

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2015/0458

BETWEEN:

PATRICK SIMMONS

Claimant

and

KEITH CLAUDIUS MITCHELL

Defendant

Before:

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

High Court Judge

Appearances:

Mr. Alban John with him Ms. Hazel Hopkin for the Claimant

Mr. Lawrence Maharaj SC with him Ms. Sheriba Lewis, Mrs. Amy Bullock-Jawahir,

Mr. Vijaya Maharaj and Ms. Nyala Badal for the Defendant

2022: September 29;
November 25; (Closing submissions)
2023: May 15.

JUDGMENT

[1] **GLASGOW, J.:** Dr. Keith Mitchell, ("Dr. Mitchell") and Mr. Patrick Simmons ("Mr. Simmons") are two long-serving politicians in the State of Grenada. They are members of two different political parties. These proceedings concern whether words spoken by Dr. Mitchell at a town hall meeting were capable of bearing the meanings ascribed to them by Mr. Simmons and whether those meanings are defamatory of Mr. Simmons.

Background

[2] Mr. Simmons is a member of the National Democratic Congress (NDC) political party. He served as Minister with responsibility for Youth Empowerment and Sports during the period 2008-2013 when the NDC formed the Government. On 19th February 2013, general elections were held in Grenada and the NDC lost power to the New National Party (NNP) led by Dr. Mitchell who is the political leader of the NNP. The NNP claimed all fifteen seats in that election. Dr. Mitchell then became Prime Minister of Grenada.

[3] On or about 1st June 2014, Dr. Mitchell, in his capacity as Prime Minister and Minister responsible for Finance (Finance Minister), attended a town hall meeting in Brooklyn, New York, United States of America hosted by Government officials. This town hall meeting was attended by members of the public, including Grenadians residing in New York. At the meeting, Dr. Mitchell was asked the following question by one attendee:

“I would like to find out what is the situation with the University, the project for the University of the West Indies in Spring Valley and secondly I would like to know...why were the people of Grenada told that the land was purchased by the NDC from the shareholders and sold to the Government?”

[4] Dr. Mitchell, in his response to the question, stated:

“....and it is a fact sister that the land was bought by the company which had some persons who were ministers of Government in that company and it was then sold on to Government and I have a fundamental problem with this. Some people are talking corruption. I don't see how any member of my Government will go and buy a piece of land knowing that the Government wants it, buy it and then sell it to the Government. Clearly, they are not buying it for charity. They clearly was (sic) buying it as a part really of making money...”

[5] When the attendee challenged Dr. Mitchell's utterances, Dr. Mitchell replied:

“No my dear, the facts are there. The company is there. I'm talking from Cabinet papers my dear. I'm sorry that you don't agree with me, but I'm not speaking from the top of my head. These are facts. Ask Simmons if he

wasn't a member of that company as an example, just ask him. I can tell you more persons who were on it; not Peter David."

Mr. Simmons' case

- [6] Mr. Simmons pleads that the words uttered by Dr. Mitchell, in his address to the attendees at the meeting, were defamatory. The fact that Peter David (former Minister of Government during the 2008 to 2013 NDC administration) was excluded from individuals involved in the alleged corrupt act shows that Dr. Mitchell knew the slanderous effect of those words. Further, the fact that Dr. Mitchell specifically mentioned Mr. Simmons' name in his allegations shows that he intended to smear his good name, reputation and calling as a politician.
- [7] He goes on to say that the words uttered by Dr. Mitchell in their natural and ordinary meaning or innuendo refer to Mr. Simmons in his capacity as a Minister of Government and meant or intended to convey as fact that:
- (1) Certain members of the Grenadian Government preceding his administration bought land which they knew was needed by the Government for the benefit of the State and then sold it to Government for profit.
 - (2) Mr. Simmons was one of the members of the company which acquired the land and sold it to the Government for profit.
 - (3) Mr. Simmons used his position as a Minister of Government to profit at the expense of the Government and people of Grenada.
 - (4) Mr. Simmons, as a Minister of Government, engaged in corrupt practices or in a corrupt transaction for profit at the expense of the Government and people of Grenada.

[8] Mr. Simmons pleads that the responses given by Dr. Mitchell were mixed with truth and falsehoods. The particulars of truth are:

(1) A company did exist in which very old and deceased members of a past Government held shares and which owned lands at Hope, St. Andrew; and

(2) That company did sell lands to the 2008 to 2013 NDC Government. In respect of the particulars of falsehoods, Mr. Simmons pleads that the following are untrue:

(a) The insinuation that the company acquired the lands knowing that the Government needed it so as to sell it to the Government for profit.

(b) Mr. Simmons was a shareholder of that company.

(c) Mr. Simmons was engaged in corrupt practices for profit at the expense of the Government and people of Grenada; and

(d) That the allegations were facts which can be proved by reference to Cabinet documents.

[9] Mr. Simmons claims that his character as a politician and public servant has been seriously disparaged and that he has been brought into public odium, contempt and ridicule. As a result, he seeks general, aggravated and exemplary damages for defamation of character; an injunction restraining Dr. Mitchell and his agents or servants from uttering, repeating, publishing and printing the defamatory words, interest and costs.

Dr. Mitchell's Defence

[10] Dr. Mitchell states that his first response to the attendee was in respect of the purchase of the land. The purchase agreement made between Spring Valley Co-operation Limited ("Spring Valley") and the Government of Grenada

("Government") is evidenced by a conveyance dated 11th April 2012 and recorded in the Deeds and Land Registry in Liber 9-2012 at page 852. The Government has not paid the purchase monies to Spring Valley. Dr. Mitchell tendered evidence that under the company's Memorandum and Articles of Association filed on 16th March 1989, the following persons were listed as shareholders of the company:

- (1) Joachim St. John, La Fortune, St. Patrick
- (2) Lennox & Denise Perrotte, Rivulet Lane, Grenville, St. Andrew
- (3) Pauline Andrew, Grenville, St. Andrew
- (4) Carlyle John, Mt. Craven, St. Patrick
- (5) Michael Lett, Petite Esperance, St. David
- (6) Althema St. John, La Fortune, St. Patrick
- (7) Ben Jones, Moyah, St. Andrew

[11] In respect of the shareholders, Pauline Andrew served as a minister of Government during a NDC led administration previous to the 2008 to 2013 NDC government. Carlyle John served as a public servant. Ben Jones served as a former Prime Minister of Grenada and Michael Lett served as a minister of Government during the 2008-2013 NDC led administration.

[12] Mr. Simmons also served as a minister of Government during the 2008-2013 NDC led administration. Dr. Mitchell pleads that he was informed that Mr. Simmons made inquiries soon after the 2013 elections about the status of payment of the purchase monies to the company. Further, Dr. Mitchell states that Mr. Simmons was closely associated with Pauline Andrew, who was Mr. Simmons' friend and a key member management team during his political campaign. Ms. Andrew had previously held the constituency seat that was later won by Mr. Simmons.

[13] As to the words referred to in paragraph 5 above, Dr. Mitchell claims that they were based on reports and Cabinet decisions gleaned from Cabinet documents dated 2010-2012. Mr. Simmons served as a member of the Cabinet of Ministers ("Cabinet") during the period when the land was purchased from Spring Valley. Further, as it relates to the words "not Peter David", Dr. Mitchell explains that he mentioned Mr. David's name as he was sitting with him at the head table at the time of the town hall meeting. Dr. Mitchell says that the words "not Peter David"

were spoken spontaneously and were met with a chorus of laughter from the audience.

[14] In respect of the alleged defamatory words spoken, Dr. Mitchell denies that the words bore or were capable of the meanings alleged or any defamatory meaning. Additionally, he denies that the words spoken were intended to denigrate Mr. Simmons in any office, calling, profession or occupation.

[15] Dr. Mitchell relies on the defence of qualified privilege. In summary, the particulars of the pleaded qualified privilege are:

- (1) Dr. Mitchell was at all material times the Prime Minister of Grenada and Minister for Finance and National Security and as such, a public official speaking in his official capacity.
- (2) The words were spoken at a town hall meeting hosted by officials of Government on matters of the state and public interest to Grenadians living in New York.
- (3) The words as alleged contained a fair and accurate report gleaned from Cabinet documents.
- (4) The words complained of were published on a matter of public concern and Dr Mitchell, as Prime Minister, was under a moral, social, legal and public duty to publish the words spoken.

[16] In the alternative, Dr. Mitchell relies on the defence of fair comment. In summary, Dr. Mitchell presents the following facts, among other things, in support of his defence of fair comment:

- (1) Cabinet papers dated 2010-2012 revealed that the previous NDC administration considered two properties to accommodate the University of the West Indies Open Campus Grenada. The land in issue was surveyed by Lett and Partners in August and September 2010. Mr. Michael Lett was closely connected to the surveying firm and was a

shareholder of Spring Valley. The property was valued in the sum of \$7,323,525.00 and was sold to the Government for the sum \$8,500,000.00. Cabinet directed the Attorney General to hold urgent discussions with the owner of the land. Thereafter, Cabinet approved the signing of the agreement for sale and paid Lett and Partners \$44,000.00 for the survey.

- (2) He spoke the words under the belief that the transaction was orchestrated with blatant disregard for the Integrity in Public Life Act¹ and the Prevention of Corruption Act².
- (3) On 11th April 2012, the Government became seized of approximately eighty-eight (88) acres of land at Hope Estate, St. Andrew for the consideration of \$8,500,000.00.

[17] Dr. Mitchell also relies on section 13 of the **Libel and Slander Act**³ and denies that Mr. Simmons is entitled to any relief set out in his prayer or otherwise.

Reply to the Defence

[18] Mr. Simmons in reply to the defence, denied that Dr. Mitchell could avail himself of the defences of qualified privilege and fair comment.

[19] In respect of the defence of qualified privilege, Mr. Simmons's response is that:

- (1) Dr. Mitchell must show that he acted in good faith, without malice and held an honest belief in the truth of the offending words published. However, Mr. Simmons contends that Dr. Mitchell has failed to meet those requirements.
- (2) Dr. Mitchell did not seek comment from Mr. Simmons before uttering and publishing the offending words. His insistence that he was relying on

¹ Cap. 150A of the 2010 Continuous Revised Edition of the Laws of Grenada

² Cap. 252A of the 2010 Continuous Revised Edition of the Laws of Grenada

³ Cap. 171 of the 2010 Continuous Revised Edition of the Laws of Grenada

Cabinet papers, only proves the absence of good faith. Dr. Mitchell must have known that there were no Cabinet papers to support the charge that he was making.

- (3) The offending words had no basis in truth and were spoken maliciously as they were intended to lead the audience to believe that there was evidence to support the charge that Government members purchased land which they knew Government needed so as to sell the same lands to Government to make money.
- (4) The public has no legitimate interest in and can derive no benefit from receiving false and malicious statements.
- (5) No Prime Minister of a free and democratic country which is founded on freedom of information can have a moral, legal, social or public duty to publish and cause false and malicious information to be disseminated among the public.

