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**IN THE SUPREME COURT OF JUDICATURE OF JAMACIA  
IN COMMON LAW**

**CLAIM NO. C.L. 2002/C-238**

<b>BETWEEN</b>	<b>RODNEY CAMPBELL</b>	<b>CLAIMANT</b>
<b>A N D</b>	<b>THE JAMAICA OBSERVER LIMITED</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>A N D</b>	<b>CHESTER FRANCIS-JACKSON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**Miss C. Brown instructed by Vacianna & Whittingham for the Claimant.**

**Miss M. Brown instructed by Brown-Hamilton & Associates for the Defendants.**

**HEARD: 20<sup>th</sup> April and 9<sup>th</sup> June 2005**

**MANGATAL, J.**

1. This matter came on for damages to be assessed on the 20<sup>th</sup> of April, 2005. The Claim is to recover damages in respect of a libellous article written and published in a column headed "Social Lives" in the Sunday Observer Newspaper dated September 1, 2002. The First Defendant is the publisher of the newspaper and the Second Defendant is the journalist named in the by-line of the article.

2. Although the Defendants had originally filed a Defence, an Amended Defence, and sought the court's leave to file a Further Amended Defence, at a Case Management Conference on December 21, 2004, an order was made

granting the Claimant's application striking out the Amended Defence and entering Judgment against the Defendants with damages to be assessed. I shall revert to these Statements of Case, earlier proceedings and the general conduct of the case by the Defendants later on in this Judgment when I deal with the claim for aggravated damages.

3. The Claimant, Rodney Campbell, gave evidence that he is a Broadcaster with the R.J.R. Communications Group. He is a Public Relations Practitioner and he also does speech writing. He hosts and coordinates different events and he is an actor both in theatre and on local television. He hosts a talk show titled "Uncensored" which takes place on R.J.R. radio station between 9:00 p.m. - 10:00 p.m. every Monday night and twice per week he plays music as a disc jockey between midnight and 5:00 a.m. on R.J.R. radio station. He currently appears in the local television series "Royal Palm Estates" and he has appeared in a number of theatrical productions namely "Love and Marriage" in New York City, "Dis ting, Dating" and "Sweet Country Love". Mr. Campbell also has written speeches for Members of Parliament, Senators, and other persons in the business community when those persons have speaking engagements. He assists with press releases as part of the Public Relations coverage of these events.

4. The offending article, which was admitted as exhibit one, covers a number of different social events and personalities including a function at the Hedonism III Resort, Runaway Bay celebrating the appointment of the Resorts' new resident Manager Brian Sang. I have looked at all of the words

in the article describing the events at Hedonism III so as to read the pleaded offending words in context. In describing the event at Hedonism III, the article uses the following words expressly touching and concerning Mr. Campbell:

“But the show- stopper for many of the national who attended was the poetry reading in the nude by sometime actor/radio personality **Rodney Campbell** at the au natural beach and outdoor jacuzzi on Saturday, as he thrilled and trilled the audience with his prose and form.”

5. Mr. Campbell's evidence was that when he first read the article he was exceedingly angry and embarrassed because of the falsehood of the article and its implications and suggestions. Added to that were his own personal feelings about how and what the article said about his own personal integrity and standing. He said that he was treated with anger and hostility from some persons who claimed to have read the publication. Mr. Campbell said he was also greatly humiliated by several persons who felt it was “a great joke” in light of the image that he had portrayed to them.

6. Mr. Campbell claimed that his employers were absolutely upset, “to put it nicely”, and, Mr. Campbell says they even gave him a strongly worded letter because they found that the kind of behaviour described in the article did not go well with Mr. Campbell's image or their own.

7. Mr. Campbell's son who was about fourteen at the time faced a lot of ridicule as well because of the article. Persons at the son's school who had

previously looked up to Mr. Campbell jeered Mr. Campbell's son about it. For several months the whole episode caused a very serious divide between Mr. Campbell and his son because to this day his son expresses the view that if it appears in the Observer, a supposedly reliable and accurate newspaper, then it must be true.

