

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2009/0014

BETWEEN:

GREGORY CLARENCE BOWEN

Claimant

and

GRENADA BROADCASTING NETWORK LIMITED

Defendant

Appearances:

Mr. Dwight Horsford for Claimant

Ms. Lisa Taylor and with her Ms. Xiomara Cherubin for the Defendant

2009: May 14
October 16
2010: March 13
May 14
2011: April 19
May 30
June 1
September 19
2013: October 24

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant in this matter on the 16th of January, 2009 filed a claim form against the Defendant accompanied by a statement of claim of the same date seeking the following relief:

1. Damages for libel, including aggravated damages
2. Exemplary damages

3. An injunction restraining the Defendant whether by themselves, their servants, agents or howsoever or otherwise from further broadcasting and publishing or causing to be broadcast or published in any way the said statements or any similarly defamatory statements concerning the Claimant.
4. Interest, cost or such further and/or other relief as to the court shall appear just.

[2] The Claimant in this matter is an electro-chemical engineer by profession and a politician, and at the time of the filing of his witness statement was the chairman of the New National Party which was the Official Opposition in the Parliament of Grenada.

[3] From 1995 to 2003 the Claimant was Minister for Communication with Public Utilities, Transport and Energy and so the Defendant Company fell within this purview as it related to telecommunications.

[4] After 2003, the Claimant served as Minister for Agriculture, Lands, Forestry, Fisheries and Public Utilities and Energy. He also served as Deputy Prime Minister from 2003-2008.

[5] At the time of the broadcast in which the alleged defamatory statements were made, he was not in fact a Member of Parliament nor was he a Minister of Government. The words complained of were uttered on or about the night of the 17th of October, 2008 during the course of the news broadcast on the 7 p.m. news carried by the Defendant network.

[6] The words were read by a news reporter, an employee of the Defendant, one Tricia Reuben, and the news report was broadcast to a wide and substantial audience in the nation.

[7] These are the words which the Claimant claims were defamatory of him:

"GRENLEC and Petro-Caribbean Grenadian officials are denying reports that the former Government Minister may have been involved in secret trading deals. On Friday GBN were informed by a reliable source that a former Government Minister had been receiving direct financial benefits from Petrocaribe Grenada Limited. However, we were reliably informed that an expected increase in the price of fuel is as a result of undercover trading by the former Government Minister, whereby oil dealers were not getting their due allowance on the hand and GRENLEC allegedly received its Petrocaribe order through a disguised Government agent other than direct trading with Petrocaribe Grenada Ltd. The source has maintained that Government's investigation is based on solid facts that the former Government Minister may have been receiving direct financial benefit resulting in a higher price to consumers. As to how the alleged fraud is conducted is what was currently left under investigations."

- [8] The Claimant claims that the said words referred and were understood to refer to himself, or otherwise were capable of referring to and were understood to be referring to him. In their natural and ordinary meaning, the words meant and were understood to mean the Claimant was a dishonest person and a fraudster, that he was corrupt and guilty of fraud or fraudulent practices, that he was guilty of a serious criminal offence, namely fraud, whilst in public office and was unfit to hold public office.
- [9] The Claimant further pleaded that it was generally and widely known by Grenadians that the Claimant was the only Minister for Energy in the former Government and that he was the Minister who negotiated the Petrocaribe agreement and the attendant arrangements for the Government and people of Grenada.
- [10] The Claimant further claims that he was the only Government Minister who was ever involved in that matter at all. Further, that a substantial number of ordinary,

sensible persons in Grenada who know the Claimant and who were listening to the said news report complained of would believed that it referred to him and to no other Government Minister or person being a member of the former Government.

[11] The Claimant further claimed that the words used were widely understood to mean or signify that the imputation of fraud against the Claimant is true and that there was an investigation by the present Government into this alleged fraud committed by the Claimant and that the Government has confirmed both the existence and the solid facts and the existence of this investigation into the Claimant's activities.

[12] The Claimant further sought to ask the Court to infer that the facts in the matter set out and pleaded in his claim and the particulars of his claim were widely known to a substantial number of identifiable persons who watched and listened to the news broadcast of the Defendant.

[13] The Claimant complained that by reason of the publication of the said news report, and the statements contained in that report, that the Claimant had been gravely injured in his character, credit of reputation as a public figure and as a citizen, and had been lowered in the estimation of right thinking members of the society generally, had been brought into public scandal odium, contempt and embarrassment.

[14] He further pleaded in aggravation of damages, he relied on the following facts. That the Defendant's network on or about the night of the 16th of October prior to the defamatory publication complained of, published a news report wherein it stated that the Claimant was successful in defending bribery allegations brought against him in a United States Court in New York. Yet, the very next day, knowing the content of the publication in the news report to be false or reckless as to the truth of such statement, they proceeded to publish the defamatory matter complained of in the newscast.

[15] He further pleads that to compound this, the day after the publication referred to above, the Defendant re-broadcast the libellous and defamatory statement contained in the aforesaid news report on the 10 O'clock news broadcast on the same evening of the 17th of October, 2008.

[16] That the Defendant, despite the engagement by way of two letters from the Claimant, flatly refused to apologize or make reparation for the defamatory publication.

[17] He further stated in his pleadings that the Defendant falsely and maliciously published of the Claimant the defamatory words and statements contained in the news report, and he relied on the following intrinsic facts: The Claimant contended that the language and expressions contained in the news report were utterly disproportionate to the facts alleged by the report.

1) The report states that both GRENLEC and Petrocaribe denied what is alleged against the Claimant, the former Minister, in respect of any secret deals with those entities.

2) The two entities, GRENLEC and Petrocaribe, having denied any such secret dealing, the report nevertheless proceeds to state that such alleged dealing, which was reported to have been denied, was causing the increase in price in gas for consumers, a matter wholly disproportionate to the facts.

3) The statement that the investigation was based on solid facts is disproportionate to the other statements of fact in the body of the defamatory report for reasons that:

a) No solid facts of this alleged secret trade dealing between the two entities and the Claimant had been set out or stated in the report, and

b) Both GRENLEC and Petrocaribe Grenada Ltd. have been stated to deny the existence of any such secret dealing by the Claimant or at all.

[18] The Claimant says and contends that the publication of the said defamatory statements contained in the news report published by Defendant were actuated by malice or some improper motive. He then proceeds to request the various reliefs stated.

[19] The Defendants in their defence do not deny that the broadcast was made and that the words which were uttered during the broadcast were in fact said.

[20] It is denied, however, that the said words referred to or were understood to refer to, were capable of referring to the Claimant as alleged. It is also denied that the said words were understood to refer to the Claimant, and it is denied that they bore or understood to bear or were capable or bearing the meanings pleaded in the statement of claim by the Claimant.

[21] The Defendant denies injury, embarrassment, loss and/or damage alleged against the Claimant as claimed in the statement of claim. They admit that the words complained of were rebroadcast in the same evening as the initial broadcast but they deny that the Claimant is entitled to aggravated and/or exemplary damages on the basis of the facts or matters set out in his statement of claim.

[22] The Defendant further denies the imputation of malice contained in the statement of claim and further states that the particulars relied on therein amount to distortions and misrepresentations of the words carried in the broadcast.