[20] In response to the defence of fair comment, Mr. Simmons states that:

- (1) The defence is not available for the mere fact that the offending words uttered and published by Dr. Mitchell are false.
- (2) It is clear that Dr. Mitchell was singling out and making a charge of corruption and profiteering at the expense of Government against ministers of Government.
- (3) Dr. Mitchell was at pains to dissociate Peter David, who also served as a Cabinet member, from the defamatory intent. The sting was clearly aimed at Mr. Simmons.
- (4) The offending words uttered were described as "facts" by Dr. Mitchell. Section 13 of the Libel and Slander Act, premised as it is, on allegations of fact and expressions of opinion on which to ground the defence therein intended, cannot apply to Dr. Mitchell and as such he cannot avail himself of that defence. In the absence of expressions of opinions there can be no fair comments.

Issues

[21] The following issues arise for determination:

- (1) Whether the offending words uttered by Dr. Mitchell are capable of the meanings ascribed to them and are defamatory?
- (2) Whether those words are defamatory of Mr. Simmons?
- (3) If yes, whether Dr. Mitchell can rely on the defences of fair comment and qualified privilege.
- (4) If the defences fail, is Mr. Simmons entitled to any relief for damages including aggravated and/or exemplary damages?

Discussion and Analysis

The law with respect to defamation

[22] The authors of **Halsbury's Laws of England** give this explanation of the law of defamation:

“A defamatory statement is a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule, or to disparage him in his office, profession, calling, trade or business⁴.”

[23] Before assessing whether the offending words uttered by Dr. Mitchell are defamatory, the court must consider whether the offending words are capable of bearing the meanings ascribed to them and if yes, whether those meanings are in fact defamatory of Mr. Simmons.

[24] In **Vaughn Lewis v Kenny D. Anthony**⁵ Barrow J.A. stated at paragraph 9 of the judgment that:

“The passage in Halsbury's by which the judge should have guided herself at that stage in her judgment was at paragraph 48. Omitting footnote references it reads:

⁴ Halsbury's Laws of England: (5th edn. 2019) vol. 32, para. 509).

⁵ [2007] ECSCJ No. 64 or (Civil Appeal No. 2 of 2006) (Saint Lucia)

‘It is for the judge to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. If he rules that they are so capable, it is for the jury, or the judge if he is sitting without a jury, to decide whether the words did in fact bear a meaning defamatory of the plaintiff.’

- [25] In this jurisdiction a judge conducts a defamation trial without a jury. Therefore, it is for the judge to determine the possible meanings of the words and whether those words are defamatory of the claimant in the proceedings.

Possible meanings of the impugned words

- [26] The authorities instruct that in determining the meaning of the impugned words, the court is to give effect to the natural or ordinary meanings that a reasonable person would attach to those words. In **Gonsalves v Lynch**⁶, Alleyne J, quoting from **Skuse v Granada Television Limited**⁷, offered the following guidance:

“The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable person watching the programme once....

2. The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.

3. While limiting its attention to what the defendant has said or written, the court should be cautious of an over-elaborate analysis of the material in issue.

4. The court should not be too liberal in its approach.

5. A statement should be taken to be defamatory if it would tend to lower the Plaintiff in the estimation of right-thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.

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

7. The defamatory meaning pleaded by the plaintiff is treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary

⁶ SVGHCV 2002/0405 & 0406

⁷ [2003] EWCA Civ 1694

meaning of the words that which is alleged in the statement of claim and secondly, if not, what (if any) less injurious defamatory meaning do they bear.

8. The Court is not at this stage concerned with the merits or demerits of any possible defence.

[27] **Halsbury's Laws of England**⁸ offers this insight:

"Before it is possible to determine whether or not particular words bear a defamatory meaning, it is necessary to determine their meaning. Whether words are capable of bearing a defamatory meaning is a question of law. However, the single meaning of words for the purpose of the law of defamation is not a question of legal construction but a question of fact, since a lay person will read into words an implication more freely than a lawyer. The meaning is that which the words would convey to ordinary persons. The ordinary person reads between the lines in the light of his general knowledge and experience of worldly affairs. Ordinary men and women have different temperaments and outlooks; some are unusually suspicious; some are unusually naive; and one must try to envisage people between those two extremes and determine what is the most damaging meaning they would put on the words in question.

In determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context. When a claimant complains of words in their natural and ordinary meaning, he must accept that meaning with all the derogatory imputations that it conveys; the ordinary reader takes the imputations as a whole and does not divide them up. The court must not put a strained or unlikely construction upon the words, and overanalyses of the words and their context is to be avoided. If they are capable of bearing a number of good interpretations, it is unreasonable to seize upon the only bad one to give the words a defamatory sense."

[28] In **Slim and others v Daily Telegraph and another**⁹ Lord Diplock LJ stated at page 505 that:

"Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of

⁸ Halsbury's Laws of England, 5th edn. Vol 32 at para 545. See also **Jones v. Skelton** [1963] 1 WLR 1362, 1370-1371 and **Morgan v. Odhams Press Limited** [1971] 1 WLR 1239, 125-1252

⁹ [1968] 1 All ER 497

those meanings. But none of this matters. **What does matter is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is “the natural and ordinary meaning” of words in an action for libel.**” (My emphasis)

[29] I am of the view that a reasonable person hearing Dr. Mitchell’s words in their natural and ordinary sense would take them to mean that:

- (1) Some ministers of the 2008 to 2013 NDC Government purchased land knowing that the Government intended to acquire it for a particular purpose and then sold the land to the Government for profit.
- (2) Some ministers of the 2008 to 2013 NDC Government engaged in corruption or corrupt practices to the detriment of the Government and/or people of Grenada.
- (3) Mr. Simmons was a member or shareholder of a company which bought land with the specific motive of selling it to the Government for profit.
- (4) Mr. Simmons was engaged in corruption or misconduct as a minister of Government.

Are those meanings defamatory?

[30] Dr. Mitchell, in his speech, stated “...[s]ome people are talking corruption”. This statement offers some of the context for the words spoken. Dr. Mitchell was speaking about the actions of some previous Government ministers with respect to the sale of the land. There was an imputation of corruption by those ministers involved in the transaction. An untrue accusation of corruption or corrupt dealings is evidently defamatory since no one would sensibly dispute that such a charge may adversely affect a person’s reputation in his calling or disparage him in his office. To put it in the terminology of the cases, the assertion that former Ministers were corrupt or engaged in corrupt practice(s) are the sort of allegations that tend to lower these former ministers of Government “*in the estimation of right thinking members of society*”.

[31] Dr. Mitchell defended his statements by asserting that “*the Defendant spoke the words in the belief that the transaction was orchestrated with blatant disregard for the Integrity in Public Life Act and the Prevention of Corruption Act*”. This pleading by Dr. Mitchell further imputes corrupt, unethical and reprehensible conduct by the Cabinet ministers in breach of the laws of Grenada. Therefore, I find that the above meanings are defamatory and/or are capable of being defamatory.

Were those meanings defamatory of Mr. Simmons?

[32] The question then arises whether these meanings are defamatory of Mr. Simmons. Learned counsel for Dr. Mitchell, Lawrence Maharaj SC, submits that the words were not capable of being understood as referring to Mr. Simmons since his full name “Patrick Simmons” was not stated or referred to by Dr. Mitchell. Counsel continues that Mr. Simmons has not led any evidence to prove that the words would lead persons acquainted with him to believe that he was the person referred to. I respectfully disagree with these submissions.

[33] Mr. Simmons served as a minister during the 2008-2013 NDC Government when the land was sold to the Government of Grenada. A minister of Government is also a member of the Cabinet. The Cabinet is made up of a limited class or group of people in a small island state like Grenada and as such they can be easily identified by members of the public. Dr. Mitchell’s comments were in reference to the Cabinet. His reference to “Simmons” could only be properly made with respect to the claimant since Mr. Simmons was the only member of Cabinet with that surname. Compounding matters, Dr. Mitchell singled out or identified Peter David. Peter David served with Mr. Simmons as a government minister during the tenure of the very Cabinet to which Dr. Mitchell alluded. Dr. Mitchell imputed corruption to the Cabinet members of the previous Government, save and except Peter David. I find that any reasonable person hearing Dr. Mitchell’s speech in the context in

which it was made would conclude that it was the claimant, Mr. Simmons who was implicated.

[34] Further evidence of this conclusion lies in Dr. Mitchell's fair comment defence when he outlined that Pauline Andrew was Mr. Simmons' close friend and part of Mr. Simmons' political campaign. The connection was made to Pauline Andrews, a shareholder of the company, seemingly to bolster Dr. Mitchell's charge that there was some level of impropriety in the sale transaction. As such, it is somewhat difficult to accept that Dr. Mitchell was not referring to Mr. Simmons in his speech at the town hall meeting.

[35] I find further that Dr. Mitchell suggested Mr. Simmons' involvement in the alleged corruption when he made the definitive assertion, "*[a]sk Simmons if he wasn't a member of that company as an example, just ask him.*" The effect of this statement was that it identified, singled out or implicated Mr. Simmons, a Cabinet member, as being a member of the company or at the very least someone who benefitted from the alleged corrupt scheme or activity involving the sale of the land.

[36] In view of the foregoing, I find that the offending words uttered by Dr. Mitchell are capable of the meanings ascribed to them by Mr. Simmons and are defamatory of him. I find the offending words were capable of disparaging and did disparage Mr. Simmons in his office as a former Cabinet minister and/or calling as a politician. The question then arises whether the defamatory statements can be defended on grounds of fair comment and qualified privilege.

Fair Comment

[37] In respect of the offending words, Dr. Mitchell says that if they are defamatory of Mr. Simmons, the offending statements were fair comment on a matter of public interest.

[38] **Gatley on Libel and Slander**¹⁰ explains the defence in this manner:

“To succeed in the defence the defendant must show that the words are comments and not a statement of fact. However, an inference of fact from other facts referred to may amount to a comment. He must show also that there is a basis for the comment, contained or referred to in the matter complained of, at least to the extent that what is being stated is comment. Finally, he must show that the comment is on a matter of public interest, 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. If the claimant can show that the comment was actuated by malice (which for this purpose means that the defendant was not expressing his genuine opinion) he will defeat the plea. It is not enough, however, to show that the comment was prejudiced or exaggerated or “unfair” in the ordinary sense of the word.”

