

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2020-01000

**IN THE MATTER OF AN APPLICATION UNDER SECTION 14(1) OF THE
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

BETWEEN

ONE CARIBBEAN MEDIA GROUP LIMITED

First Claimant

TRINIDAD EXPRESS NEWSPAPER LIMITED

Second Claimant

OMATIE LYDER

Third Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

THE COMMISSIONER OF POLICE

Second Defendant

SUPERINTENDENT WENDELL LUCAS

Third Defendant

AND

THE MEDIA ASSOCIATION OF TRINIDAD AND TOBAGO

Interested Party

Before the Honourable Mr. Justice Seepersad

Date of Delivery: January 13, 2021

Appearances:

1. Ms Sophia Chote S.C., Mr. Peter Carter, Ms Vahni K. Seunath instructed by Ms Dana-Marie Smith, Attorneys-at-law for the Claimants.
2. Mr. Fyard Hosein S.C., Mr. Rishi Dass instructed by Ms Kendra Mark-Gordon and Ms Kadine Matthew Attorneys-at-law for the Defendants.
3. Ms Ria Mohammed-Davidson and Mr. Michael Rooplal, Attorneys-at-law for the Interested Party.

DECISION

1. Before the Court for its determination is the Claimants' Fixed Date Claim Form filed on March 16, 2020 by virtue of which the following relief has been sought:
 - a. A declaration that the search warrants issued by a Justice of the Peace on March 11, 2020 upon the application(s) of the Third Defendant, Police Superintendent Wendell Lucas were unconstitutional, unlawful, arbitrary, unnecessary and disproportionate. The warrants were invalid, null and void and of no effect in that they contravened the constitutional right to freedom of the press enjoyed by the Claimants under Section 4(k) of the Constitution of the Republic of Trinidad and Tobago.
 - b. A declaration that the execution of the second warrant and the seizure of items namely four (4) USB flash drives from the office of Omatie Lyder located at No. 35-37 Independence Square, Port-of-Spain was unconstitutional, unlawful, unnecessary and disproportionate in that it contravened the fundamental rights of the Second and Third Named Claimants to the enjoyment of property and the right not to be deprived thereof except by due process of law.
 - c. A declaration that the search warrant obtained by the Third Defendant from a Justice of the Peace and issued on March 11, 2020 to search the premises "owned and managed by Omatie Lyder" (the first warrant) was unconstitutional, unlawful, unnecessary, arbitrary and disproportionate. It was invalid, null and void and of

no effect in that it contravened the fundamental right to the enjoyment of property, the right not to be deprived thereof except by due process of law, the protection of the law of the Second and Third Named Claimants.

- d. A declaration that the search warrant obtained by the Third Named Defendant from a Justice of the Peace and issued on March 11, 2020 to search the premises of the Trinidad Express Newspapers situated at No. 35-37 Independence Square, Port-of-Spain (the second warrant) was unconstitutional, unlawful, unnecessary, arbitrary and disproportionate. It was invalid, null and void and of no effect in that it contravened the Claimant's fundamental right to the enjoyment of property, the right not to be deprived thereof except by due process of law, the protection of the law.
 - e. Damages for breach of constitutional rights.
 - f. Such further and/or other relief as the Court may in exercise of its jurisdiction under section 14 of the Constitution and under its inherent jurisdiction consider appropriate for the purpose of enforcing and protecting or securing the enforcement and protection of the Claimants' said rights.
 - g. Costs.
2. In essence, relief has been sought under section 14 of the Constitution and the Claimants' claim is that their rights as outlined under section 4 (a), (b) and (k) have been breached.

The Parties:

3. The First Named Claimant owns the Trinidad Express Newspaper and the Third Named Claimant is the Editor-In-Chief of the Trinidad Express Newspaper. The Third Named

Defendant is a police officer attached to the Financial Investigations Bureau and he is also an attorney-at-law.

The Evidence:

4. The Claimants relied on the following affidavits :
 - a. Affidavit of Kendra Marshall-Pierre filed March 16, 2020.
 - b. Affidavit of Omatie Lyder filed April 7, 2020.
 - c. Joint Supplemental Affidavit of Curtis Rampersad and Roberta Sampson-Keith filed on April 7, 2020.
 - d. Affidavit of Roberta Sampson-Keith filed on April 7, 2020.
 - e. Affidavit of Dawn Thomas filed April 7, 2020.
 - f. Affidavit of Jason Noray filed April 7, 2020.
 - g. Affidavit of Fazil Ramjitsingh filed April 7, 2020.
 - h. Supplemental Affidavit of Omatie Lyder filed May 8, 2020.
 - i. Affidavit in Response of Omatie Lyder filed July 3, 2020.

5. The Defendants relied on the following affidavits :
 - a. Affidavit of Superintendent of Police Wendell Lucas filed June 5, 2020.
 - b. Affidavit of Acting Assistant Commissioner of Police William Nurse filed June 5, 2020.
 - c. Affidavit of Acting Superintendent of Police Deryck Walker filed June 12, 2020.

The Factual Overview Upon Which The Claim Is Premised:

6. The Second Named Claimant published in its online newspaper on March 7, 2020 and in its Sunday newspaper on March 8, 2020 an article which was headlined, "ACP flagged for suspicious activity bank records deposits of close to \$2M into over 15 personal accounts".

