

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT LUCIA
CLAIM NO.: SLUHCV2011/0667**

BETWEEN:

**PHILIP J. PIERRE
Claimant**

and

**[1] GUY ELLIS
[2] MAYERS PRINTING COMPANY LIMITED
[3] MIRROR PUBLISHING COMPANY LIMITED
Defendants**

and

CLAIM NO.: SLUHCV2014/0868

BETWEEN:

**PHILIP J. PIERRE
Claimant**

and

**[1] DAVID VITALIS
[2] GUY MAYERS
[3] MAYERS PRINTING COMPANY LIMITED
[4] MIRROR PUBLISHING COMPANY LIMITED
Defendants**

APPEARANCES:

Mr. Peter I. Foster QC and Mr. Sahleem Charles for the Claimant
Mr. Leslie Prospere and Mr. Vilan Edward for the Defendants

**2017: March 27th; April 3rd;
2017: June 21st.**

JUDGMENT

[1] **SMITH J:** *The Saint Lucia Mirror* newspaper published a letter to the editor headlined “Mr. Pierre’s Great Wall” in its 15th April 2011 issue. It was about Mr.

Phillip J. Pierre, now the Leader of the Opposition of Saint Lucia. Mr. Pierre says he is not a thin-skinned politician, but he took great umbrage at the publication. He sued the newspaper's editor, Mr. Guy Ellis, as well as the printing company and the publishing company owned by Mr. Guy Mayers, now Saint Lucia's High Commissioner to the United Kingdom.

- [2] Mr. Pierre says that the clear intent of the letter ("the article") was to depict him as a corrupt, selfish representative who put his personal needs above that of his constituents and was therefore not fit to be re-elected at the upcoming general elections. Mr. Pierre was, at the time of the publication, the Saint Lucia Labour Party's elected representative for the Castries East constituency but his party was in opposition at that time.
- [3] Mr. Guy Mayers was Mr. Pierre's political opponent. He had lost the previous general election to Mr. Pierre in December 2006 but had been appointed as a senator and cabinet minister in the government of the United Worker's Party. At the time of publication he was a cabinet minister as well as the candidate endorsed to challenge Mr. Pierre once again in the upcoming general elections of November 2011. Mr. Mayers and his co-defendants deny that the article is capable of the meaning contended for by Mr. Pierre. They plead qualified privilege in their defence.
- [4] The second claim, which was heard together with the first, arose from the fact that the first claim had been struck out on 13th January 2014 for want of prosecution. Mr. David Vitalis, the editor of the Mirror at that time, published an article on 18th January 2014 entitled "Libel Case Struck Out". This second article repeated the allegations against Mr. Pierre contained in the first article as well as a summary of the outcome of the first claim, along with excerpts of interview comments from Mr. Mayers and Mr. Ellis. The first claim was eventually re-instated. Both matters were heard together on 27th March and on 3rd April 2017, and the last set of written closing submissions were filed on 29th May 2017.

The Published Articles

[5] Mr. Pierre claims that the published articles, both of which are set out in full below, sought to impugn his character and credibility in his personal, professional and political life. The first publication was as follows:

‘THE EDITOR:

THE Castries East Constituency Branch of the United Workers Party is calling on Parliamentary Representative, Phillip J. Pierre to explain to the constituents of Castries East the construction of a wall along the southern boundary of his home (private property) at upper Water Works Road, at a cost to tax payers of over EC\$70,000.00.

PUBLIC FORUM

The UWP East Castries Branch understands that Mr. Pierre made a couple of submissions to government for consideration of restorative works following the passage of Hurricane Tomas. Included among these was a project for the reconstruction of a wall along the boundary of this house which was undermined during the passage of Hurricane Tomas.

The UWP Castries East Constituency Branch is aware that there was need to undertake restoration works post Hurricane Tomas within the Castries East Constituency. In fact many people have been coming to our constituency office seeking help to repair or rebuild their homes or to build retaining walls to protect their home and land as a result of damage caused by hurricane Tomas. We also appreciate that the role of Parliamentary Representative along with government officials would be instrumental in responding to needs at that level. What we do not understand, though, is what appears to be clear display of self-serving prioritization on the part of Mr. Pierre. We also recognize that there were numerous instances which became apparent and in many cases merited greater attention by the Parliamentary Representative in his assessments and representation.

A grill over the drain leading to Mr. Pierre’s driveway was also constructed at tax payer’s expense. The fact that Mr. Pierre would choose to make a submission which highlighted his personal situation ahead of the needs of the constituents of Castries East is indeed shameful and worthy of note.

We therefore call on Mr. Pierre to explain to the constituents of Castries East why he chose to give priority to a project to

construct “The Great Wall of Pip” ahead of the pressing needs of so many poor people all over the constituency who were affected by hurricane Tomas.

We call on the constituents of Castries East to note the actions taken by the Parliamentary Representative which is clearly a slap in the face to persons who voted for his representation. Mr. Pierre’s action is certainly a manifestation of his elitist outlook vis-a-vis the constituents of Castries East. The money used to build Mr. Pierre’s “Great Wall” could have been used to attend to the needs of the underprivileged constituents who were in greater need. It is indeed unfortunate that Mr. Pierre would take full advantage of his position as Parliamentary Representative to make demands that would redound to his own benefit. Base on Hon. Pierre’s actions we are now left to speculate whether the translation of his nick name “PIP” is **Pierre Is Priority**.

Castries East Branch of the United Workers Party”

- [6] The second publication, written by David Vitalis, repeated the allegations contained in the first publication along with commentary on the outcome of the case.

LIBEL CASE STRUCK OUT COURT AWARDS COSTS TO THE MIRROR EDITOR AND PUBLISHER

IT was shaping up to be an interesting court battle in defence of the right to fair comment in public interest, but ended in something of an anti-climax.

In one corner were the defendants – the Editor and Publisher of **THE MIRROR** newspaper. In the other corner, neither the Claimant, Member of Parliament for Castries East, Philip J. Pierre (now a senior Minister of Government) nor his attorneys, Peter Foster & Associates, were available.

The decision? Case struck out!

Madame Justice Rosalyn Wilkinson of the Eastern Caribbean Supreme Court made the order – with costs to be paid to the defendants – “for want of prosecution.”

By David Vitalis

Pierre had filed the case in response to a letter, headlined “Mr. Pierre’s Great Wall”, which was published on page four of the Paper’s edition of Friday April 15, 2011. The letter was signed by the Castries East Branch of the United Workers Party, which was in government at the time. It called on Pierre to explain the construction of a concrete wall and grill along the southern boundary of his private home at upper Water Works Road, Castries, at the cost of over EC\$70,000 to taxpayers.