[39] In **Reynolds v Times Newspapers Ltd and others**¹¹, Lord Nicholls explained the ingredients of a defence of fair comment as follows:

“Traditionally one of the ingredients of this defence is that the comment must be fair, fairness being judged by the objective standard of **whether any fair-minded person could honestly express the opinion in question**. Judges have emphasised the latitude to be applied in interpreting this standard. So much so, that the time has come to recognise that in this context the epithet ‘fair’ is now meaningless and misleading. **Comment must be relevant to the facts to which it is addressed. It cannot be used as a cloak for mere invective.** But the basis of our public life is that the crank, the enthusiast, may say what he honestly thinks as much as the reasonable person who sits on a jury. **The true test is whether the opinion, however exaggerated, obstinate or prejudiced, was honestly held by the person expressing it:** see Diplock J in *Silkin v Beaverbrook News-papers Ltd* [1958] 2 All ER 516 at 518, [1958] 1 WLR 743 at 747.

It is important to keep in mind that this defence is concerned with the protection of comment, not imputations of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere. Further, to be within this defence the comment must be recognisable as comment, as distinct from an imputation of fact. The comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made: see the discussion in *Duncan and Neill on Defamation* (2nd edn, 1983) pp 58–62.

¹⁰ *Gatley, Libel and Slander* 11th edn., Sweet & Maxwell at para. 2

¹¹ [1999] 4 All ER 609 at page 615

One constraint does exist upon this defence. **The comment must represent the honest belief of its author.** If the plaintiff proves he was actuated by malice, this ground of defence will fail.” (My emphasis)

- [40] As can be gleaned from the above, an important ingredient of the defence is that the statements must be comments and not statements of fact. In **Vaughn Lewis v Kenny D. Anthony**¹², Barrow JA stated that:

“A cardinal requirement that must be met for the defence of fair comment to succeed is that the words complained of must be comment and not fact. If they are statements of fact and not comment the defence fails.”¹³.

- [41] Additionally, the facts upon which the comments are made must be true and must not be mixed with report and comment. In **Myrna Liburd v Lorna Hunkins**¹⁴, Blenman JA (as she then was) held that:

“To establish the defence of fair comment, a defendant must prove that the facts on which the comment is founded are true and that the comments on these facts are fair. **In addition, the defendant must also prove that the words complained of are comments and not facts. It is settled law that the defence of fair comment does not cover misstatements of fact. If the words complained of contain allegations of fact, then the defendant must prove that those allegations of facts are true; it is insufficient for the defendant to merely plead that he or she honestly believed them to be true.**” (My emphasis)

- [42] Further, in **Hunt v Star Newspaper Co. Ltd**¹⁵, Fletcher Moulton LJ explained that:

“In the first place, **comment in order to be justifiable as fair comment must appear as comment and must not be mixed up with the facts that the reader cannot distinguish between what is report and what is comment...**

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.

¹² [2007] ECSCJ No. 64 or SLUHCVP2006/0002

¹³ Vaughn Lewis v Kenny D. Anthony [2007] ECSCJ No. 64 at para. 31

¹⁴ SKBHCVP2014/0023 at page 3

¹⁵ [1908-10] All ER Rep 513 at page 517-518

In the next place, **in order to give room for the plea of fair comment the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails.**" (My emphasis)

Comment or fact?

- [43] Counsel for Mr. Simmons, Mr. Alban John, submits that it is well established law that for a defendant to rely on the defence of fair comment, the offending statement made by him must be true and must be comment and not fact. Mr. John relies on the pronouncements made by the court in **Myrna Liburd** which I have recited above.
- [44] Counsel for Dr. Mitchell, Mr. Lawrence Maharaj SC, also submits that for the defence of fair comment to succeed, the defendant must show that words are comment and not facts. Further, counsel says, it must be shown that there is a basis for the comment and that the comment is a matter of public interest or a matter for which the public has a legitimate concern. Mr. Maharaj SC relies on **Gatley on Libel and Slander**¹⁶ in support of his submissions.
- [45] Mr. Maharaj SC submits that Dr. Mitchell's statements were comment which was a deduction or conclusion from other facts referred to by him which have been established to be true. Counsel submits that it is a fact that the 2008 to 2013 NDC government purchased the land for the establishment of a university campus from a company which was owned by former minsters of government. In the circumstances of the case, Dr. Mitchell's reference to "Simmons" is not a statement of fact but rather based on Simmons' admission that he made enquiries about the balance of the purchase price after he demitted office.
- [46] Counsel Mr. Maharaj SC further argues that whether the words are comments or facts must be considered in the context in which they were spoken. In this context, the words were spoken at a town hall meeting. Mr. Maharaj SC submits that Dr.

¹⁶ Gatley on Libel and Slander (11th edn. Sweet & Maxwell) at para. 12.2

Mitchell, as Prime Minister at that time, did not know of the question before hand, did not have the relevant documents before him and could not speak with precision. Therefore, counsel posits, Dr. Mitchell's statements should be regarded as comment on the matter. Counsel points to para. 12.12 of **Gatley** in support of his submission that Dr. Mitchell is not confined to reliance on facts to which he has referred in the publication complained of. Dr. Mitchell was entitled to rely on the Cabinet conclusions and the company's registration documents. Further, counsel says, the comments are a matter of public interest since they concern political and state matters. See paras.12.30-31 of **Gatley**.

My thoughts on the fair comment defence

[47] It is not disputed that Dr. Mitchell served as the Prime Minister of Grenada and Finance Minister when the offending words were uttered at a town hall meeting in the United States of America. Dr. Mitchell's statements were made in response to a question from a member of audience with respect to the statements in the public domain about the UWI Open Campus project at Hope, St. Andrew. I find that, in general, the discussion between Dr. Mitchell and the attendee about the UWI project concerned a matter of public interest since it centred mainly on the use of public funds to purchase land to construct a new university campus.

[48] Dr. Mitchell in his response to the attendee repeatedly stated that his statements were "facts". In his first response to the attendee, Dr. Mitchell stated "And it is a fact sister..." When challenged by the attendee, he stated "No, my dear the facts are there...I'm talking from Cabinet papers my dear...these are facts..." I therefore agree with Mr. John that Dr. Mitchell's statements were presented as facts and not comments. Dr. Mitchell even went as far as stating that he is "talking from Cabinet papers". This statement suggests a deliberate effort by Dr. Mitchell to convince the attendee that he was aware of or conversant with documentary evidence to substantiate his assertions. The fact that the assertions made by Dr. Mitchell, were in his words, presented as "facts" and not comments on the topic under

discourse at the event is, in my view, more than a sufficient basis for one to conclude, and I so conclude that the defence of fair comment fails.

Qualified Privilege

[49] Dr. Mitchell in his defence pleads that the occasion on which he spoke the impugned words was one to which a defence of qualified privilege applies since he spoke the words in his official capacity as Prime Minister of Grenada and its finance minister at a town hall meeting hosted by Government officials.

[50] In **Jameel and others v Wall Street Journal Europe Sprl**¹⁷ their Lordships quoted from the decision of **Toogood v Spyring**¹⁸ where Parke B explained the rationale for the defence of qualified privilege in this manner:

“In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits.”

[51] The learned authors of **Tort: The Law of Tort (Common Law Series)**¹⁹ also provide useful elucidation of the development of the common law defence of qualified privilege:

“Under English law, there are certain occasions upon which, for reasons of public policy and the common convenience and welfare of society, a person may make defamatory statements about another which are untrue without incurring any liability in defamation for his statements. These occasions are called privileged occasions. Where the public policy

¹⁷ [2006] UKHL 44 at para. 127

¹⁸ 1 CM&R 181, 149 ER 1045 at 193

¹⁹ Tort: The Law of Tort (Common Law Series) 3rd edn. LexisNexis Butterworths 2014) Chap 26. para 26.90)

considerations are particularly compelling, any publication on such an occasion will be protected by absolute privilege. **Where, however, the public policy considerations are less compelling than those which give rise to absolute privilege but are nevertheless sufficiently important to justify a more limited immunity being given to untrue and defamatory words, the publication will be protected by a qualified privilege. Where the occasion is protected by qualified privilege, a person will be protected if the statement was fairly warranted by some reasonable exigency or occasion and so long as it is not proved that the defendant was actuated by malice:** 'Sometimes the need for uninhibited expression is of such a high order that the occasion attracts absolute privilege, as with statements made by judges or advocates or witnesses in the course of judicial proceedings' More usually, the privilege is qualified in that it can be defeated if the plaintiff proves that the defendant was actuated by malice'. The categories of qualified privilege, amounting as they do to no more than applications, in particular circumstances, of the underlying principle of public policy, are never closed, and changing social conditions may indicate the need to extend an existing category or even to create a wholly new one." (My emphasis)

[52] In **Seaga v Harper**²⁰, the Privy Council observed that:

"The defence of qualified privilege, like so many other doctrines of the common law, developed over a period of time, commencing in the 19th century, and is still in the process of development...

"It is founded upon the need to permit the making of statements where there is a duty, legal, social or moral, or sufficient interest on the part of the maker to communicate them to recipients who have a corresponding interest or duty to receive them, even though they may be defamatory, so long as they are made without malice, that is to say, honestly and without any indirect or improper motive. It is the occasion on which the statement is made which carries the privilege, and under the traditional common law doctrine there must be a reciprocity of duty and interest: *Adam v Ward* [1917] AC 309, 334, 86 LJKB 849, [1916-17] All ER Rep 157, per Lord Atkinson. The development of the law is accurately and conveniently expressed in *Duncan and Neill on Defamation*, 2nd ed (1983), para 14.04:

"From the broad general principle that certain communications should be protected by qualified privilege 'in the general interest of society', the courts have developed the concept that there must exist between the publisher and the publishee some duty or interest in the making of the communication."

[53] In determining whether the impugned words are covered by the privilege, the learned authors of **Tort: The Law of Tort (Common Law Series)**²¹ explain that:

²⁰ [2008] UKPC 9 at para.5

“It is a question of law for the judge whether, in the light of all the circumstances viewed with today’s eyes, an occasion is to be regarded as privileged and the burden of proving the facts and circumstances necessary to establish the privilege is on the defendant: **‘In determining whether an occasion is regarded as privileged the court has regard to all the circumstances...’** (My emphasis)

[54] The Privy Council observed in **Pinard-Byrne v Lennox Linton**²², that the defence was created “*to strike an appropriate balance between the right to freedom of expression and the right of an individual to protect his reputation.*”²³ While it cannot be the case that the citizen should be at liberty to make defamatory comments with impunity, the law recognises that public discourse requires a certain latitude for the dissemination of thoughts and views on matters affecting the public interest even when the discourse may be said to be otherwise damaging to the good name and reputation of a citizen. It is in that context that it is said that the defence of qualified privilege can only be truly deployed when the statement, even though untrue and defamatory, touches on a matter that concerns the public interest.