7. The story was written by Ms. Denyse Renne, an investigative journalist employed by the Second Claimant. The article reported, *inter alia*, that deposits of approximately two million dollars made by Deputy Commissioner of Police Irwin Hackshaw into fifteen (15) personal accounts from 2014 to 2017 had been reported as suspicious activity to the Financial Intelligence Unit (FIU) by three financial institutions. There was also a follow-up story by Ms. Renne which was published in the Trinidad Express on March 10, 2020 under the headline “Cops under PCA probe \$2m deposited into bank accounts”.
8. On March 11, 2020 at or about 3:30 pm the Third Defendant accompanied by a team of six (6) TTPS officers entered Express House located at No. 35-37 Independence Square, Port-of-Spain. They gained access to the second floor of the building which houses the offices of the Trinidad Express Newspaper and executed a search of the Third Claimant’s office, during which four (4) USB devices were seized. They also attempted to gain access to the server room on the third floor of Express House. This aspect of the search was subsequently abandoned as the relevant IT personnel were not present so as to ensure a shut-down of the entire server did not occur. The Third Defendant and the team of officers eventually left Express House on or about 6:30 pm.
9. The search was effected pursuant to two (2) warrants issued under section 5(1) of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. The first warrant authorised the search of “premises under the control and managed by OMATIE LYDER Editor-in- Chief of the TRINIDAD EXPRESS NEWSPAPERS.” This warrant was later amended to provide for the search of “the premises of the TRINIDAD EXPRESS NEWSPAPER.” Both warrants authorised the search and seizure of twenty-four (24) items including electronic equipment, storage devices, data, documents and articles. These items were said to be concealed at the premises of the Trinidad Express Newspaper and would “*afford evidence as to the commission of an indictable offence namely tipping-off contrary to Section 24 of the Proceeds of Crime Act, Chap. 11:27 as amended.*”

10. Prior to the publication of the newspaper articles an investigation had been launched by the Financial Intelligence Unit into activities undertaken by senior police officer Irwin Hackshaw. The articles published by the Express Newspaper however catalysed a further police investigation into the offence of “tipping off” and the search warrants were purportedly issued in furtherance of this investigation.

Preliminary issue:

11. In their submissions filed 16 October 2020, the Defendants raised the argument that certain aspects of the Claimants’ submissions were not outlined in the pleadings filed. The Defendants advanced, *inter alia*, that it was not pleaded that the search warrants were issued under incorrect sections of the law and in contravention of other legal requirements. This course, according to the Defendants, contradicted the guidance of Singh LJ in the English Court of Appeal decision of **R (Talpada) v Secretary of State for the Home Department [2018] EWCA (Civ) 841 at paragraphs 68 to 69.**

12. This Court therefore has to consider the issue as to whether the Claimants’ submissions in relation to the “legality” of the search warrants should be entertained or whether such a course would be prejudicial to the Defendants.

13. In their Fixed Date Claim Form filed on 16 March 2020 the Claimants pleaded at paragraph 10 that a warrant was issued to search and seize material relating to the commission of the offence of tipping off. In her affidavit Dawn Thomas at paragraph 14, stated that she was informed by Ms. Chote S.C. that the Third Defendant was focused upon Section 51 of the Proceeds of Crime Act Ch. 11.27 and the offence of tipping off.

14. Paragraph 15 of Supt. Lucas’s affidavit filed on the 5 June 2020 stated that the contents of the articles published by the Trinidad Express Newspaper bore similarity to the information contained in the confidential documents and reports issued by the FIU and FIB and that this scenario required an investigation.

15. Copies of the search warrants were attached to the affidavits of Dawn Thomas and Supt. Lucas and they reflected the words “the commission of an indictable offence namely tipping off” and legislative sections were referenced.
16. This resolution of the issues in this case does not hinge upon heavily disputed facts and all the information as to the wording of the warrants is evidently before the Court. Part 56. 14(3) of the Civil Proceedings Rules 1998 (as amended) outlines, *inter alia*, that a Judge may grant any relief that appears to be justified based on the proved facts whether or not such relief should have been sought by an application for an administrative order.
17. The Court, when faced with matters which involve the Constitution, should exercise a measure of flexibility, mindful that it has the right to intervene in furtherance of its obligation to guard against constitutional violations.
18. Procedural rigor should not trump the need for constitutional vigilance and in matters where the vindication of constitutionally entrenched rights is at play the Court should resolutely focus on substance as opposed to form.
19. Accordingly, the jurisdiction of the Court, in this case, given the serious issues of constitutional importance which fall to be determined, cannot be restricted to the grounds outlined in a Fixed Date Claim Form. The established adduced evidence should ultimately fashion the applicable relief. Consequently, the Claimants' submissions in relation to the offence of tipping off, the appropriate legislative provisions, the nature of the alleged offence that was being investigated and the lawfulness of the search warrants, should all be considered given the important issues which arise on the evidence elicited and which are material when one considers the backdrop of the generalised pleaded case and the relief sought.
20. In Talpada (supra), which was an appeal of a judicial review application, the Court said as follows:

Paragraph 2 per Lady Justice Hallett:

“...In judicial review proceedings it is rarely necessary for there to be live evidence, because the nature of the issues is usually such that there should be no relevant dispute of fact. ***If there is a dispute of fact, and it is relevant to the legal issues which arise in a claim for judicial review, the court usually proceeds on written evidence. Since the burden of proof is usually on the person who asserts a fact to be true, if that burden is not discharged, the court will proceed on the basis that the fact has not been proved...***”

...

Paragraph 67 per Singh LJ:

“...In my view, it cannot be emphasized enough that public law litigation must be conducted with an appropriate degree of procedural rigor. ***I recognize that public law litigation cannot necessarily be regarded in the same way as ordinary civil litigation between private parties. This is because it is not only the private interests of the parties which are involved. There is clearly an important public interest which must not be overlooked or undermined. In particular procedure must not become the master of substance where, for example, an abuse of power needs to be corrected by the court.*** However, both fairness and the orderly management of litigation require that there must be an appropriate degree of formality and predictability in the conduct of public law litigation as in other forms of civil litigation.”

(Emphasis Court’s)

21. This is a matter which involves a significant public interest element and there is need for a comprehensive examination of the facts and the law so as to determine the constitutionality of the process which was engaged by the Defendants. Ultimately, this Court will not genuflect to overtly technical procedural arguments, disregard matters of substance or abdicate its obligation to fearlessly defend the Constitution. The Court shall consider all the issues raised by the Claimants.

The Issues:

22. This Court must therefore generally determine whether the search warrants dated the March 11, 2020 were wrongly, arbitrarily, disproportionately and/or unconstitutionally issued.

