

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2023/0188 (formerly GDAHCV2019/0042)

BETWEEN:

KAREN RODEN-LAYNE

Claimant

and

**GEORGE WORME
IMPACT PRINTERS GRENADA LIMITED**

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Ruggles Ferguson KC and Ms. Mckaeda Augustine for the Claimant
Mr. Dwight Horsford and Mr. Ian Sandy instructed by Mr. Anslem Clouden for
the Defendants

2025: July 24th;
September 30th (Submissions);
October 1st (Submissions);
2026: January 13th.

JUDGMENT

- [1] **GLASGOW, J.:** This claim arises from a series of articles published in the 4th, 11th and 18th January 2019 issues of the New Today newspaper, in which the claimant (hereafter referred to as “Mrs. Layne”) alleges statements were written and published against her which statements defamed her.
- [2] The trial was bifurcated. By agreement of the parties, and pursuant to directions of the court, the issue of liability for alleged defamation was to be determined in the first instance. This judgement is confined to that issue.

Mrs. Layne's case

- [3] At the time of the publications in dispute, Mrs. Layne served as the General Manager of the Grenada Solid Waste Management Authority (hereafter referred to as "GSWMA"). Of significance to this discourse is the fact that Mrs. Layne is the wife of Mr. Joseph Ewart Layne, a person reputed to be a prominent participant in the 1979-1983 Grenada Revolution.
- [4] Mrs. Layne avers that in the 4th January 2019 issue of the New Today newspaper (hereafter referred to as "the 4th January publication"), the defendants falsely and maliciously wrote and published, or caused to be written and published, articles containing defamatory statements concerning her. The 4th January publication reads:

"INVESTIGATION LAUNCHED INTO MISUSE OF SOLID WASTE FUNDS

... The New Today has been reliable [sic] informed that funds from the Grenada Solid Waste Management Authority were used to facilitate a trip to a country in Europe by a prominent figure of the ill-fated 1979-83 Grenada Revolution.

This follows closely on the heels of a probe being undertaken by the Integrity Commission into alleged massive wrong-doing at the Marketing & National Importing Board (MNIB) during the tenure of former Chief Executive Officer (CEO) Ruel Edwards and the governing board headed by Samuel Andrew.

A well-placed source told this newspaper that the credit card of the Solid Waste Authority was allegedly used to purchase airline tickets from a local travel agency for the top revolutionary figure and his wife to make the overseas trip within the last six months of the year.

He said that the credit card was also allegedly used to pay for other expenses related to the overseas trip such as hotel accommodation and meals.

The former revolutionary figure is not known to be an employee of the Solid Waste Authority.

The New Today contacted newly installed Chairman of the Board of Directors of the authority, medical doctor Bert Brathwaite who indicated that he was not aware of the issue but did promise to look into it.

However, the Chairman of the Solid Waste Authority admitted that no permission was granted by the board for any such financial transaction with its funds if indeed it took place.

The paper complied with the request made by Dr. Brathwaite to write him officially about the alleged incident in order for him to investigate the matter.

Five specific questions were sent to the Solid Waste Chairman in relation to the unfolding story of the alleged unauthorised use of the finances of the authority to facilitate the trip by the former revolutionary figure.

On Monday morning, Dr. Brathwaite sent an email message to the New Today acknowledging receipt of the questions. He said: "this is to acknowledge receipt of your email dated 28th December 2018. Kindly be advised that the matter that you raised will be investigated...

The New Today also contacted a person of interest at the Solid Waste Authority for comment Monday on the issue and she requested that the questions be put in writing and this was complied with by this newspaper.

The responses sent to our News Desk at 2.20pm Monday by the Solid Waste Authority employee to the three questions submitted by The New Today were "False", "False" and "Utterly False".

The New Today was also able to solicit a response to the allegation from the person at the centre of the alleged misuse of the funds belonging to the state body through his local attorney-at-law.

He described it as 'false, baseless utterances of a wounded soul consumed with hate and malice.' ..." [Emphasis not mine]

- [5] The 4th January publication continued as follows on another page of the New Today newspaper:

"The credit card scam

Chairman of the Board of Directors of the Grenada Solid Waste Management Authority, Dr. Bert Brathwaite on Monday officially informed staffers at the state controlled body that an investigation will be launched into alleged misuse of the funds of the enterprise.

Well-placed sources told THE NEW TODAY that Dr. Brathwaite met with staffers at the head office of the Solid Waste at the Grenada Industrial Development Corporation (GIDC) compound at the Frequente Industrial Park at Grand Anse in St. George's.

He said that the Chairman informed staffers that he had received a query from THE NEW TODAY newspaper about the unauthorised usage of the two credit cards belonging to the state entity...

According to the source, the Chairman requested print outs concerning the usage of the credit cards in recent months to ascertain whether the allegations brought to his attention had any truth in them.

He said that while Dr. Brathwaite was addressing staffers his cellphone rang, he looked at it and indicated to staffers that it was a call from a particular employee of THE NEW TODAY who was apparently trying to reach him on the allegations making the rounds.

The Solid Waste Chairman did not take the call.

However, this newspaper was told that there were looks of anxiety and discomfort on the faces of some staff members as the Chairman spoke about his intention to get at the bottom of the so-called credit card scandal..." [Emphasis not mine]

- [6] The editorial column of the same 4th January publication also addressed the alleged credit card scam:

"The Solid Waste investigation!!!

Another state-run entity is now the subject of alleged wrongdoing.

The New Today can inform the nation that it has officially written to the Chairman of the Board of Directors of the Grenada Solid Waste Management Authority, Dr. Bert Brathwaite to bring to his attention some troubling information in our possession.

We are duty bound to inform the nation that Dr. Brathwaite has confirmed receipt of our letter and indicated that an investigation will be carried out into alleged wrongdoing with the funds of this state body.

The allegation is that the Credit Card of the Solid Waste Authority was used without the approval of the Board of Directors to purchase two airline tickets including one to facilitate an overseas trip some where [sic] in Europe by someone who is not known to be an employee of the statutory body.

The information points in the direction of an individual who was a prominent member of the ill-fated 1979-1983 Grenada Revolution.

There are also reports that the credit card was used to cover other expenses of a personal nature on this overseas outing like hotel accommodation.

The New Today was told that when the ticket was purchased for the overseas engagement that no one from the Solid Waste Management Authority was known to be travelling to an [sic] European capital undertaking any function on behalf of the state entity.

It begs the question - if no one from Solid Waste was on official business for the state body then what was the Credit Card doing in Europe?

Equally important is the related question that the person who used it was supposed to be on holiday from the authority at the time. Why would a person who is on holiday be using the Credit Card of Solid Waste and not surrender it?

The New Today is also forced to ask the additional question – where is the credit card at the moment? Has it been surrendered to the authority?

Our investigation points to Solid Waste Authority having two credit cards – one Master and one Visa for its sole use.

It does not take a forensic accountant to undertake a simple exercise to find out whether the Credit Card of the state body was abused without the knowledge of the Board of Directors.

The bank that issued the Credit Card often issues a financial statement on the use of the credit card.

All the Board of Directors has to do is request from its Financial Department the bank statements for the two credit cards in the last six months for perusal. It is as simple as that.

The New Today has no reason to doubt the sincerity of Board Chairman Dr. Brathwaite to carry out some kind of an investigation into the allegation as brought to his attention by this newspaper.

The Chairman was seen on the compound of the authority on Monday holding a series of meetings with the relevant staff members who should be able to shed some light on the alleged illegal use of the Credit Card.

This newspaper is also getting some troubling information about alleged wrong-doing at Solid Waste that the Board of Directors needs to investigate as a matter of urgency.

There is another serious allegation surfacing that the letterhead of Solid Waste was used to help persons who are not employed with the state body to apply for visas to gain entry into the United States.

If correct, this is fraudulently [sic] use of the property of this important and vital state body.

It is well known that a number of persons have been prosecuted in Grenada for engaging in scams to get visas to enter the United States.

Two high profile sporting personalities are currently facing fraud and forgery charges before the high court in a US visa scandal.

This kind of activity raises serious questions about whether or not persons are not collecting money under the table for using the letterhead of Solid Waste to help persons to gain entry into the United States..." [Emphasis not mine]

- [7] Mrs. Layne contends that the articles written in the 4th January publication were widely circulated and were reasonably understood to refer to her.
- [8] Mrs. Layne further asserts that the defendants aggravated the injury and damage on her character by repeating, confirming and/or adding to the defamatory allegations in the 11th January 2019 issue of the New Today newspaper. Mrs. Layne avers that the following was written in the 11th January 2019 article:

"Solid Waste investigation still on

Chairman of the Board of Directors of the Solid Waste Management Authority, Dr. Bert Brathwaite has confirmed that the investigation into alleged wrong doing at the state body is still ongoing.

...Dr. Brathwaite said that he has not been able to do any extensive probing into the allegations that were first brought to his attention by this newspaper about the alleged misuse of the Credit Card of the authority.

He said that there is no truth to the reports making the rounds that the board has completed its investigation and concluded that there was no wrong-doing."

"Problems at Solid Waste

All is not well at the state-owned Solid Waste Management Authority.

A well-placed official contacted THE NEW TODAY newspaper following last week's issue which focused on the alleged misuse of the company's credit card to facilitate an overseas trip by a prominent member of the 1979-82 Grenada Revolution who is not known to be an employee of the state body.

The official made mention of the burning of documents belonging to the Financial Department in the wake of reports about certain alleged wrong-doing at Solid Waste.

He said that a few days ago documents from the department were sent up at the Landfill at Perseverance to be burnt but unusually a senior member of staff 'came to supervise the burning'.

He described this as 'strange' because employees at the landfill 'always did (the) burning for finance many times before... not once he ever went up to the landfill to supervise the burning'.

Why now an investigation is being held now a few days before burning took place- he went to supervise the burning?"

[9] Mrs. Layne pleads that the words published in the 11th January article were understood to mean that she was involved in, or responsible for the destruction of financial records of the GSWMA, with the intention of concealing criminal activity arising from the alleged misuse of the GSWMA's credit card.

[10] Mrs. Layne further complains that the defendants compounded and aggravated the injury to her reputation by repeating and/or confirming the defamatory allegations contained in the 4th and 11th January 2019 publications when, in the 18th January 2019 edition of the New Today newspaper, they wrote and published the following article:

"A serious investigation is needed!!!

...In recent weeks, reports have surfaced about alleged wrongdoing at GSWMA which should attract the attention of not only the newly installed Board of Directors headed by Dr. Bert Brathwaite but also the Line Minister and entire government.

This newspaper is confident that the workers at Solid Waste have a lot to reveal to a properly constituted Commission of Inquiry about what appears to be bad management decisions resulting in the state body not getting value for money in the millions of dollars being spent on garbage disposal.

The workers should also be questioned specifically about the credit card transactions for 2018.

...

This newspaper is convinced that an independent team should be set up to probe into allegations about the misuse of the credit card of Solid Waste to conduct activities not sanctioned by the Board of Directors.

There have been reports about the shredding of documents at the Main Office at Frequente and the burning of documents at the Perseverance Landfill amidst reports of some wrongdoing at the state body.

Is the Board of Directors aware of the burning of documents at Perseverance in the past two weeks? Does the Board know what documents were destroyed by fire? Did it sanction the burning of those documents?

An independent team ought to be set up to do a complete and comprehensive audit of the financial affairs of GSWMA and to determine whether documents are missing in order to do a cover-up of alleged wrongdoing.

The NEW TODAY is convinced that it does not take a forensic accountant to do the investigation especially the use of the credit card of GSWMA as a paper trail can easily be provided by the commercial banks...”

- [11] Mrs. Layne’s case is that the cumulative effect of the publications portrayed her as dishonest and that her character has been seriously injured. She alleges that she suffered embarrassment and mental and psychological pain and suffering by her name being brought into public scandal.
- [12] Mrs. Layne’s further case is that the defendants’ conduct amounted to incompetent, irresponsible and shoddy journalism. She contends that the defendants failed to undertake reasonable verification of the allegations prior to publication and acted with recklessness as to the truth. Mrs. Layne is of the view that the defendants were motivated by spite and malice.
- [13] Mrs. Layne seeks the following relief, among others: general, aggravated and exemplary damages, an injunction restraining the defendants from publication of the defamatory statements, interest and costs.

The defendants’ case

- [14] The defendants deny that the publications were malicious, and further deny that the words impugned words bear any defamatory meaning.
- [15] The defendants further deny that the allegedly defamatory words referred to, or were understood to refer to Mrs. Layne. The defendants also assert that the words

were incapable of being understood to mean that Mrs. Layne was engaged in the destruction of GSWMA's records with a view to covering up criminal activities misusing its credit card.

- [16] The defendants contend that even if the words contained in the publications were defamatory, the publications were fair comment upon a matter of public interest, namely the issue of whether the allegation of misuse of the GSWMA's credit card merited investigation, and whether the occasion was ripe for a review of the management of its affairs. The defendants further and alternatively contend that the publications were made on an occasion of qualified privilege.

Legal Analysis

- [17] The issues for determination are whether the impugned publications are defamatory of Mrs. Layne and, if so, whether the defendants are entitled to rely on any of the pleaded defences.

Whether the publications are defamatory of Mrs. Layne

- [18] Defamation is committed when a defendant publishes to a third person words or other matter containing an untrue imputation against the reputation of a claimant¹.
- [19] To succeed in an action for defamation, a claimant must prove the making of a statement by a defendant tending to lower the claimant in the estimation of right thinking-members of the society, the publication of that statement to a third person, and the words must be construed in their natural and ordinary meaning². The court's consideration of defamation in the extant matter is therefore twofold: (1) whether the published words in their natural and ordinary meaning are defamatory and (2) if they are, whether they are defamatory of Mrs. Layne.

¹ Dr. Edmond Mansoor v Eugene Silcott ANUHCv2010/0209

² Gaston Browne v Isaac Newton ANUHCvAP2020/0028

- [20] The authors of **Halsbury's Laws of England**³ describe the test of what is defamatory in the following manner:

"In deciding whether or not a statement is defamatory, the court must first consider the notional single meaning that the words would convey to the ordinary person. ... the court seeks to determine and act upon the one and only meaning that the readers as reasonable persons should have collectively understood the words to bear. Having determined the meaning, the test is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense. ...

Words will be defamatory if they impute conduct the reasonable person considers discreditable, even though in the author's stated view such conduct is proper."

- [21] In **Charleston & Anr v News Group Newspapers Ltd & Anr**⁴ their Lordships referred to the text of Duncan & Neil on Defamation⁵ as follows:

"In order to determine the natural and ordinary meaning of the words of which the plaintiff complains it is necessary to take into account the context in which the words were used and the mode of publication..."

Mrs. Layne's arguments

- [22] Counsel for Mrs. Layne argues that the following principles may also be drawn from the House of Lords' decision in **Charleston**⁶: (1) The ordinary reader is taken as having read the article(s) as a whole and takes note of the prominence given to them; and (2) The natural and ordinary meaning of an allegedly defamatory publication is the meaning, including any inferential meaning, conveyed to the mind of the ordinary, reasonable and fair-minded reader.
- [23] Counsel for the claimant also refers to **Ramadhar v Ramadhar**⁷ where the court noted three levels of defamatory sting referred to as 'Chase levels' in reference to the decision in **Chase v News Group Newspapers**⁸:

³ (5th edn., 2023) vol. 32, para 543

⁴ [1995] 2 AC 65

⁵ 2nd ed (1983) p 13 para 4.11

⁶ [1995] 2 AC 65

⁷ [2020] UKPC 7

⁸ [2002] EWCA Civ 1772

“Chase level 1 is the most serious level of meaning and it applies where the defendant’s statement meant that the claimant has actually committed the wrong. So, if he said that the claimant has committed fraud, he will have to show that the claimant has indeed committed a fraud. Chase level 2 meaning applies where the defendant alleged only that he has reasonable grounds for suspecting that the claimant has committed a fraud.... If, however, the meaning of what he said is merely that there are grounds for investigation, the meaning is Chase level 3.”

- [24] It is further undisputed that the articles were widely disseminated, including by online publication by the second defendant, and that the first defendant was the author of the impugned articles.
- [25] It is also common ground that by an independent investigation commissioned by GSWMA’s Board of Directors in April 2019, Mrs. Layne was exonerated of any wrongdoing and the allegation was described as “completely false”.
- [26] Against that background, this court turns to the meaning and sting of the publication. Mrs. Layne’s position is that the effect of the offending articles was clear and unequivocal: she had corruptly and unlawfully used a GSWMA credit card to finance a personal trip to Europe with her husband, as well as that she fraudulently used the GSWMA letterhead for non-employees and was involved in the destruction of official financial records.
- [27] In relation to the credit card allegation, as pleaded, Mrs. Layne explains that the natural and ordinary meaning of the challenged words was that she had unlawfully and corruptly used the GSWMA credit card to finance a trip to Europe by her husband and herself, or that there is credible evidence that Mrs. Layne unlawfully and corruptly used the GSWMA credit card to finance a trip to Europe by her husband and herself. Counsel for Mrs. Layne further submits that when viewed in their totality and context, the meaning that the ordinary and reasonable reader would attach to the credit card allegation is that Mrs. Layne was under investigation in relation to the credit card allegation.
- [28] Mrs. Layne pleads alternative meanings of the words which meanings include:

- (1) Mrs. Layne had committed, or there is credible evidence that Mrs. Layne had committed, serious criminal offences, including offences under the Prevention of Corruption Act, in relation to her use of the GSWMA credit card.
- (2) Mrs. Layne is under investigation for unlawfully and corruptly misusing the GSWMA credit card;
- (3) There is evidence which merits an investigation of corruption connected with Mrs. Layne's stewardship as GSWMA's General Manager including misuse of the GSWMA's letterhead to fraudulently and criminally provide job letters to persons who are not employees of the GSWMA to facilitate such persons obtaining US visas.

[29] With respect to the publication on 11th January 2019 concerning the destruction of financial records, counsel for Mrs. Layne submits that this article is directly related to the credit card allegation first published on 4th January 2019, and that the 11th January 2019 article gives the ordinary reasonable reader the clear impression that the defendants were insinuating that destruction of financial documents were underway to cover up the credit card allegation.

[30] As regarding the allegation concerning the use of the letterhead, counsel for Mrs. Layne posits that the ordinary reasonable reader would link the letterhead allegation to the credit card allegation and to general wrongdoing at GSWMA. Counsel concludes therefore that the ordinary reasonable reader would understand that the defendants in the editorial published under the captioned "The Solid Waste Investigation!!!" on 4th January 2019 were insinuating that Mrs. Layne was a party to the letterhead allegation. Mrs. Layne's argument is that on the totality of the offending articles the ordinary reasonable reader will conclude that the defendants were saying as a fact that, "there is credible evidence, which merits an investigation, of massive corruption connected with the claimant's stewardship as General Manager of GSWMA including misuse of the letterhead of GSWMA to fraudulently and criminally provide job letters to persons who are not employees of GSWMA to facilitate such persons in obtaining US visas."⁹

⁹ Paragraph 29 of Submissions filed on behalf of Mrs. Layne on 14th February 2022

The defendants' argument

- [31] The defendants submit on the other hand that the court must determine whether the words are capable of bearing defamatory meaning, and if so, identify the permissible range of meanings attributed to them, relying on the Court of Appeal decision in **Vaughn Lewis v Kenny Anthony**¹⁰.
- [32] The defendants further argue that they merely published the fact of an allegation, and deny that the words conveyed that Mrs. Layne had committed serious criminal offences, or that there was massive corruption connected with Mrs. Layne's stewardship as GSWMA's General Manager.
- [33] Counsel for the defendants argues further that Mrs. Layne alleges a defamatory imputation other than the ordinary meaning of the impugned words. Counsel for the defendants submits that the defamatory implication which the words objectively bore is that Mrs. Layne misused the GSWMA credit card to fund a trip to London for her and her husband, who had an appeal being heard in the Privy Council. The defendants argue that this meaning is only discernible by way of implication. They submit that to sustain an allegation of a defamatory meaning by innuendo, the particulars of facts supporting such innuendo must be set out, but that Mrs. Layne had not done so.

My take on whether the words were plainly and ordinarily defamatory or at all

- [34] I do not accept the defendants' characterisation of Mrs. Layne's position. Mrs. Layne did not plead or pursue a case of innuendo. The case presented by Mrs. Layne is that the meanings arise from the natural and ordinary meaning of the words themselves read in context, and do not depend on extrinsic facts known to a limited class of readers.
- [35] The publications asserted that the New Today had been reliably informed that GSWMA funds were used to facilitate the trip to London, that the credit card was

¹⁰ Civil Appeal No. 2 of 2006

allegedly used for personal expenses, and that documents were burned under suspicious circumstances shortly after the allegations surfaced. These matters were presented in a manner which invited the reader to draw the inference of misconduct and concealment.

- [36] There is no innuendo in the publication. The meanings are not oblique or allusive. Rather, I find that the plain, ordinary and natural meaning of the words in question was that the GSWMA credit card was improperly used to fund a trip to London by Mrs. Layne and her husband who was a key figure in the Grenada Revolution. The words also plainly meant that financial records were destroyed to cover up that misuse. The improper use of the letterhead also suggested a corrupt use of the property belonging to GSWMA and as such are purely defamatory.

Having found that the offending words are plainly and ordinarily defamatory, are those words in fact defamatory of Mrs. Layne?

- [37] Citing **Morgan v Odhams Press Ltd**, Mrs. Layne's counsel submits that the applicable test is whether the ordinary reasonable reader would identify the claimant as the person defamed. In the present case, while Mrs. Layne was not expressly named, it is not in dispute that she served as GSWMA's General Manager at the material time, a senior position of the statutory authority. Indeed, it was conceded by the defendants that although Mrs. Layne is not named or identified in the offending publications, the words and statements published would reasonably lead readers to conclude that she was the person referred to in the publication.
- [38] It is also undisputed that Mrs. Layne is married to Mr. Joseph Layne, and that at the material time Mr. Layne was due to be heard on an appeal before the Privy Council. Against this factual background, and having regard to the nature of the allegations published, it seems quite clear to me that the ordinary reasonable reader would readily identify Mrs. Layne as the person to whom the allegations related.

[39] In view of these matters, I am satisfied that the impugned words with respect to the credit card were capable of referring to Mrs. Layne, did in fact refer to Mrs. Layne, and were defamatory of her. The publications imputed dishonesty, corruption and abuse of office, matters which plainly tend to lower a person in the estimation of right-thinking members of society. The allegations struck at Mrs. Layne's integrity in the discharge of her functions as GSWMA's General Manager thereby disparaging her professional reputation.

[40] I am hard pressed, however, to find that the letterhead publication, taken on its own, was inherently defamatory of Mrs. Layne as (1) the publication merely reported the fact of the allegation of the use of the GSWMA's letterhead; and (2) more importantly, there is nothing in the impugned material to suggest to the ordinary reader that it was Mrs. Layne who may have used the letterhead to assist persons seeking to obtain a US visa.

[41] The defendants have asked the court, if it finds that the challenged words are defamatory and defamatory of Mrs. Layne, to consider whether they may rely on the defences of fair comment or qualified privilege. The question then arises whether the defamatory statements can be defended on such grounds.

Fair Comment

The relevant law

[42] **Section 13 of the Libel and Slander Act¹¹** reads:

"In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expressions of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved."

[43] To avail themselves of the defence of fair comment, or "honest comment" as endorsed by Phillips LJ in **Spiller and another v Joseph and others¹²**, the

¹¹ CAP 171

¹² [2010] UKSC 53

defendants must establish that the words in question are honest or fair comment on a matter of public interest¹³. In **Vere Bird III v Gaston Browne**¹⁴, Byer J explained the defence of fair comment as follows:

“For the Defendant to avail himself of this defence he must however show that the words are comments and not statements of facts. They must also show that there is a basis, which is some allusion, to the facts underpinning the comment, that it is based on facts that are true or protected by privilege and the comment is one that is objectively fair in that an honest and fair-minded person could hold that view. ‘The defence is not inapplicable because the comment was prejudiced or exaggerated or “unfair” in the ordinary sense of the word’¹⁵ and finally the comment must be on something that is of public interest. That is, ‘one which has been expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern’¹⁶.”

[44] Lord Nicholls in the case of **Cheng Albert and another v Tse Wai Chun Paul**¹⁷, relied on by both parties, stated the following five ingredients of the defence described as “non-controversial” and “well established”:

- (1) The comment must be a matter of public interest.
- (2) The comment must be recognizable as comment as distinct from an imputation of fact.
- (3) The comment must be based on facts which are true or protected by privilege.
- (4) The comment must explicitly or implicitly indicate at least in general terms the facts on which it is based¹⁸.
- (5) The comment must be one which could have been made by an honest person, however prejudicial he might be and however exaggerated or obstinate his views. It must be germane to the subject matter criticized.

[45] It is a requirement that a defendant who pleads the defence of fair comment in a defamation claim must establish all the requirements of the defence. Further, as

¹³ “Gatley on Libel and Slander” (12th edn.) at para 12.1

¹⁴ ANUHCv2019/0683

¹⁵ Abraham Mansoor and Ors v Grenville Radio Ltd ANUHCv2004/0408 at paragraph 102

¹⁶ *ibid*

¹⁷ (2000) 10 BHRC 525

¹⁸ Spiller et al v Joseph et al [2010] UKSC 53

explained in **Cheng Albert and another v Tse Wai Chun Paul**¹⁹, even where a comment satisfies the objective limits of the defence, it will lose its protection if it is shown that the defendant did not honestly hold the opinion expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, even if it was the dominant or sole motive, did not of itself defeat the defence, however, proof of such motivation may be evidence from which lack of genuine belief in the view expressed may be inferred²⁰.

[46] The distinction between comment and fact is also critical. In the case of **Hunt v Star Newspaper**²¹, Fletcher Moulton LJ stated the following:

“Any matter, therefore, which does not indicate with a reasonable clearness that it purports to be comment, and not statement of fact, cannot be protected by the plea of fair comment.”

[47] The words must be comment, not a statement of fact, although an inference of fact from other facts may amount to a comment²². This principle was explained in **Gatley on Libel and Slander**²³ as follows:

“...if the author sets out facts in relation to the Claimant’s conduct and states that his inference from those facts is that the Claimant must have been bribed so to act his statement will fall within the defence.”

[48] In considering the defamatory statement and the defence of fair comment, I am guided by the above principles. The particulars of fair comment as pleaded by the defendants are as follows:

- (1) The company is a state owned corporation which is subject to the oversight and application of the policies of the government of Grenada in the conduct of its affairs.
- (2) The company is a public authority whose enterprise objective is the provision of environmental and sanitation services to the public.

¹⁹ (2000) 10 BHRC 525

²⁰ (2000) 10 BHRC 525

²¹ [1908] 2 KB 309

²² *Abraham Mansoor et al v Grenville Radio Limited et al* ANUHCV2004/0408

²³ *Sweet & Maxwell* (10th edn.) 2004 para 12.10

- (3) The conduct of the affairs of that statutory authority, the management and deployment of its resources are all matters in which the public is legitimately concerned.
- (4) There was an allegation of the misuse of the company's funds.
- (5) The defendants' words and publication were to the effect that there is such an allegation which ought to be investigated.
- (6) That there is such an allegation or that such allegation needs to be inquired into formally, are matters in which the public has a legitimate interest, or with which it is legitimately concerned and on such matters it is desirable that all should be able to comment freely.
- (7) Mrs. Layne served as GSWMA's General Manager at the time of the publication and the senior executive officer of that state owned corporation.
- (8) The words contained in the publication contained the expression of the defendants' opinion on how the allegation should be investigated and what matters should be covered by any investigation into those allegations.

[49] With respect to the requirement that the comment must be one which an honest person could have made, counsel for the defendant relies on the case of **Abbott v Hadeed**²⁴, where our Court of Appeal referenced the decision in **Tse Wai Chun Paul v Albert Cheng**²⁵ in the following manner:

“...Lord Nicholls of Birkenhead indicated that the touchstone in determining whether a comment is fair is the honesty of the defendant in his belief in the view that he has expressed. Provided that the views expressed are honestly held and are germane to the subject matter on which it is made, it matters not how prejudiced or exaggerated they are. At paragraph 24, he stated that honesty is to be determined objectively.”

The defendants' views on fair comment

[50] Citing **Abbott v Hadeed**, defense counsel argues that provided an honestly held opinion is germane to the subject matter, the degree of prejudice or exaggeration

²⁴ HCVAP2010/0041

²⁵ [2001] EMLR 777

in the comments is irrelevant. Counsel for the defendants states that a reading of the words published in the 4th January 2019 publication reveals that the words and statement published contain questions and commentary on the allegation and matters of public interest relative to the story, and that where they appear to be critical of the GSWMA, they are fair and proper comments and criticisms of the conduct of the business of a public authority.

Mrs. Layne's views on fair comment

[51] Counsel for Mrs. Layne however submits that the defence of fair comment should fail for the following reasons:

- (1) The articles were presented in the main as assertions of fact, not opinion.
- (2) The underlying facts, namely the facts contained in the credit card allegation, the letterhead allegation, and the destruction of financial records allegation were untrue, and the defendants did not exercise responsible journalism in publishing them.

[52] Counsel for Mrs. Layne supplements his argument that the facts on which the defamatory statements were made concerning the credit card allegation were not true by pointing out that the investigation into the defendants' assertions proved that the GSWMA credit card was not misused.

Application of the law on fair comment to these facts

[53] Applying the principles of law, it is easily accepted that the management and use of public funds by a statutory authority such as the GSWMA is plainly a matter of public interest. Mrs. Layne served as the GSWMA's General Manager at the material time, and public scrutiny of her management of its affairs was legitimate.

