

Special damages

95. Special damages must be specifically proven. As stated before, the court is not satisfied that the drop in the student numbers and the consequent diminution in income is attributable either solely or in large measure to the posts. To so find, would essentially be to speculate, so that no award will be made for special damages.

96. Finally, the defence submitted that a discount ought to be applied for the offer of apology albeit two months after the post was made. In the view of the court, that which was offered was certainly not in substance an apology but an apology for using the particular forum. However, the Claimant ought to have engaged the process, as it was clear that the Defendant was willing to apologize. The Claimant ought to have suggested the form of words of the apology he was willing to accept but he failed so to do. In the view of the court, this must be considered albeit it does not attract a substantial discount owing to the content of the apology offered and the refusal to publish it in the newspaper which was a core request of the Claimant made in his pre-action letter. A discount of 10% on general damages will therefore be applied.

97. In relation to Gia, she has not presented a defence and so the findings of the court in relation to the posts being of defamatory contents applies equally to her. There is, however, no evidence of she having reposted her own posts so that the reach of her publication is less albeit not by much. The acts of both Defendants are separate acts. They are each liable for defamation for their singular acts.

Disposition

98. There shall be judgment for the Claimant against each Defendant as follows:

    i. The First Defendant shall pay to the Claimant general damages for defamation in the sum of $300,000.00 inclusive of an uplift for aggravation.

    ii. The First Defendant shall pay to the Claimant exemplary damages in the sum of $30,000.00.

    iii. The Second Defendant shall pay to the Claimant general damages for defamation inclusive of an uplift for aggravation, reduced by a discount of 10% in the sum of $360,000.00.

    iv. The Second Defendant shall pay to the Claimant exemplary damages in the sum of $50,000.00.

    v. Each of the Defendants shall issue (whether jointly or otherwise) an unequivocal apology and retraction of the defamatory material to be approved by the Claimant through his Attorney-at-Law and to be published once in three daily newspapers of the Claimant's choosing, as well as on their respective social media platforms which were used to disseminate the defamatory posts.

vi. The First and Second Defendants are restrained whether by themselves, their servants and/or agents or otherwise from further speaking or publishing, printing or publishing, broadcasting or publishing or causing to be spoken, printed, broadcast or published or repeated the words complained of or any similar words defamatory of the Claimant.

vii. The First and Second Defendants shall pay to the Claimant the prescribed costs of the claim.

Ricky Rahim
Judge