[55] Traditionally, the defence was limited to dissemination of information to a person or a limited group of persons where the maker of the statement could show that he or she had a legal, social or moral interest or duty to share the information to the person(s) receiving same and that the person(s) receiving same had an interest or duty of the same nature to receive same. The test for qualified privilege in those circumstances is found in the often-cited case of **Adam v Ward**²⁴, where Lord Atkinson stated at page 170 of the judgment that:

“...a privileged occasion is, in reference to qualified privilege, **an occasion where the person who 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.” (My emphasis)

²¹ Tort: The Law of Tort (Common Law Series) (3rd edn. LexisNexis Butterworths 2014) Chap 26. para 26.91

²² [2015] UKPC 41

²³ Ibid at para. 19

²⁴ [1916-17] All ER Rep 157 (House of Lords)

[56] Conceptually, this approach restricted the engaging of the qualified privilege defence in cases of publications on a wider scale made, for example, by the media to a large and unlimited audience. The law has significantly advanced on the matter and the discourse as to whether the defence extends to publication which are widely disseminated can be said to have been resolved in favour of the applicability of the defence in such circumstances. The Privy Council in **Seaga**²⁵ traced the development of the “amplified” approach to the defence:

“The law has been slow to accept that a communication to the world at large, such as in a newspaper, is protected by qualified privilege. It has traditionally been held either that there is no duty on the part of the maker to publish it so widely or that the breadth of the class of recipients is too wide for them all to have an interest in receiving it: see, eg, *Chapman v Lord Ellesmere* [1932] 2 KB 431, 101 LJKB 376, [1932] All ER Rep 221; and cf *Gatley on Libel and Slander*, 10th ed (2004) paras 14.6, 14.81. The submission has been advanced from time to time that the law should recognise the existence of a species of qualified privilege founded upon a duty on the part of the maker of the statement to publish it to the world at large. This received some support from Pearson J in *Webb v Times Publishing Co Ltd* [1960] 2 QB 535, 568, [1960] 2 All ER 789, [1960] 3 WLR 352 and from Cantley J in *London Artists Ltd v Littler* [1968] 1 All ER 1075, [1968] 1 WLR 607, 619, but in *Blackshaw v Lord* [1984] QB 1, [1983] 2 All ER 311, [1983] 3 WLR 283 the Court of Appeal was cautious about accepting it as a general rule, while being prepared to acknowledge the existence of occasional exceptions (the examples usually given are *Cox v Feeney* (1863) 4 F & F 13; *Allbutt v General Medical Council* (1889) 23 QBD 400, 54 JP 36, 58 LJQB 606 and *Webb v Times Publishing Co Ltd*, supra). The germ of the idea of a privilege for reports to a wide range of readers or listeners where the circumstances warrant a finding of sufficient general public interest may, however, be seen in *Blackshaw v Lord*, a decision which merits more attention than it has hitherto received. To recognise such a defence in some form would be consonant with the principle underlying the defence of privilege, that it is in the public interest that such statements should be made, notwithstanding the risk that they may be defamatory of the subjects of the statements. Nevertheless, although attempts were made to move the law in this direction, it could not be said until the decision of the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127, [1999] 4 All ER 609, [1999] 3 WLR 1010 that a defence on these lines was available to those who published defamatory statements to the world at large.

[8] Lord Nicholls of Birkenhead, who gave the main speech, considered the essential factors of freedom of expression, the importance of the role

²⁵ [2008] UKPC 9 at para. 6

of the media in the expression and communication of information and comment on political matters, and the reputation of individuals as an integral and important part of their dignity. He concluded that the necessary balance between these factors could be achieved, while liberating the law to some extent from the traditional duty-interest concept of qualified privilege. He considered that the established common law approach remained essentially sound. What he proposed, with which the other members of the Appellate Committee agreed, was a degree of elasticity, adapting the common law test to afford some protection to what he described as “responsible journalism”. The court is to have regard to all the circumstances when deciding whether the publication of particular material was privileged because of its value to the public.”

[57] Their Lordships then addressed the question of whether the “Reynolds privilege” applies only to the press thusly:

“The second disputed matter, which is germane to the present appeal, is whether the *Reynolds* defence is available only to the press and broadcasting media, or whether it is of wider ambit. In *Kearns v General Council of the Bar* [2003] EWCA Civ 331, [2003] 2 All ER 534, [2003] 1 WLR 1357²⁶ the Court of Appeal expressed the view that it was confined to media publications. That was not, however, necessary to the decision and their Lordships are unable to accept that it is correct in principle. They can see no valid reason why it should not extend to publications made by any person who publishes material of public interest in any medium, so long as the conditions framed by Lord Nicholls as being applicable to “responsible journalism” are satisfied. Lord Hoffmann so stated categorically in *Jameel* at para 54, and his opinion was supported by Lord Scott of Foscote at para 118 and, by inference at least, by Baroness Hale of Richmond at para 146.”²⁷

Dr. Mitchell and “pre Reynolds” qualified privilege

[58] As explained above, the House of Lords in **Adam v Ward** instructed that the court is to consider whether Dr. Mitchell had a legal, social or moral duty to make the offending statements to the attendee(s) and whether the attendee(s) had corresponding right or duty to receive them.

²⁶ See Rawlins JA in *David Carol Bristol v Dr. Richardson St. Rose*

²⁷ [2008] UKPC 9 at para.11

[59] I am of the view that the legal duty test can be easily disposed of. There is no evidence that Dr. Mitchell was not under a legal obligation to make his statements. He was not being compelled by virtue of the provisions of any statute, law or an order of the court to make the offending statements. Indeed, the offending statements were made freely and openly in a town hall meeting.

[60] I will now consider whether Dr. Mitchell had social or moral duty to make the statements. In **Pinard**²⁸, the court opined that merely satisfying the public interest element of the defence is insufficient. The Board in disagreeing with our Court of Appeal stated “[a]s the Board sees it, it is not sufficient for the court to focus on the underlying circumstances. Thus, it is not sufficient to say, as the Court of Appeal did, that the underlying project was a matter of public interest or a matter of public importance²⁹”.

[61] The court must have regard to all of the circumstances in which the statements were made. This principle was enunciated in **David Carol Bristol v Dr. Richardson St. Rose**³⁰, where Rawlins JA stated:

“The principle is that an occasion is privileged where the person who makes the impugned statements has an interest, or a social, moral or legal duty to make them to the person to whom they are made, while the person to whom they are made has a corresponding or reciprocal interest or duty to receive the communication. In determining whether the reciprocal duties or interests are present and, ultimately, **whether the defence is available, the court must have regard to the relevant circumstances of the communication.**” (My emphasis)

[62] As I have indicated above, the UWI project was generally a matter of public interest since it involved the use of public funds to purchase land for the project. But this matter does not end here. The court must be satisfied that the defendant had a duty to make the statement to the persons to whom the statement was made and the person receiving the same must have had a right or duty to receive it. So, can it be said that Dr. Mitchell had a duty, whether social or moral, to make

²⁸ [2015] UKPC 41

²⁹ [2015] UKPC 41 at para. 32 see also para. 35

³⁰ SLUHCVAP 2005/00015 at para. 15

the impugned statements directed to the attendees and that the attendees had a duty to receive those statements in all the circumstances?

[63] As a starting point I would say that a particularly cautious approach must be adopted to this question in the case at hand. For one thing, as Dr. Mitchell's counsel, Mr. Maharaj SC seems to be postulating, and this has not been seriously disputed by Mr. Simmons' counsel Mr. John, that the attendees certainly had a right to receive elucidation on this public project. The project would affect the finance, education, and other critical aspects of the public landscape of Grenada. Mr. Maharaj SC for Dr. Mitchell eloquently articulated a case at trial along the lines that there was certainly need for public scrutiny of the manner in which this entire affair was conducted by the 2008 to 2013 NDC government. I will address below a number of matters that I do agree with him ought to have been more scrupulously executed by the then government. Among other things I do agree with learned senior counsel on such matters as the conflicts of interests and other conduct of members of the 2008 to 2013 NDC Government regarding the purchase of the property. Looking at the matter from this viewpoint one could certainly say that Dr. Mitchell was duty bound as leader of the Government and the country's Finance Minister to elucidate these matters.

[64] However, looking at matters more closely and I do think this is the point borne out by the cases and by Mr. John for the claimant, did the public have a right to receive the impugned material? Elsewhere it has been said apropos of the qualified privilege defence that "*[If] the thrust of the article is true, and the public interest condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue.*"³¹ At the town hall meeting, Dr. Mitchell was asked the following question by an attendee: "*I would like to know...why were the people of Grenada [sic] told that the land was purchased by the NDC from the shareholders and sold to the Government?*" Dr. replied by stating, among other things that "*...I don't see how any member of my Government will go and buy a piece of land knowing that the*

³¹ See Lord Bingham of Cornwall in *Jameel v Wall Street Journal* [2006] UKHL44 at para. 34

Government wants it, buy it and then sell it to the Government. Clearly, they are not buying it for charity. They clearly was buying it as a part really of making money...”

[65] In my view, and as I have more than often recited above, the entire thrust of Dr. Mitchell's statement imputed corruption not only to Mr. Simmons but to other members of the company and the 2008 to 2013 NDC Government. The corruption was couched as a scandal whereby land was purchased by a company in which members of the 2008 to 2013 NDC government held interest for the sole purpose of being sold to the government for use in the UWI project. While the public had a vested interest in knowledge about the project, they had no interest in receiving this misinformation which was offered without the benefit of any research or investigation.

[66] By personally calling Mr. Simmons' name in his speech as a member of the company, Dr. Mitchell suggested that Mr. Simmons was a beneficiary of the alleged corruption. The imputations were made even the more emphatic by the statement apparently exculpating Mr. Peter David from involvement in the alleged corruption. Peter David was a sitting member of the same 2008 to 2013 Cabinet which approved the land transaction.

[67] Further compounding all of this and as I have observed with respect to the defence of fair comment, when the attendee challenged Dr. Mitchell's statements that members of the 2008 to 2013 NDC Government did sell land to the Government for profit, Dr. Mitchell replied by stating “[t]hese are facts. Ask Simmons if he wasn't a member of that company as an example, just ask him”. Dr. Mitchell's rejoinder could not have left his audience with any clearer impression than that, as Prime Minister and Finance Minister, he was presenting, not opinion, but facts to his listeners.

[68] In my view, therefore the defence fails on the question of qualified privilege. There could be no moral or social duty to disseminate this patently false information

without research or comment from the person(s) traduced. These matters were entirely within Dr. Mitchell's power to properly interrogate before he made his remarks. Mr. Maharaj SC made the point that Dr. Mitchell was asked the question which he did not know beforehand, did not have documents present with him to consult or verify and that he answered imprecisely. Certainly if Dr. Mitchell was not equipped with the material to give an accurate answer then caution would have dictated a more prudent response than the emphatic statement which he insisted to his audience was fact.