[54] However, I am of the view that the defence of fair comment fails at a more fundamental level. The challenged publications were not presented as expressions of opinion or evaluative commentary. They were presented, in

substance and tone, as assertions of fact: that Mrs. Layne had engaged in or was involved in the unlawful and corrupt use of the GSWMA credit card to finance a personal trip overseas; that financial documents were destroyed in suspicious circumstances; and that such conduct warranted investigation.

[55] The repeated references to being “reliably informed”, the assertion of specific alleged transactions, the detailed narrative concerning document destruction, and the manner in which the allegations were framed conveyed to the ordinary reasonable reader that the defendants were asserting the truth of the allegations, not merely expressing a view or inviting debate.

[56] Moreover, the defence of fair comment requires that the comment be based on facts which are true or protected by privilege. It cannot be disputed that the independent investigation commissioned by GSWMA’s Board of Directors found no misuse of the credit card effectively exonerating Mrs. Layne of wrongdoing. The investigation found the allegations to be “completely false”. The factual substratum upon which the defendants purported to comment was therefore untrue.

[57] In the circumstances, the defence of fair comment cannot succeed. Comment based upon false notions, presented as truth is not protected by the defence of fair comment. This court therefore finds that the publications concerning the alleged misuse of the GSWMA credit card and the destruction of financial records were statements of fact, not comment; that they were based on untrue allegations; and that the defendants are not entitled to rely on the defence of fair comment as a result.

Qualified Privilege

[58] The modern defence of qualified privilege in respect of publications to the world at large was articulated by Lord Nicholls in **Reynolds v Times Newspaper Ltd**²⁶. His Lordship identified a non-exhaustive list of factors to be considered in

²⁶ [2001] 2 AC 127

determining whether such publication of defamatory material was protected in the public interest, including:

- (i) 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.
- (ii) The nature of the information and the extent to which the subject matter is a matter of public concern.
- (iii) The source of the information.
- (iv) The steps taken to verify the information.
- (v) The status of the information.
- (vi) The urgency of the matter as news is often a perishable commodity.
- (vii) Whether comment was sought from the claimant or some other person with knowledge of the facts.
- (viii) Whether the publication contained the gist of the claimant's side of the story.
- (ix) The tone of the publication. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
- (x) The circumstances of the publication, including the timing.

[59] **Reynolds** privilege protects the publication of defamatory material where (1) it was in the public interest that the information should be published and (2) the publisher acted responsibly in publishing the information²⁷. Lord Nicholls emphasised that the list was not exhaustive and that the weight to be accorded to each factor would vary from case to case.

[60] Counsel for the defendants in support of a finding of the application of the defence of privilege relies on **Adam v Ward**²⁸, a 1917 decision, and **Horrocks v Lowe**²⁹, a 1975 decision. Counsel for the defendants further refers to paragraph 51 of the case of **Jameel et al v Wall Street Journal Europe SPRL**³⁰ as follows:

“[51] If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. They must be part of the story. And the more serious the allegation, the more important it is that it should make a real contribution to the public interest element in the article. But whereas the question of whether the story as a whole was a matter of public interest must be

²⁷ Per Lord Phillips in *Flood v Times Newspapers Ltd.* [2012] 2 AC 273

²⁸ [1917] AC 309

²⁹ [1975] AC 135

³⁰ [2006] UKHL 44

decided by the judge without regard to what the editor's view may have been, the question of whether the defamatory statement should have been included is often a matter of how the story should have been presented. And on that question, allowance must be made for editorial judgment. If the article as a whole is in the public interest, opinions may reasonably differ over which details are needed to convey the general message. The fact that the judge, with the advantage of leisure and hindsight, might have made a different editorial decision should not destroy the defence. That would make the publication of articles which are, *ex hypothesi*, in the public interest, too risky and would discourage investigative reporting.”

[61] The particulars of the defence of qualified privilege as pleaded by the defendants are as follows:

- (1) The first defendant is an experienced journalist and investigative reporter.
- (2) The defendants are in the business of news reporting and journalism.
- (3) The role of a free press is established in modern democratic societies.
- (4) The company is a state owned corporation which is subject to the oversight and application of the policies of the government of Grenada in the conduct of its affairs.
- (5) The company is a public authority whose enterprise objective is the provision of environmental and sanitation services to the public.
- (6) The conduct of the affairs of that statutory authority, the management and deployment of its resources are all matters in which the public is legitimately concerned.
- (7) There was an allegation of the misuse of the company's funds.
- (8) The defendants' words and publication were to the effect that there is such an allegation which ought to be investigated.
- (9) That there is such an allegation or that such allegation needs to be inquired into formally, are matters in which the public has a legitimate interest, or with which it is legitimately concerned and on such matters it is desirable that all should be able to comment freely.
- (10) Mrs. Layne served as the General Manager of the Company at the time of the publication and the senior executive officer of that state owned corporation.
- (11) The defendants were at all relevant times speaking in their capacity as journalists and members of the free press.

- (12) The defendants published the words complained of, in the furtherance or pursuance of a legal, social and moral duty of the free press to engage the public on matters of national importance and to pursue the legitimate interest of communicating its perspective on emerging news information.
- (13) The public had a common and corresponding interest in the subject matter.
- (14) The defendants were under a legal, social and moral duty to publish the words complained of at the relevant times, in the publications complained of and during the currency of an investigation into the allegations.

[62] As with the defence of fair comment, it is a beyond trite matter that the management of GSWMA's affairs, including the use of public funds, is a matter of public interest. However, that conclusion does not end the inquiry. The critical question is whether the defendants acted responsibly in publishing the defamatory allegations.

[63] Counsel for the defendants submits that the allegation of the credit card misuse was the whole story in the 4th January 2019 publication, and it would be impossible to publish without referring to Mrs. Layne and the details of the accusation. Counsel also submits that the publications met the conditions of responsible journalism to which qualified privilege attaches.

[64] It is for the court to determine whether the defendants met the standard of responsible journalism. In **Flood v Times Newspaper**³¹, relied on by both counsel for the parties, Brown LJ stated the following:

"In deciding whether Reynolds privilege attaches (whether the Reynolds public interest defence lies) the judge, on true analysis, is deciding but a single question: could whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question

³¹ [2012] 2 AC 273

to be in the public interest? In deciding this single question, of course, a host of different considerations are in play.”