8. In cross-examination Mr. Campbell indicated that most of his co-workers at R.J.R. Group expressed the sentiments described by him and that there were also persons who called in to his Radio Show and ridiculed him. Mr. Campbell revealed that he was invited to a G2K Event, an event involving the youth arm of the Jamaica Labour Party, one of the two major political parties in Jamaica. The G2K Group consists of young vibrant professionals. That group put him on the stand and ridiculed him.

9. Mr. Campbell also claimed that he lost contracts as a result of the article. He claimed that he was contracted by Dairy Industries Limited to do Children's programmes with them. He did several programmes with them but he was contracted to do one, which he did not get to do. It was explained to him that the reason why he did not get that contract was that he was seen as unfit and shady. On one occasion subsequent to the publishing of the article by the Observer, he hosted a Children's Expo for Dairy Industries. After the expo he was placed in a room and asked what was operating in his mind why he decided to pose nude in front of tourists. He did not get any contracts from Dairy Industries thereafter.

10. In cross-examination Mr. Campbell indicated that the article referred to a week-end of events and that he had been aware of the week-end of events. He stated that he had been asked to take part in the week-end of events and he had agreed to participate, but he did not agree to participate nude. He offered to participate in an evening event which took place on stage in the dining room which he did in fact take part in at a different time than was noted in the article.

11. Mr. Campbell denied that the programme "Uncensored" which he hosts has as its main theme sexual topics, and stated that the tone of the programme is concerned with current and topical issues, ranging from rape, incest and group sex to crime and the state of the economy. He said that he had not expressed his opinion on partners in sexual intercourse, female or otherwise. He is the host, not a guest, and his personal opinions are not put forward.

12. Mr. Campbell could not say whether the libel had affected him in his capacity as an actor. He currently appears on Royal Palm Estates and the play "Love and Marriage" went on prior to, during, and after the article.

In cross-examination Counsel for the defendants had called for and examined the letter from the R.J.R. Group. This letter, which I note is dated June 1, 2004, was admitted as an exhibit in re-examination. The letter in my view does not represent Mr. Campbell's employers' immediate response to the article. It is not addressed to Mr. Campbell, but is instead addressed "To Whom It May Concern" and was written nearly two years after the

offending publication. The letter is really at best a commentary by FAME FM'S Executive Producer indicating his opinions and disappointment about the behaviour described in the article. To that extent it is supportive of Mr. Campbell's case. However, Mr. Campbell did not lose his job and there is no evidence that he received any sanctions as a result of the incident. Happily his employers appear to have been prepared to give him the benefit of the doubt as to whether he did in fact do what the article said.

13. After the Claimant's case was closed the Observer's Editor-in-Chief Paget DeFreitas gave evidence. Mr. DeFreitas was also the Editor-in-Chief in September 2002 when the article was published. He knows Mr. Campbell and he had at the time of the article and still has a decent acquaintance and relationship with him. He indicated that he knows of Mr. Campbell hosting "Uncensored". Mr. DeFreitas has listened to Mr. Campbell, has read things about Mr. Campbell and has read things written by him.

14. According to Mr. DeFreitas, the general tone of the discussions on the programme "Uncensored" is of a fairly explicit and personal nature, mostly dealing with sex and sexual relationships. The programme deals with how people prefer their sexual partners and the kinds of things people do in sexual relationships. Mr. DeFreitas has heard Mr. Campbell say what he likes in women, how he likes his women to look and what sorts of underwear he likes his women to wear. He has heard these views from Mr. Campbell on the radio and in person. He also read a newspaper interview

with Mr. Campbell, the general tone of which had to do with how Mr. Campbell likes his women to look and what he likes them to do to him.

15. Based on what he knows about Mr. Campbell, Mr. DeFreitas was not surprised when he saw the article. His perception of Mr. Campbell is that he is a little bit of an exhibitionist, who thrives on public attention. Having read the piece, i.e. the article by the second defendant, it seemed to Mr. DeFreitas to be the kind of thing that Mr. Campbell would do to get the spotlight shining on himself. Mr. DeFreitas would not be surprised if Mr. Campbell had, at some time after the article was written, done the type of acts which the article said was supposed to have been done by him at Hedonism III.