Factual matrix prior to the publications:

23. Prior to the publications, the evidence outlined that the journalist contacted officer Hacksaw. This position was advanced in the Supplemental Affidavit of Omatie Lyder filed on 8 May 2020 to which was annexed exhibit "O.L.2". The journalist wrote that the Sunday Express tried contacting officer Hackshaw on a number of occasions between 4 March to 6 March without success. The article stated that he eventually returned the call and enquired from the journalist the reason for her call. The article outlined that the journalist wanted to get a comment on some questions relating to him being flagged by the FIU for suspicious financial transactions and officer Hackshaw indicated, *"Well, if you want to print whatever you want, dearie, you can. But just be mindful that there are repercussions to those..."*

The searches:

24. On the morning of March 11, 2020, Supt. Lucas, contacted Deputy Director of Public Prosecutions in relation to the investigation into the offence of 'tipping off' and communicated his intention to obtain a search warrant to be executed upon the Trinidad Express Newspaper. He was subsequently advised to proceed in accordance with Section 51 of the Proceeds of Crime Act.

25. Supt. Lucas gave instructions to Ag. Corporal Keston Abraham to draft the necessary warrants and he proceeded to the Port of Spain Magistrates' Court and obtained a search warrant from a Justice of the Peace to search the premises under the control of and managed by Omatie Lyder, Editor-in-Chief.

26. The warrant authorized a search of computers, tablets, external storage devices, cellular phones including their SIM cards, SD cards, images, calendars, phone books, contacts, SMS

messages, emails, pictures, video recordings, audio recordings, call logs, installed application data, GPS information, Wi-Fi information, internet history and usage, user files, system files and any other data which were recorded or stored on the hard drive or other storage medium contained within the aforementioned electronic digital devices; and magazines, digital recording discs, documents and articles.

27. On Wednesday 11th March 2020, Supt. Lucas, together with Inspector Alfred, Inspector Mc Kenzie, Assistant Superintendent of Police Singh from the FIB, Corporal Walker, Police Constable Mohan and Woman Police Constable Maraj-Hughes from the Cyber Crime Unit proceeded to Express House in two unmarked police vehicles.
28. They arrived at the Express House at around 3:30 pm, introduced and identified themselves to the security guard and advised that they were there to see Omatie Lyder. After twenty minutes they approached a female employee who was entering the building and they informed her of their intent and she took them to Ms. Lyder's office.
29. There is some dispute as to how entry was effected, as Jason Noray deposed to the fact that the police 'barged through.' However, Kendra Marshall-Pierre stated that the police merely followed her.
30. The police then met Curtis Rampersad and Supt. Lucas presented him with the first warrant. The evidence suggests that no copy of this warrant was given to the Claimants and they were not permitted to take a photo of same but Supt. Lucas said that he indicated that he could make a copy available.
31. Thereafter, an Express in-house Attorney-at-Law advised that he was objecting because the warrant read as if it was Ms. Lyder's premises. Upon receipt of this information, the Police took no further steps to execute the warrant. Supt Lucas deposed that he accepted that there was an error on the first warrant and advised Mr. Peters that he would have it amended. As a result he returned to the Justice of the Peace and obtained the second warrant.

32. Supt. Lucas thereafter returned with the second warrant and presented it to persons at Express House.

33. Supt. Lucas deposed that he, Inspector Alfred, Inspector Mc Kenzie, Corporal Walker, Police Constable Mohan and Woman Police Constable Maraj-Hughes all entered Ms Lyder's office and a search was conducted of a desk and cabinet therein and four flash drives were seized.

34. The officers from the Cyber Crime Unit enquired about the server room and Supt. Lucas at paragraph 40 of his affidavit stated as follows:

"Ms. Thomas then came and started quarrelling and said that we could not go in there. Mr. Wilson subsequently opened the door to the server room and the officers attached to the Cyber Crime Unit enquired as to the identity and whereabouts of the Information Technology staff on duty. Mr. Wilson then made a telephone call and informed us that he had a conversation with the Information Technology personnel and he was informed that they had reached too far and couldn't return to Port of Spain at the time. Corporal Walker then informed me that because no Information Technology personnel was present and they did not know the configuration of the server they would have to shut down the entire server to get in. Consequently, we decided not to shut down the server and end the search."

35. The server room however was never accessed by the police.

Press rights and search warrants:

36. The Constitution of Trinidad and Tobago explicitly recognizes and declares that freedom of the press is an enshrined right as outlined under section 4 (k). Courts have opined as to the unique nature of the protection afforded under section 4(k). In **T and T Newspaper Publishing**

Group Limited v The Central Bank of Trinidad and Tobago and the Attorney General of Trinidad and Tobago [1990] LRC (Const) 391, Lucky J (as he then was) outlined that:

“72. Freedom of the press of necessity includes freedom of thought and expression and vice versa; but, where each freedom is set out separately as in Section 4 of the Constitution freedom of the press must have a greater and more all-encompassing meaning than freedom of thought and expression.

37. Freedom of the press is a fundamental facet of a functional democracy and this Republic's first Prime Minister, in his first Independence address stated, *inter alia*, “democracy, finally, rests on a higher power than Parliament. It rests on an informed and cultivated and alert public opinion.”
38. The moment press freedom is arbitrarily infringed or curtailed is the moment that our prized freedom becomes compromised. The dissemination of unbiased information is essential in a democracy and the ability of the press to report fairly and freely should not be thwarted so as to protect myopic or insular interests. Journalists and media houses operate as the watchdogs of the citizenry.
39. The work of a free press extends, shapes, alters and affects every right-thinking member of the society and press freedom has to be jealously guarded by Court. The media is charged with the unenviable public interest mandate to vigilantly monitor private business, governmental action as well as socio-economic and cultural realities, so as to ensure that relevant and critical information is disseminated to the public at large. Democracy is meaningless if the public is deliberately kept in the dark and a society's actions and reactions should never be predicated upon misinformation, ignorance, lies, secrecy or deceit. The role of accurate and responsible investigative journalism is therefore vital as unearthed information obtained by such journalists can empower the citizenry and guard against inequity, discrimination, corruption, public malfeasance and maladministration by holding the influential, wealthy and powerful accountable.