[65] The decision in **Flood** is instructive. In that case, the defence of qualified privilege succeeded notwithstanding that the allegations ultimately proved to be unfounded. Crucially, however, the publication followed a lengthy and careful investigation by the journalists, the obtaining and analysis of documentary and financial evidence, engagement with the relevant authorities, and the existence of objective circumstances strongly suggesting that the allegations were credible at the time of publication.

[66] In deciding that **Reynolds** privilege applied in **Flood**, the court stated that the defendants were motivated by a concern to ensure that the investigation was being or would be properly pursued. They had themselves investigated the sources and nature of the allegations exhaustively over a substantial period as far as they could” and there was “a strong circumstantial case” that the claimant was guilty of the allegations.

[67] The present case stands in stark contrast. I am mindful that the task of balancing the right of journalists to speak on matters of critical public interest is one that must be jealously guarded. But at the same time, the case law suggests that this right must be exercised responsibly, with deference and with respect for the good name of those who may be affected by the exercise of journalistic expressions. It is for this reason that the law tasks the journalist with, among other things, verifying material (where possible) before publication. I would add that publishing material without verification or careful investigation should be reserved for the rarest of instances, although I can hardly think of any instances where publication without any effort to validate its content would not be offensive. In this case, while the defendants purported to seek comment from Mrs. Layne, the manner in which it was done, and significantly the manner in which the defendants proceeded with the publications thereafter, leaves very little doubt that seeking comment from Mrs. Layne was perfunctory and pro forma. This is readily apparent by, among other things, the fact that while Mrs. Layne’s categorical denial of the allegations was reported, publication proceeded without pause in face of the fact, known by the defendants, that an investigation was afoot. Equally the allegations were

framed in a manner which conveyed their truth rather than their provisional or unverified nature.

[68] The tone of the publications is particularly relevant and significant. The defendants did not confine themselves to reporting the existence of the allegation. Instead, they published detailed assertions as to how and for what purposes the credit card was allegedly used, referred to being “reliably informed”, linked Mrs. Layne to other instances of alleged wrongdoing, and suggested the destruction of financial records in suspicious circumstances. The allegations were also repeated and amplified over successive publications.

[69] Moreover, to repeat, the defendants published the allegations before any investigation was conducted by GSWMA’s Board of Directors despite being informed that such an investigation was to take place. On the facts of this case, nothing suggests that there was any urgency which warranted publication without scrupulous verification. As the defendants themselves asserted in the publications, this was a simple case of whether or not a GSWMA credit card was used improperly and whether it was Mrs. Layne who did so. Verification could have easily been provided by the outcome of the investigation which the defendants knew was underway. I would say all this because the seriousness of the allegations, involving corruption, misuse of public funds, and concealment of wrongdoing with the implications for easily destroying the good name and reputation of one accused of such wrongdoing demanded a commensurately high standard of verification.

[70] All the circumstances as heretofore highlighted therefore suggest that while it is true that the subject matter was one in which the public would have held a significant stake and ought to have been informed, journalistic integrity required by the Reynolds standards (usually referred as responsible journalism) was not met. The publications went beyond neutral reportage and adopted allegations as statements of fact without adequate investigation or verification.

[71] In those circumstances, the defendants are not entitled to rely on the defence of qualified privilege.

Malice

[72] Mrs. Layne also asserts that malice renders ineffective the defendants' reliance on the defences of fair comment and qualified privilege. Although both defences have already been found to be unavailable to the defendants, I will address the issue of malice for completeness.

[73] Where words are published as fair comment or on an occasion of qualified privilege, a claimant may nonetheless succeed in a claim in defamation if he or she proves that the defendant was actuated by malice. The burden of establishing malice rests on the claimant³², and it is for the court to decide as a question of fact whether the defendant was actuated by malice in publishing the impugned statement. Allegations of malice must therefore be clearly pleaded and supported by cogent evidence³³.

[74] Rawlins JA in **David Carol Bristol v Dr. Richardson St. Rose**³⁴ stated the following with respect to 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 accuracy 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.”

[75] Counsel for Mrs. Layne argues that in publishing the defamatory statements, the defendants were actuated by malice. The evidence relied upon includes a history of antagonistic reporting by the defendants directed primarily at Mrs. Layne's husband in the months immediately preceding the publications. It is Mrs. Layne's

³² Halsbury's Laws of England para 632

³³ Halsbury's Laws of England para 632

³⁴ Saint Lucia Civil Appeal No. 16 of 2005

evidence that she became the collateral target of that animus by reason of her marital association and professional position.

[76] On the other hand, the defendants argue that for malice to be relevant it must be directed against Mrs. Layne. They refer to the authority of **Horrocks v Lowe**³⁵, and argue that since on Mrs. Layne's pleadings the malice is directed at Mrs. Layne's husband and not directly against her, it is not relevant. Counsel for the defendants argues that the target of the alleged animus was Mr. Layne, whose eleven high-profile convictions for his role in the Grenada Revolution are indisputable, rather than Mrs. Layne herself. Counsel argues that Mrs. Layne cannot be defamed by way of an improper motive relative to another person, and that her assertions are incompetent to dislodge the defence of qualified privilege and fair comment.

[77] I do not accept that **Horrocks v Lowe**³⁶ supports so narrow a proposition. In **Horrocks v Lowe**³⁷, Lord Diplock stated the following at page 150:

"Apart from those exceptional cases, what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, "honest belief." If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. 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 recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental 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.

³⁵ [1975] AC 135

³⁶ *ibid*

³⁷ *ibid*

Even a positive belief in the truth of what is published on a privileged occasion - which is presumed unless the contrary is proved - may not be sufficient to negative express malice if it can be proved that the defendant misused the occasion for some purpose other than that for which the privilege is accorded by the law. **The commonest case is where there dominant motive which actuates the defendant is not a desire to perform the relevant duty or to protect the relevant interest, but to give vent to his personal spite or ill will towards the person he defames.** If this be proved, then even positive belief in the truth of what is published will not enable the defamer to avail himself of the protection of the privilege to which he would otherwise have been entitled." [Emphasis added]

[78] Lord Diplock explained that even where a defendant holds a positive belief in the truth of what is published, privilege will be defeated if it is shown that the dominant motive for publication was an improper one, including, in the view of this court, the desire to injure, to pursue a collateral purpose, or to misuse the occasion for ends unrelated to the duty or interest which attracts the privilege.