16. In cross-examination Mr. DeFreitas indicated that whilst he has not listened to an entire programme of "Uncensored", he has listened to substantial segments of the programme about twenty times. He says that on each and every occasion that he has heard the programme it has had to do with sex and, said he, in what I thought was a rather sarcastic vein, he has not been privileged to hear any deep discussions about the W.T.O. or the economy.

17. Mr. Campbell, in Mr. DeFreitas' view is more on the entertainment side of the media, and is not involved in the serious core of the media.

18. The second defendant Chester Francis-Jackson gave evidence next. Mr. Jackson gave evidence that he is a publicist and that he currently writes a column for the Gleaner. He used to write a column for the

Observer and he was the author of the Article "Social Lives" issued Sunday September 1, 2002 in the Sunday Observer. Mr. Jackson has known Mr. Campbell for close to twenty years. Mr. Jackson said "I know him (Campbell) socially and I know him intimately".

19. The hotel manager of Hedonism III Mr. Brian Sang had telephoned Mr. Jackson and invited him down to the hotel because of the schedule of week-end activities. Mr. Jackson stated that he had information which led him to write the article. He normally checks his sources prior to publication. On the day in question he checked the entertainment staffers at the hotel and they advised him that the performance of Mr. Campbell was underway. Based on that information and other factors Mr. Jackson wrote the article. He was convinced of the truth because Mr. Campbell had been billed for the performance and a nude performance did take place. Mr. Jackson subsequently discovered that it was not Mr. Campbell who had performed in the nude, instead, it was a stand-in. Mr. Jackson stated that he would not have been surprised if Mr. Campbell had appeared in the nude because he has known him for over 20 years, knows his personality, they have over the course of years had many discussions, and Mr. Jackson has "never known him(Campbell) to be a prude or anything of the sort". He stated that he has seen Mr. Campbell in the nude, and it was on the basis of his familiarity and interactions with Mr. Campbell that he was called by the hotel manager Mr. Sang.



20. Mr. Jackson too has heard Mr. Campbell's programme "Uncensored". He has heard discussions on Jamaican men and oral sex and he has heard Mr. Campbell leading the guests in the direction he thought Mr. Campbell wanted to go by leading evidence as to his likes and dislikes, and what he would do and would not do. Mr. Jackson says that the "promos" for the programme have always been titillating. The programmes he has heard have been sexual in nature although he is not in a position to say that only sexual topics are discussed on the programme.

21. In cross-examination Mr. Jackson said that he is still on social terms with Mr. Campbell. Prior to the trial date he had not seen Mr. Campbell in over a year. However, it was normal in their relationship not to speak to Mr. Campbell with any consistency although they had been closer at one time.

22. Mr. Jackson said at the time of the nude performance, he was on the Hedonism III property at another event, and was not at the nude performance. He says he was at the ladies' performance that he was more interested in seeing at the time. He admitted that the ladies' performance was not referred to in the article of September 1, 2002 although he claims that an article on the ladies' performance might have been done at another time.

23. Mr. Jackson was advised by staffers that the performance of Mr. Campbell was underway and that it took place. He also spoke to persons other than staffers. He spoke to guests who indicated that the performance was great. Staffers gave a glowing review in informal terms eg. they said

something like "him mash it up". Mr. Jackson conceded that his mistake was to assume that the person who did the nude performance was Mr. Campbell because he was the one billed for the performance.

24. Mr. Jackson agreed that in the article he described the performance in some detail, for example, by saying Mr. Campbell thrilled and trilled the audience with his prose and form. As a columnist of a newspaper so widely published he felt that it was in order for him to write a graphic sort of article when he was not even present. Mr. Jackson opined that this is acceptable because he normally takes a sampling of the audiences' reactions or responses and he obtains a sampling from the guests. He spoke to the guests after the performance.