40. Rights however are never absolute and a balanced approach has to be engaged when dealing with issues of alleged constitutional infringement. When it is advanced that constitutional rights have been violated, the Court should ultimately consider whether any such assertion of infringement can be reasonably justified in a sovereign democratic state, mindful of its obligation to uphold the supremacy of the Constitution and to protect the entrenched rights of all citizens. The Court is cognizant of the fact that the press cannot be presumed to have a monopoly on the truth and the media is not exempt from accountability. The Court does not sit in an ivory tower nor does it don “rose coloured glasses” and it does take judicial notice of the fact, that, in its pursuit of market share and profitability, media houses have with increased frequency, focused on personalities instead of issues and have published pieces which have violated the rights of citizens or simply appealed to the insatiable appetite for scandal. The Court must and will fearlessly act as an impartial arbiter.
41. In its interpretation of the Constitution, this Court is inclined to adopt a purposive, wide and generous approach as it holds the view that the Constitution is dynamic and must be interpreted in a manner which enables its continued relevance and applicability, in this ever evolving sovereign democratic state.
42. Subsequent to the publications and the search, the Second Defendant held a series of press conferences and pellucidly indicated, *inter alia*, that the police was not interested in going after the media but the rogue officer who leaked sensitive FIU information and breached the law. Notably, however, in her affidavit, Mrs Thomas outlined that the Third Defendant did indicate that he was interested in obtaining information as to the source of the information which was published in the articles.
43. The disclosure of information with respect to the identity of a journalist’s source is a matter which needs to be treated with caution as information is a journalist’s currency. Source protection is an integral and constituent component of press freedom. Consequently, the Court should exercise caution and carefully consider whether alternative avenues for such

disclosure were exhausted and it must always evaluate whether the public interest favours the mandatory disclosure of source information via the use of search warrants.

44. In this Republic, there is a perception that, the absence of transparency and accountability, corruption, nepotism, short-sightedness, selfishness, ethnic, class and political divisions have prevented us from maximising our resources and realising our limitless potential. Interestingly, within the recent past the role of investigative journalism has expanded and these journalists have increasingly addressed and highlighted many of these issues which plague our public institutions. They have also highlighted the propriety of actions undertaken by public officials.
45. This type of information can, in fact, catalyse much needed change by exposing wrong doing which may have, for far too long, flourished in dark. Whistle blowers and persons who have valuable information therefore play an integral role and such sources assume significant personal risk when they share information with journalists. These relationships are undoubtedly predicated upon trust and as a consequence the issue of source protection cannot be marginalised.
46. Source protection must be treated as an inherent and integral facet of the freedom enjoyed under section 4(k) of the Constitution and a careful and proportionate balance has to be struck between the interests of justice and the public interest on the one hand and the interest of free and fearless journalism which includes source protection on the other.
47. Although they play a critical role in a functional democracy, media houses and journalists do not enjoy any unique or special privilege which exempts them from prosecution nor do they enjoy immunity from having search warrants executed upon them. The right conferred by section 4(k) of the Constitution is, in this Court's view, not one which is clothed with special protection.

48. A foundational pillar of democracy is equality of treatment and no one is above the law. However, the vital and necessary role engaged by the media does require that the right to press freedom as outlined under section 4(k) of the Constitution, must be treated as one which carries special importance. Although the right to press freedom does not attract special protection, care and caution should characterize the approach to be adopted when issues which potentially impact upon press freedom arise.

49. At common law, a court had the power to issue a search warrant on sworn information based on the suspicion that stolen goods were on premises so as to enable a search for such stolen goods: **Elias v Pasmore [1934] 2 KB 164**. This original jurisdiction has now been superseded and statutory provisions cover the issuance of search warrants for summary and indictable offences under Section 41 of the Summary Courts Act Ch. 4:20 and Section 5 of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 respectively.

50. Lord Hoffmann in **A-G v Williams [1997] 3 LRC 22 at 28** explained that:

'The purpose of the requirement that a warrant be issued by a justice is to interpose the protection of a judicial decision between the citizen and the power of the state. If the legislature has decided in the public interest that in particular circumstances it is right to authorize a policeman or other executive officer of the state to enter upon a person's premises, search his belongings and seize his goods, the function of the justice is to satisfy himself that the prescribed circumstances exist. This is a duty of high constitutional importance. The law relies upon the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met.'

51. Boodoosingh J (as he then was) in **CV2019-02135 Central Broadcasting Services Limited v Commissioner of Police** at paragraph 17 cited Stone's Justice Manual 2018 which provided

guidance as to the process which should be followed when applying for a search warrant. The relevant extract states as follows:

“An application for a warrant to enter and search premises must be made ex parte and be supported by an information in writing. All the material necessary to justify the grant of the warrant should be contained in the information provided on the form. The obligation on an applicant for a warrant is the same as that imposed on any person making a “without notice” application to a court, namely one of “full and frank disclosure”. The obligation is not necessarily fulfilled merely by an information demonstrating that the bare statutory minima for the grant of the warrant are met. The disclosure must be as “full and frank” as the circumstances of each case requires. The police should disclose that a private prosecution is expected to follow the issue of the warrant. A warrant may be quashed on the grounds of material non-disclosure.”

52. At paragraph 26 Boodoosingh J (as he then was) further stated:

“26. What all of these cases clearly demonstrate is that a proper judicial process must be followed in the obtaining of a search warrant. Certain stringent criteria must be satisfied. Any incursion on the rights of the citizen must be carefully measured and be proportionate to the circumstances. There is no “one fit all” stipulation. There are, however, certain basic criteria that must be established. The process of issuing a search warrant is not a formality and it can be subject to careful judicial scrutiny.”

53. This Court accepts the Defendants’ submission that not every defect or misdescription evident on the face of a search warrant will render it invalid. In the Irish case **The People (at the suit of the Director of Public Prosecutions), v Veronica Balfe [1998] 4 IR 50**, the addresses on the information and search warrant did not coincide. In addition the warrant before the court was addressed to a person other than the applicant and the search warrant contained an amendment which was unsuitable, inappropriate, unclear, ambiguous and

unlawful. It was held by the court that these factors were not necessarily fatal. In the instant case, with respect to the first search warrant, there was sufficient clarity to indicate the premises which was the subject of the warrant.