[79] Mrs. Layne contends that the following are indicative of malice:

- (1) From September 2018 to December 2018, the defendants carried on a propaganda war against her husband. In the three-month period leading up to the aforesaid 4th January 2019 offensive articles, the defendants wrote and published a spate of articles attacking Mrs. Layne's husband over his alleged role in the 1979 - 83 revolutionary period, portraying him as a violent person and vehemently opposing his application to be admitted to the Grenada Bar as an attorney-at-law, to which purpose the trip to England was related.
- (2) Mrs. Layne's husband responded to the attacks on him which response engaged a public back and forth with the first defendant in which Mrs. Layne's husband disclosed that the first defendant had been convicted for the offence of stealing in recent years. The first defendant confirmed the existence of this conviction under cross examination.
- (3) The revelation by Mrs. Layne's husband that the first defendant has a recent criminal conviction for stealing escalated the attacks on her husband resulting thereafter in a barrage of articles in the New Today newspaper, continuing up to 21st December 2018.

(4) Mrs. Layne's husband was the principal target of the allegation of corruption- "the person at the centre of the alleged misuse of the funds belonging to the state body"³⁸.

[80] Mrs. Layne's posture on this issue is that the defendants, in deciding to publish the offending article, did not exercise professional judgment arising from the years of experience of the first defendant as a journalist, but were driven by spite resulting in a 'cavalier, slipshod or careless manner of reporting.

[81] I can do no more than quote from the articles themselves. The first opens with a charge pointing to Mrs. Layne's husband when it said –

"The New Today has been reliable [sic] informed that funds from the Grenada Solid Waste Management Authority were *used to facilitate a trip to a country in Europe by a prominent figure of the ill-fated 1979-83 Grenada Revolution*". [Italics added]

[82] I quote again,

"A well-placed source told this newspaper that the credit card of the Solid Waste Authority was allegedly *used to purchase airline tickets from a local travel agency for the top revolutionary figure* and his wife to make the overseas trip within the last six months of the year.

He said that the credit card was also allegedly used to pay for other expenses related to the overseas trip such as hotel accommodation and meals.

The former revolutionary figure is not known to be an employee of the Solid Waste Authority." [Italics added]

[83] I quote again –

"A well-placed official contacted THE NEW TODAY newspaper following last week's issue which focused on the alleged misuse of the company's credit card to facilitate an overseas trip by a prominent member of the 1979-83 Grenada Revolution who is not known to be an employee of the state body."

³⁸ 4th January publication

[84] The entire tone and content of the articles leave me with the solid view that t Mrs. Layne's husband was the principal focus of the defendants' writings, and that the allegations concerning the misuse of the GSWMA credit card were framed so as to implicate him as "the person at the centre of the alleged misuse of the funds belonging to the state body." However, Mrs. Layne, as GSWMA's General Manager was also explicitly, inevitably and directly implicated by those allegations.

[85] Malice, for the purposes of defeating defences in defamation, is not confined to personal animosity directed exclusively towards the claimant. It may equally be established where a defendant publishes defamatory material indifferently, without caring whether it is true or false, or where the dominant motive for publication is an improper one, unrelated to the duty or interest said to justify the occasion. In circumstances where a defendant knowingly or indifferently sacrifices the reputation of a claimant in pursuit of a collateral vendetta against another, I am of the view that the requisite malice may be inferred.

[86] I am satisfied on the evidence that the defendants acted with indifference to the truth of the allegations published. They failed to undertake meaningful verification, rushed to publication despite knowing the gravity of the allegations, and persisted in repeating and amplifying the accusations in successive issues of the newspaper. Significantly, although the defendants called publicly for an investigation, they did not publish the fact or outcome of that investigation when it exonerated Mrs. Layne.

[87] When the tone, timing and persistence of the publications are considered cumulatively, and viewed against the background of the sustained antagonistic campaign waged by the defendants in the months immediately preceding the impugned articles, the inference of malice becomes inescapable. The defendants repeatedly returned to the allegations, escalated their seriousness and employed language calculated to inflame suspicion, all while failing to publish any clarification, retraction or the outcome of the investigation they themselves had urged. This pattern of conduct demonstrates that the occasion of reporting on a matter of public interest was misused for an improper purpose. In the process,

Mrs. Layne's reputation was treated as expendable in the pursuit of a collateral agenda, in contravention of journalistic integrity.

[88] Therefore, I find that the defendants were actuated by malice in the publication of the offending articles. That finding would, in any event, have defeated the defences of fair comment and qualified privilege had they otherwise been available.

Conclusion

[89] For the reasons set out above, it is this court's finding that the words complained of, as published in the January 4th, 11th, and 18th, 2019, editions of **The New Today** except those words related to the letterhead allegations, were defamatory of Mrs. Layne.

[90] It is further found that the defendants have failed to establish the defences of fair comment or qualified privilege. In any event, those defences would have been defeated by this court's finding of malice.

[91] Accordingly, the defendants are jointly and severally liable to Mrs. Layne for defamation.

[92] The matter will now proceed to the assessment of damages and the determination of any ancillary relief sought.

Order

[93] Accordingly, it is therefore ordered and directed as follows:

- (i) Judgment is granted in favour of the claimant;
- (ii) Damages and costs to the claimant are to be assessed if not agreed within twenty-one days from today's date with respect to defamation by all the articles except the allegations of defamation related to the letterhead;
- (iii) Failing settlement, the claimant shall file and serve witness statements and submissions with authorities in support of the assessment;

- (iv) The defendant shall file and serve witness statements and submissions with authorities in response within twenty-one (21) days of service by the claimant;
- (v) The claimant shall apply to the court office for the scheduling of the assessment of damages and costs before the master.

Raulston Glasgow
High Court Judge

By the Court

Registrar