[23] The Defendant denied that they have any intention of further publishing the words complained of, and the Defendant will maintain that the Claimant is not in any event entitled to an injunction by reason of the matters pleaded above.

[24] The Defendant further pleaded that they contend that the words contained are published on an occasion of qualified privilege, and they go on to state the particulars of that qualified privilege:

1. The Defendant admits so much of Paragraph 11.1 of the Statement of Claim as alleges that at all material times the Claimant is and was a Politician, former Minister including holding the portfolio of Minister of Energy in the former New National Party Government of Grenada. Save as admitted aforesaid the Defendant neither admits nor denies the said paragraph having no direct knowledge of the other matters set out therein.
2. The Defendant neither admits nor denies Paragraph 1.2 of the Statement of Claim having no direct knowledge of the matters contained therein.
3. The Defendant admits Paragraph 2.1 of the Statement of Claim save that it avers that it carries on the business of transmitting for general broadcast to the public in Grenada radio and television programmes via a television station familiarly known as "GBN TV", a radio station known as "Klassic Radio" broadcasting on the assigned frequencies 540 AM and 87.9 FM and a radio station familiarly known as "HOTT FM" on the assigned frequencies, 98.5 FM and 109.5 FM.
4. It is admitted that the Defendant published the words complained of in paragraph 3.1 of the Statement of Claim, however, the Defendant can neither admit nor deny that the said words were broadcast to a substantial audience in the nation as alleged.
5. It is denied that the said words referred to or were understood to refer to or are capable of referring to the Claimant as alleged in paragraph 4.1 of the Statement of Claim or at all. Further, if, which is denied, the said words were understood to refer to the Claimant, it is denied that they bore or were understood to bear or

are capable of bearing the meanings pleaded in Paragraphs 5.1 and 5.2 of the Statement of Claim or any meaning defamatory of the Claimant as alleged or at all.

6. The Defendant denies the injury embarrassment, loss and/or damage as alleged in Paragraph 6.1 of the Statement of Claim or at all.
7. Save that it is admitted that the words complained of rebroadcast on the same evening as the initial broadcast the Defendant denies that the Claimant is entitled to aggravated and/or exemplary damages on the basis of the facts and matters alleged in Paragraph 7.1 of the Statement of Claim or at all.
8. The Defendant denies the imputation of malice against it as contained in Paragraph 8.1 of the Statement of Claim and states further that the particulars relied upon therein amount to distortions and misinterpretations of the words carried in the broadcast.
9. It is denied that Defendant has any present intention of further publishing the words complained of. Further the Defendant will maintain that the Claimant is not in any event entitled to an injunction by reason of the matters pleaded hereinabove.
10. Further or in the alternative, the Defendant will contend that the words complained of were published on an occasion of qualified privilege.

[25] The Claimant in the matter filed in application on 29th April 2009 pursuant to the provisions of rules 69.4 of CPR for the determination of the preliminary issue as to whether the words complained of are capable of bearing the meaning attributed to them in paragraphs 5(1) & 5(2) of the statement of claim.

[26] That application was heard and in a ruling delivered by Cumberbatch, J on 14th May, 2010, he found that having applied the relevant principles, the words

complained of in their natural and ordinary meaning do have the meaning ascribed to them in paragraph 5(1) of the statement of claim.

[27] He however made no finding as to whether the person referred to in the broadcast was the Claimant. Therefore, this Court is only concerned with whether the individual referred to in the broadcast was in fact the Claimant Gregory Bowen, Justice Cumberbatch having already found that the words in their ordinary and natural meaning do have the meaning ascribed to them by the Claimant in paragraph 5 (1) of the statement of claim.

[28] The Claimant in his evidence-in-chief said that he did not in fact hear the live broadcast either the 6 O'clock radio edition or the 7 O'clock TV presentation of the news, but states that he subsequently obtained a copy of the GBN news from the 7 O'clock broadcast that evening. The copy of the news report was recorded on a CD and the Court has the benefit of listening to the particular news report in its entirety on said CD.

[29] In his evidence-in-chief he said that the words and statements contained in the news report concerning him were untrue and injurious to his character and his reputation. The words and statements as he understood them meant that he was dishonest and that he had received monies from Petrocaribe Ltd. for his own purpose.

[30] He further went on to say that since the defamatory publication on the evening of 17th October, 2009 many people in the community where he lives and which he served as a Member of Parliament for many years have repeated the statements made in the said reports and have accused his of wrongdoing and stated that they expect him to be jailed at any time.

[31] He further stated that other persons have met him and told him that they believe the said statements to be true otherwise it would not have been broadcast on

GBN. Many people in his church, the Morne Jaloux Roman Catholic Church, and across the nation express their concern and belief that he was under investigation and might be going to prison for fraud. He said that the news report on the question in the action has been most damaging to him, both as a politician and a citizen.

[32] Further, he stated that he is still in active politics since his narrow defeat in the last General Election in 2008. And some of his former constituents have said to him directly and within his hearing that they no longer trust him and that 'I was thieving Petrocaribe money.'

[33] He said that further, when he contacted the chairman of Petrocaribe Grenada Ltd, the said chairman indicated to him that he had been reached for comments by servants of the Defendants and he told them that the allegations made against him was categorically false.

[34] Further, he said that he heard in the recording of the news report that the reporter stated that both GRENLEC and Petrocaribe Grenada Ltd. had denied what GBN had alleged to have been based on solid facts against him.

[35] He said what he found curious is that the day before the said Defendant, GBN, had broadcast his success in defending a claim of corruption brought against him in a court in New York where one Jack Grinberg alleged he had requested a bribe in order to keep the oil exploration contract with the Government of Grenada.

[36] That that suit was thrown out in the court in New York and the very next day, in the face of that report the day before, that they proceeded to report these damaging allegations in the face of the categorical denials by both GRENLEC and Petrocaribe Ltd. He said in his evidence-in-chief that he believed that the intention of this publication was to keep his character under suspicion in the public eye and to destroy his political career.

- [37] In cross-examination, he indicated that he that he assumed the position of the chairman of the NNP, the New National Party, in 2009 and he was presently a Senator in the Upper House, and he assumed that position sometime or about February 2010. He was a devout Catholic and the father of five children. He said he attended Mass regularly at the Morne Jaloux Roman Catholic church. He considered Morne Jaloux his parish.
- [38] He has been a member of that parish since 1984 and remains a member of that church. He has lived in La Borie since 1997 and he is the former parliamentary representative for the constituency of St. George South East, the constituency that includes the area of Morne Jaloux as well as La Borie and St. Pauls, it also includes Springs, St. George's.
- [39] He served as a parliamentary representative between 1999-2008, that is up to the 8th of July, 2008 when the NNP lost the election. He indicated that he had listened to the report from the Defendant on the 17th of October, 2008. He said that there was no reference to him by name in the report. He said because he was the only former Minister associated with Petrocaribe and the Minister who spearheaded all the negotiations and implementation in the Petrocaribe agreement, that the newscast not mentioning his name directly, must have referred to him.
- [40] He said the Petrocaribe agreement was and is an arrangement between Venezuela and other Caribbean territories for the supply of fuel under favourable conditions to the recipients. He said it is not a trade agreement, it was a specific agreement and it was not reciprocal as would be expected in a trade agreement.
- [41] He said the Petrocaribe agreement contemplates the provision of a commodity, to wit, fuel to the State of Grenada. The agreement contemplates payment for the fuel by cash and the exchange of commodities. It was part of the agreement for one State to provide the commodity, that is oil, and for the other State to pay for this commodity by cash and by other commodities.