25. After the performance he did not see or speak to Mr. Campbell. Mr. Jackson went off property to a function.

26. After Mr. Jackson's evidence, the case for the Defendants was closed. It is to be noted that Mr. Sang was not called to give evidence on behalf of the Defendants, in particular to state whether Mr. Campbell was in fact slated to do the nude performance.

27. What is the relevant law to be applied to the facts as found by me? In this case, judgment has been entered in favour of the Claimant on the issue of liability and it having been ordered at the Case Management Conference that damages are to be assessed, the offensive aspects of the article have therefore been determined to be defamatory of the Claimant.

28. Whilst it is true that society today, at least in the western world and Jamaica, may find a nude performance less abhorrent than in former times, and that in certain quarters and segments of society such a performance might even be viewed as avant-garde, trendy and liberal, I am of the view that the right-thinking ordinary average members of society generally on reading the article would view the alleged behaviour of Mr. Campbell described in the article as exhibiting loose morals and such readers would view a nude performance as being of an indecent nature.

29. In cases of libel, the Claimant may, but need not prove actual damage, because the law presumes damage or injury to reputation resulting from defamation. My task is therefore to assess general damages in light of the principles governing this area of the law.

30. Damages are said to be at large and are not amenable to assessment by way of any precise arithmetical calculation. The main purposes of general damages in this area of the law are to compensate the Claimant for the distress he suffers from the publication, to repair the harm to his reputation, and also to serve as a vindication of his reputation.

31. As Rowe, J. as he then was, indicated in **Caven v. Munroe** 16 J.L.R. 286 at 293f and as Forte P. indicated in S.C.C.A No. 21/98 **Margaret Morris and The Gleaner et al v. Hugh Bonnick**, and S.C.C.A. No. 70/96 **The Gleaner Co. Ltd. & Dudley Stokes v. Eric Anthony Abrahams**, previous decisions as to quantum in libel cases are not necessarily helpful, even when updated to the money of the day. This is because, as Sir Thomas

Bingham M.R. said in **Elton John v. M.G.N. Ltd.** [1996] 2 All. E.R. 35 at p.51... “comparison with other awards is very difficult because the circumstances of each libel are almost bound to be unique.” In **John v. MGN Ltd.** the English Court of Appeal did approve of the practice of looking at awards which the Court of Appeal had had an opportunity to affirm or vary. In my view, the decisions by judges in other libel cases, particularly those considered by our Court of Appeal, can be a rough and ready point of reference as a check or balance, once one bears in mind that the circumstances in each case are almost bound to be unique. What is important is that, as Rowe P. said in **Caven v. Munroe** p. 293F “I must however take fully into consideration all the factors which have traditionally exercised the minds of judges and jurors in arriving at a proper award”.

32. In paragraphs 32.46 – 32.52 of Gatley on Libel and Slander, 10<sup>th</sup> Edition, some of the relevant considerations are set out. Relevant considerations are the extent of publication, the nature of the libel, the effect of the defamation on the claimant’s reputation, the claimant’s position and standing, injury to feelings, any distress, loss of trust and humiliation the defamatory publication has caused to the claimant and any actual loss suffered by the claimant eg. Loss of business or earnings. The whole conduct of the defendant, from the time of the defamatory publication to the time of the judgment may also be taken into account.

33. In this case the Claimant has alleged that the defendants’ conduct has aggravated the damage and I will therefore have to consider whether

compensation for this additional injury to the Claimant's feelings should be awarded.

34. At paragraph 33.28 of Gatley on Libel and Slander, it is stated:-

Admissible evidence that can be given in mitigation of damages can be placed in the following categories:-

- (1) claimant's bad reputation;
- (2) facts relevant to the contextual background in which the defamatory publication came to be made;
- (3) evidence properly before the court on some other issue;
- (4) facts which tend to disprove malice,
- (5) claimant's own conduct;
- (6) apology or other amends;
- (7) damages already recovered for same libel.