This took place after the then united Workers Party administration of Prime Minister Stephenson King had initiated a Constituency Development Programme and invited Members of Parliament to recommend three projects for government financing in each constituency, following the passage of Hurricane Tomas in October 2010.

The letter was published in the run-up to a general election in which Pierre and Mayers were opponents in the Castries East Constituency. The letter claimed that there were people in East Castries who had suffered as a result of the hurricane and accused Pierre of looking after his personal needs ahead of those of his constituents. The main thrust of the letter, however, was its call on Pierre to explain his actions to the public.

The suit named Guy Ellis, the paper’s Editor at the time, the Mirror Publishing Company and Mayers Printing Company as defendants, Pierre sought damages, including aggravated damages for libel, interest and costs. He claimed that the letter had accused him of “selfishly and or corruptly” expending tax payers money on his property and that his personal and professional reputation has undergone “Extreme embarrassment and hurt feelings” as a result of the publication. He also claimed to have suffered odium, ridicule and contempt.

Judge Wilkinson upheld a submission by counsel for the defendants Leslie Prospere of the firm of Gordon, Gordon and Company, assisted by Mr. Jahn Siflet that the case should be thrown out because of the non-appearance of either Pierre or his legal representatives, Peter Foster and Associates.

Commencing on the outcome, Ellis said: “From a purely professional standpoint, I also would have preferred a trial because I believe this case would have demonstrated to local journalists and the media that the courts will back them once they are not reckless and they report or comment on matters of public interest honestly and without malice. This was clearly a matter of public interest. We would have been particularly interested in

hearing Mr. Pierre defend his claim that this was not a matter in the public interest given that 2011 was an election year and it was public funds that were used on the two projects on his property.”

Managing Director of both Mirror Publishing and Mayers Printing, Guy Mayers, who was unsuccessful against Pierre in the 2011 general elections, said he was happy that the case was over.

Mayers added: “It is now for Mr. Pierre to answer the people of Castries East on the question they asked in the first place: Why was a wall along the southern boundary of his home (private property) and a grill over the drain leading to his driveway, that cost the tax payers over EC\$70,000.00 more of a priority that the pressing needs of so many poor people all over the constituency who were affected by Hurricane Tomas?”

The Judge’s ruling came Monday following a submission by Prospere, lead attorney for the defendants. He informed Justice Wilkinson that the defendants were in a position to proceed, noting that there had been no communication from the claimant, Pierre, or his counsel, despite the fact that they had “a duty to prosecute the matter with speed.” He recalled that the case has been filed since June 2011, and notice of the hearing issued on April 18, 2013, by the court for the attention of the parties. It meant that the parties had received about nine months notice of a trial date, but neither claimant nor his counsel had produced any explanation for their absence, or any request for an adjournment, Prospere said. Noting that judicial time is precious, Prospere then asked the court to dismiss the claim for want of prosecution. He also pleaded for costs to be awarded to each defendant, “consistent with the case management process of 27th October, 2011.”

Justice Wilkinson then ordered the matter “struck out” and “prescribed costs awarded to each defendant.” It was all over in less than half-an-hour.

“We had primed ourselves for a vigorous defence of our position because from day one we were convinced that Mr. Pierre did not have a case,” Ellis later said. “Personally I badly wanted to win this case in a trial not just for the Mirror and Mayers Printing or for myself, but more so for the entire media community in St. Lucia that has been under siege by politicians in recent times. I believe there has been a deliberate attempt by people holding public office, especially politicians to humiliate and denigrate the media and render it ineffective and untrustworthy.”

Ellis said Pierre's case brought back memories of the 1968 Lord Denning ruling that the right of fair comment was "one of the essential elements" of freedom of speech. Denning said: "we must ever maintain this right in tact. It must not be whittled down by legal refinements. When a citizen is troubled by things going wrong, he should be free to write to the newspaper and the newspaper should be free to publish his letter. It is often the only way to get things put right. The matter must, of course, be one of public interest. The writer must get his facts right and he must honestly state his real opinion".

Lord Denning went further to say that the important thing was to determine whether or not the writer was actuated by malice. He said: "if he was an honest man expressing his genuine opinion on a subject of public interest, then no matter that his words conveyed derogatory imputations; no matter that his opinion was wrong or exaggerated or prejudiced; and no matter that it was badly expressed so that other people read all sorts of innuendoes into it; nevertheless, he has a good defence of fair comment. His honesty is the cardinal test. He must honestly express his real view. So long as he does this, he has nothing to fear even though other people may read more into it..."

- [7] The seeds of the allegations were sown in the crucible of the Constituency Development Program ("the CDP"). The then Prime Minister Stephenson King outlined what it was about in his budget presentation for the financial year 2010-2011:

"I wish to initiate the Constituency Development Program (CDP) with an initial injection of \$5 million in this fiscal year ... it must be construed ...as an expression of this administration's unwavering commitment to fostering bi-partisanship and stimulating development at the community and constituency level... Constituencies, through their parliamentary representatives, will be encouraged to tender proposals which clearly articulate their particular development objective... This administration is keen to ensure that the vetting process is open, transparent and fair. For this reason, a bi-partisan committee will be convened which will

be charged with the responsibility for crafting the criteria for evaluation and overseeing the selection process.”

[8] The project, which the articles allege was submitted by Mr. Pierre for works at his private property, was approved and executed under the CDP. The analysis which follows as to whether the articles were defamatory will focus on the first publication (the letter) since the second publication was a repeat of those allegations.

[9] The issues that arise for determination are: (1) whether the article is capable of a defamatory meaning; (2) whether the article was defamatory in the circumstances of this case; (3) whether the facts support the allegations; (4) whether qualified privilege is available to the defendants; (5) whether the defendants were actuated by malice; (6) whether absolute privilege is available to the defendants in the second claim.

Whether Article Capable of Defamatory Meaning

[10] The starting point in defamation cases is to determine whether the article is capable of a defamatory meaning. The applicable principles have been fully illuminated by a number of oft-cited decisions. There is therefore no need for any peregrination through the case law. Reference to a few of them should suffice to illustrate the settled approach. In the Trinidadian case of **Basdeo Panday v Kenneth Gordon**,¹ Hamel-Smith JA set out what the approach should be:

“25 ... The trial judge must first determine whether the words are capable of a defamatory meaning and if they are then he must resolve whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct...”

¹ Republic of Trinidad and Tobago, Civil Appeal No. 175 of 2000.

[11] Barrow JA, in **Vaughan Lewis v Kenny Anthony**² cited the approach used by Lord Nichols of Birkenhead in **Bonnick v Morris**:

'In that case Lord Nicholls restated the approach to be adopted by the court in determining the meaning:

"In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable user...reading the article once. The ordinary, reasonable reader is not naïve; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The Court must read the article as a whole and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant."

[12] In **Jones v Skelton**³, a Privy Council appeal from New South Wales, Australia, Lord Morris explained the concept of the ordinary and natural meaning of words as follows:

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied meaning or an inferred or indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary meaning of words (see **Lewis v Daily Telegraph Ltd.**). The ordinary and natural meaning may therefore include any implication or reference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict rules of construction, would draw from the words."

[13] In the United Kingdom case of **Lewis v Daily Telegraph**⁴ Lord Reid said:

² Saint Lucia, Civil Appeal No. 2 of 2006.

³ [1963] 3 All ER 952

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

[14] Mr. Pierre set out in his statement of claim about eight different formulations of what he contends the words, in their natural and ordinary meaning, meant and were understood to mean. I hope I do no disservice to those formulations by attempting to summarize them as follows. Mr. Pierre contends that: the words meant that he illicitly, corruptly and selfishly caused EC\$70,000.00 of taxpayers money to be spent on the reconstruction of a wall on the southern boundary of his private home and a grill over the drain leading to his driveway, for his personal benefit, while there were more deserving projects as his poor constituents were in great need following the passage of Hurricane Tomas. He did so because he is a selfish elitist who put his personal needs ahead of his constituents and was therefore not deserving of remaining as their representative.

[15] The Defendants deny that the article is capable of the defamatory meaning as alleged by Mr. Pierre. They submit that (1) the words “illicit” and “corrupt” were never used in the article and that those words carry meanings that connote dishonesty or dishonourable motives which was not the message behind the article; (2) the article provided the reader with a factual background that culminated with a legitimate question that arose from a number of reasonably drawn conclusions; (3) Mr. Pierre’s priority project recommendations showed that he placed his personal interest regarding his private residence over and above

⁴ [1963] 2 All ER 151

those of his constituents who had been adversely affected by the hurricane and therefore he had acted selfishly. His action satisfied the dictionary definitions of selfishness and elitism. Though they did not plead justification, it appears that the Defendants' posture is that, insofar as the article alleged that Mr. Pierre was a selfish elitist who put himself ahead of his constituents, that, given the meaning of those words, it was supported by the evidence.

[16] In short, the conclusion the Defendants invite this Court to reach is that the ordinary Saint Lucian reader would have considered the article as no more than an open condemnation of Mr. Pierre's exercise of judgment on the important matter of is restorative works submissions, in light of his constituents' more dire needs in the aftermath of Hurricane Tomas, and would have eagerly anticipated his response in light of the impending general elections. So, was the article capable of a defamatory meaning?

[17] I agree with the Defendants that the article, whether in its natural and ordinary meaning or by innuendo, did not mean and was not understood to mean that Mr. Pierre acted illicitly. There is plainly no allegation or insinuation of dishonesty. Mr. Prospere, counsel for the Defendants, submitted that "corruption" similarly connotes some kind of dishonesty. Mr. Foster QC, counsel for Mr. Pierre, argued that in the text **Corruption and Misuse of Public Office** (published by the Oxford University Press) "corruption" encompasses all those situations where public officers break the confidence entrusted to them. That might be casting the net too wide. An elected representative might, for instance, promise his constituents that if re-elected he would oppose the planned introduction of casinos in the constituency, but, after being elected, he ends up supporting it. He might certainly be said to have broken the confidence and trust reposed in him by his voters, but he cannot be said to have acted corruptly.

[18] If a minister frustrates an application for information under a freedom of information law which obliges him to provide such requested information, he might be said to have broken the confidence reposed in him that he would comply with

the laws of the land, but I doubt it could be characterized as a corrupt act. A perusal of the *United Nations Convention Against Corruption*, while not setting out any definition of corruption, shows that it is aimed at getting state parties to take appropriate measures to prevent bribery of public officials, money laundering, misappropriation and diversion of property by public officials, illicit enrichment and concealment. Abuse of function is described as the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her function, for the purpose of obtaining an undue advantage for himself or for another person or entity. I am not persuaded that the article is capable of meaning that Mr. Pierre was corrupt.

[19] But neither can I conclude, as Mr. Prospere urges, that the article as a whole was “*no more than an open condemnation of the Claimant’s exercise of judgment ...*” It was considerably more than that. The Defendants have trained their sights on the claim that the article meant that Mr. Pierre acted corruptly and illicitly. They appear to have accepted that the article did mean that he acted as a selfish elitist and that this, under the circumstances, is not capable of bearing a defamatory meaning; or, it was supported by the facts.

[20] Mr. Pierre, at the time, was the elected representative for Castries East. His primary duty as their representative was to represent their interests, not his own. If he recommended, as one of only four allowed projects, the restoration of a wall and grill at his private property, for his personal benefit, at a time when his constituents were in need following the passage of a hurricane, that would be betrayal of his duty to his constituents. It might not be illegal, unethical or fraudulent, but it would certainly rank as dishonorable conduct by a representative.

[21] That the article is capable of a defamatory meaning is positively revealed by the article itself, without the need for any strained interpretation: “*It is indeed unfortunate that Mr. Pierre would take full advantage of his position as Parliamentary Representative to make demands that would redound to his own benefit...clearly a slap in the face to persons who voted for his representation.*”

This is saying that he abused his office by using it to obtain a project for himself. That such an action is perceived as dishonorable by the publisher of the article is demonstrated by the characterization of the action as “*a slap in the face of persons who voted for his representation*”.

Whether Defamatory in Circumstances of this Case

[22] I must now go on to consider whether the words are defamatory in the particular circumstances of this case. I therefore ask myself whether the ordinary, unbiased Saint Lucian on Micoud Street – who is neither avid for scandal, overly suspicious nor naïve – having reading the article once, would understand it as an allegation of dishonourable conduct by Mr. Pierre.

[23] In asking myself that question, I must frame it in the context of Saint Lucia at that time: Six months prior to the article, a hurricane had affected Saint Lucia. Some people had died; there was extensive damage. Mr. Pierre was an elected representative; a general election was imminent in which constituents would decide whether to return him to office later that year; an article is published saying that, in the aftermath of the hurricane, Mr. Pierre had the opportunity to submit four priority projects to the government for approval and, in doing so, he submitted one that benefitted him personally while his constituents had more pressing needs. The article stated that Mr. Pierre took full advantage of his position as representative to recommend a project that benefitted him and that this was a slap in the face of those who voted for him.

[24] I consider that the ordinary Saint Lucian would be a person interested in the political situation given the imminence of the elections; that he would expect that his elected representative, in the aftermath of a natural disaster, to look after the needs of his voters instead of putting himself first; that he would interpret the letter as alleging that Mr. Pierre had abused his public office and acted dishonorably by putting his wants or needs over that of his constituents and therefore did not deserve to be re-elected. The fact that the article called on Mr. Pierre to explain why he would have chosen a personal project while his constituents had pressing

needs does not affect my conclusion because the article had already made a conclusion about his alleged action. To allege that someone is a “thief”, “corrupt”, “dishonorable” or abused his office and then ask him to explain his action cannot neutralize the poison of the sting already administered. If, however, Mr. Pierre in fact made the submission for the works project that benefitted him, that affects whether the article was defamatory of him.

Whether Facts Support the Allegations

[25] The fundamental factual assertions about Mr. Pierre were that: (1) he made submissions under the CDP for certain restoration works following the passage of Hurricane Tomas; (2) he included among those submissions, a project for the reconstruction of a wall along the southern boundary of his home and a grill leading to his driveway; (3) the works he submitted for the wall and grill cost EC \$70,000.00 of taxpayers money; (4) the wall and grill were projects that redounded to his own benefit.

[26] The following is not in dispute. The aim of the CDP was to build or renovate community infrastructure and amenities. Mr. Edward Didus Fedee was the coordinator of the project who would prepare a series of reports containing details of the description and cost. He would submit these to the permanent secretary who would then transmit them to the Prime Minister for final approval. A submission was in fact made to the government for approval of a project for the reconstruction of a wall that ran along the southern boundary of Mr. Pierre’s property, as well as a grill leading to his driveway. These works were executed with public funds at a cost of EC\$70,000.00.

[27] Where the battle is joined is on the question of whether it was Mr. Pierre who made or caused the submission to be made and whether the works benefitted him personally.

[28] Mr. Pierre’s position on this issue is that: (1) he never recommended the project and in fact questioned whether it had to be done at that time; (2) he was part of a

bi-partisan group that toured the Castries East constituency and identified the project; he was part of the consensus; (3) the group recommended the project because the collapsed wall presented a risk to the public; (4) the wall was in need of repair prior to Hurricane Tomas which only exacerbated its condition; (5) it was the public, the users of the upper Waterworks Road, that benefitted from the project, and not Mr. Pierre.

[29] The Defendants' case is that: (1) as originally conceived, projects would indeed have to be recommended by a bi-partisan group; (2) but the exigencies created by Hurricane Tomas altered the procedure so that it was given to the parliamentary representatives to select and recommend the projects; and (3) this was exactly what Mr. Pierre did and benefitted from the grill leading to his private driveway and the rubble wall that prevented soil slippage from his property.

[30] What is the best obtainable version of the truth?

[31] The Claimant's evidence comprised his own testimony and that of Valentine Vaughan Edwin. Their witness statements stood as their examination in chief and they were cross-examined. It was anticipated that the evidence of Mr. Edward Didus Fedee, the coordinator of the CDP, would be of great assistance to the Court. He had filed a witness statement on behalf of Mr. Pierre. But during cross-examination, Mr. Fedee started to feel unwell. He stated that he was hypertensive and needed his medication. Court was recessed to allow him to get his medication and return to complete his evidence. When he returned it was to state that his doctor had advised that he not continue until he was well otherwise he risked having a stroke. Suffice it to say that when the trial continued a few days later, Mr. Foster informed the Court that Mr. Fedee would not be returning to conclude his evidence. Both counsel agreed that his witness statement and oral evidence be stricken from the record.

[32] Mr. Mayers, Mr. Ellis and Mr. Vitalis gave evidence for the Defendants. Their witness statements stood as their examination in chief and they were cross-examined. In relation to the first publication, Mr. Ellis, the editor at that time, relied

on the information communicated to him from Mr. Mayers. The second publication, written by Mr. Vitalis, was a repeat of the allegations contained in the first.

[33] The less challenging question is whether Mr. Pierre benefitted from the reconstruction of the wall and the grill leading to his driveway. Though this question consumed quite a bit of cross-examination time, I think it can be resolved without any extensive review of the evidence.

[34] Under cross-examination, Mr. Pierre stated that: *"My property did not benefit from that wall. The wall was built long before I was born... it was built to protect the road, to prevent land slippage.... It was not built to prevent soil erosion from my property. I am not an engineer I cannot opine on land slippage."* Mr. Pierre appeared to be saying that the wall was built to prevent land slippage, while at the same time maintaining that the wall did not prevent soil erosion from his property. When pressed by Mr. Prospere, he said he could not opine since he was not an engineer.

[35] The evidence in chief of Mr. Valentine Vaughan Edwin, an engineering assistant with the Ministry of Infrastructure, was that: *"The wall does not belong to the Claimant and was not built for his private purposes. It was built to protect the road and prevent the land from coming down onto the road."* Under cross-examination, Mr. Edwin stated:

"the wall was protecting the land; there was land above the road that needed protecting. It was this wall that was replaced. Yes, I was aware of other damage. Yes, other damage included land slippages in other parts of the constituency. It included other collapsed walls in the constituency. One of the primary purposes of a retaining wall is to prevent land behind it from coming down."

[36] The following responses were elicited from former Prime Minister King under cross-examination:

“the wall belonged to the government; it was built and constructed by the Government of Saint Lucia; infrastructure along public roads is the responsibility of the government; the wall is not Mr. Pierre’s wall, it is for the protection of the road and the public; once public property is under threat slope stabilization walls are built.”

[37] It is plain from the evidence that the wall did not belong to Mr. Pierre. I do not think this was ever seriously in question. I am satisfied that the evidence, on a balance of probabilities, supports a finding that the wall was built to prevent land slippage from Mr. Pierre’s property coming down onto the road. The undisputed evidence is that the wall ran along the southern boundary of Mr. Pierre’s property. The land that was being retained behind the wall was Mr. Pierre’s land. The wall was to prevent land slippage from his property onto the road and the public that used the road. The intended and primary beneficiary of the wall was the general public but Mr. Pierre, unavoidably, also benefitted from it. He also benefitted from the placement of the grill over the drain leading to his driveway. This conclusion is not affected by the fact that the Castries East branch of the UWP, which had its office next to Mr. Pierre’s home, also benefitted from the grill.

[38] The more knotty issue is whether Mr. Pierre made the submission or caused it to be made or influenced the making of it for his benefit. In his examination in chief, Mr. Pierre stated that:

“the determination to reconstruct the wall or grid was made by a bipartisan committee charged with the responsibility for evaluating the project.”

[39] Under cross-examination, he stated that before and after Hurricane Tomas he had toured his constituency with a delegation to identify areas that needed priority. He recalled that members of the delegation included Edward Fedee; an engineer, Adrian Theobalds; some constituents; Minister Guy Joseph and others. They looked at areas that were in need of repair. He was part of a group and there was consensus that the wall was in need of repair. At some point, he queried whether the wall should have been repaired at that time. He said he did not make any

recommendations on his own; he was part of a consensus decision. He stated that there was a bi-partisan committee that recommended projects for the CDP but he was not sure if the bi-partisan structure remained in place after Hurricane Tomas. The bi-partisan committee did not make the final decision; the final decision for the CDP project was made purely and solely by the minister of finance, before and after the hurricane.

[40] He further stated:

“I was representing my constituents effectively by touring with the powers that be and identifying the projects that needed to be done and being part of the consensus that made these recommendations. On my own, my recommendation would mean nothing. I was part of a consensus that agreed that this wall needed to be constructed because it was a hazard to the public.”

[41] In his evidence in chief, Mr. Valentine Vaughn Edwin stated that:

“The wall since 1997 had been in need of repair. I had costed the repair works then but the Claimant did not want the works carried out unless absolutely necessary. The works were not carried out until after Hurricane Tomas ... After Hurricane Tomas the damage to the wall became worse and it had to be demolished and rebuilt... After the hurricane, the wall had become very weak and posed a danger to the public.”

[42] Under cross-examination, Mr. Edwin stated: that Mr. Pierre had personally told him that he did not want it done unless it was absolutely necessary; the Ministry said that the wall had to be replaced; Mr. Pierre expressed concern about the wall being replaced; the final decision would not rest with him (Mr. Edwin); his recommendation was not influenced by what Mr. Pierre had said to him.

[43] Pitted against this body of evidence is that of the Defendants. Mr. Mayers' evidence in chief is that he verified the information in the first publication with Mr. Fedee during a “series of meetings” he held with him. He said some of his

discussions with Mr. Fedee occurred “telephonically” while others were at his ministry on the waterfront in Castries. He said that he approved the letter for publication in the Mirror newspaper because he “*was satisfied that the contents of the same had accurately reflected the salient points of Mr. Edward Fedee’s report insofar as it concerned the Claimant’s works recommendations under the project. I was at the time of approving the letter also privy to the contents of Mr. Edward Fedee’s report including his hand written notes regarding the Claimant’s recommendations under the project.*”

[44] Under cross-examination, Mr. Mayers maintained his narrative but admitted that he had not tendered any document showing that Mr. Pierre had made any submissions relating to the wall or grill. The contents of Mr. Fedee’s report including his hand-written notes regarding Mr. Pierre’s recommendations were not in evidence.

[45] Mr. King, in his evidence in chief, stated that:

My then Government however modified the project after the passage of Hurricane Tomas on 31st October 2010. A number of Saint Lucians died and many others lost their homes and other possessions during the Hurricane’s passage. The hurricane also considerably battered the island’s infrastructure.

My then Government accordingly shifted the project’s emphasis to the provision of urgent relief to the many victims of Hurricane Tomas. Members of parliament were instead required to identify and submit for approval three priority works projects in their respective constituencies arising from the damage caused by Hurricane Tomas

The unit under the aegis of Mr. Fedee in December of 2010 accepted and approved works project submissions from the Claimant ...

These included repairs to a retaining wall along the Waterworks public road and the Claimant’s property as well as repairs to a grill across a

driveway leading to the Claimant's private residence. These two works projects were situate in my constituency.

I am aware that the Claimant's works projects were submitted to Mr. Fedee for the preliminary approval of Mr. Isaac Anthony. I subsequently approved the Claimant's recommendations save ...”

[46] Mr. King was not challenged on this in cross-examination. Like Mr. Mayers, he stated that no notes or documents regarding Mr. Pierre's submission had been put in evidence. He further stated that a portion of the wall may have collapsed and was in need of repair; that Mr. Pierre could not have said 'don't repair the wall'; if the wall fell it could have affected both Castries East and Castries North; the road was a major artery for several communities. He stated that he made the determination that it would have been a need; he felt that the wall was in need of attention but he was not aware of whether Mr. Pierre questioned the need for the project.

[47] Whose evidence do I prefer? Both Mr. Pierre and Mr. Edwin appeared to be honest, straightforward and credible in their demeanor as witnesses. Mr. Pierre perhaps waffled a little on the question of soil slippage from his property. For the Defendants, Mr. King gave clear, direct, honest answers to all questions without hesitation. He was an impressive witness. Mr. Ellis' testimony though also direct and straightforward was less crucial since he was relying on information from Mr. Mayers. Mr. Mayers appeared very guarded and somewhat evasive.

[48] What tips the evidential scale in favour of Mr. Pierre's narrative is that: (1) no report or handwritten notes of Mr. Fedee (which Mr. Mayers said he was privy to) was tendered into evidence; (2) Mr. King stated that the files in relation to the project would have been kept by Ministry of Economic Affairs; (3) Mr. Mayers was a minister of government and could have easily accessed those files; (4) meeting notes dated 18th March 2011 from Theobalds engineering firm documents that “*Mr. Pierre inquired as to whether the construction of the wall was essential at this*

time.” These meeting notes were referred to in the witness statement of Valentine Edwin.

[49] The meeting notes are compelling because it is independent evidence. It pre-dates the publication of the article. It was not prepared on behalf of either party in these proceedings. Mr. Mayers spoke of handwritten notes and report but produced nothing. Mr. Pierre was able to produce what appears to be independent documentary evidence that supports his narrative. It is further corroborated by the testimony of Mr. Edwin, an engineering assistant at the ministry of infrastructure, that Mr. Pierre only wanted the wall built if it was absolutely necessary.

[50] Then there is the evidence of the Defendants’ own witness, Mr. King, the Prime Minister at the time, that the wall needed to be built and that Mr. Pierre could not have said not to build the wall. I find, on a balance of probabilities, that Mr. Pierre neither made the submission, caused the submission to be made, nor influenced its submission. He might not have objected to it and, in fact, admitted to being part of the consensus, but that is not tantamount to him making the submission for his own benefit. The wall was reconstructed because persons other than Mr. Pierre assessed it to be a threat to the users of the Waterworks Road

Whether Qualified Privilege Available to the Defendants?

[51] The Defendants raise the eponymous **Reynolds** defence. Lord Nichols of Birkenhead in **Reynolds v Times Newspapers Ltd and Others**⁵ set out the classic statement on when an occasion can be regarded as privileged.

[52] Lord Nichols stated:

“The underlying principle is conventionally stated in words to the effect that there must exist between the maker of the statement and the recipient some duty or interest in the making of the communication. Lord Atkinson’s dictum, in *Adam v. Ward* [1917] A.C. 309, 334, is much quoted:

‘...a privileged occasion is...an occasion where the person who

⁵ 2001 2 AC 122.

makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential'.

The requirement that both the maker of the statement and the recipient must have an interest or duty draws attention to the need to have regard to the position of both parties when deciding whether an occasion is privileged. But this should not be allowed to obscure the rationale of the underlying public interest on which privilege is founded. The essence of this defence lies in the law's recognition of the need, in the public interest, for a particular recipient to receive frank and uninhibited communication of particular information from a particular source. That is the end the law is concerned to attain. The protection afforded to the maker of the statement is the means by which the law seeks to achieve that end. Thus the court has to assess whether, in the public interest, the publication should be protected in the absence of malice.

In determining whether an occasion is regarded as privileged the court has regard to all the circumstances ... And circumstances must be viewed with today's eyes. The circumstances in which the public interest requires a communication to be protected in the absence of malice depend upon current social conditions.”

[53] From the above quotation, I distill this principle: The court has to assess whether, in the public interest, the publication is of sufficient interest that it should be protected, in the absence of malice, and having regard to all the circumstances.

[54] I will also keep this particular piece of advice from Lord Nichols in mind as I proceed with my evaluation of whether the publication attracts privilege:

“Further, it should always be remembered that journalists act without the benefit of the clear light of hindsight. Matters which are obvious in retrospect may have been far from clear in the heat of the moment. Above

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

[55] But, as a counterpoint, I think I should also keep in mind a cultural distinction, namely, that in this region newspapers are often organs of political parties or otherwise party-affiliated; publications in them are often aimed at discrediting political adversaries for political advantage.

[56] Lord Nichols then set out a list of ten factors to consider in determining whether it was in the public interest for a publication to be protected. He cautioned that the list was not exhaustive and that the weight to be given to these and any other relevant factors will vary from case to case:

- (1) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed if the allegation is not true.
- (2) The nature of the information and the extent to which the subject matter is a matter of public concern.
- (3) The source of the information. Some informants have no direct knowledge of events. Some have their own axes to grind, or are being paid for their stories.
- (4) The steps taken to verify the information.
- (5) The status of the information. The allegation may have already been the subject of an investigation, which commands respect.
- (6) The urgency of the matter. News is often a perishable commodity.
- (7) Whether the comment was sought from the claimant or some other person with knowledge of the facts.
- (8) Whether the publication contained the gist of the claimant’s side of the story.
- (9) The tone of the publication.
- (10) The circulation of the publication including the timing.

[57] I now assess the case at bar having regard to those factors.

The seriousness of the allegation

[58] The allegation is a serious one. If true, the allegation meant that Mr. Pierre had abused his position by putting his needs ahead of the pressing concerns of his constituents. It is obviously a serious matter for Mr. Pierre who has sued over it, as well as for his constituents and the general public who would have an interest in the performance of an elected representative and the opposition's deputy party leader.

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

[59] Mr. Pierre's argument was that the simple task of a government department rebuilding one of its walls in an area known to be prone to land slippage and which required rebuilding for over 13 years was not a matter of public concern in the context within which it was published. I think the matter is more complex than that. What attracts public interest is not the act of rebuilding a partially collapsed wall but who recommended it and why. The nature of the information was the action of a public official, an elected area representative and senior political figure in the country. If, as the evidence suggests, there were other retaining walls that needed fixing, why was Mr. Pierre's chosen and by whom? I think it was a matter of public concern whether Mr. Pierre had made the submission and why he identified that project as a priority.

The source of the information.

[60] The letter to the editor came from the Castries East branch of the UWP whose *raison d'être* was the election of its candidate, Mr. Mayers. It therefore had a political axe to grind. It had a vested interest in the defenestration of Mr. Pierre. Information from such a source screamed for verification.

The steps taken to verify the information

[61] Mr. Mayers verified the information in the letter from his constituency branch with someone who was at the center of CDP operations, namely, Mr. Fedee. This

ought to have been enough to verify its accuracy. That information turned out to be wrong. Either Mr. Fedee gave incomplete information, wrong information or the information was misunderstood or was fudged for a political advantage. Mr. Ellis, the editor of the newspaper, relied on the verification done by Mr. Mayers, the owner of the newspaper as well as a minister as political opponent of Mr. Pierre.

The status of the information

[62] If the information was indeed contained in a report or handwritten notes in an official file at a ministry, that ought to have been enough. No evidence from any official file concerning the alleged submission was produced to the court.

Urgency of the publication

[63] Mr. Pierre says there was no urgency for the publication of the letter other than the urgency of the impending general elections in order to make the Claimant lose credibility. I am prepared to accept that, in the particular context of newspaper business and news cycles, the Defendants could not be said to have acted improperly in publishing the information as soon as they had verified it. As Lord Nichols observed in **Reynolds**, news is often a “perishable commodity”.

Whether comment sought from Claimant

[64] The Defendants did not seek any comment from the Claimant. It is indeed likely that if a comment had been sought from the Claimant, he would have stated that he did not make a submission but had questioned the necessity to have the wall built at that time. Mr. Mayers stated that he did not seek a comment from Mr. Pierre because they were political opponents. But that was precisely why the newspaper ought to have done so, that is, to publicly demonstrate that it was not actuated by bad faith because the owner of the newspaper was Mr. Pierre’s opponent. A journalist as experienced as Mr. Ellis ought to have known that if the letter originated from Mr. Mayers’ constituency branch and was verified by Mr. Mayers who wanted to unseat Mr. Pierre, that at least a token comment from Mr. Pierre might have been prudent.

Whether the publication contained the gist of the claimant's side of the story.

[65] The publication did not contain the gist of Mr. Pierre's side of the story.

The tone of the publication

[66] Mr. Pierre contends that the tone of the publication was harsh, filled with ridicule and reeked of rancor, rather than being even-handed reporting. While it was certainly not even-handed reporting, I do not agree that it was a harsh, rancor-filled piece. It made a very serious charge against Mr. Pierre and one that any elected representative would be expected to take seriously.

The circumstances of the publication, including timing

[67] The article was published about seven months before the impending general elections. This might have given Mr. Pierre time to explain the truth to his constituents and the wider public before polling day. The closer the publication was to the election, the more difficult it might have been for Mr. Pierre to clear the air. It was published in a newspaper of national circulation. The second article was re-published in a Jamaican newspaper.

[68] In weighing up the factors, I consider that the source of the information (which was a serious allegation) should have set off alarm bells; the verification process was flawed; no comment was obtained from Mr. Pierre; no gist of his side of the story included; the publication had wide circulation. On the other hand, the subject matter of the information is of public concern; in the newspaper business, information is published quickly; the tone of the publication was not harsh when compared to other defamation cases put before the court. Lord Nichols' words resonate: "*journalists act without the benefit of the clear light of hindsight*".

[69] As part of my deliberations, I am obliged to remind myself that a court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know, especially when the information is in the field of

political discussion. I am further obliged to remind myself that any lingering doubts should be resolved in favour of the publication. This might have been an easier issue to resolve but for the fact that there was a co-mingling of journalistic duty with political motives. We are not here dealing with an independent newspaper but one owned by a person who was a cabinet minister at the time of publication and who, as the evidence showed, had an active hand in what was published in the newspaper. My lingering doubt must, however, be resolved in favour of the Mirror. I am constrained to conclude that the information was of sufficient value to the public that, in the public interest, it should be protected by privilege. I now turn to the issue of malice.

Malice

[70] The classic exposition of malice in this context is from Lord Diplock in *Horrocks v. Lowe*⁶. If the defendant used the occasion for some reason other than the reason for which the occasion was privileged he loses the privilege. Thus, the motive with which the statement was made is crucial. If desire to injure was the dominant motive the privilege is lost. Similarly, if the maker of the statement did not believe the statement to be true, or if he made the statement recklessly, without considering or caring whether it was true or not, he loses the privilege. Lord Diplock emphasized that indifference to truth is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true:

“In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognize the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental

⁶ [1975] A.C. 135, 149

process by which the belief is arrived at it may still be 'honest', that is, a positive belief that the conclusions they have reached are true. The law demands no more.”

[71] Rawlins JA stated the principle in similar terms in **David Carol Bristol v Dr. Richardson St. Rose**⁷:

“[25] Where words are published under circumstances which create qualified privilege, the claimant might still prevail on a claim for defamation if he proves that the person abused the privilege because of express or actual malice. The test of express malice requires the claimant to prove that the defendant did not honestly believe that 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 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 their truth or falsity where he took no investigative steps to ensure their when he could have done so. Whether a defendant was indifferent to the truth of the defamatory statements is subjective to the defendant and depends, among other things, on his level of knowledge, education and intelligence. To a great extent, it is an enquiry as to the motive for the publication...” (emphasis supplied)

[72] From those two expositions on malice in the context of qualified privilege, I distill this principle: that the inquiry into malice centers on asking what the dominant motive was for the publication of the article. Was the dominant motive to discredit a political opponent in the eyes of the voters or to inform the public of a matter of some public interest? Mr. Pierre argues for the former, the Defendants for the latter. Under cross-examination, Mr. Mayers stated: “*The motive behind publishing the article was for Mr. Pierre to answer the questions the constituents has asked.*”

⁷ Saint Lucia, Civil Appeal No. 16 of 2005.

[73] Since I have deemed the publication as privileged, the burden now shifts to the Claimant to prove that the Defendants were actuated by malice. Hamel Smith JA in **Basdeo Panday v Kenneth Gordon** stated:

“Accordingly, when an occasion is deemed privileged the burden of proof shifts to the plaintiff to show that the words were actuated by malice.”

[74] Mr. Ellis under cross examination acknowledged that there were factual inaccuracies in the article but believed that they did not undermine its thrust which was to challenge Mr. Pierre’s judgment on the matter of his priority project recommendations in light of the constituents’ urgent needs arising in the aftermath of Hurricane Tomas. The Defendants submit that the facts incontrovertibly establish that Mr. Mayers was not the article’s author as he several times reiterated under cross-examination and neither was Mr. Ellis.

[75] The letter came from the Castries East constituency branch whose primary aim was to unseat Mr. Pierre and elect its candidate Mr. Mayers; the letter was sent to Mr. Mayers’ newspaper; there was no evidence that it was published in any other newspapers; Mr. Mayers who was trying to unseat Mr. Pierre conducted the verification of the information; he said he saw report and handwritten notes verifying the information; as a government minister Mr. Mayers had access to the official file, yet he failed to produce copies of the report or handwritten notes; the letter did not simply question whether it was true, it stated as a fact that Mr. Pierre made the submission, it made a judgment on that action and called on him to explain himself; Mr. Pierre was never asked for a comment nor the gist of his version included; Mr. Mayers said he did not ask for a comment because they were political opponents. The Court is left to infer that if they were not political opponents, a comment would have been asked for.

[77] I am constrained to find that the dominant motive for publishing the article was to discredit Mr. Pierre in the eyes of the voters and get a political advantage. It matters not whether the author of the letter was someone from the Castries East

constituency branch and the Defendants merely the publishers. Mr. Mayers, by his own admission, played an active role in its verification and publication.

[78] Did the Defendants have an honest belief in the truth of the article? The Defendants' key witness, former Prime Minister King said he did not believe that Mr. Pierre would put his personal needs over that of his constituents. When asked the same question Mr. Mayers steadfastly refused to answer, saying that his opinion did not matter, as he was not the author of the article. By refusing to answer the question, I am left to infer that he did not honestly believe Mr. Pierre was a selfish person, an opinion he pleaded in his defence. By publishing a letter the source and verification of which came from Mr. Pierre's political foes, without getting a comment from him, the Defendants, experienced editor and publisher, acted carelessly as to the truth of the article.

[79] The Defendants submitted that they can still avail themselves of the defence of qualified privilege even if malice is established against them provided they demonstrate that they were duty bound to transmit the article to the public at large. The Defendants rely on **Gatley on Libel and Slander** Ninth Edition at paragraph 16.17 for this proposition:

[16.17] **Matter not believed to be true: exceptional cases.** While lack of honest belief in the truth of the statement is normally fatal to the defence of privilege it is not so if the defendant is under a duty to pass on the information to a third party. In the course of his summing-up in *Vanbergen v Bosshard*, McCardie J. gave as an illustration of such a case, an accountant employed to audit the accounts of a company, who, "when going through the books,... finds that a cashier in the employ of the company has, to the best of his belief, embezzled £100 of the company's money. The accountant may say, 'I cannot think that young Richardson has really embezzled this £100.00...' it does not matter what he can think or cannot. If the facts are such as to indicate what may be a case of embezzlement, it is clearly his duty to report the matter to the directors of

the company.” As Kelly C.B. said in *Botterill v. Whitehead* “A person may honestly make on a particular occasion a defamatory statement without believing it to be true, because the statement may be of such a character that on that occasion it may be proper to communicate it to a particular person who ought to be informed of it.” In principle this extends to a case where the defendant in performance of a duty passes on a statement which he knows to be untrue but he would not be protected if he failed to include contradictory evidence in his possession...

[80] The Defendants submit that the media has a responsibility to disseminate social and political information to the electorate particularly in the lead up to an impending general election. The article concerned the exercise of the judgment of a politician on a matter of public expenditure in the lead up to impending general elections and the Defendants were accordingly duty bound to disseminate this important information to the electorate. They further submit that the evidence incontrovertibly establishes that the Defendants were not in possession of any contradictory information at the time of publishing the article. As such, the Court should find that the Defendants could avail themselves of the defence of qualified privilege even if they are found to have not honestly believed the article to be true. In the example cited, the accountant did not believe what his audit revealed that a company employee had embezzled funds. Notwithstanding his lack of honest belief in it, he had a professional duty to report the finding to those who contracted his services. I do not think the nature of the information in the article at bar is of the character envisaged in the exception so as to create a duty to report it to the public.

Damages

[81] Mr. Pierre contends that he should be awarded significant compensation to console him for the distress he suffered from the publication, to repair the injury to his reputation and as vindication of his reputation. I considering what sum should be awarded as damages in this case, I examine defamation cases from the region.

- [82] In **Vaughan Lewis v Kenny Anthony**, there was a pointed allegation of corruption against a Prime Minister: “*Kenny Anthony just take the money and put it behind his back and nobody knows where it is.*” It considering the award of damages the trial judge took into account that an apology was tendered, the absence of malice, the defamatory remarks were heard by about one hundred persons, the fact that Mr. Anthony went on to win the next general election. Her award of \$60,000.00 was reduced to \$45,000.00 by the Court of Appeal.
- [83] In **David Bristol v Dr. Richardson St. Rose**, the gravity of the libel was considered (“this doctor’s profound arrogance and conceit ...has resulted in patient death and morbidity’), the extent and manner of the publication, the presence of malice and the defendant’s refusal to apologize. The Court of Appeal and awarded \$40,000.00.
- [84] Mr. Foster submitted that a higher award should be made in this case, given that those decisions are now dated. He urged for a similar award as that made in **Victoria Alcide** where the learned judge awarded general damages in the sum of \$140,000.00, aggravated damages in the sum of \$50,000.00 and exemplary damages in the sum of \$50,000.00. Those awards were made on the basis of default judgments against two defendants, one of whom has set aside the award so that damages have to be re-assessed. I do not think that I should have regard to the Alcide case under such circumstances.
- [85] **France and another v Simmonds**⁸ is a case from St. Christopher and Nevis in which the injured party was the Prime Minister who had been wrongly accused of corruption. The Privy Council affirmed the award of \$75,000.00 made by the trial judge and confirmed by the Court of Appeal.

⁸ [1990] 38 WIR 172.

[86] In **Keith Mitchell v Steve Fassihi and Others**⁹, the defendants, in a “petition” to Her Majesty the Queen, had accused the Prime Minister of using his office to harbour criminals, assist in money laundering, of having his election campaign financed by criminals, of using public monies to set up private family businesses, of appointing known criminals as Honorary Consuls and Ambassadors at large and other defamatory matters. An award of \$100,000.00 including aggravated damages was not interfered with by the Court of Appeal.

[87] In considering the appropriate award to make in this case, I have regard to the gravity of the allegation. I give considerable weight to the fact that the defamatory remarks were nowhere as grave as in the cases cited above. There was no allegation of bribery, corruption or criminality. There was no pecuniary loss; no evidence of psychiatric injury; no claim for special damages. I also give considerable weight to the fact that the evidence does not reveal that Mr. Pierre suffered any diminution of the esteem in which his constituents or the general public held him. He remained a highly successful politician. In the election (which the article was aimed at impacting), he won by an even higher margin of over seven hundred votes; he went on to become the leader of the opposition. Former Prime Minister King from the UWP said he does not believe Mr. Pierre would put his own interest above that of his constituents. On the other hand I also take into consideration that the Defendants refused to apologize when given the opportunity to do so and that the publication had an island-wide circulation in Saint Lucia. I think an award of \$30,000.00 including aggravated damages would be an appropriate award in the circumstances of this case.

Whether Absolute Privilege available to Defendants

[88] The second article was published by Mr. David Vitalis, editor of the Mirror, on 18th January 2014, six days after the first claim had been struck out. As stated earlier in the judgment, the second article contained a report of striking out of the first claim, a repeat of the allegations in the first article, as well as comments from Mr.

⁹ Grenada, Civil Appeal No. 22 of 2003.

Mayers and Mr. Ellis. Mr. Vitalis' position was that since the first claim had been struck out he did not see the need to conduct verification into the first article. The allegations were repeated in the second article as appropriate background, he said, so that the readership could understand the nature of the first claim that was struck out.

[89] I do not think that the Defendants in the second claim can avail themselves of the defence of absolute privilege since the second article went beyond a fair and accurate reporting of what took place before the court. If it were limited to that, the Defendants would have been protected by absolute privilege.

[90] Bearing in mind what I have earlier stated in this judgment in relation to the appropriate award of damages, there was no evidence that the second article occasioned Mr. Pierre any diminution of the esteem in which he was held. I do not think any annoyance caused by the repeat of the allegations was in any way aggravated given the circumstances under and the manner in which the second article was published. I accept the evidence of Mr. Mayers that it was the Caribbean Media Corporation that was solely responsible for disseminating the second article to the Jamaica Observer for online publication. I think that an award of \$10000.00 would be appropriate in the circumstances of this case.

[91] I therefore make the following orders.

- (1) Judgment is entered for the Claimant in Claim No. 0667 of 2011;
- (2) The Claimant is awarded the sum of \$30,000.00 as damages including aggravated damages;
- (3) Prescribed costs are awarded in accordance with Part 65.5 of the CPR 2000.
- (4) Judgment is entered for the Claimant in Claim No. 0868 of 2014;
- (5) The Claimant is awarded the sum of \$10,000.00 as damages;
- (6) Prescribed costs are awarded in accordance with Part 65.5 of the CPR 2000.

**JUSTICE GODFREY SMITH, SC
HIGH COURT JUDGE**

BY THE COURT

REGISTRAR