- [69] Even more significantly, prudence would have dictated restraint with respect to implicating Mr. Simmons' good name and reputation in an affair which Dr. Mitchell now states that he could not adequately address at the time because he did not have sufficient material available to him to give an informed response. It seems to me that this was the very essence of the dicta in **Pinard** which advises that, at the very least Dr. Mitchell should have interrogated the matter or deferred the question to a time when he could have properly interrogated the matter before attempting to enlighten the public on any problems with the land sale deal.

Are the Reynolds principles applicable?

- [70] But can the matter be explored along the lines of the Reynolds privilege? I am mindful that the Reynolds privilege is not to be treated as a separate defence. The jurisprudential ambit of the Reynolds privilege has engaged considerable judicial discourse. See, for instance the discussion on the same at paragraph 10 of **Seaga**.
- [71] As noted above, for some time the courts took the approach that the principles enunciated in **Reynolds** were to be applied in cases involving newspapers or persons engaged in broadcast media who publish defamatory statements to the

world at large. Indeed, Rawlins JA in **David Carol Bristol v Dr. Richardson St. Rose**³² stated at paragraph 20 of that judgment that:

“The learned judge stated that Reynolds was only applicable to cases in which a newspaper or other news media publishes a libel to the world at large and not in cases of limited publication. This was correct because in cases of limited circulation, this Court has consistently applied, as the test for privilege, the principles stated by Lord Atkins in *Adams v Ward*, which were crystallized in *London Association for the Protection of Trade v Greenlands Ltd.*”

[72] Again, as stated above, the Privy Council in **Seaga** considered the issue whether the guidance in **Reynolds** applies only to cases involving the press or broadcasting media. In that case, the Board agreed with the finding of the trial judge in the court below that where utterances are published in public and members of the press or broadcasting media are in the audience, the **Reynolds** principles are applicable. The rationale for this principle is that the defendant ought to have known that his or her statements would more than likely be published by the media and disseminated to the public. I note that the **Seaga**³³ case was decided after the **David Carol Bristol**³⁴ decision.

[73] The Board in **Seaga**³⁵ made the following observations on the findings of the courts below:

Trial judge’s findings:

“The scenario in which Mr **Seaga** made his comments, that is, at a hotel, at a meeting open to the public and attended by the news media raises the question of the type of publication that it was. It is my view that in this context the publication is to the world at large. The national coverage afforded by media with island-wide circulation takes the occasion of this communication out of the realm of communication between persons in a specific relationship... I find however, that the **Reynolds** case does apply to the instant case bearing in mind the presence in the audience of the media and Mr Seaga’s realized expectation

³² SLUHCVP 2005/0015

³³ Delivered on 30th January, 2008

³⁴ Delivered on 20th February 2006.

³⁵ [2008] UKPC 9 at para. 13

that his utterances were more than likely to be quoted to the public by the media.” (My emphasis)

Court of Appeal’s findings:

“In the Court of Appeal Harrison P and Smith JA held that the *Reynolds* principles could only apply to publications by the media. McCalla JA held that the judge was not correct in applying those principles, because publication by the media ought not to have been attributed to him.

The Board then concluded:

“For the reasons which they have given, **their Lordships consider that the *Reynolds* approach did apply to the present case, and that the judge was right** and the Court of Appeal incorrect in this respect.” (My emphasis)

[74] For the reasons given above and in the specific circumstances of this case, I find that the *Reynolds* principles are applicable to this case. Dr. Mitchell, his strenuous protestations to the contrary notwithstanding, was, more than cognisant of the fact that the comments which were made at the forum were being and would be widely disseminated and published in the worldwide media. I think that as leader of government business he would have anticipated or expected no less than the widest circulation of his interactions with the public.

Invocation of the *Reynolds* principles in this case

[75] The Privy Council in ***Seaga***³⁶, offered this caution about the court’s approach to the matters that Lord Nicholls in ***Reynolds*** proposed that a judge may take into account when assessing whether a *Reynolds*’ type privilege may suffice as a defence to a claim for defamation:

“They are not like a statute, nor are they a series of conditions each of which has to be satisfied or tests which the publication has to pass. As Lord Hoffmann said in *Jameel* at para 56, in the hands of a judge hostile to the spirit of *Reynolds*, they can become ten hurdles at any of which the

³⁶ [2008] UKPC 9 at para. 12

defence may fail. That is not the proper approach. The standard of conduct required of the publisher of the material must be applied in a practical manner and have regard to practical realities: *ibid*. The material should, as Lord Hope of Craighead said at paras 107-8, be looked at as a whole, not dissected or assessed piece by piece, without regard to the whole context.”

The Board then recited the relevant factors as elucidated by Lord Nicholls in **Reynolds** as follows:

- “(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 the 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.
- (6) The allegation may have already been the subject of an investigation which commands respect.
- (7) The urgency of the matter. News is often a perishable commodity.
- (8) Whether comment was sought from the Plaintiff. He may have information others do not possess or have not disclosed. An approach to the Plaintiff will not always be necessary. Whether the article contained the gist of the Plaintiff’s side of the story.
- (9) The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
- (10) The circumstances of the publication, including the timing.”

Seriousness of the defamatory words

- [76] As stated earlier, the allegations of corruption are defamatory of Mr. Simmons for the reasons I have already advanced in this judgment. These allegations are evidently serious as they ascribe corruption, immoral, and /or reprehensive conduct to Mr. Simmons in his calling as a politician.

Tone of the defamatory words

- [77] Dr. Mitchell made a statement that “[s]ome people are talking corruption.” This statement was immediately followed by an elaboration of what he deemed to be the corrupt act when he stated “*I don’t see how any member of my Government will go and buy a piece of land knowing that the Government wants it, buy it and then sell it to the Government. Clearly, they are not buying it for charity. They clearly were buying it as a part really of making money...*” It is clear that Dr. Mitchell was of the view that these alleged actions by the Ministers of the 2008 to 2013 NDC Government reeked of corruption and were reprehensible. These were strong sentiments.

Circumstances of publication

- [78] Dr. Mitchell made his utterances at a town hall meeting which was attended by Grenadians and members of the public at large. Dr. Mitchell in his defence states that this was an official meeting hosted by officials of the Government of Grenada. It therefore goes without saying that the media more than likely would have been present in the audience to capture the meeting hosted by Government. Further, Dr. Mitchell, as Prime Minister of Grenada, is a public official. Therefore, it is reasonable to conclude that statements made by him, would more than likely, be recorded, quoted and/or published in the press or broadcast media. It is not disputed that the recording of the town hall meeting including the offending statements were published on YouTube, a social media platform on the internet. Dr. Mitchell ought to have known that, having regard to his position as Prime Minister and the nature of the event, it may have attracted members of the press and national coverage or at least his statements may be recorded and published in the media for public consumption at a later date. I have already stated my view that as leader of government business, Dr. Mitchell would have anticipated and/or expected the widest distribution of his public interactions on matters of State.

Reliability of the information

- [79] Dr. Mitchell conceded at trial that in hindsight the statement he made about Mr. Simmons being a member of the company was “not accurate”. He relied on Mr. Simmons’ friendship with Pauline Andrew and Mr. Simmons’ queries as to the payment of the balance of the purchase price, among other things in support of his statement. However, the evidence reveals that these assertions were unreliable. There is no evidence that Mr. Simmons was a member of the company or that he had any proprietary or beneficial interest in it. What is even more telling is the fact, as I have been at pains to point out in this judgment, there was no one better placed than the Prime Minister and Minister for Finance to verify the information that he sought to impart to his constituents and the wider citizenry.

Urgency of the matter

- [80] There is no evidence that there was any urgency in disclosing this material to the public. Again, this underscores the fact that the prudent course dictated by the occasion was some research before the material in question was disseminated.

Steps taken to verify information

- [81] Dr. Mitchell admitted at trial that at the time of his statements he did not investigate whether Mr. Simmons was actually a shareholder of the company. I will again note that Dr. Mitchell could have easily verified whether Mr. Simmons was actually a member or shareholder of the company. At trial, Dr. Mitchell relied on the articles of incorporation of the company which reveals who are the shareholders of the company. This material and indeed the Cabinet Conclusions about the deal could have been consulted before the entire matter was discussed in public. Dr. Mitchell failed to exercise due care to ensure that the information he disseminated to the attendees at large and the public was reliable and truly stated.

Comment sought from Mr. Simmons

- [82] There is no evidence that Dr. Mitchell sought any comment or input from Mr. Simmons before making his utterances at the town hall meeting.

Overall context

- [83] While I have gone through the factors seriatim, this by no means suggests that I have ignored the guidance set out by their Lordships in the authorities such as **Jameel** and **Seaga** to the effect that I must consider the overall context in which these statements were made. The court is required to consider the overall context and more particularly the overall thrust of the statements, the public interest in receiving the information, the utility of including the impugned material and whether in any event the publication was done in a fair and responsible manner. In the latter regard, the court may consider such matters as steps taken to verify the information before publication, opportunity for the maligned individual(s) to comment etc. Indeed, I have alluded to the context previously. But I shall repeat. The overall context in which the challenged statements were made was further to a question asked at a public discourse about the status of a project embarked upon by a 2008 to 2013 NDC government preceding that of Dr. Mitchell's NNP government. Dr. Mitchell, in my view, held a duty as Prime Minister and Finance Minister to enlighten the questioner, his audience and indeed the public on the matters raised by the questioner. In seeking to do so, Dr. Mitchell outlined the specific nature of an allegedly corrupt deal involving members of the past Government. He reiterated that the matters that he sought to enlighten the listeners about were indeed facts within his knowledge and within documentary material privy to himself and his Cabinet, that is to say, the Cabinet papers. He further suggested that Mr. Simmons, a former NDC Government Minister at the time of the allegedly illegal acts, was implicated in the corrupt deal. These matters have not been borne out by the facts. There was a patent lack of any effort to even make a cursory investigation or interrogation of this information before its release.

I have also found that there was a deliberate effort to single out Mr. Simmons as a key player in the purportedly corrupt deal. There was no investigation or interrogation of this fact before doing so. Again, the veracity of the charges against Mr. Simmons could have been easily investigated or Mr. Simmons himself could have been asked about the matter. These were all steps that could have easily been taken but were not.

- [84] The public has a right to be informed of the conduct of public affairs and in this case, they had a right to receive details about the conduct of the UWI project. But the public had no right to be told patently incorrect information presented as facts that had not, at least, been previously investigated or an opportunity offered to persons traduced by that information to comment thereon. At paragraphs 36 to 37 of **Ramadhar v Ramadhar and others**³⁷, the Privy Council offered some insight into this question of the right of politicians to privacy and the public scrutiny which attends the practice of their chosen profession thusly:

“37 ... the respondents were themselves engaged in public life and courted the media, and therefore they could not expect to be free from scrutiny or criticism in public. Politicians cannot expect to be free from banter and ridicule, good-humoured or otherwise, or from scrutiny of their motives. If politicians were entitled to be protected by the law of defamation against mere criticism, that, as was made clear in *Barron v Vines*, might have a chilling effect on democratic debate.”