35. In this case I do not recall hearing any evidence as to the extent of publication, but from the evidence that has been led it can be taken that the article appeared in a newspaper that enjoys wide circulation and prominence in Jamaica. Although it was pleaded that the newspaper is also available to readers internationally via the internet, no evidence was brought on this point and to my mind, that evidence ought to have been led if reliance was to have been placed on such facts. It is not a matter of which a court can take judicial notice. I must however look at the prominence of the article, the titillating and dramatic way in which the article is delivered and the fact that, like the names of other persons referred to in the article, Mr. Campbell's name appears in bold type.

36. In this case, the claimant gave evidence as to his status as a broadcaster and as to comments made to him by persons who had read the article. Mr. Campbell has told us how he was shunned and ridiculed. Whilst I appreciate that the defendants, in giving their views as to the claimant's reputation have their own interest to secure, I accept them when they say that the programme "Uncensored" which is hosted by Mr. Campbell does have as its focus, matters sexual in nature. I thought Mr. Campbell's demeanour unconvincing when he was asked questions in relation to this aspect of the matter and when certain suggestions were put to him. This is relevant because the subject article would cause less damage to the reputation of someone who does not mind expressing their sexual views publicly to the world at large than someone who is more reticent about such private matters. It would also cause less injury and hurt feelings to a Claimant who is an outgoing extrovert than a person given to privacy and modest decorum. On the other hand I bear in mind that someone who is quite liberal in their expressed views is not necessarily someone who would be prepared to exhibit themselves publicly. In addition, some regard must be had to Mr. Jackson's evidence about how well acquainted he is with Mr. Campbell and his personality and the level of their relationship, and the fact that they are still on good terms. No suggestion to the contrary has been made on Mr. Campbell's behalf in respect of any of these matters.

37. Unlike the cases of **Hugh Bonnick v. Margaret Morris and the Gleaner Company Limited** S.C.C.A No. 21/98 **The Gleaner Company**

**Limited v. Eric Anthony Abrahams**, S.C.C.A. No. 70/96 (there are Privy Council decisions in respect of both of these cases but those decisions do not affect the point being made here), **Caven v. Munroe** and **Leslie Harper v. Edward Seaga** Suit No. C.L.H.138/1996 judgment delivered (11/7/03), in this case there is no defamatory allegation in relation to the claimant in his profession or trade or office. As was stated at page 60 of the **John v. MGN Ltd** case, though the article was false, offensive and distressing it did not attack Mr. Campbell's personal integrity in that there is no implication of dishonesty, underhandedness, corruption or deceitfulness. Nor does the article generally damage his overall reputation as a broadcaster or performer. I do however bear in mind what Mr. Campbell had to say about loss of a contract with Dairy Industries.

38. In assessing damages in respect of the injury to Mr. Campbell's feelings, I am entitled to take into account the distress, hurt and humiliation the defamatory publication has caused to the Claimant - **John v. M.G.N.** [1996] 2 All.E.R. 35. I am also entitled to take into account the effect on Mr. Campbell of the distress he discovered coming from his son. At paragraph 32.48 of Gatley on Libel and Slander, reference is made to the judgment of Moland J, in **Nixon v. Channel Four Television** unreported, April 11, 1997 where the claimant was permitted to give evidence of the effect upon him of such distress as he observed of his wife and daughter. Where the claimant is speaking of himself being shunned this is described

as “social distress” and distress caused by the distress of people in the claimant’s environment is described as “reflex distress”.

39. As regards the evidence offered by the defendants in mitigation of damage, I have listened to the evidence as to the facts relevant to the contextual back ground in which the defamatory publication was made, for example, that based on information received, Mr. Jackson had been informed that Mr. Campbell was billed to perform nude. Mr. Campbell himself says he was to perform but at a different event and venue on the Hedonism property and not nude. In this regard I refer to paragraph 33.12 of Gatley on Libel and Slander where the author discusses the decision in

**Burstein v. Times Newspaper** [2001] 1 W.L.R. 579 as follows:

“It was held that, even though there is no defence of justification, evidence could still be led in mitigation of damages of facts which are directly relevant to the contextual background in which a defamatory allegation came to be made, albeit that the evidence consists of facts that in other circumstances might have been the ingredients of the defence of justification. It was emphasized that the defendant has to accept that the publication complained of is not on the facts justified. Thus if the libel complained of was a report that the claimant in the course of a drunken brawl struck a woman in the face evidence could be led that the claimant did get involved in a drunken brawl, though he did not strike anyone, as that would be relevant to the contextual background.”