- [42] He said that at the time he was Minister of Energy that his portfolio did not include the area of trade. The lead-up to the negotiations for the Petrocaribe agreement would have involved persons in the Ministry of Foreign Affairs only in setting up of the meetings.
- [43] He said the reason that he felt that broadcast referred to him was because he was the Minister of Energy and the main person involved in negotiations for the agreement. He said since the report of the 17th of October, 2008 he had assumed the chairmanship of the NNP, that would be in 2009 as said before, and that he became a Senator in 2010. He said he remained in active politics.
- [44] He said since October 2008 he had engaged members of his former constituency. He has held meetings in his former constituency but he would not agree that those meetings were mass meetings. He would categorize the attendance at those meetings as being less favourable than before, that is, before the announcement.
- [45] He said he had not based his answer on his prospects of contesting the next General Elections. He said it was his intention to contest the next General Election whenever it was called and he hoped and he expected to win. He said he would not agree totally that there were some indication from within the constituency with respect to his prospects.
- [46] He said he is depending on the hard work which includes the cleansing of his name in order to be successful in winning at the polls. He said the single most difficult task to overcome will be the clearing of his name and it is not correct that if he fails to clear his name he will not contest in this election.
- [47] He said the party may determine with respect to what has been said, he hopes that he would enjoy the confidence and support of his constituents whether he contests to the election or not.

- [48] He said after hearing the news broadcast he contacted the chairman of Petrocaribe Grenada Ltd. because he would have all the facts. He understood the statement to refer to him. "I know the statements of the 18th October to be untrue. I simply wanted to ask the chairman and hear from him, as one of the persons who would participate in the investigation, whether what was said was true or not."
- [49] He said that the report referred to an investigation being undertaken and he also could not contemplate such an investigation taking place without the co-operation of Mr. Antoine, who was the then chairman of Petrocaribe Grenada Ltd. He said he contemplated that Mr. Antoine would be involved in the investigation, and the facts that he was seeking from Mr. Antoine were whether or not Petrocaribe Grenada Ltd. had led anyone to believe the contents of the statement made in the broadcast. He said he knew Mr. Antoine since approximately 1966-1967 before he served as the chairman of Petrocaribe Ltd. He was the Manager of Gravel & Concrete Grenada, and it was possible that he became the Manager of Gravel & Concrete when he, the Claimant, was Minister of Communications, but he believed it was under another Minister.
- [50] He said Gravel & Concrete is a statutory corporation which does fall under the Ministry of Communication & Works. He admits that he was the Minister of Communication for some time during Mr. Antoine's tenure at Gravel & Concrete but not for most of it.
- [51] He said the portfolio of Minister of Communication & Works was removed from him in 2003. He said before he became a Member of the House, he worked as an engineer with GRENLEC. He said from 1979 he worked in various capacities at the statutory corporation from being a trainee Engineer to becoming the General Manager, the General Manager being his last position.

- [52] He said having spoken to Mr. Antoine, Mr. Antoine confirmed to him that the allegations that were stated in the news report were categorically untrue. He stated that he had heard the broadcast on the 16th, the day prior to the broadcast complained of in his complaint. He said that the broadcast concerned him, that the broadcast called him by name saying that the matter in court in New York had been thrown out, and it briefly stated that the matter involving an allegation bribery made by one Jack Grinberg. He was the Defendant in a suit brought by Mr. Grinberg in the US. That case was filed against him in 2007.
- [53] The broadcast of the 16th of October, 2008 concerned that case being thrown out by the court. He said he followings the proceedings closely. He recalled asking the Government of Grenada to apologize in September 2010 due to this case being thrown out. The matter was thrown out sometime in July of 2010. He said he disagreed that there could be no broadcast in 2008 about a matter being thrown out in July 2010.
- [54] He said the matter he sought the apology from the Government for was an allegation of bribery made by Jack Grinberg. The matter he referred to in paragraph 23 of the statement of claim concerns the matter alleging bribery brought by Jack Grinberg against himself. He said there were other matters filed against him by Mr. Grinberg but not in New York. There were other civil proceedings involving Mr. Grinberg and himself other than those in New York.
- [55] He indicated that he was very familiar with the Defendant given the fact that he was Minister of Communication of Works for some time. He said while he was the Minister of Communication & Works he became familiar with some of the employees and some of the personnel of the Defendant. He knew who the Manager of GBN was at the time of the broadcast, one Mr. Edwards.
- [56] He said Mr. Edwards served as Manager of GBN but he could not say whether he served as Manager while he was Minister. He said it was possible that he had

interaction with Mr. Edwards while he was the Minister of Communications and he said he would describe his relationship with the Defendant Company as reasonable. He recalled a Mr. Purcell being the Manager of GBN while he was a Minister. He said he interacted with Mr. Purcell mainly through correspondence but he did not recall speaking to him.

[57] He said he did however remember speaking to Mr. Edwards while Mr. Edwards was Manager. He said these discussions took place over the phone. He said the relationship between Mr. Edwards and himself personally were excellent, but from an organisational standpoint there was at least one incident which was not pleasant. He said when he heard the report of 17th October, 2008 he personally had no discussions with Mr. Edwards regarding the report. He said he made contact with Mr. Edwards regarding the report through channels.

[58] In re-examination he said it was the same case that he spoke of, the case that was thrown out in 2008 brought by Mr. Grinberg that he was referring to in paragraph 23 of his witness statement. He said the case was thrown out and he requested an apology in 2010.

[59] He said the case had been thrown out four times, three times at the court at first instance. He said the ruling of the 16th of October, 2008 was one with prejudice. The fourth time the case was brought was on appeal somewhere around July 2010.

[60] In response to the court, he said that there were about ten members of Cabinet while he was Minister of Government between the period 1995 and 2008. He said between 2003 and 2008 the number of Cabinet Ministers would have reached ten. It would have included Ministers who were also Senators at the time.

[61] In support of his case, he called witness Ann Hinds. She said she was an unemployed Spiritual Baptist and that she attended church in Springs. She said

she knew the Claimant Mr. Bowen very well since he was going to Presentation Boys College as a young man. She recalled hearing news; she watched the news on the night of the 17th of October 2008. She recalls hearing the report with respect to Petrocaribe Grenada Ltd. and GRENLEC.

[62] She said when she heard the words complained of in the report especially 'reliable source', 'solid facts', 'fraud' and 'Government Minister' she understood the words to mean and believed that they meant that the Claimant had committed a fraud and that he was part of criminal activities and that the Government of the day was conducting an investigation into his activities.

[63] She said she believed that this report was malicious and wicked and designed to make the public think less favourably of the Claimant. She said that she also called Mr. Fred Antoine, Chairman of Petrocaribe Grenada Ltd. to find out whether it was true and she was informed that it was absolutely not true and that there were no dealings at all with the Claimant.

[64] She said she felt it was particularly disappointing to hear what was said in the newscast because on the day before, on the 16th October 2008, GBN had broadcast of his success in the Grinberg matter in the States. She said it was significant because the report indicated that the dismissing of the case against the Claimant cleared the way for the Government and the people of Grenada to proceed with the business of pursuing the exploration of marine gas resources and the delimitation of maritime boundaries. She said to have these things said against the Claimant in the newscast was very disappointing and hurtful.

[65] She said in cross-examination that she was the personal assistant to Mr. Bowen, and that employment ended on 31st July, 2008. She said it was a paid position and she had been his personal assistant from May 1997 to July 2008 when the election took place.

- [66] She said she lived in Springs and she was part of the constituency that Mr. Bowen had represented in Parliament. She said that she knew Mr. Bowen from school days and knew that he liked to look after the well-being of others and he was a forthright and honest person and that she had formed a good opinion of him.
- [67] She said she thought the words that she heard that night on the 17th October referred to Mr. Bowen, he being the only Minister who dealt with the Petrocaribe Agreement, she said there was no doubt in her mind that they were referring to Mr. Bowen.
- [68] The Petrocaribe issue was an agreement, as far as she knew, between Venezuela and the Government of Grenada to supply petroleum. She said in October 2008 this is what she understood the Petrocaribe agreement to mean. She said when she said the reference to Petrocaribe that is what made her believe the report was referring to Mr. Bowen. She said she believed what the report said. She said before she heard the report in October of 2008 she had no cause to believe that Mr. Bowen had committed any fraud or was involved in criminal activities.
- [69] She said she had a good opinion of the Claimant prior to October 2008. She said after hearing the report, she called Mr. Antoine and she spoke to him. She said this would have been around after 7 O'clock the evening. She said she spoke to him, and that she reached him on his cell phone.
- [70] She said Mr. Antoine was a member of the constituency which Mr. Bowen had represented, that is, St. George South East. He was also chairman of that constituency branch of the NNP. She said Mr. Antoine was no longer chairman; he had stopped being chairman about 3-4 years prior. She said that she had also performed work for the constituency branch as a Personal Assistant for Mr. Bowen.

- [71] She said even after she spoke to Mr. Antoine she still believed the words to be true, and she had discussions with Mr. Bowen about the report. She said that there was more than one discussion between herself and Mr. Bowen about the report. She said the first time she spoke to Mr. Bowen she told him about her concern about what she had heard. She said even after she had these discussions she continued to hold the view that what she had heard was true. She said it wavered a bit in her mind, but she was not too convinced.
- [72] She said now, at the time she was giving the evidence, she still holds that what was said in the report was true; that she still held this view today. She said that she was asked to give the witness statement on behalf of Mr. Bowen and she agreed, and she did so even though she believed that Mr. Bowen was involved in criminal activities.
- [73] She said she was happy when she heard the news release of the 16th of October, 2008, about the success of Mr. Bowen in the New York matter. She said when she initially heard the reports, that she did not believe the news about Mr. Bowen and Mr. Grinberg. She said there came a time when the GBN story with respect to Petrocaribe came to light, and that is when I had thought of believing what was said and she had cause to discuss the Grinberg matter with Mr. Bowen.
- [74] She said she did not actually look at the broadcast; she was mainly listening to it. She said the broadcast was significant because the Government of Grenada was in its quest to explore marine, gas and gas resources, so once that was clear they could have gone on and drilled; because with this issue hanging over their head, the Government of the day, the present Government, the issue with Grinberg, once that was cleared up they could have gone ahead and negotiated to get the things done.

- [75] She said she still believes, and she repeated that she still believes that the report on Mr. Bowen by GBN is true. She said, 'I would agree that it is important and that GBN had an obligation to air news if it were true.'
- [76] Mr. Gabriel Strachan also gave evidence on behalf of the Claimant. He said that he knew the Claimant because he was the elected Parliamentary Representative and he met him while he was going house to house in the village in which he lived. He said he was not necessarily a supporter of the Claimant.
- [77] He said he still listens to GBN News at 7:00 on Channel 11. He said in October 2008 he was not employed at the Calabash Hotel. He said he started working at Calabash, from the 9th December 2008 to present. He said prior to that he worked as a supervisor at Native Hut in South City Plaza. He said at Calabash he worked from 3-11 p.m. While he worked at Native Hut, he said he could still listen to GBN News, not every evening he would look at the news but he was a regular watcher of the news. He said I heard the broadcast and to my mind, the words of the broadcast, he believed the words related to the Claimant, because the closest Minister to the Petrocaribe Agreement in the former Government was the Claimant.
- [78] He said no part of the report named the Government Minister, the report merely said a former Government Minister. He said he knew it to be a fact that Mr. Bowen was the only Minister negotiating on behalf of the Government of Grenada for the Petrocaribe agreement. He said before 2008 he had heard about it on the radio and he was an avid reader of the newspaper and listener to radio programmes.
- [79] He said Mr. Bowen was the only Minister he recalls discussing the Petrocaribe Agreement before October 2008. He said he could not honestly recall Minister Boatswain or Prime Minister Mitchell discussing Petrocaribe Agreement. He recalls mainly Minister Bowen discussing the said agreement.

- [80] He said he cannot recall any other Minister talking about the Petrocaribe Agreement on air. He was adamant that the one name that he recalls being associated with the Petrocaribe Agreement was that of Gregory Bowen, the Claimant.
- [81] He said there may have been others who were involved in the negotiations but, again, he repeated that the Claimant was the one person who he recalled being intimately involved with it.
- [82] He said the then Minister who was responsible for Energy issues was Gregory Bowen and there were no Ministers less prominent than Gregory Bowen involved with the negotiations with Petrocaribe. He said when he heard the words on the newscast that he believed them. He said before October 2008 he had met Mr. Bowen several times. He said he met him after the 17th October, 2008 and discussed the report with him. That occurred about a week after the report.
- [83] He said that having spoken to Mr. Bowen, he aired his concerns to him. He said he believed what he heard in the reports. He said after he spoke with Mr. Bowen, he still had doubts in his mind and he still believed the report. When he said that Mr. Bowen was lowered in his estimation, he said "I held Mr. Bowen very high esteemed before the report".
- [84] However, he said after the report, especially when the report said it was from a reliable source that swayed his mind to believe what he had heard about him to be true. Up to this day, the day that he was giving evidence, and all that he has heard, he still had doubts remaining. He still holds that to be true. He has not heard any retraction or anything. He still believes that Mr. Bowen is in trouble with the law; even now it still alters his view of Mr. Bowen. Based on the report, he still has doubts. He said he gave the witness statement on behalf of Mr. Bowen, because he was asked if he heard the news and he said yes. He said he was asked to be a witness.

- [85] Mr. Frederick Antoine was the next witness to give evidence. He stated that he was the General Manager of the Grenada Distillers Ltd. and he was an Accountant by profession. He said he knew the Claimant well; he was the Parliamentary Representative for South East St. George in the constituency in which he Mr. Antoine lived from 1999 to September 2009.
- [86] The Claimant was a Minister of Energy in the former NNP Government and the Minister responsible for the Petrocaribe Agreement and its implementation. He said on 17th October, a day in which he remembered well, he heard a broadcast concerning and referring to the Claimant on the evening news carried by the Defendant.
- [87] He said that prior to seeing the news report or hearing the news report, he had received a telephone call from one of the reporters from the Defendant about an hour before the report was aired. He could not remember which reporter it was but he remembered that it was a woman. He indicated that she wanted to meet with him and as Chairman of the Petrocaribe Grenada Ltd. and was to do so that evening before the 6 O'clock news about a story for the evening news.
- [88] He said that he indicated to her that he was out of town and he would not get back to St. George's in time for a sit down interview. The interview was conducted over the phone. He said the reporter told him that she had a report from a reliable source that a former Minister had formed a company and was bringing fuel into Grenlec under Petrocaribe and that is why the cost of energy was so high in Grenada.
- [89] He said his response to her was that that was pure nonsense. He said he went on to tell her that there were controls in place to prevent that kind of thing, that there were three tanks in Grenlec. He indicated to her that the only fuel in those tanks at Grenlec were fuel under the Petrocaribe Grenada agreement. And that there was no other agreement or arrangement.

- [90] He further said that he told the reporter that only one cheque was issued by Grenlec every month to Petrocaribe Grenada Ltd. and that she could check with Grenlec to confirm this.
- [91] He said that as a result of this conversation, he made it his duty to listen to the news that evening at 6 O'clock on the radio. He said the news came over at 6 O'clock and he listened to it. He said the report was broadcast and it repeated what the reporter had said to him and interpreted by him as a reliable source, and informing GBN that a former Government Minister was receiving financial benefits from an undercover deal by supplying fuel to Grenlec which should be supplied by Petrocaribe Grenada Ltd. and it repeated what he said to the reporter that is that the allegation was false. Using his words "pure nonsense".
- [92] He said the report then mentioned Grenlec had disputed what the reliable source had alleged. He said what amazed him was that the Defendant that is both Grenlec and Petrocaribe Grenada categorically denied that what was said in the report was wrong yet they chose to air the report that evening.
- [93] He said that when he heard the words of the news report, he understood them to mean that Gregory Bowen was doing something illegal, and that he had committed fraud and that these fraudulent practices were resulting in the high cost of fuel to the people of Grenada.

DEFENCE

- [94] The defence in this matter relied upon the evidence of two witnesses, Ms. Odette Campbell and Mr. Ruel Edwards.
- [95] Ms. Campbell, a journalist by training, was the News and Current Affairs Manager of the Defendant Company and held that position from 1st October 2008. She testified that she had worked with the Defendant Company in various capacities

from about 1987 up to the date of the hearing. She agreed that she was well experienced in the field of journalism.

- [96] She received information on the 17th October 2008 from one of the staff reporters of an interview conducted with a news source. The source gave the information on condition of anonymity. Based on the information received, the reporter prepared a story to be aired that evening on both radio and television.
- [97] She vetted the story. It concerned allegations that the then Government was investigating a former Government Minister who may have been benefitting personally from the Petrocaribe Agreement. The reporter did not disclose the name of the former Minister and as far as she was aware the name had not been disclosed to the reporter, and when the story was aired no mention was made of the name of any former Government Minister.
- [98] She sought to balance the story, she asked the reporter to get the comment from local persons involved in Petrocaribe Grenada Limited, the Company set up to put the Agreement in place in this country.
- [99] The reporter contacted officials of both Petrocaribe Grenada and Grenlec (another entity mentioned in the story). One such official commented both on and off the record and stated that they had no knowledge of the allegation. The Chairman of Petrocaribe denied any knowledge of the allegations.
- [100] She stated that she knew the source of the information and she knew the source to be credible and reliable from previous dealings with the said source.
- [101] She edited the story and stated that the Defendant presented a fair and balanced account of the story.

- [102] She did not consult anyone to verify the accuracy of the information received. She did not consult with the police, as to whether an investigation was being undertaken.
- [103] She knew that the Claimant could have been the Minister of Energy in 2005 when the Petrocaribe Agreement was signed, but she could not recall who was in fact the Minister at the time.
- [104] She further stated that while further investigation could have been pursued, it was not necessarily prudent to carry out further investigation before the story aired. She also did not think that it was irresponsible to air a story without verifying the accuracy of the information given the denials of the officials of Petrocaribe and Grenlec. She said that there were certain protocols which she had to adhere to.
- [105] GBN is now owned by the Government of Grenada and One Caribbean Media. She admitted that GBN is a leading media network in Grenada. Classic Radio is streamed on the internet, and is broadcast both on AM and FM bands.
- [106] She said it was debatable whether an allegation that a Minister was receiving funds from a Government entity was corruption.
- [107] She agreed that the publication did not discuss the workings of the Petrocaribe Agreement in Grenada.
- [108] The second witness was Ruel Edwards, who at the time of the publication was the General Manager of the Defendant.
- [109] He admitted that GBN is a leading media house in Grenada with a wide listenership. They command a good viewership in Grenada.

- [110] He as General Manager did not edit stories to be aired, and that the decision whether or not to air a story did not rest with him. It is for the editor to screen and vet stories before they air. Depending on the story, the editor would come to him and the story would be discussed before airing.
- [111] He agreed that the contents of the story in question raised serious allegations of fraud, but he was unaware of whether the police were consulted before the story aired.
- [112] He was aware the Claimant was a Minister of Government but he could not say what portfolio he held, but he was aware that he was the Deputy Prime Minister. He was also aware that the Claimant was Minister of Energy prior to 2008.
- [113] He admitted that the story did not speak to the working of the Petrocaribe Agreement.
- [114] He was not aware of any Government investigation into a former Minister. He was no longer employed with GBN, he left the position in October 2010.
- [115] He knew the source of the allegations, and he too did not consider it prudent not to publish the report in light of the denials of the officials of Petrocaribe & Grenlec.
- [116] He felt that publishing the report was responsible, but that between the publication and the time he gave evidence he was unaware of any investigation into any former Minister.

THE ISSUES

- [117] The issues to be decided by the Court in this matter are as follows:
1. Whether the words complained of were referring to the Claimant and did in fact refer to him.

2. Were the words defamatory of the Claimant?
3. Was the occasion of the publication of the words an occasion of qualified privilege?
4. The quantum of damages, if any, to be awarded to the Claimant.
5. Is the Claimant entitled to aggravated or exemplary damages?

**WERE THE WORDS COMPLAINED OF REFERING TO THE CLAIMANT AND
DID IN FACT REFER TO HIM**

[118] That the words complained of were published is not an issue in these proceedings neither is it an issue whether the words complained of in their normal and natural meaning had the meaning ascribed to them by the Claimant, Cumberbatch, J having decided that they did by way of an earlier ruling. (In that ruling he made no finding that the person who was referred to was the Claimant).

[119] While the Claimant and his witnesses clearly state that the words when they were published related to him and him alone as he was at the relevant time the Minister with responsibility for Energy in Grenada.

[120] The witnesses for the Claimant clearly stated that once they heard the published words that the Claimant was lowered in their estimation and that they believed the report and thought less of him as a result of the allegation.

[121] Defamation is defined as a publication to a third party of matters which in all the circumstances would be likely to affect a person adversely in the estimation of the reasonable person.

[122] In **Gatley on Libel & Slander**¹ it states:

"The gist of the torts of libel and slander is the publication of matters (usually words) conveying a defamatory meaning. A defamatory

¹ Gatley on Libel & Slander, 8th Ed. Para 31

imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule or to injure his reputation in office, trade or profession or to injure his financial credit; The standard opinion is that of right thinking persons generally."

[123] The Defendant has maintained that the words used do not mean that the Claimant is a fraudster or was involved in any corrupt or illegal activity while he was a member of Government or at all. Neither do the words mean that the Claimant was dishonest, corrupt or unfit for public office.

[124] The law on defamation does not require the Claimant's name to be called or mentioned. If by reading the published words the reasonable person is led to believe that it is the Claimant to whom the publication refers that is sufficient.

[125] I refer to **Gairy v Bullen & Bullen**² where it was stated that there are two types of libel:

1. One which contains specific reference to the Claimant by name, and,
2. The other where words do not explicitly refer to the Claimant by name but may be shown to refer to the Claimant:
 - a) By showing that there is something intrinsic in the article itself which points to the Claimant, or
 - b) By proving in evidence extrinsic facts which would connect the Claimant with the alleged libel
 - c)

Gatley on Libel³ states:

"Where the claimant is actually named in the libel, no difficulty can arise. But where the libel does not ex facie refer to the Claimant, e.g. where he is described by his initials or by a fictitious name or by a nickname or by the name of another where he is not mentioned at all, extrinsic is not

² Grenada Civil Suit No. 97 of 1968

³ Gatley on Libel, 8th Ed. Para.

mentioned at all, extrinsic evidence must be given to connect the libel with the Claimant. For this purpose witnesses can be called to testify that they understood from reading the libel in the light of the circumstances narrated and their acquaintance with the Claimant that he was the person referred to. The evidence may be given generally. The grounds upon which the witnesses formed their opinion may be left to be investigated on cross-examination.”

[126] Evidence of any relevant surrounding circumstances which might lead a reasonable person who reads the publication to conclude that the Claimant was the person being referred to, is also admissible.

[127] Per Lord Morris of Borth-y-Gest in **Morgan v Odhams Press Ltd**⁴:

“It is also to be remembered throughout that the issue was not whether the witnesses believed the words to be true but whether the words were reasonably understood to refer to the plaintiff.”

[128] I also refer to the words of Lord Alverstone CJ in **Jones v Hutton & Co**⁵:

“If in the opinion of the jury a substantial number of persons who knew the plaintiff, reading the article, would believe that it refers to him, in my opinion an action, assuming the language to be defamatory, can be maintained and it makes no difference whether the writer of the article inserted the name or description unintentionally, by accident or by believing that no person existed corresponding with the name or answering the description. If upon the evidence the jury are of the opinion that the article referred to him, the plaintiff’s case is made out.”

[129] Further, in **Kauffer v London Express Newspaper Ltd**.⁶, Viscount Simon stated:

⁴ [1971] WLR at p. 1254

⁵ [1909] 2 KB 444 at 454

⁶ [1944] 1 All ER 4905 at 4906

“Where the plaintiff is not named, the test which decides whether the words refer to him is the question whether the words are such as would reasonably lead persons acquainted with the plaintiff to believe that he was the person referred to.”

[130] Having reviewed the evidence of the witnesses for the Claimant, they have all stated that upon hearing the publication on the night in question they formed the view that it was the Claimant whom it referred.

[131] I find that the formation of that view was not unreasonable as the Claimant was the Minister for Energy and, according to his evidence, the main protagonist in the negotiations with respect to the Petrocaribe agreement on behalf of the Government of Grenada.

[132] In the circumstances, I am unable to agree that the publication was insufficient to identify the Claimant as the person referred to in the words complained of.

WERE THE WORDS DEFAMATORY OF THE CLAIMANT

[133] Counsel for the Defendant submitted that the words not only did not refer to the Claimant but that they were not defamatory and could not reasonably be interpreted as being so. The words complained of are as follows:

“Grenlec and Petrocaribe Grenada Ltd. officials are denying reports that a former Government Minister may have been involved in secret trading deals ...

On Friday, GBN were informed by a **reliable source** that a former Government Minister has been receiving direct financial benefit from Petrocaribe Grenada Ltd. ...

However, we were reliably informed that an expected increase in the price of fuel is as a result of undercover trading by the former Government

Minister, whereby oil dealers were not getting their due allowance on one hand, and Grenlec allegedly received its Petrocaribe order through a disguised Government agent other than direct trading with Petrocaribe Grenada Ltd. ...

The source has maintained that Government's investigation is based on **solid facts** that the former Government Minister may have been receiving direct financial benefit resulting in a higher price to consumers. As to how the alleged **fraud** is conducted is what is currently left under investigations."

[134] The words implied (among other things) that the said Minister of Government was:

1. Involved in secret trading deals
2. Receiving direct financial benefits from Petrocaribe Grenada Ltd.
3. That these undercover dealings led to an increase in the price of petrol in Grenada.
4. That as a result of what this Minister was doing, oil dealers were being short changed.
5. That Grenlec was getting fuel through a disguised Government agent rather than through normal channels.
6. That an investigation of this alleged fraud was underway.

[135] I find that the words conveyed that the Minister (whom I have already found to be a reference to the Claimant) was involved in corrupt activity stemming from secret trading deals involving Petrocaribe Grenada Ltd. which led to increased oil prices to the consumer and less profits for oil dealers. It further headed that an investigation of this fraud was being undertaken and that the Minister had benefited financially from these misdeeds.

[136] In **Gatley**, it states that in order to be successful in an action for defamation the Claimant must not only prove that the Defendant published the words and that the

said words are defamatory he must also identify himself as the person being defamed.

[137] It is to my mind clear that the ordinary reasonable listener to the Defendant's news report on the evening of 17th October, 2008 would reasonably conclude that the statements made during that broadcast imputed that the Claimant was corrupt, dishonest, had engaged in fraudulent activity and had done so for financial gain. Further, that he was under investigation by some relevant authority.

[138] In addition, I find that the statements would likely cause members of the public to shun and/or ridicule and look down on the Claimant since the statements disparaged him in his office as a Member of Parliament and a Minister of Government.

[139] I am satisfied that the newscast was saying that the Claimant was a dishonest and corrupt politician who had used his office to benefit at the expense of oil dealers, the general public and Grenlec. These words could lead to the Claimant being viewed with hatred, contempt and ridicule.

[140] I find therefore that the words used were capable of being defamatory of the Claimant and were in fact so.

WAS THE OCCASION OF THE PUBLICATION OF THE WORDS AN OCCASION OF QUALIFIED PRIVILEGE

[141] The Defendant claims that the subject words are subject to qualified privilege, and that was the thrust of their defence.

[142] **Gatley** on Libel & Slander states that:

"There are occasions upon which privilege on grounds of public policy and convenience less compelling than those which give rise to absolute

privilege, a person may yet, without incurring liability for defamation make statements about another which are defamatory and in fact untrue. On such occasions of privilege a person is protected if the statement was fairly warranted by the occasion (that is to say, was reasonably necessary to achieve the purpose for which the law grants the privilege) and so long as it is not shown that he made the statement with malice, that is, knowing it to be untrue or with some indirect or improper motive. These occasions are called occasions of qualified privilege, for the protection which the law, on grounds of public policy, affords not absolute, but depends on the honesty of purpose with which the defamatory statement is made. The rule being founded on the general welfare of society, new occasions for its application will necessarily arise with continually changing conditions, though the long established statutory protection for various reports has reduced the need to extend the common law."

[143] In **Adam v Ward**⁷ qualified privilege is described as:

"A privileged occasion is an occasion where the person who makes the communication has an interest or duty, legal, social, or moral, to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential."

[144] In the case of **Bristol v St. Rose**⁸, Rawlins, JA stated: -

"Where words are published under circumstances which create qualified privilege, the Claimant might still prevail on a claim in defamation if he proves that the person abused the privilege because of actual malice. The test of express malice requires the Claimant to prove that the Defendant did not honestly believe the words were true because the Defendant was either aware that they were not true or was indifferent to their truth or falsity. Express malice arises as a question of fact which is

⁷ (1917) AC 309

⁸ Civil Appeal, St. Lucia No. 16 of 2005

to be drawn or inferred inter alia from the contents and source of the statements and the circumstances in which the statements were made. A Defendant might be indifferent to the truth or falsity where he took no investigative steps to ensure their accuracy when he could have done so. Whether a defendant is indifferent to the truth of the defamatory statements is subjective to the Defendant and depends on, among other things, his level of knowledge, education and intelligence. To a great extent, it is an inquiry as to the motive for the publication."

[145] The question of privilege is one for the adjudicator and it is for the Defendant to establish that the necessary facts and circumstances existed for the privilege to arise.

[146] If the occasion was privileged then the Claimant must prove that the Defendant was actuated by malice.

[147] The Defendant must show both that they were under a legal, moral or social duty to communicate the defamatory matter to a third party, and the third party had a corresponding interest in receiving it. Whether such a legal, moral or social duty to communicate the defamatory matter exists is a question of law.

"If a legal duty is relied on the judge's task is easier but where the Defendant pleads a moral or social duty it is more difficult.

[148] In deciding whether such a moral or social duty exists, the Court must ask itself:
"Would the great mass of right minded men in the position of the Defendant have considered it their duty under the circumstances to make the communication? It is an objective not a subjective test which is to be applied. Thus if the judge decides that a reasonable, right minded person would not have recognised a duty to communicate the defamatory matter,

it will be no defence for the defendant to plead that he believed honestly and in good faith that there was such a duty.”⁹

“A duty will arise where it is in the public’s interest that such a publication should be made, and it does not simply arise because the information appears to be of legitimate public interest. It is well recognised that public interest and public benefit are not enough without more. There must be a duty to publish to the public at large to receive the publication.”¹⁰

[149] According to Lord Nichols in **Reynolds v Times Newspapers Ltd.**:¹¹

“In absence of any additional safeguard for reputation, acceptance of the blanket defence would mean that a newspaper which was anxious to be the first with a scoop would be free to publish seriously defamatory mis-statements of fact based on the slander of materials, and it would be unsound in principle to distinguish political discussion from discussion of other matters of serious public concern.”

[150] There is a non exhaustive list of matters which the Court ought to take into account when considering whether the defamatory statements attract qualified privilege. Some such matters are as follows:

1. The nature of information and the extent to which the subject matter was a matter of public concern
2. 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.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind or are being paid for their stories.
4. The steps taken to verify the information.

⁹ Kodilinye Caribbean Law of Tort

¹⁰ *Mansoor & Ors v Grenville Radio & Ors*, Antigua Civ. Suit. No. 408/2004

¹¹ [1999] 4 All ER 609

1. The status of the information. The allegation may have already been the subject of an investigation, which commands respect.
2. The urgency of the matter. News is often a perishable commodity.
3. Whether comment was sought from the Claimant. He may have information which others do not possess or have not disclosed.
4. The tone of the article.
- 5.

[151] In the case of **Loutchansky v The Times**¹² it was stated that in light of the decision in **Reynolds**, that when the Court is asked to decide whether there was a duty to publish the defamatory words to the general public, that the appropriate standard was that of “responsible journalism”.

[152] That standard should not be too low so as to encourage newspapers to publish what is clearly not true, which was not only against the interest of the defamed individuals but also against the interest of the media, because it would lead to the public ceasing to believe anything they read in the printed media.

[153] In contrast, the standard ought not to be set so high as would deter the printed media from discharging their function of keeping the general public informed.

[154] It was held in **Samuel v Wall Street Journal**¹³ that:

“In applying the **Reynolds** defence, the first question was whether the subject matter of the article, considered as a whole, was a matter of public interest. The **Reynolds** defence had been developed from the traditional form of privilege by a generalisation that in matters of public interest there could be said to be a professional duty on the part of journalists to impart the information and an interest in the public in receiving it; that generalisation should be regarded as a proposition of law and not decided every time as a question of fact. It was thus not helpful to apply the

¹² [2001] 4 All ER 115

¹³ [2006] 4 All ER 1280

classic test for the existence of a privileged occasion and to ask whether there was a duty to communicate the information and an interest in receiving it. If the publication was in the public interest the duty and interest were taken to exist. The next question, if the article as a whole concerned a matter of public interest, was whether the inclusion of the defamatory statement was justifiable. But whereas the question of whether the story as a whole had been a matter of public interest had to be decided by the judge without regard to what the editor's views may have been, the question of whether the defamatory statement should have been included was often a matter of how the story should have been presented. On that question allowance had to be made for editorial judgment. If the publication, including the defamatory statement, passed the public interest test, the inquiry shifted to whether the steps taken to gather and publish the information were responsible and fair. The question in each case was whether the Defendant had behaved fairly and responsibly in gathering and publishing the information. The standard of conduct required of the newspaper had to be applied in a practical and flexible manner having regard to practical realities. In the instant case, there had been no basis for rejecting the Defendant's **Reynolds** defence."

[155] I am satisfied that the Defendant in this case had a social and moral duty to report on the Petrocaribe Agreement and the public had a corresponding interest in receiving that information.

[156] But, I find that the slant of the news report in this matter was not the Petrocaribe Agreement but the entire focus of the news report was the Claimant (even though he was not named).

[157] It was not the Defendant's duty to communicate and the public had no legitimate interest in receiving what was false information about the Claimant. Freedom of speech is one of the fundamental tenets of our society but responsible journalism

requires that the media must take the necessary precautions to ensure the accuracy of the information which they publish.

“The public has no right to know untrue defamatory matter about which the publisher made no sufficient inquiry before deciding to publish it” per **Loutchansky.**”

- [158] The Defendant must prove that the publication was in the public interest and they must do so by more than showing that the subject matter was of public interest. There is a duty on the part of the Defendant to practice responsible journalism.
- [159] The Defendant here received a story from a source which they describe as trustworthy and reliable. They spoke to the Chairman of Petrocaribe Grenada Ltd. and to officials of Grenlec; these persons flatly denied that there was any truth to the allegations.
- [160] The Defendant did not seek to ascertain who the former Minister was, nor did they seek to get any comments from the former Minister. The broadcast also implied that the former Minister was under investigation by the then Government, however, no approach was made to ascertain whether the police or anyone else were in fact investigating any Minister in the former NNP Government.
- [161] Responsible journalism, to my mind, would have required the Defendant to make an effort to find out who the Minister was and perhaps get his/her comments on the allegations, as well as an inquiry to the relevant authorities as to whether an investigation was being undertaken or carried out into these allegations. No such steps were undertaken.
- [162] In the world of journalism as we know it today, being first with news is considered invaluable. “The scoop” is of vital importance in this world of instant news, but getting the scoop cannot be achieved by sloppy journalistic practices. The media must be a responsible corporate citizen in disseminating information to the public.

[163] There was no credible evidence that the Minister received any monies from the Petro Caribe Grenada Ltd, no credible evidence that any such financial benefit led to higher fuel prices for consumers in Grenada, and no credible evidence that there was any investigation being carried out by the Government of the day, or any other authority for that matter.

[164] Moreover, the Defendant provided the Court with absolutely no evidence that they believed that the statements made were true. I find that the Defendant in this case was reckless or indifferent as to whether the statements published were true or not.

[165] I find like Blenman, J in **Mansoor & Ors v Grenville Radio Ltd & Ors**¹⁴ that:
It is not sufficient to simply rely on a Cabinet decision and to ask persons whether any investigation or verification was done."

[166] I find that the Defendant acted with malice as they were reckless as to whether the statements published were true. They were intent on getting out the story and did so without regard for even the minimum standards of journalistic practice.

[167] They wished to be first to report what was a sensational story and did so without regard for the truth of the very serious allegations which were made. I do not find that the repeat of the broadcast later on the night of 17th October, 2008 constitutes malice as this was and remains the Defendant's normal practice.

[168] The Defendant's defence of qualified privilege therefore fails.

DAMAGES

[169] The Claimant has claimed damages including both exemplary and aggravated damages in his claim form.

¹⁴ ANUHCV 2004/0408

[170] That the Claimant, in light of the Court's earlier finding, is entitled to damages is without question. In **Gleaner and Dudley Stokes v Eric Anthony Abraham**¹⁵ the Privy Council stated as follows:

"The damages must be sufficient to demonstrate to the public that the plaintiff's reputation has been vindicated. Particularly if the Defendant has not apologised and withdrawn the defamatory allegations, the award must show that they have been publicly proclaimed to have inflicted a serious injury."

[171] In **Miura Durcille v Robert Hoffman et al**¹⁶ Justice Mitchell set out the guidelines to the Court as to what factors ought to be considered in assessing the amount of damages which ought to be awarded as compensation. These are as follows:

1. The gravity of the allegation
2. The extent of the publication
3. The extent and nature of the Claimant's reputation
4. The effect of the publication
5. The conduct and behaviour of the defendants

[172] The Claimant at the time of these allegations was the former Minister of Energy and the former Member of Parliament for the constituency of St. George South East. He was also a former Deputy Prime Minister of Grenada. He also held other Ministerial portfolios in the years that he was a Member of Parliament.

[173] The reputation of the Claimant was certainly known to a large portion of the population of Grenada, and he had held various positions of responsibility within the Government of Grenada. The allegations of fraud and dishonesty and abuse of his public position would have had a negative impact on his reputation not only in his former constituency but throughout Grenada as a whole.

¹⁵ Privy Council Appeal No. 86 of 2001

¹⁶ ANUHCV 1998/0151

[174] The allegations were broadcast on radio and at least three times on television, and it is clear that these broadcasts would have reached a wide audience within Grenada, Carriacou & Petit Martinique.

[175] The Court heard from Gabriel Strachan, Frederick Antoine and Ann Hinds that they all heard the broadcast on the evening that it aired. As stated before, it is more than likely that the broadcasts were heard by a fair cross section of the listening public in Grenada.

[176] I have no doubt that the Claimant has suffered (as he has described in his evidence) injury to his reputation and his feelings. His evidence was that the report greatly distressed him and had caused his family pain and distress. He expressed the view that the purpose of the allegations was to destroy his political career. No doubt his family's distress added to his own.

[177] The Defendant in this matter has not offered an apology. In their defence, they say that the confidential source from which they obtained the information did not disclose the name of the Minister. They maintained through the proceedings that the Claimant was not named and that they received no complaints or feedback from the public associating the Claimant with the report.

AGGRAVATED DAMAGES

[178] The Claimant in his submissions asks that he be awarded aggravated damages for the following reasons:

1. "On the evening of the 17th October 2008, the Defendant repeated the libel in a rebroadcast and they so admit: Paragraph 7 of the Defence – Document 3 Trial Bundle.
2. The Defendant failed to issue an apology.
3. The Defamatory matter was broadcast a day after the Defendant reported a victory for the Claimant in a matter in the US Courts

wherein an allegation of bribery was made against the Claimant knowing the content of the publication of the 17th October 2008 to be unfounded.

4. The Defendant persists in the assertion that the words complained of are not defamatory, and that they have no reference to the Claimant."

[179] I do not find that the Defendants here have acted in such a manner as to attract an award of aggravated damages. They have not unnecessarily or unreasonably repeated the allegations made and while they have not proffered an apology, I find that the reason for not doing so do not give rise to such an award. I am not of the view that the Defendant here has persisted in behaviour which can be said to have aggravated the damage suffered by the Claimant, for instance, by repeatedly publishing the false allegations.

[180] As a result, I would not award aggravated damages in this case.

[181] The Claimant has in fact won re-election to the Parliament of Grenada and has been re-appointed a Minister. Further, he has also served as an Opposition Senator while his party was in opposition between 2008-2013.

[182] It would appear that the damaging words have done nothing to severely impact on the Claimant's political career.

EXEMPLARY DAMAGES

[183] **Rookes v Barnard**¹⁷ establishes the basis for an award of exemplary damages. From the learning in this case, there are two categories of cases in which an award of exemplary damages would be given. The first category is the "oppressive, arbitrary or unconstitutional action by Servants of the Government".

¹⁷ (1964) AC 1129

[184] The second category per Lord Derlin LJ is concerned with cases in which the “Defendant’s conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.”

[185] In **A v Bottrell**¹⁸, Lord Nicholls of Birkenhead stated among other things, “.... In the ordinary course the appropriate response of a court to the commission of a tort is to require the wrong doer to make good the wronged person’s loss, so far as payment of money can achieve this. In appropriate circumstances this may include aggravated damages. Exceptionally, a Defendant’s conduct in committing a civil wrong is so outrageous that an order for payment of compensation is not an adequate response. Something more is needed from the Court to demonstrate that such conduct is altogether unacceptable to society. Then the wrongdoer may be ordered to make a further payment by way of condemnation and punishment.”

[186] The Defendant’s behaviour, in order to attract an award of exemplary damages must satisfy the “criterion of outrageousness”. He goes further:

“The test of outrageousness will usually involve intentional wrongdoing with additionally an element of flagrancy or cynicism or oppression or the like, something additional, rendering the wrong doing or the manner or the circumstances in which it was committed particularly appalling. It is these features that makes the Defendant’s conduct outrageous.”

[187] Looking at all the evidence and the attendant circumstances of this case, I cannot find that the Defendant’s behaviour in this matter rises to that “outrageous” level which is required. While I have found that the publication was defamatory, I cannot find that the Defendant has done anything which exacerbates the injury suffered by the Claimant. I find that an award of damages in this case will adequately punish the Defendant.

¹⁸ (2003) 3 WLR 1406

[188] I therefore would not award exemplary damages in this case. Having received all the relevant authorities, I would award the Claimant the sum of \$70,000.00 in damages with interest at the rate of 3% from the date of filing the claim to the date of judgment.

[189] After judgment, interest would be at the rate of 6% until payment. Costs of the claim are to be as agreed between the parties, the sum of \$7500.00.

Margaret A. Price Findlay
High Court Judge