- [85] Mr. Simmons and Dr. Mitchell are both experienced politicians who are well seasoned in the craft of politics and the public scrutiny to which the lives of politicians are subjected. But the Privy Council at paragraph 36 of **Ramadhar** prefaced this truism about the life of a politician by noting most relevantly to our present discourse that:

“The Board does not suggest that a press conference given by senior politicians is to be regarded as an occasion for casual statements. On the contrary, **there is a clear public interest that politicians talking in public should observe high standards of accuracy and fairness since the public need to know the true position and are inevitably influenced by what they say. Moreover, in the eyes of the law, the**

³⁷ [2020] UKPC 7

respondents were entitled to have their reputations protected from untrue allegations.” (Bold emphasis mine)

- [86] The Privy Council’s thoughts expressed at paragraph 36 of **Ramadhar** present an accurate articulation of my position on this issue in this case. None of the facts exposed on this claim by Dr. Mitchell suggest the observance of “*standards of accuracy and fairness*” in the statements that he uttered in answer to the questions posed about the UWI Project and, in particular, about Mr. Simmons. Like the Privy Council opined in **Ramadhar**, “*the public need to know the true position...*”. For these additional reasons, I find that the defence of qualified privilege fails.

Malice

- [87] The defences of qualified privilege and fair comment do not prevail if there is evidence of malice. However, the context in which both defences may be defeated by malice differs. In respect of qualified privilege, **Gatley on Libel and Slander**³⁸ states the law thusly:

“The defence of qualified privilege is defeated by malice. This is established if the claimant shows... that the defendant acted from an improper motive (e.g. spite or revenge or personal gain) rather than to fulfil the purpose for which the law grants the privilege and proof that the defendant was aware that the statement was untrue or was reckless as to its truth, is conclusive evidence of malice.”

- [88] In **Abraham Mansoor and others v Grenville Radio Limited and others**³⁹, Blenman J (as she then was) stated at paragraph 58 of the judgment that:

“The issue of malice in the context of qualified privilege is dealt with in Gatley on Libel and Slander 10th Ed Para 163. In order to avail oneself of the defence of qualified privilege, **there should be no improper motive in making or publishing the statement; the absence of honest belief in the truth of the publication is generally conclusive evidence of malice; the positive belief in the truth of what is published will usually protect the defendant unless he can be proved to have misused the occasion. In whatever context malice is raised, evidence**

³⁸ 11th edn at para.

³⁹ ANUHCv2004/0408 at para. 58, See also Rawlins JA in Bristol v Richardson SLUHCvAP 2005/0016 at para. 25

tending to show, or from which it can be inferred, that the defendant had no honest belief in the truth of the defamatory statement will usually be powerful evidence of malice. If it be proved that (the Defendant) did not believe that what he published was true this is generally conclusive evidence of express malice, for no sense of duty to protect his own legitimate interests can justify a man in telling deliberate falsehoods about another save in the exceptional case where a person may be under a duty to pass on without endorsing, defamatory reports made by some other person.” (My emphasis)

[89] With respect to malice in the context of the plea of fair comment, Lord Nicholls of Birkenhead in **Albert Cheng and another v Tse Wai Chun Paul**⁴⁰ stated that:

“[A] comment which falls within the objective limits of fair comment can lose its immunity only by proof that the defendant did not genuinely hold the view he expressed. Honesty of belief is the touchstone. Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred.”

[90] Remy J⁴¹ succinctly restated the principle thus:

“The law is also settled that malice will destroy the defence of fair comment. The onus of proving malice rests on the Claimant. The malice that is required to be proved is proof that the Defendant did not genuinely hold the view he expressed. The question to be asked is whether the comment is the “honest expression of the commentator’s real view and not merely abuse or invective under the guise of criticism.”

[91] Lord Nicholls in **Albert Cheng**⁴², had this to say:

“The question raised by this appeal concerns the meaning of malice in the context of the defence of fair comment. On this, two matters are clear. First, unlike the outer limits (as I have called them) of the defence of fair comment, which are objective, malice is subjective. It looks to the defendant’s state of mind. Second, malice covers the case of the defendant who does not genuinely hold the view he expressed. In other words, when making the defamatory comment the defendant acted dishonestly. He put forward as his view something which, in truth, was not his view. It was a pretence. The law does not protect such statements.

⁴⁰ [2000] HKCFA 35 or [2001] EMLR 777 at para. 75

⁴¹ *Lester Bryant Bird v Winston Baldwin Spencer et al*, ANUHCv 0185/2009 at para. 49

⁴² [2000] HKCFA 35 or [2001] EMLR 777 at para. 24

Within the objective limits mentioned above, the law protects the freedom to express opinions, not vituperative make-believe.”

- [92] In distinguishing the test for malice in the context of the defences of fair comment and qualified privilege, Lord Nicholls in **Albert Cheng**⁴³ explained that:

“Juries can be instructed, **regarding fair comment, that the defence is defeated by proof that the defendant did not genuinely believe the opinion he expressed. Regarding qualified privilege, juries can be directed that the defence is defeated by proof that the defendant used the occasion for some purpose other than that for which the occasion was privileged.**” (My emphasis)

- [93] The above authorities have elucidated that where the defendant had an improper motive or had no honest belief in the truth of his statements, then it is highly probable that they were actuated by malice. In short, the test for malice in fair comment is whether the defendant honestly believed that his statements were true.

- [94] On the other hand, the defence of qualified privilege is defeated where it can be proven that the defendant had an improper motive for the publication of the offensive words or used the occasion for “*some purpose than that for which the occasion was privileged*”. The defence itself is premised on the idea that the statement, even if it turns out to be untrue and defamatory, is protected where the statement maker’s primary or dominant motive is to give a trustworthy account, report, or statement in the public interest with respect to the matter on which he or she makes a statement or reports. If it can be shown that the dominant motive is not to give a trustworthy account, report or statement but that some other motive is the primary or dominant aim, then the malicious intent is proven, and the statement maker may be held responsible. It is said that knowledge of or recklessness or indifference as to the inaccuracy of a statement may provide evidence that the defendant may have been driven by an improper motive but this is not necessarily determinative of the issue. It remains to be determined by the

⁴³ [2000] HKCFA 35 or [2001] EMLR 777 at para. 76

judge that an improper motive was the dominant factor impelling the defamatory statement. In all cases, it is for the claimant to establish malice.

Malice in respect of qualified privilege

[95] With respect to the defence of qualified privilege, it is said, as noted in **Mansoor** above at paragraph 88 of this judgment that:

“[I]n whatever context malice is raised, evidence tending to show, or from which it can be inferred, that the defendant had no honest belief in the truth of the defamatory statement will usually be powerful evidence of malice.”

[96] Rawlins JA made the point more succinctly in **David Carol Bristol v Dr. Richardson St. Rose**⁴⁴ when he stated that:

“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 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.” (My emphasis)

[97] **Gatley**⁴⁵ gives the following summary of the law in this context as stated by Lord Diplock in **Horrocks v Lowe**:⁴⁶

“If it be proved that the defendant did not believe that what he published was true, this is generally conclusive evidence of express malice, “for no sense of duty to protect his own legitimate interests can justify a man in telling deliberate falsehoods about another. The burden of proof, at least

⁴⁴ SLUHCVP 2005/0016 at para. 25

⁴⁵ Gatley on Libel and Slander, 11th edn at para. 17.3

⁴⁶ [1974] 1 ALL ER 662

where conduct extraneous to the privileged occasion is not relied on, is not light one”.

Gatley⁴⁷ makes the further note that:

“If the defendant publishes untrue matters recklessly, without considering whether it be true or not, he is to be treated as if he knew to be false, but carelessness, impulsiveness or irrationality in arriving at a belief is not to be equated with indifference to the truth.”

[98] In the present state of the law in matters of speech involving politicians, I see the law’s acknowledgment of the politicians’ right to voice strong views about their opponents often in an effort to dissuade voters from holding a favourable view of or casting a ballot for those opponents. However, the law equally, while acknowledging the politician’s right to communicate in strong language, does not discharge the politician from the obligation to be fair and responsible in the sense explained in the cases particularly **Ramadhar**. See also **Lyndon Duncan v Edison Baird**⁴⁸ and **Horrocks v Lowe**⁴⁹. In this context, the law may allow the politician to use words that tend to disparage their opponents’ conduct of their office or their qualifications to hold office so as long as it is not shown that the dominant motive is to injure their opponents’ good name and reputation. As Lord Hoffman pointed out in **Jameel**, “*the occasion prevents the inference of malice, which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice.*”⁵⁰ (My emphasis)

[99] Dr. Mitchell, in my view, was rather reckless in his failure to interrogate or to seek an opportunity to interrogate the matters on which he spoke publicly when, he more than anyone else could have easily verified the accuracy of his utterances before they were made or he could have easily deferred his answer to such a time as he could have properly enlightened the public. His insistence that what he was stating were facts indicate that he spoke without considering whether what he was

⁴⁷ Supra, note 45

⁴⁸ AXAHCVP 2012/0008

⁴⁹ [1974] 1 ALL ER 662

⁵⁰ [2006] UKHL 44 at para. 127 quoting from Parke B in *Toogood v Spyring* 1 CM & R 181 at 193

saying was true or not. This evidence does not suggest mere inadvertence or impulsiveness or even the sort of crass and/or callous language that is oftentimes a feature of political conversations. See **Horrocks and Lyndon Duncan v Edison Baird** in this regard. The statements in question in this case suggest to me a sort of deliberate insistence on imparting information as facts without minding whether they were true or not. For this reason, as discussed below, I have found that Dr. Mitchell could not have held an honest belief in what he was stating as facts. The dominant motive in that moment does not appear to me to have been to shed a light on the matter under question. Rather, the statements seem to have been uttered with the primary intention to seriously disparage the members of the previous Government in general and Mr. Simmons, in particular. A finding of a primary or dominant motive of such a nature, the authorities above suggest, is generally conclusive proof of express malice which negatives the defence of qualified privilege. In this case therefore, I find that, for all the foregoing reasons, the defence of qualified privilege would have been defeated by express malice if the defence had succeeded in this case.

Malice in the context of the defence of fair comment

[100] In this case, Dr. Mitchell during his speech expressly stated that the allegations were “facts” and supported by “Cabinet papers”. At trial several matters were presented as the basis for Dr. Mitchell’s assertion of possible corruption.

The Cabinet Conclusions

[101] Dr. Mitchell, in his speech, reiterated that there are Cabinet documents to support his statements. In summary, the Cabinet conclusions produced in this claim are :

- (1) Conclusion dated 20th April, 2009: Cabinet noted the proposals submitted by the Minister for Education and Human Resource Development (“Minister for Education”) for a new University Centre in Grenada.