40. I accept as a fact that Mr. Jackson was informed by hotel staffers that the performance of Mr. Campbell was under way and did take place, and further that a nude performance reading poetry occurred. However, there is



no evidence to prove that Mr. Campbell had in fact offered to perform nude and so I make no finding in that regard. One would have expected the Defendants to call the hotel manager Mr. Sang or some other knowledgeable person from the hotel to give evidence as to Mr. Campbell's alleged offer to perform nude, if the Defendants intended to assert and rely on that factual position.

41. I now turn to consider the claim for aggravated damages.

The court is entitled to look at the whole conduct of the Defendants from the time the libel was published right up until trial. At paragraph 32.51 of Gatley on Libel and Slander it is stated that evidence tending to establish malice on the part of the Defendants is, as a general rule, admissible to support a claim for aggravated damages. Recklessness as to the truth of a defamatory statement, not caring whether it be true or false, is treated as equivalent to knowledge that it is false. At paragraph 32.33 of Gatley it is stated:

"It has been suggested that malice could arise if the defamatory charge was made, not on the evidence of the defendant's own senses, and a slight inquiry would have shown that the charge was unfounded."- per Lord Salveson in **AB v.XY** 1917 S.C. 15 at 23.

In the present case Mr. Jackson indicated that he did not see the performance himself yet he reported it in such descriptive terms. A slight inquiry, particularly of Mr. Campbell himself, would have indicated that what was reported was fallacious. Failure to speak to Mr. Campbell before

publishing is all the more inexplicable when one takes into consideration how well Mr. Jackson states that he knows Mr. Campbell. At page 62 of **John v. MGN Ltd** Sir Thomas Bingham M.R. indicated that it would be reckless not to make an inquiry which was extremely simple, involving no more than a phone call. There, as here, there was no urgency about the article, it was not as if it was news in respect of which readers would lose all interest if the article had been deferred for a time period during which proper inquiries could have been made. It is interesting to note, by way of contrast, that in the offending article Mr. Jackson makes no report about the event involving the ladies, which event he says he personally attended, yet he was content to report upon an event which he Mr. Jackson did not personally witness.

42. In addition, Mr. Campbell is relying upon the way in which the Defendants have conducted their defence as aggravating the damage suffered by him.

43. In her written submissions, Counsel for Mr. Campbell highlights the background to the claim. The Defendants filed a defence on January 22 2003 denying that the words published were libellous and stating that no spite or malevolence towards the Claimant was intended. Almost one year later on January 6 2004, the Defendants filed an Amended Defence which merely stated an intention to rely on the defence of Justification without providing any facts in support of such a defence. On the 21<sup>st</sup> of January 2004 the Claimants filed an application to have the Defence and Amended

Defence struck out for disclosing no reasonable grounds for defending the claim and for failure to comply with the Civil Procedure Rules 2002 as they relate to setting out the facts on which the Defendants rely to dispute the claim or setting out the Defendants' version of events, as well as the requirement for verification by a certificate of truth.

44. On the 4<sup>th</sup> of February 2004 when the Case Management Conference came on for hearing, the Conference was adjourned on the Defendants' application, their Attorneys having indicated a desire to settle.

45. Some months later, in June 2004, the Affidavit of Camille Royes was filed on behalf of the Defendants in response to the Claimant's application. That Affidavit makes it very plain that at the time when the plea of justification was raised the Defendants, certainly their Attorneys-at-Law, did not have all the details at hand to properly ground such a defence. In my view there was no proper basis whatsoever for raising the plea of justification. To do so in these circumstances was reckless and erratic.