54. The Court should not however treat search warrants with a rubber stamp and in the discharge of its supervisory jurisdiction, must ensure that the approach to the issue of search warrants is not rudimentary, casual or lax.
55. Courts are duty bound to resolve the dispute before them based on the accepted evidence and the existing law, in doing so, where the law is deficient or archaic, this Court feels compelled to highlight same and it is the view of this Court, that the relevant laws in this Republic governing search warrants require urgent review.
56. The invasion of homes, offices and private spaces amounts to a significant constitutional infringement and should only occur where there exists evident and reasonable justification. In relation to the issuance of search warrants, the required level of protection should logically require the involvement of legally trained persons to undertake and discharge this duty of high constitutional importance.
57. In a sovereign democratic state, the effecting of a search warrant upon a media house should be viewed from the perspective of increased and heightened significance as the implication and reach of such action, cannot be equated to a situation where a search warrant is executed upon a private citizen given that any unjustified interference with press freedom can have a retrograde, reverberating and recessive impact upon the society as a whole.
58. Procedural regularity and legislative conformity are important considerations when search warrants are sought and misdescriptions though not automatically fatal, should be viewed on a case by case basis when a determination as to the constitutionality of a search warrant has to be made. The decision to execute a search warrant upon a media house in particular should

be effected in circumstances which are not clothed with a scent of suspicion, irregularity or an air of arbitrariness.

59. In a democracy, the power to search the private space of a citizen is an exceptional intrusive power, a power which should be exercised only when the necessitating conditions are clear, certain and connected to an ascertainable offence.
60. There were evident errors on the face of the warrants which would be hereinafter identified and addressed and these errors were seemingly not detected by the Justice of the Peace. Given that there is currently no requirement for Justices of the Peace to be legally trained, they may generally lack the degree of specialisation required to equip and empower them to deal with important constitutional issues and the law should be reviewed so as to mandate the involvement of a Magistrate or a Judge.
61. In the absence of legislative reform, as the guardian of the Constitution, the Court needs to be robust in its defence of democratic principles and there is an evident need for judicial guidance so as to regulate the manner in which search warrants to be executed upon the media are issued. These guidelines should be followed by Justices of the Peace and by police officers.
62. The police should adopt an approach which is guided by fundamental principles of fairness and natural justice and it should be acknowledged that there exists a need to strike a balance between the interest of law enforcement, on the one hand, and the interest of privacy and proprietary protection on the other.
63. In **R v National Post (2010) 1 S.R.C. 477** Binnie J stated at paragraphs 28 and 64 as follows:

[28] *“The public has an interest in effective law enforcement. The public also has an interest in being informed about matters of public importance that may only*

see the light of day through the cooperation of sources who will not speak except on condition of confidentiality.”

...

[64] *“While confidential sources are not constitutionally protected, their role is closely aligned with the role of the “freedom of the press and other media of communication”, and will be valued accordingly.”*

64. The law and approach relating to the parameters of the rights of the press in relation to search warrants has been explored and outlined in a series of cases decided by the Supreme Court of Canada, these are:

- a. *Canadian Broadcasting Corp. v. Lessard* [1991] 3 S.C.R. 421 (“Lessard”)
 - b. *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)* [1991] 3 S.C.R. 459 (“New Brunswick”)
 - c. *R. v. National Post*, [2010] 1 S.C.R. 477. (“National Post”)
 - d. *R. v. Vice Media Canada Inc.* [2018] 3 SCR 374 (“Vice Media”)
65. **Lessard** and **New Brunswick** (*supra*) set out a list of nine factors which should guide the issuance of a warrant for the search of a media house under section 489 of the Criminal Code (which is substantially similar to section 5(1) of the Indictable Offences (Preliminary Enquiry) Act pursuant to which the two search warrants before this Court were purportedly issued).
66. In **National Post** (*ibid*) the Supreme Court dismissed complaints that the **Lessard** and **New Brunswick** principles were too generalized and offered inadequate protection in relation to the right to freedom of expression found in Article 2(b) of the Canadian Charter of Rights and Freedoms.
67. In **Vice Media** (*supra*), albeit after the enactment of legislation, the relevant test was re-framed into four simple and practical requirements:

- a. Notice: the authorising judge must consider whether to exercise the discretion to impose a condition for prior notice of the search to be given to the media;
- b. Statutory Preconditions: all statutory preconditions must be met;
- c. Balancing: the authorising judge must balance the state's interest in the investigation and prosecution of crimes as against the media's right to privacy in gathering and disseminating the news; and
- d. Conditions: the authorising judge should consider whether to impose conditions to ensure that the search would not unduly impede the media in the publishing and dissemination of the news.

68. Moldaver J, also outlined that:

- (a) prior partial publication should be treated on a case-by-case basis, rather than as a factor that always militates in favour of disclosure
- (b) on a review of an *ex parte* order, if the media points to relevant information which was not before the authorising judge then the media will be entitled to a *de novo* review.

69. The two warrants before this Court were issued pursuant to section 5(1) of the Indictable Offences (Preliminary Enquiry) Act which provides for the issue of a warrant upon proof on oath that there is reasonable ground for believing that there is in a building anything that will afford evidence as to the commission of an indictable offence. The warrants reflected that the offence being investigated was the indictable offence of "tipping off". However, under the Proceeds of Crime Act, tipping off is not an indictable offence but a summary offence.

70. The warrants also stated that they were issued for the purpose of gathering evidence relating to an offence, "*Contrary to section 24 of the Proceeds of Crime Act, as amended.*" No such offence exists by virtue of section 24 of the Proceeds of Crime Act. The referenced section bears no relation to the offence of tipping off and sets out the procedure to be adopted by

the DPP to obtain and modify confiscation orders on account of an increase in the value of an offender's property. Notably however, the complaint on oath in relation to the first warrant did reference Section 51 of the Proceeds of Crime Act.

71. Section 51 of the Proceeds of Crime Act states as follows:

51.(1) A person commits an offence if—

(a) he knows or suspects that a Police Officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and

(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

(2) A person commits an offence if—

(a) he knows or suspects that a disclosure (hereinafter referred to as “the disclosure”) has been made to a Police Officer or the designated authority under section 47, 48 or 49; and

(b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(3) A person commits an offence if—

(a) he knows or suspects that a disclosure of a kind mentioned in section 48(a), 49 or 50 (“the disclosure”) has been made; and

(b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for an employee of a financial institution to disclose any information in a suspicious activity report or for a professional legal adviser to disclose any information or other matter—

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

...

72. In this Court's view Section 51 does not automatically bar the press from publishing information in relation to the fact that a financial investigation has commenced or is likely. The section appears to target the disclosure of information which would likely prejudice the investigation.

73. In the Bermudan case **Fiona Miller v Emmerson Carrington [2016] SC (Bda) 106 APP (2 December 2016)** Kawaley CJ examined Section 47 of the Bermudan Proceeds of Crime Act 1997 which is in *pari materia* with our Section 51. At paragraph 21 the Court stated:

“21. ... the offence of tipping off requires the Crown to prove the following three essential elements of the offence under section 47(1):

(1) that the accused knew or suspected a Police money laundering investigation had commenced or was about to commence;

(2) that the accused made a disclosure to another person which was likely to prejudice the investigation or proposed investigation; and

(3) (where the issue is sufficiently raised by the accused) that the accused knew or suspected that the disclosure was likely to be prejudicial.”

74. At paragraph 34 the Court interpreted the meaning of “*likely to prejudice*” as:

“34. I therefore find that the “likely to prejudice” element of the tipping-off offence created by section 47 of the Act merely requires the Prosecution to prove that the disclosure might very well have prejudiced the investigation, without regard to whether, for reasons not known to the accused, actual prejudice was not in fact likely. The crucial conduct which the statute prohibits is (1) making a disclosure about a money laundering investigation which the accused knows or suspects has started or is about to start, a disclosure which (2) objectively viewed at the time when the disclosure is made, may well prejudice the investigation, while (3) knowing or suspecting that the disclosure might very well be prejudicial. Clearly, each case ultimately falls to be determined on its own facts and the approach to construing section 47 which I have adopted is significantly shaped by the particular nuances of the issue in controversy in the present case.

75. Prior to the issue of search warrants, the judicial nature of the function imposed upon the authorising officer an obligation to be satisfied that there is evidence capable of providing reasonable grounds for the holding of the belief, that the warrant(s) sought, were necessary and would assist in the investigation of the stated offence. The evidence before this Court suggests that there was no such clarity and certainty on the face of the warrants sought or in the complaint on oath.

76. With respect to the first warrant, the Justice of the Peace had before her a complaint under oath prepared by Supt. Lucas which served as the evidence to support the issue of the search warrant. Having reviewed paragraphs 36 to 37 of Supt. Lucas’s affidavit no such complaint was put before the Justice of the Peace in relation to the second warrant. In the absence of

evidence to the contrary, it appears that the Justice of the Peace issued the second warrant without any proof upon oath.

77. The justifiable rationale for issuing of a warrant should be pellucid and the relevant and applicable facts have to be evaluated from an objective perspective. The evident errors and inaccuracies on the face of the warrants should have signalled that the police was not fully apprised of the relevant law and the obvious lack of clarity should have aroused a measure of disquiet in the mind of the Justice of the Peace.

78. The information obtained by the author of the publications was of a confidential nature and the Defendants articulated that the publications possibly compromised the efficacy of the investigation into a senior police officer's conduct. Such a circumstance if demonstrated, may justify the grant of a search warrant, however, this argument, given the factual matrix before this Court, is flawed.

79. In this society, where the public's trust and confidence in public institutions including the police service, is low, public notification as to the fact of an investigation or potential investigation, has the potential to "pressure" the relevant authorities into taking decisive action thereby ensuring that sensitive investigations especially those which may involve senior officials, are actively and thoroughly pursued.

80. The mantra "see something say something" has been chanted with increased regularity and citizens are now encouraged to speak up about wrongdoing. Such conversations are necessary if the society is to ensure that important issues are not sacrificed at the altar of self-preservation or in furtherance of the clandestine pursuit of myopic and insular concerns.

81. This Court had difficulty with the position outlined by Supt. Lucas at paragraphs 14 and 15 of his affidavit as it related to his obvious intent to uncover the source of the information which was the subject of the articles in pursuit of the investigation into the offence of "tipping off". The public interest into the investigation into the potential summary offence of "tipping off"

cannot automatically be viewed as being of greater importance than the public interest in knowing the fact that there was an ongoing investigation into serious allegations involving a senior police officer. From an objective perspective, there are also reservations as to whether the articles could have prejudiced or compromised any ongoing investigation. The investigation upon which the articles was premised, involved suspicious financial transactions with commercial banks which purportedly occurred between 2014 to 2017. The relevant records were not in Mr. Hackshaw's hands or within his reach or control, and, assuming that the articles alerted him to the ongoing investigation, he could not reinvent or refashion the past. There is no evidence before this Court, which objectively suggests that the publication had the potential to materially prejudice the ongoing investigation.

82. The publication of the articles made the public aware that a serious investigation into the conduct of the (then) most senior substantive police officer after the Commissioner of Police, had been initiated and this awareness had the potential to exert pressure on the system so as to ensure that a comprehensive investigation was engaged. This information was also clothed with significant public interest import.

83. Supt. Lucas expressed the view at paragraph 14 of his supplemental affidavit that the “leak” of the information referenced in the articles, likely emanated from two possible sources, the Financial Intelligence Unit and or the Financial Intelligence Bureau. The persons within these groups who had access to the disclosed information were ascertainable and finite. Accordingly, investigations into the offence of “tipping off” could have first focused upon these two groups as opposed to the media so as to identify the source(s) for the disclosed information.

84. In the **Case of Roemen and Schmit v Luxembourg (Application No. 51772/99) (Strasbourg, 25 February 2003)** the European Court of Human Rights had to consider before it the application of, *inter alia*, a journalist, who published a story about a minister that was convicted of tax fraud. Following this, search warrants were issued by the investigating judge

for searches to be done at his house and workplace, the investigators being instructed to “search for and seize all objects, documents, effects and/or other items that [might] assist in establishing the truth with respect to the above offences or whose use [might] impede progress in the investigation”. Though the warrants were executed, no evidence was found. The journalist argued that his right as a journalist to refuse to reveal his sources had been violated by the searches pursuant to Article 10 of the European Convention of Human Rights, freedom of expression.

85. The Court, in holding that there was a violation of Article 10 of the journalist’s rights stated at paragraphs 46, 48, 57 and 58 :

46. ... The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected... Limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court... In so doing, the Court must look at the “interference” complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are “relevant and sufficient”.

...

48. The question is whether that interference can be justified under paragraph 2 of Article 10. ***It is therefore necessary to examine whether it was “prescribed by law”, pursued a legitimate aim under that paragraph and was “necessary in a democratic society”*** (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, pp. 24-25, §§ 34-37).

...

57. In the Court’s opinion, there is a fundamental difference between this case and *Goodwin*. In the latter case, an order for discovery was served on the

journalist requiring him to reveal the identity of his informant, whereas in the instant case searches were carried out at the first applicant's home and workplace. The Court considers that, even if unproductive, a search conducted with a view to uncover a journalist's source is a more drastic measure than an order to divulge the source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigative powers, as, by definition, they have access to all the documentation held by the journalist. The Court reiterates that "limitations on the confidentiality of journalistic sources call for the most careful scrutiny by the Court" (see *Goodwin*, cited above, pp. 500-01, § 40). It thus considers that the searches of the first applicant's home and workplace undermined the protection of sources to an even greater extent than the measures in issue in *Goodwin*.

58. In the light of the foregoing, the Court reaches the conclusion that the Government have not shown that the balance between the competing interests, namely the protection of sources on the one hand and the prevention and punishment of offences on the other, was maintained. In that connection, the Court would reiterate that "the considerations to be taken into account by the Convention institutions for their review under paragraph 2 of Article 10 tip the balance of competing interests in favour of the interest of democratic society in securing a free press (*ibid.*, p. 502, § 45).

(Emphasis Court's)

86. The articles which catalysed the obtaining of the warrants did not identify the source of the material which the journalist used. At the time the warrants were issued, Supt. Lucas evidently had in his possession, information which had been generated by the Financial Intelligence Unit (FIU) and the Financial Intelligence Bureau (FIB) and he outlined at paragraph 15 of his affidavit that the information in the Express articles was similar to the

information contained in the confidential documents and reports from the FIU and the FIB. This information was however not disclosed to the Justice of the Peace and would have been relevant when deciding whether or not the warrants should have been issued. Accordingly, the obligation for full and frank disclosure was not discharged and this material non-disclosure, in the round and having regard to the operative factual matrix, is significant and should lead to the quashing of the warrants.

87. Further on the evidence before this Court, the Claimants were not suspects in the course of any criminal investigation. Supt. Lucas gave no evidence of same and no cautions pursuant to the Judges' Rules were administered when the police executed the warrants.

88. In **R (on the application of Eastenders Cash and Carry plc) v South Western Magistrates' Court [2011] All ER (D) 76 (May) at paragraph 13**, in relation to exercise of discretion in granting a search warrant, it was held that belief is more than a suspicion and the need to have reasonable grounds for a belief imposes a higher threshold than the need to have reasonable grounds for a suspicion.

89. Consequently, a high standard of evidence would have been required to enable the Justice of the Peace to engage the appropriate balancing exercise so as to determine whether the issuance of the warrants was proportionate.

90. In **Lessard**, portions of the videotape which the police were seeking to seize had already been shown on the nightly news. In **National Post**, at the time of the application for the warrant was made by the police, the newspaper had already published the banking documentation which was the subject of the production order. The Globe, Mail, Sun Media, Ottawa Citizen and CTV had also reported some details of the document. In **Vice Media**, the relevant message exchanges which formed the basis of three news stories had been published by the appellant company in 2014, prior to the police's application for the production order.

91. The factual matrix in the instant case can be distinguished from circumstances which operated before the Canadian Supreme Court as there was no prior publication of the source's identity.
92. The language used in the search warrants before this Court was also quite broad and not in line with the circumscribed nature of the production orders/search warrants which were issued in the aforementioned Canadian cases. In the cases of **Lessard**, **National Post** and **Vice Media** there was precision of language as opposed to the wide scope of the items listed in the two search warrants. Such broadly worded warrants do not reflect the degree of proportionality that is required when dealing with the potential infringement of a right of special importance such as the right to press freedom.
93. The necessary balancing exercise required an informed and measured determination as to whether the public interest in identifying and prosecuting the journalist's source was of greater importance than the public's right to know that a serious investigation was looming over the head of a very senior police officer especially when one considers the fact that such an investigation had to be undertaken by junior police officers.
94. In situations where there is an intent to call for the issue of a search warrant for a media house or a journalist, the special importance which is associated with this section 4(k) right must mandate that due and reasoned consideration should be given to the issue as to whether the intended search is necessary, whether the information sought could be otherwise obtained and whether the importance of the search outweighs the infringement imposed upon press freedom.
95. In **Goodwin v United Kingdom (1996) 22 EHRR 123** it was clearly articulated that a journalist should only be subjected to searches in a democratic society, where there exists a legitimate aim in the furtherance of a pressing societal need.