- (2) Conclusion dated 4th May, 2009: Cabinet instructed the Attorney General (“AG”) to hold discussions concerning the acquiring of lands at Hope Vale, St. George, among other things.
- (3) Conclusion dated 14th December, 2009: Cabinet noted the report on the visit to the proposed sites of the UWI Open Campus Grenada submitted by the Minister for Works, Physical Development and Public Utilities (Minister for Works). Cabinet agreed that the Hope site was the best location for the UWI campus project and directed that the committee make proposals to Cabinet for its consideration.
- (4) Conclusion dated 19th April 2010: Cabinet was informed by the Minister for Works that the Ministry was seeking to obtain a valuation for the properties at Hope and Mirabeau. This Ministry was requesting two persons to provide the valuation. Representatives from UWI would be visiting Grenada and that a report should be ready by then.
- (5) Conclusion dated 21st June, 2010: Cabinet considered an ex-agenda submission by the Minister for Education and gave approval for the UWI Open Campus to be located at Hope, St. Andrew. Cabinet directed the Minister for Housing, Lands and Community Development (Minister for Lands) to obtain title for the property at Hope, St. Andrew.
- (6) Conclusion dated 11th October, 2010: Cabinet noted the valuation report for the Hope, St. Andrew property which was owned by Spring Valley and which it intended to acquire for the purpose of the UWI Open Campus submitted by the Minister for Housing. Cabinet directed that the AG hold urgent discussions with the owners of the land on the planned acquisition.
- (7) Conclusion dated 6th December, 2010: Cabinet gave approval for the negotiating committee to propose a purchase price of \$8 million dollars with a ceiling price of \$8.5 million dollars, among other things.
- (8) Conclusion dated 21st March, 2011: In reference to Cabinet conclusion dated 19th April, 2010, Cabinet considered a submission by the Minister for Legal Affairs and requested the Attorney General to hold further discussions with the Finance Minister with a view to finalizing that matter.

- (9) Conclusion dated 20th June, 2011: In reference to Cabinet conclusion 14th March 2011, Cabinet considered a submission from the Minister for Legal Affairs and directed the Attorney General to follow up with the Finance Minister and submit a report to Cabinet at its next meeting on 27th June, 2011.
- (10) Conclusion dated 2nd April, 2012: Cabinet granted approval for the execution of the agreement for sale between Spring Valley and the Government and further agreed to pay the sum of \$44,000.00 to Lett and Partners in respect of the survey of lands at Hope, St. Andrew.
- (11) Conclusion dated 14th May, 2012: Cabinet considered a submission from the Minister for Legal Affairs that the Attorney General and Minister for Education should seek a meeting with UWI on the status of the Open Campus project.

[102] The foregoing evidence relied on by Dr. Mitchell reveals that (1) the valuation division of the Ministry of Finance valued the land at \$7,323,525.00; (2) the Government agreed to start the negotiations at \$8 million dollars; and (3) the Government bought the land at a price that was higher than it was valued by the Government's valuation department.

[103] Cabinet Conclusion dated 19th April 2010 recites the fact that Cabinet was informed by the Minister for Works that the Ministry was seeking to obtain a valuation for the properties at Hope and Mirabeau, St. Andrew. The conclusion also stated that "*the Ministry was requesting two persons to provide the valuation*". This suggests at face value that the Ministry of Works sought to obtain two valuations for the possible sites at Hope and Mirabeau. Therefore, there is some possibility that Cabinet may have reviewed other valuations from private persons for the property in issue. The Cabinet Conclusions also reveal that a committee was established to oversee the acquisition of the land at Hope, St. Andrew and that the committee was mandated to report to Cabinet. No evidence has been presented to the court of the committee's work in relation to the agreed purchase price or that they reported their findings to the Cabinet.

The purchase price/valuation differences

- [104] The difference between the purchase price of \$8.5 million and the valuation price of \$7,323,525.00 amounting to \$1,176,465.00 forms part of the explanation presented by Dr. Mitchell for making the impugned statements. Dr. Mitchell points out that the variance is similar to the cash payment of \$1,100,330.72 that the Government agreed to pay to the company upon execution of the agreement for sale⁵¹. Dr. Mitchell argues that this disparity suggests something amiss about the transaction⁵².
- [105] Government did not pay the full purchase price for the land, even though the land was officially conveyed to it by the company. Cabinet Conclusion dated 6th December, 2010 reveals that Cabinet gave approval for the negotiating committee to propose a purchase price of \$8 million dollars with a ceiling price of \$8.5 million dollars. That Conclusion stated that Cabinet agreed in principle that the down payment for the land should be the sum of \$3 million dollars and the balance of the purchase price be paid over a period of 5 years with interest at 3.5% per annum. The evidence then shows that the Government agreed to make a cash deposit of \$1,100,330.72 upon execution of the agreement for sale instead of a down payment of \$3 million dollars.

Mr. Simmons' association with Pauline Andrews

- [106] Dr. Mitchell's case highlights Mr. Simmons' association with Pauline Andrew and that Mr. Simmons made inquiries about the payment of the remaining balance of the purchase price after the 2013 general elections. This association and Mr. Simmons' queries about payment, Dr. Mitchell stresses, further bolsters his claims that he honestly believed that Mr. Simmons was a member of the company. Mr. Simmons admits and I accept that he made inquiries about the payment of the

⁵¹ Agreement for sale dated 5th April 2012 between Spring Valley Co-operation Limited and the Government of Grenada page 36 of Trial Bundle Volume 3.

⁵² Para. 51 of the defendant's closing submissions.

remaining balance on invitation by Ms. Andrew. However, the mere fact that he made those inquiries do not prove that Mr. Simmons had any propriety or beneficial interest in the company or its property as stated by Dr. Mitchell. In my view, a simple company search would have verified whether Mr. Simmons was in fact a member or shareholder of the company and therefore stood to benefit from the payment of the balance of the purchase price. Indeed, again, I believe that Dr. Mitchell was well placed at the time to have such an inquiry conducted before levelling the charges that he made regarding the entire affair in general and in respect of Mr. Simmons in particular.

- [107] Mr. Simmons conceded at trial that, having regard to his friendship with Ms. Andrew, who was a shareholder of the company, he ought to have recused himself from Cabinet meetings regarding the sale of the land. I think Mr. Simmons rightly concedes that it would have been proper to excuse himself from the Cabinet meetings. However, the specific charge in this case is that he, Mr. Simmons was a member of the company and that he thereby stood to benefit from the sale of the land and/or from the payment of the balance of the purchase price. There is no evidence to support this factual charge. Indeed, at trial when questioned by Counsel for Mr. Simmons on Mr. Simmons' involvement with the company and whether he made any profit from the transaction, Dr. Mitchell stated *"No, I have no facts to support that...but yes, I still find it strange"*.

Allusions to Ben Jones

- [108] The charge that Ben Jones, a former Prime Minister of Grenada (1989-1990) now deceased, was a shareholder of the company and possibly had some connection to the NDC do not take matters any further in respect of the statement that some Government ministers purchased land and sold it to Government for profit. Clearly, Mr. Jones' estate may have benefitted from the sale if, at the time of the sale, his estate still held shares in the company. However, this fact alone is not proof of an

alleged conspiracy to acquire lands and sell the same to Government for profit as charged by Dr. Mitchell.

Michael Lett's involvement

- [109] Dr. Mitchell relies on the fact that Michael Lett served as a minister of Government during the time when the land was sold to the Government by the company and that he was also a shareholder of that same company. Further, reliance is placed on the fact that Mr. Lett's firm was paid the sum of \$44,000.00 by the Government to survey the land.

Assessment of honest belief

- [110] It is not disputed that the company purchased the land at Hope, St. Andrew which purchase is evidenced by a conveyance⁵³ dated 6th September 1989. Mr. Lett was a shareholder of the company at the time of the purchase of the land in 1989 and he served as a member of the Cabinet in 2012 when the land was purchased by the then Government. His company was paid to conduct a valuation of the lands for the purpose of Government's purchase of the same. Mr. Lett should have excused himself from those Cabinet discussions regarding the purchase of the land from the company. But this fact alone or the combination of the foregoing matters do not, in my view, make out the charges as asserted by Dr. Mitchell in his New York address.
- [111] At trial, Dr. Mitchell conceded that he misspoke (1) of the company's purchase of the land merely to sell it to Government for the construction of the university campus; and (2) that Mr. Simmons was a member of the company. The case presented at trial sought to extrapolate a charge of Government corruption on the lines of the material set out above. But the charge in this case as I have stated before was specific. A defence of fair comment would necessarily demand that

⁵³ See Conveyance dated 11th April 2012 at page 12 of Trial Bundle Volume 3 which recites how the company came into possession of the property.

Dr. Mitchell establish the specific charges that he made as factual since those charges were not presented as mere comment but as facts.

[112] But even if he was allowed to articulate his case in the manner that he purports, there is simply no evidence that this company was operated as a sham or cloak for the purpose of making money at the expense of the people of Grenada. There is certainly no evidence that the company purchased land and then sold it on to Government for profit. There is no evidence that Mr. Lett or Mr. Simmons used their offices as Cabinet members to unduly influence the other Cabinet members to approve the sale of the property for the purpose of making a profit. Further, there is no evidence that Mr. Lett, Ms. Andrew nor Mr. Simmons influenced the directors or officers of the company to sell the land to the Government. Frankly, there is simply no evidence that Mr. Lett or Ms. Andrew was involved in the day-to-day management of the company when it decided to sell the land to government. Indeed, I note that the agreement for sale and the conveyance were executed by Carlyle A. John, Chairman and Eunice Tamar, Secretary, as officers on behalf of the company.

[113] The truth of the matter is that a company in which Mr. Lett and other members of a NDC government prior to the 2008 to 2013 NDC government held or may have held interest sold lands to the 2008 to 2013 NDC government. But again, the charge or imputation in this case is very specific. It asserts that members of the 2008 to 2013 NDC government purchased land and sold it to Government for profit. This was not true. The facts reveal that the lands were purchased back in 1989 and sold to Government in 2012. There could logically be no scheme or plot (and indeed none has been shown) by the members of the company to buy land in 1989 and sell it Government 20 years later for profit.

[114] Equally, the fact that the Government purchased the land at a price higher than its market value or agreed to offer a price higher than the market value is not sufficient to prove the charge advanced by Dr. Mitchell in his statement about impropriety by ministers of Government

[115] With respect to the conflict-of-interest issue, while one may argue that there was some conflict given Mr. Lett's shareholding and a possible conflict of interest given Mr. Simmons' close friendship with Ms. Andrew, this evidence without more is insufficient to prove the intentional element of Dr. Mitchell's charge that the land was originally bought to make a profit by selling it to the Government. As to the cash payment the Government gave to the company as down payment on the purchase price, I find that there is nothing irregular on the face of this evidence. The cash payment of \$1,100,330.72 that Government agreed to pay to the company and the difference between the purchase price and the valuation price of \$1,176,465.00 are not even similar and do not take matters any further.