Parties and their Attorneys-at-Law must understand that there are consequences for such conduct. However, the matter does not end there. That Affidavit goes on to seek the Court's permission to further amend the Defence in a manner which included a persistence in the defendants' denial of malice and an allegation that the Claimant offered to perform a poetry recital nude. That application to further amend was never granted.

46. The Second Case Management Conference on June 10, 2004 was adjourned due to the absence of the Defendants as well as their Attorneys-

at-Law. On December 21 2004, once again neither the Defendants nor their Attorneys-at-Law were present, and the Defendants' Defence was struck out for non-compliance with procedural rules, as well as for disclosing no reasonable grounds for defending the claim. Judgment was entered for the Claimant for damages to be assessed.

47. It is therefore clear that the Defendants did not expressly admit liability. Nor did they withdraw or abandon the plea of justification; it was left to the court to seize control of the reins and strike out the defence. In point of fact it has even been held that the mere fact that the defendant has placed a plea of justification on the record is a matter which can be considered when assessing damages, even though the defendant withdraws the plea at trial- **Warwick v. Foulkes** (1844) 12 M & W 507.

48. As regards the matter of refusal to apologize, Counsel for Mr. Campbell made reference to this factor in her written submissions. However, there really was no evidence adduced before me, which I can comfortably rely on with regard to this aspect of the matter. In any event, the mere fact that a defendant who has uttered an erroneous defamatory statement, declines to meet a demand for an apology or to withdraw the statement, is not evidence that the statement was made maliciously. Much will depend on the circumstances and, in my view, those circumstances have not been properly distilled in this case. I will not be taking this factor into account in deciding on the appropriate measure of damages and whether to award aggravated damages.

49. I find that there is evidence of malice in this case. I also find that the Defendants' conduct from the date of publication of the libel, right through the litigation up to the time when the Defence was struck out, and arguably right up to trial(though I make no specific finding in respect of the time after the striking out), along with the malice is such as to aggravate the damage suffered by Mr. Campbell.

50. The damages are in truth at large in this case and I have not had the benefit of looking at any libel case where the circumstances are similar. In the **Bonnick** case, serious allegations were made of impropriety and lack of integrity in the Claimant's professional capacity. Although the judgment of the learned judge at first instance was overturned, the majority in the Court of Appeal did not appear to find the award of \$750,000.00 excessive. Forte,P would have reduced the award to \$650,000.00 but this was because he was not satisfied that the case was an appropriate case for aggravated damages. That case was decided in 1998 and today that award would be considerably higher. In the **Harper v. Seaga** decision Brooks J. made an award of \$3.5 Million on the 11<sup>TH</sup> of December 2003, which also represented an award inclusive of aggravated damages. In that case there were also serious allegations of professional impropriety and Mr. Harper was found to have been defamed in respect of a public office. I am advised that that case is under appeal. In the case of **Woman Corporal Kennedy v. The Gleaner Company Limited** C.L. 1995/ K 030 delivered 27<sup>th</sup> April 2001, a corporal of police was defamed in her personal capacity by a newspaper

report. In that case the libellous statement was that the Claimant and her sister-in-law were involved in a physical fight in a church at the funeral of the Claimant's brother. Dukharan J. found that as a result of the defamation the Claimant was removed from active duty, given static duty and was by-passed for promotion. She was awarded \$750,000.00 and that sum included an award for aggravated damages. An Appeal from Dukharan J.'s decision was dismissed by the Court of Appeal. That sum if updated to today's money would also be substantially more. I am aware that the circumstances in each case are very unique. However, I consider that the libel in the **Bonnick** case and the **Harper** case should attract a larger award than in the instant case whilst the award in the **Woman Corporal Kennedy** case is not outside the ballpark which I consider appropriate in the instant case, taking all factors and circumstances into consideration. In all the circumstances, and bearing in mind all mitigating and aggravating circumstances, I consider an award of \$1,000,000.00 to be appropriate. General Damages are therefore assessed against the Defendants in the sum of \$1,000,000.00, with costs to the Claimant to be taxed if not agreed or otherwise ascertained.