96. The words, *“Well, if you want to print whatever you want, dearie, you can. But just be mindful that there are repercussions to those...”* uttered by Mr. Hackshaw during the conversation with the journalist, instilled a significant measure of disquiet in the Court’s mind. The power vested to public officials must never be used to advance the personal agenda of any such official and the Court is concerned that the search warrants were issued when the substantive Commissioner of Police was out of the jurisdiction and when officer Hacksaw was acting as the Commissioner of Police. Ultimately, there should always be a commitment to ensure that personal agendas do not dictate public process, nor should public office be used as a weapon to effect repercussions upon those with whom swords may have been crossed.
97. Having considered all of the operative circumstances, this Court holds the view that the process engaged by the Third Defendant when the warrants were issued was flawed and disproportionate.
98. In situations where the police has to investigate its own personnel, public knowledge of the fact of such an investigation can serve as a useful safeguard in ensuring that there is a thorough investigation which results in appropriate action against any wrong doer, thereby thwarting the tendency to treat institutionalised wrongdoing with hushed tones and to keep such issues hidden and covered.
99. If, as a society, there is a serious intention to chart a new path of transparency and accountability in relation to all matters of public interest, then, whistle blowing protection should be actively pursued so that wrongdoing, which prevails in the shadows of silence, would be stifled by the rays of light which can make visible its ugly existence. Whistle blowing protection as well as legislative steps which mirror the Canadian Journalists Sources Protection Act (JSPA) 2017 should be considered.
100. The JSPA amended both the Canada Evidence Act and the Criminal Code to provide a legislative scheme governing orders for disclosure and search warrants involving the media. Of particular relevance is section 3 which relates to search warrants. The section requires that

an application for a warrant relating to a journalist's communications or an object, document or data relating to or in the possession of a journalist must be made to a judge of a superior court of criminal jurisdiction, who is given exclusive jurisdiction to adjudicate on such applications. It further provides that a judge may issue a warrant only if in addition to the statutory conditions required, he/she is also satisfied that:

- (a) There is no other way by which the information can be reasonably obtained and;
- (b) The public interest in the investigation and prosecution of a criminal offence outweighs the journalist's right to privacy in gathering and disseminating information.

101. Section 3(7) further provides that any warrant issued by a judge may contain *“any conditions that the judge considers appropriate to protect the confidentiality of journalistic sources and to limit the disruption of journalistic activities.”*

102. The effect of the JSPA on the Canada Evidence Act was recently examined by the Canadian Supreme Court in **Denis v Côté 2019 SCC 44 (CanLII)**.

103. The Court, per Wagner CJ, noted the historic nature of the protections granted to the media by the JSPA and said as follows:

*“It is important to stress that in carrying out its plan to modernize the law... Parliament drew upon the various decisions rendered by the Court on this subject over the years. However, it modified the structure of the test and the weights of the identified criteria. Thus, some criteria that were but considerations are now essential conditions, while others have become less important. **By this meticulous reorganization, Parliament has created a scheme of new law from which a clear***

intention emerges: to afford enhanced protection to the confidentiality of journalistic sources in the context of journalists' relations with those sources."(Emphasis Court's)

104. It was further noted that the following changes were made to the common law principles as outlined in **National Post** (*supra*) :

- a. Shifting of the Burden of Proof: once a person shows that he or she is a "journalist", and his or her confidential source is a "journalistic source", as defined in the Act, the burden of proof shifts to the party seeking disclosure to prove that the conditions for judicial authorization of the disclosure are met;
- b. Requirement of reasonable necessity: the applicant for a disclosure order must show that the information or document cannot be produced in evidence by any other reasonable means; and
- c. Balancing exercise: If these threshold requirements are met, the court must then engage in a balancing exercise which requires the court to decide whether the public interest in the administration of justice outweighs the public interest in preserving the confidentiality of the journalistic source, having regard to, *inter alia*, the importance of the information to a central issue in the proceedings, freedom of the press and the impact of disclosure on the journalistic source and the journalist.

105. It is hoped that the Legislature in this Republic, can be moved to adopt a proactive as opposed to a reactive legislative agenda and prioritise the enactment of similar provisions.

106. Until such time as the appropriate legislative protection for journalists is enacted, as a sovereign democratic state, the social contract and attendant rights and responsibilities as outlined under the Republican Constitution have to be jealously defended by the Court. Although the right outlined under section 4(k) of the Constitution does not attract special

protection it does attract special importance and consequently, the parameters of same must be outlined and observed with precision.

107. The search of media houses cannot be viewed as the norm. Such searches should be sanctioned only where it is essential for the administration of justice and the public interest favours the disclosure of the information sought because it is vital to the furtherance of a criminal investigation. Before such a search warrant is issued, the issuing authority should ensure that all the required statutory requirements have been met. Full disclosure of all relevant information must be made and a proportionality analysis has to be engaged by a judicial officer so as to ensure that there is a balance between the right of the police to investigate a criminal offence on the one hand and the constitutional right enshrined under section 4(k) on the other.

108. Search warrants generally and those to be executed upon a media house in particular, should by necessity, be issued by legally trained personnel and once practicable, Magistrates as opposed to Justices of the Peace should be used.

109. Ideally and with the effecting of legislative reform, search warrants which involve the unearthing of source information should be issued by Judges of the Supreme Court. Such a course may militate the chilling impact which the search of a media house can have upon the society. Parliament may therefore wish to urgently consider the enactment of an amendment to section 5 of the Indictable Offences (Preliminary Enquiry) Act. Until such time as the suggested legislative amendments are undertaken, the police should only approach Magistrates, if they intend to obtain a search warrant to search a media house.

110. The two warrants executed by the Third Defendant were plainly irregular. There were errors on both warrants as to the nature of the offence, critical information as to the possibility that relevant information could have been obtained from the FIU or the FIB was not disclosed and there was obvious uncertainty as to the statutory provision upon which the proposed investigation was premised. The decision to issue the warrants failed to strike the

required balance between the interest to investigate the summary offence of “tipping off” on the one hand and the right to press freedom as well as the right of the journalist who authored the articles to protect the confidentiality of her source on the other. In addition, the language in the warrants was not circumscribed or precise nor was it confined to specific relevant areas so as to ensure that its execution would cause minimum disruption and incursion.

111. For the reasons which have been outlined the Court declares that the two search warrants issued on March 11, 2020 were unlawful and unconstitutional as they disproportionately infringed upon the Claimants’ right as articulated under Section 4(k) of the Constitution of Trinidad and Tobago.

112. It is further declared that the seizure of the four USB flash drives from the office of the Third Claimant was unconstitutional.

113. The Claimants are entitled to receive damages for the breach of their constitutional rights and the quantum of same shall be assessed and determined by a Master in Chambers.

114. The Defendants are to pay to the Claimants’ costs certified fit for Senior Counsel to be assessed by the Court in default of agreement.

FRANK SEEPERSAD

JUDGE