[116] The long and short of it is that Dr. Mitchell ought to have been aware of the truthfulness or otherwise of these statements since (1) he was at pains to exculpate, immunise or absolve Peter David from any of the charges that he was emphatically making; (2) again, he, more than any other speaker on the topic du jour was well placed to verify or seek an opportunity to verify the truth of his factual assertions before making them; and (3) as a logical incidence of (1) and (2), he could not have genuinely hold the above facts to be true. In a word, while there is no evidence that Dr. Mitchell blatantly set out to disseminate falsehoods, there is more than enough evidence, in my view, from which one can more than safely conclude that he uttered those words recklessly and with disregard as to whether they were true or not. The defence of fair comment would have failed on the grounds that Dr. Mitchell did not or could not genuinely hold and espouse the views that he did on the day in question.

Relief

Damages

[117] Mr. Simmons claims damages for defamation of character. There is no pleading for special damages, but this is not fatal to the claim for damages since a claim for

slander is actionable per se without proof of damage where the words disparage the claimant in any office, profession or calling.

[118] The learned authors of **Halsbury's Laws of England**⁵⁴ state:

"517. Slander actionable per se.

An oral defamatory statement is actionable per se, that is without proof of special damage, if:

- (1) it is calculated to disparage the claimant in any office, profession, calling, trade or business held or carried on by him at the time of the publication;
- (2) it is published of the claimant in the way of his office or calling and in relation to his conduct in it, and imputes unfitness for or misconduct in that office or calling; or
- (3) it imputes that the person of whom the words are published has committed a crime punishable by imprisonment."

[119] In Grenada, section 7 of the **Liber and Slander Act**⁵⁵ states that:

Slander affecting official, professional or business reputation

"In any action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him or her at the time of publication, **it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his or her office, profession, calling, trade or business.**" (My emphasis)

[120] Mr. Simmons' case is that the offending words uttered by Dr. Mitchell damaged his reputation, credit and calling as a politician and he has been seriously injured. Mr. Simmons testifies that he has been brought in public odium, contempt and ridicule. I have found earlier that the offending words were defamatory, in that they tended to lower Mr. Simmons' reputation in the eyes of right-thinking members of the society or caused him to face ridicule or contempt in his office or calling.

[121] In **David Carol Bristol v Dr. Richardson St. Rose**⁵⁶, Rawlins JA explained the rationale for damages for defamation.

⁵⁴ Halsbury's Laws of England (5th edn. 2019) vol. 32, para. 517)

⁵⁵ Cap. 171 of the 2010 Continues Revised Edition of the Laws of Grenada

“While an award of damages in this case must not punish the wrongdoer it must fairly compensate the victim. Compensation is awarded to console the claimant for the distress he suffers from the publication of the statement; to repair the injury to his reputation; and as a vindication of his reputation. In this case the solace for injury to feeling needs to be significant. **Fielding v Variety Incorporated** was a case in which the plaintiff had suffered no injury to his reputation because it was the fact that a play that the defendant had described as a disastrous flop continued to play to packed houses so that no one could have believed the defamatory statement. However, it was accepted that the conduct of the defendant had greatly injured the plaintiff’s feeling and it was for that element alone that he was compensated. That case shows how distinct an element in compensation is the matter of injury to feeling.”

- [122] In cases of this nature, the court is usually guided by the awards of damages for similar losses in similar cases. Mr. Simmons, in his closing submissions, cited several cases where awards of general damages were granted for defamation. In **Keith Mitchell v Steve Fassihi and others**⁵⁷, the Court of Appeal affirmed an order of Master Mathurin awarding general damages in the sum of \$100,000.00 and \$50,000.00 in exemplary damages. In **Victoria Alcide v Helen Television Systems Limited and another**⁵⁸, the court awarded the claimant \$100,000.00 in general damages concerning an allegation that the claimant, a prison officer, had inappropriate relations with male inmates at the prison. I find that the sum of \$100,000.00 will provide adequate relief to Mr. Simmons as general damages for slander.

Aggravated damages

- [123] In **Lester Bryant Bird v Winston Baldwin Spencer and another**⁵⁹, Remy J explained that:

“The law is settled that general compensatory damages may be increased to take into account factors such as the motives and conduct of the defendant among others; such 'aggravated damages' are meant to compensate the plaintiffs for the additional injury, going beyond that which

⁵⁶ SLUHCVP 2005/0016 at para. 47

⁵⁷ GDAHCVAP2003/0022 or [2004] ECSCJ1122-2 (vLex citation)

⁵⁸ SLUHCV2011/0398

⁵⁹ ANUHCV2009/0185 at para. 113

would have flowed from the words alone, caused by the presence of the aggravating factors.”

[124] In **Sutcliffe v Pressdram Ltd**⁶⁰, Nourse LJ opined that:

“The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff’s feelings, so as to support a claim for ‘aggravated’ damages, includes a failure to make any or sufficient apology and withdrawal, a repetition of the libel; conduct calculated to deter the claimant from proceeding; persistence, by way of prolonged or hostile cross examination of the claimant or in turgid speeches to the jury, in a plea of justification which is bound to fail, the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means.”

[125] I find that the most glaring evidence of aggravation is exhibited by the failure to apologise. Counsel for Mr. Simmons, Mr. John, in his pre-action letter dated 22nd August 2014 demanded a written apology from Dr. Mitchell which was refused. At trial, Dr. Mitchell acknowledged that his statements were erroneous in material regards for instance, Mr. Simmons’ membership of the company. In my view, this acknowledgment should have been forthcoming much earlier. Certainly, the company documents which showed who were the shareholders of the company, ought to have impelled Dr. Mitchell to immediately retract his assertions about Mr. Simmons’ involvement in the alleged affair.

[126] Equally, the Cabinet papers which Dr. Mitchell relied on in his evidence ought to have advised him at least by the time of disclosure that his assessment of the conduct of the 2008 to 2013 Government was flawed in material respects. He ought to have issued some retraction, correction or apology. His failure to do so, in my view, added to the injury caused to Mr. Simmons’ reputation and must be compensated for as aggravated damages.

[127] Counsel for Mr. Simmons relies on the decision in **Mary John v Cliff Williams**⁶¹. The claimant in that case was awarded \$40,000.00 in aggravated damages.

⁶⁰ [1990] 1 All ER 269 at 288

⁶¹ ANUHCv2016/0356

However, I note that the decision in **Mary John** was recently overruled in its entirety by the Court of Appeal in a judgment⁶² delivered on 23rd February 2023. In **Victoria Alcide**⁶³, the claimant was awarded \$20,000.00 in aggravated damages. I find the sum of \$30,000.00 in aggravated damages will provide sufficient relief to Mr. Simmons.

Exemplary damages

[128] In discussing whether an award of exemplary damages is available, Jamadar JA (as he then was) in **Faiiq Mohammed v Jack Austin Warner**⁶⁴, had this to say:

“Since **Rookes v Barnard** in 1964, the law has recognised 3 categories of cases for which exemplary damages may be awarded, they are:

- i. oppressive, arbitrary or unconstitutional action by servants or agents of the State;
- ii. conduct calculated to make a profit which may well exceed the compensation payable; and
- iii. cases where statute allows this.

In relation to category (ii) above (conduct calculated to make a profit which may well exceed the compensation payable), as Jamadar J.A. correctly noted at paragraph 109 of his opinion, **“This category is not confined to moneymaking in the strict sense. It extends to cases in which the Defendant is seeking to gain at the expense of the Plaintiff some object ... which either he could not obtain at all or not obtain except at a price greater than he wants to put down”** (My emphasis)

[129] Dr. Mitchell uttered strong views on the alleged corruption. Those utterances disparaged Mr. Simmons in his calling as a politician and former minister of Government. However, while I am of the view that Dr. Mitchell could not honestly believe that his statements were true and that he had no duty to utter falsehoods and misstatements of fact, I am not satisfied that that they meet the threshold of “oppressive, arbitrary or unconstitutional conduct” or conduct calculated to make a profit or gain. Therefore, I find that an award of aggravated damages is sufficient and as such the order seeking exemplary damages is refused.

⁶² *Cliff Williams v Mary John* ANUHCVP2020/0015 (Antigua and Barbuda)

⁶³ SLUHCV2011/0398

⁶⁴ *Trinidad and Tobago Civil Appeal No. 252 of 2014* at paras. 144-145

Injunctive relief

[130] Mr. Simmons seeks injunctive relief against Dr. Mitchell and/or his servants or agents in his claim. In **Tort: The Law of Tort**⁶⁵ the learned authors state:

“The injunction is a remedy of general application in the law of tort. Where a tort has been committed, an injunction may be granted whenever there is a risk that it may be continued or repeated, but it will be refused if there is no ground for apprehending its continuation or repetition.”

[131] In the claim, Mr. Simmons pleads that the offending words were published on the social media platform “YouTube” and remain published thereon. Notwithstanding, there is no evidence that Dr. Mitchell instructed, directed or authorised the publication of the offending words on YouTube. Further, apart from the publication on YouTube, there is no evidence that the offending words have been repeated or republished or are likely to be repeated by Dr. Mitchell and/or his servants or agents. Accordingly, there is no just reason for the grant of an injunction against Dr. Mitchell and/or his servants or agents. The order for an injunction is refused.

Costs

[132] This claim is a monetary claim for an unspecified sum of damages coupled with other remedies. As such rule 65.5 (2)(a) of the Civil Procedure Rules 2000 applies. The parties have not reached agreement on costs. Having regard to the provisions of the above rule, the court will assess the value of the claim as \$130,000.00 being total of the damages awarded to Mr. Simmons. Prescribed costs are calculated on a cumulative basis⁶⁶. Therefore, 15% costs on the scale of the first 100,000 is \$15,000 and 12.5% of the remaining \$30,000 is \$3,750. Accordingly, Mr. Simmons is entitled to prescribed costs in the sum of \$18,750.00.

⁶⁵Tort: The Law of Tort (Common Law Series) (3rd edn. LexisNexis Butterworths 2014) Chap 8. para 8.2

⁶⁶ See Appendix B of Part 65: “Scale of Prescribed Costs”

Conclusion

[133] For all these reasons, it is hereby ordered that:

- (1) The claim filed by Patrick Simmons ("Mr. Simmons") on 12th October, 2015 is granted in part.
- (2) The defendant, ("Dr. Mitchell"), shall pay to Mr. Simmons the following:
 - (a) damages for defamation in the sum of \$100,000.00
 - (b) aggravated damages in the sum of \$30,000.00
 - (c) interest on the total sum of \$130,000.00 awarded in damages at the rate of 6% per annum from the date of this judgment to payment.
 - (d) costs in the sum of \$18,750.00.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar