[2025] JMSC Civ 21

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021CV00483

BETWEEN	**RICHARD CREARY**	**CLAIMANT**
AND	**THE GLEANER COMPANY (MEDIA) LIMITED**	**DEFENDANT**

IN OPEN COURT

Mr Robert Collie instructed by Collie Law for the Claimant

Mr Kevin Powell and Ms Annay Wheatle instructed by Hylton Powell for the Defendant

Heard: September 23, 24, 2024 & February 26, 2025

DEFAMATION – JOURNALISM – ALLEGATION OF CORRUPTION – *REYNOLDS* PRIVILEGE - FAIR COMMENT – INTEGRITY COMMISSION MISSTATES FACTS – ARTICLE PUBLISHED WITH SAME ERRORS - APOLOGY TO CLAIMANT BY INTEGRITY COMMISSION AFTER ARTICLE PUBLISHED – NO APOLOGY FROM DEFENDANT – NO COMMENT SOUGHT FROM CLAIMANT BEFORE PUBLICATION – VERIFICATION NOT SOUGHT - REPORT SERIOUS IN TONE AND CONTENT - DAMAGES

Defamation Act, 2013, sections 21, 23, 24 & 25, paragraphs 5 & 7 of Schedule I
Integrity Commission Act, section 55(5)

WINT-BLAIR, J

Background

[1] **"*The public tends to be interested in many things which are not of the slightest public interest*."**[1]

[2] The Integrity Commission Act ("the Act") was brought into force on February 22, 2018. The Act established a Commission of Parliament to be known as the Integrity Commission and charged it with certain functions to include the receipt of complaints and the commencement of investigations into alleged or suspected acts of corruption.

[3] Under the Act, the Integrity Commission may at any time, submit a report to Parliament on any matter which in its opinion, the Parliament should give its particular attention.

[4] Petrojam is Jamaica's petroleum refinery. It is jointly owned by PDV Caribe, a subsidiary of Petróleos de Venezuela and the Petroleum Corporation of Jamaica ("PCJ"). The PCJ is a statutory body created and wholly owned by the Government of Jamaica. Both Petrojam and PCJ are state entities.

[5] In June 2018, the Integrity Commission commenced an investigation into "*allegations of impropriety and/or irregularity, conflict of interest, corruption, nepotism, cronyism and favouritism at Petrojam Limited*."

[6] In October 2019, the Integrity Commission concluded that investigation and published two reports:

1. *Special Report of Investigation – Petrojam Report No. 1 Conducted into Allegations of Acts of Irregularity and/or Impropriety, Conflict of Interest,*

[1] **Jameel and Others v Wall Street Journal Europe SPRL** [2006] UKHL 44

Corruption, Nepotism, Cronyism and Favouritism at Petrojam Limited ("report no. 1".) and;

2. *Special Report of Investigation – Petrojam Report No. 2 – Conducted into Allegations Concerning Certain Donations which were made by Petrojam Limited to Organisations and Causes for the Period April 2016 to March 2018,* ("report no. 2".)

[7] These reports raised questions regarding connections between certain named individuals, in or connected to Petrojam. The concern of the Integrity Commission as set out in the reports was whether certain named individuals were strategically placed in positions at Petrojam to form part of certain corruption-enabling mechanisms.

[8] The claimant claims that he was erroneously named in the reports as a member of the panel that had interviewed Floyd Grindley for the post of General Manager of Petrojam. Further, that he was included in a panel that recruited Ms. Yolande Ramharrack which was found to be irregular. He contends that these errors were made by the Integrity Commission and the Gleaner published them without contacting him or ensuring that the article was accurate.

[9] The Integrity Commission acknowledged the errors in its reports in a public apology to the claimant, attached to a media release dated July 13, 2020, which stated:

> *"The Integrity Commission has today issued a written apology to His Worship the Mayor of Port Maria, Councillor Richard Creary.*
>
> *The apology was issued in respect of an erroneous statement that was made in the Commission's 'Petrojam' Reports of Investigation.*
>
> *The reports were recently submitted to and tabled in both Houses of Parliament.*
>
> *The Commission's apology was copied by the Commission to the Hon. Speaker of the House of Representatives, the President of the Senate and the Clerk to the Houses.*

In its apology to Mayor Creary, the Commission said that it "sincerely regrets its error and wishes to unreservedly apologize to you for any distress, embarrassment or inconvenience that it may have caused you."

In the interest of full transparency, and public accountability, a copy of the apology is appended to this media release."

[10] In the letter of apology[2] to Mr Creary, the Integrity Commission in an unsigned letter wrote:

"…

The Commission has since determined that at Conclusion #30 on page #375 of Report #1, and that at Conclusion #8 on page #196 of Report #2, it is erroneously stated in substance, that you were a member of a panel that interviewed Mr Floyd Grindley for the post of General Manager of Petrojam Limited."

On page #216 of Report #1, it is accurately stated that you were indeed "unable to attend" at [sic] *the interview of Mr Floyd Grindley.*

The Commission recognizes that you only participated on the panel for the interview involving Ms Yolande Ramharrack, for the post of Human Resource Development and Administration Manager. This fact is accurately recorded in Report #1."

The Claim

[11] The claim states that on July 1, 2020, the Gleaner Company (Media) Limited ("the defendant"), published an article entitled *"Web of Corruption?"* The article was based on reports no. 1 & 2 tabled by the Integrity Commission in the House of Representatives on June 30, 2020.

[12] The claimant, in compliance with rule 69 of the Civil Procedure Rules, outlined the defamatory words in his particulars of defamation as follows:

i. The defendant defamed the claimant by insinuating that he was a corrupt public official and by naming the claimant a "key enabler" of corruption, calling his inclusion on a recruitment panel "irregular" and falsely naming him as a member of the panel that interviewed Mr Floyd

[2] Dated July 13, 2020

Grindley for the post of General Manager of Petrojam Limited, who was accused of being dishonest.

[13] The claimant alleges that the article was defamatory in that he has maintained a sterling reputation as an honest and upstanding member of society. He is a well-respected political figure and his reputation has been damaged by the defendant.

[14] He claims that the servants and/or agents of the defendant deliberately and/or negligently published an article characterising him as dishonest and corrupt as the lead story in the Daily Gleaner.

[15] The claimant testified that he was no longer a member of the Petrojam Board when the reports were tabled. He was a director of the PCJ at that time. The article said he was a friend of Dr Andrew Wheatley, former energy minister who was accused of being corrupt and involved in the Petrojam scandal. The article insinuated and implied without any evidence, that because of that friendship, the claimant himself was also corrupt.

[16] The article sought to link this alleged corrupt relationship between the claimant and Dr Wheatley as a conflict of interest, nepotism, favouritism and cronyism, all of which cast the claimant in a negative light. The claimant was referred to as one of the "*Key enablers?"* of corruption and as part of a *"Web of corruption?"*

[17] His inclusion on the panel that recruited Ms Yolande Ramharrack was stated to be *"irregular,"* in the article. However, the claimant testified that he had nothing to do with the recruitment of Ms Ramharrack, he admitted that he was a member of the panel that interviewed her.

[18] The claimant gave evidence that the defendant published the article without first contacting him or making any reasonable attempts to verify the information used in the story. Thereby affecting the minds of the many readers of the Gleaner with the damaging notion that as a public official, he was dishonest and bringing his reputation into disrepute. Further, the widespread publication and dissemination of the article has caused damage to the claimant's career and future prospects.

The publication of the article lowered him in the estimation of right-thinking members of the society which has caused him embarrassment.

[19] The claimant instructed a public relations company, Communications and Marketing Limited, to send a statement on this matter to the defendant refuting the allegations made against him in the article. The defendant ran a truncated version of his statement on July 3, 2020, and in doing so gave it a negative spin whereas the claimant's statement was carried in its entirety by other media houses. An online publication by the defendant containing the statement was shown to the claimant who said that he had not seen it before.

[20] The defendant refused to offer an apology to the claimant despite his requests and his statement correcting the article. The article remains accessible on the defendant's online platform. Unless it is restrained, the defendant will further publish or cause to be published the defamatory article complained of, or similar articles and/or will negligently allow its online partners and platforms to continue the publication of the article. As such, the claimant claims:

1. Damages aggravated and exemplary damages, for defamation.
2. An Injunction restraining either the defendant, its employees, agents and/or servants or otherwise, from publishing or causing to be published the same or similar articles defamatory of the claimant.
3. Interest pursuant to the Law Reform (Miscellaneous Provision) Act.
4. Costs.

The Defence

[21] The Gleaner Company (Media) Limited in its defence, admits that at all material times, Mr Creary was the Mayor of Port Maria, St Mary and that it published the article in its daily newspaper, the Gleaner on or about July 1, 2020.

[22] The defendant in its particulars of defence relied on the reports and contends that the words complained of were fair comment on the questions raised and the conclusion set down in the reports.

[23] The article was a commentary on the Integrity Commission's findings that named individuals, including the claimant, based on their affiliations, connections, posts and roles in the management and operations of Petrojam, were strategically placed in positions to enable corruption at that entity.

[24] The Integrity Commission apologized to the claimant on July 13, 2020, after the publication of the article. The defendant denies that the words used in its article were defamatory and relies on qualified privilege at common law, section 23, paragraphs 5 and 7 of Schedule 1 of the Defamation Act and section 55 of the Integrity Commission Act.

[25] The defendant denies that it has damaged the claimant's reputation as it gave due regard to the principles of responsible journalism. It relies on *Reynolds* privilege to ground this defence.

[26] On or about July 1, 2020, the servants and/or agents of the defendant, published an article called *"Web of Corruption?"* as the headline article in the Daily Gleaner following the publication of the reports by the Integrity Commission.

[27] Mr Jovan Johnson, an investigative and multi-media journalist as well as Senior Staff Reporter at the Gleaner gave evidence that it was he who had compiled the information and authored the story for the article headlined *"Web of Corruption"*.

[28] Mr Johnson testified that the headline for the article was created by the editor and the information used for the story was taken from the reports tabled in the House of Representatives on the afternoon of June 30, 2020. He obtained copies of the reports via an email sent at 4:53 p.m. on June 30, 2020, from the Public Relations Officer to the Houses of Parliament. Mr Johnson said that this is the usual practice for the distribution of Parliamentary material and that on previous occasions he had received material in that way so he had no doubt that the reports were genuine.

[29] The information for the article was taken from the reports. Mr Johnson said that he reproduced what was in the reports, his article was not original journalism. The witness disagreed that in his haste to submit the article before his submission deadline, he carelessly and without due regard for the facts rushed the article to his editor for publication.

[30] The reports relied on by the defendant were protected by the Integrity Commission Act. The reports named certain individuals as part of its concluded investigation. The article was based on the Integrity Commission's use of the characterisation "*corruption-enabling mechanisms"* to question the strategic placement of individuals at Petrojam as was said in the reports. Page 191 of report no. 2 included a diagram "*outlining the relationships and/or affiliations between Petrojam Limited officials, GOJ officials and other persons detailed herein*". Mr Johnson testified that it was his belief that the article was a fair and accurate report and/or comment on the reports.

[31] The article concerned important and serious issues of legitimate public interest including issues related to the management, and operations of Petrojam. The only part of the article that was not taken from the reports was a section identifying public figures. Mr Creary was then the Mayor of Port Maria.

[32] The witness when asked the meaning of the words *"Web of corruption?"* responded that the article had a question mark (?) inviting the reasonable reader to pay attention to it. The headline invited the reader to read the rest of the story. The article made it clear in paragraph one that the question posed in the headline arose from statements made in the reports. He pointed out the claimant in a depiction of a spider, on the same page as the article whose legs pointed to photographs of Dr Wheatley, Mr Grindley, the claimant and Dr Bahado-Singh. The *words "Key Enablers?"* with a question mark, appeared beside the spider.

[33] Mr Johnson said he was aware that one of the ethical standards of journalism required that a person should be given an opportunity to respond. Though he had a submission deadline of one hour, he was able to read the approximately 700

pages of reports and write the article. Mr Johnson admitted that he did not contact any of the individuals named in the reports before submitting the story for print. He said this looming deadline was not the reason he sought no response from the subjects of the article as the defendant did not contact any of the over one dozen people named in the reports.

[34] He said that the defendant was mindful of the timing of the release of the reports. Their release was late in relation to his submission deadline. The reports had been shared with other media entities who would no doubt be seeking to publish their stories on the reports as soon as possible. In addition, the reports contained matters of significant public interest and this outweighed contacting the individuals.

[35] Mr Johnson's evidence was that he does not know the claimant personally and does not recall having any particular interaction with him. He had no malice towards the claimant, at the time he wrote the article, nor did he have any malice towards him before or after that. The claimant was not the focus of the article. He was but one of several persons referred to in the article, all of whom were named in the reports. He firmly disagreed with counsel's suggestions that both he and the defendant were politically affiliated and biased against the Jamaica Labour Party.

Submissions

[36] Counsel for the claimant submits that the use of the words *'Web of Corruption?'* and *'Key Enablers?'* by the defendant are defamatory. In defining the tort of defamation, counsel for the claimant relied on the case of **Michael Troupe et al v Leon Clunis et al**[3] and the Defamation Act, 2013.

[37] It was argued that the tenor of the defendant's article was designed to lower the reputation of and embarrass the claimant by implying to an ordinary reasonable person that the claimant was a corrupt public official engaged in nepotism and collusion by innuendo. The reason for the facetious placement of the question mark after the headline is that the defendant well knows the words *"Key Enablers?"*

[3] [2019] JMSC Civ 240

are by their very nature defamatory. Associating the word 'corruption' with a politician damages his political hopes as it means he is untrustworthy.

[38] It was submitted by Mr Collie that the defendants have sought to rely on the defences of qualified privilege, fair comment and sections 21 and 23 of the Defamation Act. In the cases of **Flood v Times Newspaper Ltd**[4] and **Reynolds v Times Newspapers Ltd**[5] the defence of qualified privilege required a balance between freedom of expression and protection of the claimant's reputation.[6] The standard to be applied was that of responsible journalism.

[39] Further, Mr. Johnson, admitted that he made no contact with the claimant nor any one named in the article. Had the defendant practised responsible journalism, the article would not have been published with false information from the reports. The defendant also cannot avail itself of the defence of fair comment as the claimant's statement was not published in the same medium as the initial article and would not have reached the same audience.

[40] It was contended by Mr Collie that section 55 (5) of the Integrity Commission Act does not provide for the defences of qualified privilege nor fair comment as does the Defamation Act. The defendant sought no comment from the claimant, failed to issue an apology, and hastily published the article. While the story may have been a matter of public interest, the basic tenets of responsible journalism were breached. The defendant, in its rush to meet its self-imposed and very short deadline, acted so negligently as to be malicious.

[41] The defences have not been made out by the defendant. By its own admission, there has been no publication of the claimant's statement in the printed newspaper which is the correct medium within the meaning of Section 23 of the Defamation Act. As such, having failed under the Defamation Act, the defences ought to fail under the Integrity Commission Act.

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[4] [2012] UKSC 11
[5] [1999] 4 All ER 609
[6] [2019] JMSC Civ 240 [121]

[42] In the circumstances, the claimant was defamed and ought to be awarded damages as assessed by this Honourable Court. The claimant claims exemplary damages as the defendant was motivated by malice and completely reckless in its rush to publication without first seeking his comment. This amounted to a failure of the test of responsible journalism.

[43] Counsel for the defendant, Mr Powell submits that the words of the article are not defamatory of the claimant. He cited the case of **Bonnick v Morris and others**[7] for the approach that the court should take in giving the article the natural and ordinary meaning it would have conveyed to the reasonable reader of the Gleaner reading the article once.

[44] When this approach is adopted, the claim should fail at the first hurdle. The article includes question marks by the words "*Web of Corruption?*" and "*Key Enablers?*" indicating that the words are not intended to be statements of fact but raise questions for the reasonable reader to consider. The words under Mr Creary's name do not allege or suggest that he has acted corruptly. The reference to his inclusion on an interview panel as "irregular" does not lead to the singular meaning that he was corrupt. The opening words of the article make it clear that the question in the headline arises from the reports of the Integrity Commission and is not definitive.

[45] The image of the claimant as connected to Dr Andrew Wheatley, former Energy Minister when considered against the opening words in the article may be understood as establishing a connection between the persons in the images and Mr Wheatley. They ultimately raise a question as to whether these connections may have been utilised to facilitate corruption, it does not result in a singular meaning that Mr Creary is corrupt.

[46] Counsel relied on Section 55(5) of the Integrity Commission Act to submit that on a review of the reports, it is plain that the article was a fair and accurate comment

[7] (2002) 61 WIR 358; [2002] UKPC 31; [2003] 1 AC 300

on the reports. In his evidence, Mr Johnson indicated that in writing the article the defendant relied entirely on the reports released by the Parliament. He simply compiled the information from both reports and presented it to his editor. It was not until approximately two weeks later that the Integrity Commission publicly acknowledged its error in naming Mr Creary as a member of the panel that interviewed Mr Grindley. However, even before the Integrity Commission did so, the defendant had published Mr Creary's objection.

[47] The reports made statements and drew certain conclusions. They set out extracts from interviews conducted by the Integrity Commission and concluded with a diagram drawing connections between named individuals and Dr Wheatley to include the claimant. This is the same diagram Mr Johnson identified in his evidence outlining relationships between Petrojam officials, GOJ officials and others.

[48] The words "*corruption enabling mechanism*" were used in the reports.[8] The article was a fair and accurate comment on statements made in the report. The unchallenged evidence was that Mr Johnson compiled information from both reports and presented it to his editor.

[49] Mr Powell relied on the case of **Percival James Patterson v Cliff Hughes and Nationwide News Network**[9] in mounting the defence of ***Reynolds*** privilege and to submit that when determining whether qualified privilege attaches to publication by the news media all the surrounding circumstances must be taken into account.

[50] The subject matter of the article was of significant public interest and the nature and the source of the information were reliable. The reports had been tabled in Parliament and it was therefore entirely reasonable for Mr Johnson to rely on them without attempting to independently justify their contents.

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[8] report no.1, page 375, para 30, special report no. 2, page 196, para 8
[9] [2014] JMSC Civ. 167

[51] The reports were released to several news outlets on the evening of June 30, 2020, giving Mr Johnson just about one hour to review and write the article. The Gleaner in competing with other media outlets desired to publish the content of the reports as soon as possible.

[52] In keeping with the principles highlighted in **Patterson**, an approach to the plaintiff may not always be necessary. The source of the reports was a respected body - the Integrity Commission, the reports were the product of an investigation, the Commission had conducted interviews with the named individuals and the fact that the matter was of significant public interest all show that it was entirely reasonable for the Gleaner to adopt the view that it was not necessary to approach Mr Creary for a comment.

[53] Mr Johnson was cross-examined as to whether it was ethical for a journalist to afford someone an opportunity to respond when an accusation is made against him to which he responded in the affirmative. However, this did not apply to Mr Creary as the article was only a compilation of the information in the reports. No improper motive can be imputed to the defendant based on the evidence.

[54] In relying on **Patterson**, it was contended that there is no evidence on which it could be said that the Gleaner had any malice or improper motive in publishing the article. Mr Creary does not plead or allege malice, however, his evidence appears to suggest (and it was his counsel's attempt in cross-examination to show) that the Gleaner acted for an improper purpose when it published the article. There were several failed attempts during cross-examination to suggest that Mr Johnson personally and the Gleaner (by way of its Chairman) as an organisation was motivated by political partisanship to publish the article. Mr Johnson disavowed any political partisanship on his part and the suggestions from Mr Creary's counsel that the Gleaner was politically influenced was not supported by evidence. Mr Creary did not allege in his statements of case or in his evidence that the Gleaner published the article due to political partisanship.

[55] Mr Creary's assertions that the Gleaner published a "negative spin" were proven to be unfounded. When he was shown the publication which he alleged carried a "negative spin" and invited to identify the source of that characterisation, his response was that it was "*the way it was carried and the truncated version*." He could not identify anything in the publication which led him to this conclusion. Mr Creary claimed that the defendant chose what parts of his statement to publish. However, when he was shown that the Gleaner carried a more complete version of his statement, he agreed but then said that it was the first time he had seen it, despite the document shown to him being disclosed more than two years ago.

[56] The evidence shows that the Gleaner published several other articles[10] which reported on the Integrity Commission's error and Mr Creary's initial denial of this assertion. Those publications were a balanced report on the issues and could not reasonably be said to show any bias against Mr Creary.

[57] It was submitted that sections 24 and 25 of the Defamation Act should be applied should the court find that the defences have failed and that the article was defamatory of Mr Creary and any damages awarded to Mr Creary should be nominal.

[58] Mr Creary claims he has maintained a sterling reputation and, in amplification, gave evidence in support of that reputation. However, there is no evidence of the harm which he suffered as a result of the article. He called no witnesses to give evidence of how their views of him were affected after reading the article. His only evidence was subjective.

[59] Mr Creary continues to operate the business he ran prior to the article, without any evidence that it has been affected in any way. His constituents obviously formed no adverse opinion of him as a result of the article as he is currently the councillor of the Richmond division and was re-elected up to February 26, 2024, four years after the publication of the article. He was a deputy general secretary of the

[10] Exhibits 2A-2D

Jamaica Labour Party prior to the publication of the article and his status remained the same after the article was published. He was Mayor at the time of the publication, and he remained Mayor after the publication and only ceased holding that position in 2024 following the local government elections. There is no evidence that the publication of the article had any adverse effect on Mr Creary.

[60] Counsel relied on **Michael Troupe** to submit that there should be no award for aggravated or exemplary damages as Mr Creary has not pleaded any facts or led any evidence that would substantiate an award under either heading. There is no evidence before the court which shows that the defendant's conduct has in any way risen to the level that could justify an award of either aggravated or exemplary damages. [11]

Issues

1. Whether the words of the article were defamatory of the claimant.
2. Whether the article was a fair and accurate comment on the reports.
3. Whether the article is protected by Reynolds privilege.
4. Whether the article was published with malice or improper motive.

Discussion

[61] In this case, the allegations were the story. The tort of defamation exists to protect, not the person or the pocket, but the reputation of the person defamed.[12]

Defamation

[62] In **Michael Troupe**, Lindo, J set out the classic statement of law:

"[63] A statement is defamatory if it tends to harm the reputation of another

[11] I wish to thank counsel for their industry in the preparation of their submissions. Only the aspects used to determine the issues at bar were reproduced here.

[12] **Jameel v Wall Street Journal Europe** [2006] UKHL 44 at [152]

as to lower him or her in the estimation of right-thinking members of society, generally, or to deter third parties from associating or dealing with him; or cause people to shun him. (See Sim v Stretch [1936] 2 All ER 1237). In order to succeed in a claim for defamation, a claimant must satisfy the court that the words, by way of innuendo or otherwise were defamatory; the words referred to him and the words were published.

[64] It is well settled that the test to be applied in determining the meaning of words in a libel action is what the words would convey to the ordinary man. The court is therefore required to consider the statements from the perspective of how an ordinary, reasonable man hearing them, would interpret them. (See Lewis v Daily Telegraph [1964] AC 234, 258 (HL)."

[63] The claimant must prove that the words used were defamatory; that they referred to him and that they were published to at least one other person other than the claimant himself. There is no issue that the words used in the article referred to the claimant and that they were published. The only question for the court is whether the words were defamatory in the circumstances of the particular case. In construing the language used in the article, the court is entitled to draw inferences from the words themselves and this too is regarded as part of their natural and ordinary meaning.[13]

Whether the words of the article were defamatory of the claimant.

The reports

[64] It is unarguable that the reports of the Integrity Commission are of considerable importance to the public. The public is entitled to be informed of the findings of that body and to be reliably informed of the content of its reports. In this case, information on the operations of the state-run oil refinery is a matter of legitimate

[13] **Lewis v Daley Telegraph** [1963] 2 All ER 151

public interest as it affects the price of fuel. The price of fuel affects the cost of living. The cost of living affects everyone.

[65] The reports of the Integrity Commission were tabled in Parliament on June 30, 2020, and released to the media at approximately 5:00 pm. What did the reports say about Petrojam and its operations? They said that the Director of Investigation ("DI") in the exercise of his power under sections 33 and 52 of the Act had commenced an investigation on June 26, 2018, into allegations of impropriety and/or irregularity, conflict of interest, corruption, nepotism, cronyism and favouritism at Petrojam.

[66] The relevant terms of reference were the recruitment of Ms Yolande Ramharrack to Petrojam Ltd, the salary and benefits which formed a part of her employment contract and the existence of a personal relationship between herself and Dr Andrew Wheatley. Also, the employment of Mr Floyd Grindley among others.

[67] Mr Creary who was then a Director of PCJ and the Chairman of the Human Resource Committee of the PCJ, does not dispute that as was found by the DI, he was a member of the interview panel for Ms Ramharrack for the position of Human Resource Development and Administration Manager at Petrojam. Mr Creary had been summoned to a hearing of the Integrity Commission on September 11, 2018. His responses to questions posed by the DI are set out in the reports.

[68] Mr Creary was not initially named as a member of the panel that interviewed Mr Grindley on page 14 of report no. 1[14]. It was Dr Bahado-Singh when asked by the DI who comprised the interview panel for Floyd Grindley, said Mr Creary was on the interview panel.[15] The DI's findings were summarized under Mr Creary's name. The relevant parts of the reports that mention Mr Creary are set out below.

[69] The DI having reviewed the documentary evidence concluded whether the "*strategic placement of certain individuals in key positions at Petrojam Limited*

[14] Report no. 1 page 14 at para 45
[15] on page 216 of report no. 1

served as corruption enabling mechanisms." The strategic placement of certain individuals is evidenced by the appointment of Dr Perceval Bahado-Singh and Mr Richard Creary to the Board of Petrojam Limited. Dr Bahado-Singh and Mr Creary thereafter interviewed Mr Floyd Grindley for the position of General Manager, Petrojam Limited…".

[70] Mr Creary admits that he was a member of the panel that interviewed Ms Ramharrack. However, he did not recruit her to Petrojam. He did not object to what he characterised as the opinion of the Director[16] which is set out below:

> ***"CONCLUSION***
>
> ***The Circumstances Surrounding the Recruitment of Certain Individuals to Petrojam Limited for the period November 2016 to December 2018***
>
> *1…*
>
> *2. The circumstances in which Mrs Yolande Ramarrack was recruited as the Human Resource Development and Administration Manager to Petrojam Limited are stained with irregularities as the entity breached its own internal policies in the following regard:*
>
> *(d) The utilisation of individuals external to Petrojam Limited as members of interview panels is irregular as it is not an established practice of the entity, a fact that was confirmed by both Mrs Roselee Scott-Heron, former Human Resource Development and Administration Manager, as well as Mrs Ramharrack. In relation to the utilisation of external persons, the Director of Investigation concludes that:*
>
> *(i) The utilisation of Mr Richard, Creary, former Director of Petrojam Limited and Director, Petroleum Corporation of Jamaica (PCJ), as a member of the panel which interviewed Ms Ramharrack was irregular. There is no evidence to indicate that the inclusion of Directors of the Board of Petrojam Limited and to an even lesser extent the PCJ is in keeping with the standard operating procedures of Petrojam Limited as it concerns the constitution of interview panels.*
>
> *Further the Director of Investigations concludes that Mr Creary did not possess the requisite skills and competence in the field of Human Resource*

[16] at paragraph 1 at page 357 in report no.1

and Administration which would render him adequately qualified to contribute to the selection of Mrs Yolande Ramharrack as Human Resource Development and Administration Manager. It is the DI's opinion that Mr Creary's service on the Human Resource Sub-Committee of the PCJ commencing in 2016 ***would not have qualified him as one of the designated panelists in keeping with Petrojam Limited Recruitment Process Policy****."* (Emphasis as in original.)

"The Director of Investigation concludes that there were instances of nepotism and/or gross improprieties and irregularities in the recruitment of Ms Yolande Ramharrack, Mr Clayton Smith, Mrs Michon Daley nee Bell, Reverend Dorothy Grant and Mr Olivier Cole to Petrojam Limited during the period 2016 to 2018."

The article

[71] On July 1, 2020, the headline in the Daily Gleaner read *"HOLNESS HEADACHE"* at the top of the page. Directly below that is a depiction of a spider whose head is pictured with Dr Wheatley and whose legs point to four photographs, one of which is the claimant.

[72] In the two left columns, the headline *"Web of Corruption?"* appears. This is the article that is the subject of this claim. Beneath the spider is a story by Edmond Campbell, Senior Staff Reporter, entitled, "*Petrojam scandal resurfaces with force, as Wheatley labelled 'dishonest' in report*". Beside the spider are the words *"Key Enablers?"* and under those words are six names in vertical and numerical order. The claimant is listed as number 4 of the 6 names.

[73] The part of the article concerning Mr Creary states:

"Web of Corruption?

SOME OF the people implicated in the Petrojam scandal were so strategically placed in positions at the oil refiner that the Integrity Commission is questioning whether they formed part of "corruption enabling mechanisms." Academic friendships and Jamaica Labour Party (JLP) affiliations were also flagged as the links that connected several key players to high-ranking officials, including Andrew Wheatly, the energy minister with responsibility for Petrojam and who was fired. The findings were made in two reports tabled on Tuesday in the House of Representatives.

KEY ENABLERS?

> ***1. Andrew Wheatley…***
>
> ***2. Dr Perceval Bahado-Singh***
>
> Appointed Petrojam board chairman in 2016, resigned June 2018. Member of panel that interviewed Floyd Grindley for general manager post. Other panelists: Richard Creary, Ike Johnson and Yolande Ramharrack. Reimbursed by Petrojam at least 27 times for overseas travels he organised. Prima facie case for dishonesty. Engaged in corruption by improperly exercised [sic] official functions as chairman to benefit himself from 2016 to 2018.
>
> ***3. ..***
>
> ***4.***
>
> ***4. Richard Creary***
>
> *Board member of Petroleum Corporation of Jamaica, parent company of Petrojam at time* ***he served on panel that recruited Ramharrack.*** *The Port Maria mayor's inclusion was irregular. Did not possess the requisite skills and competence in HR and membership on PCJ's HR subcommittee in 2016 would not have qualified him. Friend of Wheatley and JLP affiliate."* (Emphasis mine.)

[74] The Integrity Commission in its apology to the claimant said:

> *"The Commission recognizes that you only participated on the panel for the interview involving Ms Yolande Ramharrack, for the post of Human Resource Development and Administration Manager. This fact is accurately recorded in Report #1."*

[75] There were no factual inaccuracies in the article on July 1, 2020, based on the source material which I accept came directly from the reports. The material misstatements of fact appear in the Integrity Commission's reports[17] and this led to the journalist reproducing the erroneous source material from the reports.

[76] Having said that, the front page of that newspaper was dedicated to the unfolding series of governance issues and irregularities uncovered in the reports. The DI indicated that there would be three reports, though this case concerns only the first two.

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[17] Report no. 2 page 196

[77] What is important in this case is that the defendant had no way of knowing that the Integrity Commission had made errors in their reports. At the time the article was published and on the date it was published, there had been no acknowledgement of these errors by the Integrity Commission. The apology to the claimant did not follow until July 13, 2020, some thirteen days after publication.

[78] It would seem that the case should end here, except that the claimant contends that the Integrity Commission's errors need not have made it onto the front page of the Gleaner. Had he been contacted by the defendant, he would have had the opportunity to tell his side and the article would have been fair, error-free and balanced.

[79] The opportunity for comment was acknowledged by Mr Johnson to be one of the ethical principles of his profession. The undisputed evidence is that Mr Creary was not contacted before the article was published. This evidence leads the court to determine the issue of responsible journalism.

[80] In **Bonnick**, the plaintiff was the managing director of a Government-owned company. Two contracts were made. The first during the tenure of the plaintiff, and the second, just after he left the company. A dispute arose as to payment amounts shortly after the first contract. The Government company filed suit claiming damages for breach of contract. The Sunday Gleaner published on its front page, an article spread across three columns naming Mr Bonnick. The article said he had been dismissed because of improprieties in what amounted to very unusual contracts. The article raised irregularities and breaches of the normal purchasing procedures. Mr Bonnick commenced proceedings asserting that the article was defamatory. The defendant relied on the defences of justification, qualified privilege and fair comment.

[81] The Privy Council explained the approach to be taken by the court in determining whether a statement is capable of bearing a defamatory meaning. The Board held the publishers to be protected by **Reynolds** privilege in circumstances where the journalist responsible for the publication had given evidence that he had not

appreciated that the article that he had published bore the defamatory meaning found by the jury. The Board held that a responsible journalist might well not have appreciated that the article bore that defamatory meaning. The test laid down by the Board was that:

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

[82] Mr Johnson said the meaning of the words *"Web of corruption?"* changed a statement into a question, and that was the reason for the question mark. It invited the reasonable reader to pay attention to the story. The headline invited the reader to read the rest of the story and it arose from statements made in the reports. The headline was an editorial decision, not his. The test of responsible journalism will be dealt with along with **Reynolds** privilege.

Whether the article was a fair and accurate comment on the reports.

[83] The defendant submitted that the article was a fair and accurate comment on statements made in the report. The unchallenged evidence was that Mr Johnson compiled information from both reports and presented it to his editor. This is a submission which obliquely raises "reportage" which has neither been pleaded by the defendant nor argued by either side and the defendant cannot rely on it. The defendant also cannot avail itself of the defence of fair comment as the claimant's statement was not published in the same medium as the initial article and would not have reached the same audience.

Reynolds privilege

[84] The defence of **Reynolds** privilege was established by the case of **Reynolds v Times Newspapers Ltd**.[18]

> *"146. It should by now be entirely clear that the Reynolds defence is a "different jurisprudential creature" from the law of privilege, although it is a natural development of that law. It springs from the general obligation of the press, media and other publishers to communicate important information upon matters of general public interest and the general right of the public to receive such information. It is not helpful to analyse the particular case in terms of a specific duty and a specific right to know. That can, as experience Reynolds has shown, very easily lead to a narrow and rigid approach which defeats its object. In truth, it is a defence of publication in the public interest."*
>
> *147. This does not mean a free-for-all to publish without being damned. The public only have a right to be told if two conditions are fulfilled. First, there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public – the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it. It is also different from the test suggested by Mr Robertson QC, on behalf of the Wall Street Journal Europe, of whether the information is "newsworthy". That is too subjective a test, based on the target audience, inclinations and interests of the particular publication. There must be some real public interest in having this information in the public domain. But this is less than a test that the public "need to know", which would be far too limited.*
>
> *149. Secondly, the publisher must have taken the care that a responsible publisher would take to verify the information published. The actual steps taken will vary with the nature and sources of the information. But one would normally expect that the source or sources were ones which the publisher had good reason to think reliable, that the publisher himself believed the information to be true, and that he had done what he could to check it. We are frequently told that "fact checking" has gone out of fashion with the media. But a publisher who is to avoid the risk of liability if the information cannot later be proved to be true would be well-advised to do it. Part of this is, of course, taking reasonable steps to contact the people named for their comments. The requirements in "reportage" cases, where the publisher is simply reporting what others have said, may be rather different, but if the publisher does not himself believe the information to be true, he would be well-advised to make this clear. In any case, the tone in which the*

[18] [2001] 2 AC 127

information is conveyed will be relevant to whether or not the publisher has behaved responsibly in passing it on.[19]

[85] Responsible journalism in Jamaica involves a balance of the guaranteed freedom of expression under section 13(3)(c) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 ("the Charter") on matters of public concern with the reputation of individuals and their rights and freedoms. This freedom of expression is not an absolute right, it is subject to the limitation set out in section 13(1)(c).[20] In my view, the repealed section 22 of the Constitution while worded differently has the same effect. This limitation is necessary in a democratic society for the protection of the reputation of others.

[86] This defence requires an assessment of the publisher's conduct in order to determine whether the newspaper or journalist acted responsibly. The privilege provides protection for responsible journalism in reporting matters of public concern.

[87] Lord Nicholls in **Bonnick** stated:

"Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of the privilege, journalists must exercise due professional skill and care."[21]

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[19] Jameel (supra), per Baroness Hale

[20] 13.-(1) Whereas -

(c) all persons are under a responsibility to respect and uphold the rights of others recognized in this Chapter, the following provisions of this Chapter shall have effect for the purpose of affording protection to the rights and freedoms of persons as set out in those provisions, to the extent that those rights and freedoms do not prejudice the rights and freedoms of others.

(3) The rights and freedoms referred to in subsection (2) are as follows-

(c) the right to freedom of expression;

[21] Bonnick at [23]

[88] The application of this standard of conduct must be practical and flexible in order that journalism is not subjected to unnecessary restrictions. It is a question of degree and weight.

*Applying the **Reynolds** criteria*

[89] It is a matter of law that once there is publication in the public interest then it is the professional duty of journalists to transmit the information and an interest in the public in receiving it.[22] If the publication is in the public interest, the duty and interest are taken to exist.

[90] Lord Phillips in **Flood v Times Newspaper** stated:

> *"…The starting point is, however, that the publication should be in respect of "a matter of public concern". This is not a black and white test, for, as Lord Nicholls observed, it is necessary to consider "the extent to which the subject matter is a matter of public concern" (Emphasis added). As he made plain, responsible journalism requires the striking of the right balance between the public interest in the subject matter of the publication on the one hand and the harm to the claimant, should the publication prove to be untrue on the other."*[24]

(a) *Public interest*

[91] In **Jameel**, Lord Hoffman stated:

> "*The public tends to be interested in many things which are not of the slightest public interest and the newspapers are not often the best judges of where the line should be drawn. It is for the judge to apply the test of public interest*."[25] The test was set down by Lord Nicholls in ***Reynolds***: *"whether the public was entitled to know the particular information*." Otherwise called "*the right to know test*."

[92] Lord Bingham of Cornhill CJ, when giving judgment in the Court of Appeal in ***Reynolds*** attempted at p 176 the difficult task of defining a matter of public interest:

> *"By that we mean matters relating to the public life of the community and those who take part in it, including within the expression 'public life' activities*

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[22] **Reynolds**
[24] [2012] UKSC 11 at [30]
[25] **Jameel** (supra) [49]

> *such as the conduct of government and political life, elections (subject to Section 10 of the Act 1952, so long as it remains in force) and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure."*[26]

[93] The reports in question formed the source material from which the article was written. They contained matters of high public importance and without doubt met the criteria of matters involving a state-run entity which gave rise to a public interest and right to be informed. The article as a whole reproduced in summary the findings of the DI and met the public interest test.

(b) Was the inclusion of the defamatory statement justifiable

[94] Having decided that the article as a whole met the public interest test, the newspaper is not allowed to publish damaging allegations which serve no public purpose. The allegations must make a real contribution to the public interest element of the article. This is an editorial decision and the court will give weight to the professional judgment of the editor in deciding the form the story will take. Different editors may have different views as to the requirements for detail in presenting their story.

[95] In the present case, the allegations were the story. The editor used an inflammatory headline with a question mark. The inclusion of the claimant under such a headline, named with others who were said to be corrupt when he was not so categorised in the source material brought him into disrepute. This was before the source material itself was found to be erroneous.

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[26] Flood

(c) Responsible journalism

[96] The next step is to consider whether the steps taken by the publisher to gather and publish information were responsible and fair. This was described in **Bonnick** as "responsible journalism."

[97] There was no evidence as to what professional standards journalists adhered to in terms of a code of conduct or practice. The conduct required of a newspaper must be viewed in a realistic, practical and flexible manner. Media is a business, this court is alive to the reality of commerce in the context of the fast-paced, information-driven world in which journalists operate.

[98] **Bonnick** sets out ten factors to be considered under the head of responsible journalism. This list is not exhaustive, merely illustrative and weight will vary from case to case:

i. The seriousness of the allegation. The more serious the allegation, the more the public is misinformed and the individual harmed, if the allegation is not true.

[99] Being accused as a key enabler of corruption or associated with corrupt individuals is damning and harmful to the reputation of any public figure. The allegations were extremely serious. In this case, there was a risk of prosecution and all that goes with it.

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

[100] This has been addressed under the public interest test. The article reported the findings and conclusion of the DI, having launched an investigation into the affairs of Petrojam. The front page of the Gleaner described the goings on as a scandal though not in the story penned by Mr Johnson. The reader avid for scandal would have been greatly interested in the article along with the ordinary, reasonable

reader who was entitled to know that the investigation was now complete. The misinformation in the article was also transmitted.

iii. The source of the information

[101] The reports used to compile the material for the article were deemed by Mr Johnson to be authentic and reliable. They had been tabled in Parliament before being released to the media. It is my view that no institution is infallible and the status or office of an individual or body does not grant the source automatic reliability. Experienced journalists should be aware of this and alive to this as a possibility. Documents may also contain errors and this is why facts are not called facts until there is verification. This case is one in which it was the respected source that was the source of the error.

iv. What steps were taken to verify the information

[102] The short answer is none. The defendant did not attempt to verify information in the reports as the evidence was that they came from a respected investigative body, there were over one dozen named individuals in the reports and there was not enough time to make contact before the deadline for submission of the article. It is here that I recall that the article was really focused on a maximum of four to six *Key Enablers* and not over one dozen.

v. The status of the information. The allegation may already have been the subject of an investigation which commands respect

[103] This was the reason given by Mr Johnson for using the reports to write the article. The source of the reports was respected and the investigation had been completed.

vi. The urgency of the matter. News is often a perishable commodity.

[104] There was a rush to publication. There was approximately one hour to get the article out. The defendant was evidently motivated by competition with other media houses to break the story first.

vii. Opportunity to comment

[105] There was none. That is undisputed.

viii. Whether the article contained the gist of the claimant's side of the story

[106] There was no such evidence. There was no evidence that the claimant was ever contacted for comment even after the Integrity Commission issued its public apology. The defendant relies on the **Patterson** case to contend that an approach to the claimant is not always necessary.

ix. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.

[107] The defendant has argued that the use of a question mark (?) changes the statement in the headline into a question and invites the reader to consider the article and what it says.

[108] This court questions that question mark. The position of the question mark is a matter of punctuation and style. I accept that the defendant's view is that the question mark changed the statement into a question. That was an editorial decision. The presentation of the story is a matter of weight.

[109] The tone of the story suggested that the named individuals were probably culpable. The headline with the question mark was sensational and glaring, designed to grab the attention of readers. This brings me to the need for balance and the weighing by editors in their exercise of journalistic skill and fairness which all the cases say has to take place in order to show that there has been some regard shown to the tenets of responsible journalism.

Whether the article is protected by Reynolds privilege.

[110] *"The Reynolds privilege is concerned to provide a degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which* ***a fair balance*** *is held between freedom of expression on matters of public concern and the reputation of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of the privilege journalists must exercise due professional skill and care."*[27]

[111] The court will now look at whether there was professional skill and care employed in the process of publishing the article in order to determine whether the defendant has made out the privilege.

[112] The article though accurate on its publication date, is headlined with the words "*Web of corruption*?" This was not Mr Johnson's doing. This was an editorial decision. These words carry no ambiguity. That headline was designed to spur the reader onto the story below. The association with corruption from the headline is difficult to ignore.

[113] The decision of the defendant when looked at using the criteria in **Reynolds** must pass the test of responsible journalism to avail itself of the defence. In **Jameel v Wall Street Journal Europe**[28], the House of Lords said that the factors set out in **Reynolds** were not a series of hurdles to be negotiated by a publisher before he could successfully rely on qualified privilege. It is for the court to decide whether the publication is protected by the privilege.

> *"But this does not mean that the editorial decisions and judgments made at the time, without the knowledge of falsity which is a benefit of hindsight are irrelevant. Weight should ordinarily be given to the professional judgment of an editor or journalist in the absence of some indication that it was made in a casual, cavalier, slipshod or careless manner."*[29]

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[27] **Bonnick** at page 309 at [23], per Lord Nicholls
[28] [2006] UKHL 44
[29] **Jameel** (Supra) [33]

Comment by the subject of the article

[114] An approach to the plaintiff may not always be necessary. This was argued by Mr Powell, relying on **Patterson**, in that, the source of the reports was the Integrity Commission - a respected investigative body, and the reports were the product of their investigation. The Integrity Commission had conducted interviews with the named individuals coupled with the significant public interest. It was, he submitted, entirely reasonable for the Gleaner not to approach Mr Creary for comment.

[115] With all due respect, I find that the Integrity Commission being staffed by humans is capable of error and this demonstrates the necessity for hearing from those named in its reports. The defendant did not in its evidence consider the possibility of error on the part of its source. It relied on the nature and character of the source from which the reports emanated and the circumstances under which the reports had been produced without any attempt at contact or verification based on this belief.

[116] I rely on the case of **Patterson** for the statement that experienced journalists ought to know that the reliability of a source does not depend only on the status or even the integrity of the individual.

[117] What is important here is that there was no contact with the claimant and this was a decision made by the defendant. This is against the backdrop of the headline six "*Key enablers*" named on the same page as the article with a depiction of a spider whose legs pointed to photos of Dr Wheatley, Mr Grindley, the claimant and Dr Bahado-Singh on the same page.

[118] This means that the defendant did not have to contact over a dozen named individuals for comment as was the evidence, as that number of named persons was at most six and at least four. The key enablers in the defendant's view were the focus of the story. There was no explanation on the evidence of Mr Johnson for failing to obtain comments from that targeted group which was considerably

smaller than the over one dozen named individuals in the reports. The Gleaner was not interested in those other persons as the article did not name them.

Culpability implied

[119] I have read and re-read the article looking for the word "allegations" and I have failed to find it. The product of an investigation was being reported in terms suggestive of proof. The language used in the reports by the DI could not reasonably be expected to be the same language used in the newspaper. The DI is immune from prosecution, the newspaper, however, is not immune from suit.

[120] I rely on Gatley on Libel and Slander[30] which reads:

> *"A statement that someone is under suspicion or investigation cannot reasonably be understood as saying that he is guilty, for if the ordinary sensible person was capable of thinking that whenever there was a police inquiry there was guilt, it would be almost impossible to give accurate information about anything."*

[121] In **Lewis v Daily Telegraph[31],** the court distinguished between words which imply a suspicion of guilt and words which imply actual guilt:

> *"I am myself satisfied that the words cannot reasonably be understood to impute guilt. Suspicion no doubt can be inferred from the fact of the inquiry being held, if such was the case, but to take the further step and infer guilt is in my view wholly unreasonable. This is to draw an inference from an inference and to take two substantial steps at the same time."*[32]

[122] This means there ought to be the use of words which tell the reader that the information in the article comprises allegations, suspicion or investigation.

[123] In looking further at professional skill and care, and a fair balance between freedom of expression and reputational harm, one basic principle of fairness in journalism is granting an opportunity for the person named in the article to comment on the allegations made against him. This opportunity was not afforded to the claimant.

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[30] 11th ed. At paras [3] – [27]
[31] [1963] 2All ER 151
[32] Lord Hodson at page 167E

Having failed to contact him on what was only suspicion of wrongdoing, the statement issued by the claimant on the same date as the article set out what the claimant's position would have been had he been contacted for comment.

[124] What was the conduct of the defendant having received the claimant's statement? The evidence before the court was that the defendant published an online version of the statement on July 2, 2020, as no tear sheet was exhibited. Another media house published the full statement online on July 1, 2020. Next, the Gleaner carried a summarized version of the statement on Friday, July 5, 2020, under the heading "Correction and clarification" on page A3. This article also referred to another two politicians named in the reports.

[125] There was no contact with the claimant up to that date. No steps were taken to enquire of the claimant what comments he would wish to make on the errors in the reports as they concerned him. The Integrity Commission made public its apology on July 13, 2020. There is no evidence that the claimant was contacted after the apology so that there could have been balanced and fair reporting.

[126] It is for this court to rule on the claim to **Reynolds** privilege, just as it is for the court to rule on the range of meanings that a publication is capable of bearing. The court's conclusions as to the latter will inform a judgment as to whether the defendant acted responsibly in publishing the article.

[127] **Reynolds** privilege protects the publication of defamatory material where it is in the public interest that the information should be published and the publisher has acted responsibly in doing so. When deciding whether to publish and when attempting to verify the content of the publication, the responsible journalist should have regard to the full range of meanings that a reasonable reader might attribute to the publication and weigh this against the prejudice that may be caused to a named party. At the end of the day, however, each case will turn on its own facts and the overriding test is that of responsible journalism. I turn now to the meaning of the article.

[128] *What meaning can be ascribed to the article* – the seriousness of the information being conveyed in the article is one consideration. In my view, the ordinary reasonable reader of the Gleaner looking at the article would form the view that it named those who were involved with Dr Wheatley in facilitating or enabling corruption at Petrojam and this included Mr Creary.

[129] I find that the words "*Web of corruption"* imply dishonesty when used in the context of an article about Petrojam, a state-owned entity funded by taxpayers. This was how the word corruption in its ordinary and literal meaning would be understood by ordinary reasonable readers. The headline was glaring and obvious. The words "*Web of corruption?* and *Key Enablers?* suggested that the claimant was number four on a list of six key individuals. This ranking had been assigned to Mr Creary by the Gleaner as nowhere in the reports has there been a ranking of any sort.

[130] The article does not say that Mr Creary was not named in the recommendations made by the DI. While the article does not single him out, it includes him in a pool of individuals who were said to be dishonest, to have made false statements, to have engaged in disreputable acts and to have been unable to account for their use of public funds. It implies guilt by association.

> *"If the words used in the article are ambiguous to such an extent that they may readily convey a different meaning to an ordinary reasonable reader, a court may properly take the other meaning into account when considering whether Reynolds privilege is available as a defence. In doing so, the court will attribute this feature of the case whatever weight it considers appropriate in all the circumstances."*[33]

[131] The claimant argues that the article paints him as corrupt and untrustworthy and that as a public figure, this is damaging to his status. The defendant contends that there was no original journalism, the article was a reproduction of what was in the reports. Mr Powell argued that there was no singular meaning in the article that Mr Creary is corrupt and in any event, he was not the focal point of the article.

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[33] Supra at [24]

Additionally, the question marks in the headline were meant to be interpreted as well as the words in the article.

[132] In my humble opinion, a story written by a journalist may use language or punctuation which alters its text with the effect that different viewpoints may emerge as to what the story means. That is what I understand from the submission that the question marks converted statements into questions.

[133] The difficulty with the defendant's position is that if the article did not have a singular meaning then it is capable of more than one meaning. At this point, there has to be a demonstration on the evidence of the decisions made by the defendant regarding whether to publish the story given its range of potential meanings and what attempts were made to verify the information used in it. Both **Bonnick** and **Flood** speak to this.

[134] In **Bonnick**, Lord Nicholls, when giving the advice of the Judicial Committee of the Privy Council on an appeal from Jamaica, held that the single meaning rule should not be applied when considering a claim to **Reynolds** privilege. He continued at para 25 to say this:

> *"Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is 'willing to wound, and yet afraid to strike'. In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances."*

[135] *The public interest* – The facts giving rise to the allegations being investigated were of great public interest. Each case turns on its own facts. The publication of the details of the report was justified. There was no reason for the defendant to believe that the reports were flawed. The details of the story and how much detail should be published are matters of journalistic judgment and editorial freedom which this

court will give weight on this issue. However, a journalist must also give due consideration to accuracy and must also meet the test of responsible journalism.

[136] *Verification* – The first step is deciding what needs to be verified. This may also raise a question as to the meaning of the article. The public interest lies in the content of the reports themselves. The defendant contends that privilege attaches to the article as there was no reason to doubt the credibility of the source and the veracity of the reports. The evidence discloses that there were no steps taken by the defendant to verify the information used in the article as they were taken from the reports.

[137] The fact that the reports were from the Integrity Commission in my view, did not obviate the need for verification and contact with the claimant because the reports were the conclusions of an investigative body. The reports could not equate suspicion with guilt and further, the claimant enjoyed the presumption of innocence as a fundamental constitutional right guaranteed by the Constitution of Jamaica.

[138] The reports contained factual errors. The defendant could have avoided making the same errors in its article by contacting the claimant for comment. The defendant grounded their **Reynolds** defence in the evidence of Mr Johnson: publication in the public interest, the hour at which the reports were released as against the deadline for submission, the lack of time within which to contact any of the individuals named in the reports and the competition with other media houses. This is not evidence which supports the requirement of the defence which is based on the tenets of responsible journalism.

[139] The position is quite different where the public interest in the allegation that is reported lies in its content. In such a case the public interest in learning of the allegation lies in the fact that it is, or may be, true. It is in this situation that the responsible journalist must give consideration to the likelihood that the allegation is true.

[140] **Reynolds** privilege absolves the publisher from the need to justify his defamatory publication, but the privilege will normally only be earned where the publisher has taken reasonable steps to satisfy himself that the allegation is true before he publishes it. Lord Hoffmann put his finger on this distinction in **Jameel** at para 62, when he said Page 29:

> *"In most cases the **Reynolds** defence will not get off the ground unless the journalist honestly and reasonably believed that the statement was true, but there are cases ("reportage") in which the public interest lies simply in the fact that the statement was made, when it may be clear that the publisher does not subscribe to any belief in its truth."*
>
> *79. Thus verification involves both a subjective and an objective element. The responsible journalist must satisfy himself that the allegation that he publishes is true. And his belief in its truth must be the result of a reasonable investigation and must be a reasonable belief to hold. What then does the responsible journalist have to verify in a case such as this, and what does he have to do to discharge that obligation?"*[34]

[141] There is no evidence that Mr Johnson satisfied himself that the allegations in his article were true. There was a conflation of reportage with **Reynolds** as a defence. All the evidence points to a reliance on the honest belief in the reliability of the reports of the Integrity Commission and not the honest belief of the journalist in the truth of the material used to write the article. The evidence from the defendant was a belief in the respected source, the reports were the product of an investigation, the Commission had interviewed the named individuals and there was significant public interest in the reports.

[142] **Reynolds** privilege arises because of the subject matter of the publication itself. Furthermore, it arises only where the test of responsible journalism is satisfied, and this requirement leaves little or no room for separate consideration of malice.

[143] I find that the defendant in its haste to publish the article failed to meet the hallmark of responsible journalism on the evidence of its conduct presented to this court. The source may have been believed to be impeccable, however, given the

[34] Flood at para 78-79

seriousness of the allegations being made against the claimant in what was an investigation, the defendant ought to have given him the opportunity to air his side. If that effort failed, then the public should know that it was against this failure that the story was being published.

[144] The subject matter was of great public interest. The public had a right to the disclosure of the information and the newspaper had a professional duty to disclose it. The article was written by an experienced reporter and approved by his editor. Neither the journalist nor the editor sought to verify its contents. The article was sensational in tone and (apparently) factual in content. The claimant's response was not sought, nor was an attempt made even at a late stage to contact him. The newspaper's inability to obtain a comment is recorded. It is neutral, investigative journalism which ***Reynolds*** privilege exists to protect. Having published the article with a certain tone, without verification or comment from the claimant and based on the foregoing assessment of the defendant's conduct, I find that ***Reynolds*** privilege does not avail the defendant.

[145] The defendant used words which were defamatory of the claimant, and in doing so fell short of the standard expected of responsible journalism. Conduct of this type was addressed by the Court of Appeal in **CVM Television v Fabian Tewarie**[35] where Panton, P stated:

> *"…there is no duty to publish inaccuracies. There is certainly no duty to publish a story that gave false details…A [newspaper]…takes unto itself the duty of reporting facts and events. It may also provide commentaries but such commentaries must be on facts. It has not* [sic] *duty to report falsehoods and inaccuracies…freedom of expression does not allow one to injure another's reputation."*

[35] SCCA No. 46/2003; November 8, 2006

Whether the article was published with malice or improper motive.

[146] Mr Creary does not plead malice, however, in cross-examination, it seemed to be suggested that the Gleaner acted for an improper purpose when it published the article. Mr Creary did not allege in his statements of case or in his evidence that the Gleaner published the article due to political partisanship or malice.

[147] However, there is evidence before this court in the evidence of Mr Johnson that the defendant failed to contact the claimant before publishing the article; that the claimant published a statement on the day the article was published; and that the defendant published the statement the next day on its website. A truncated version appeared in print on page A3 of the Daily Gleaner on July 5, 2020, as a correction/clarification. The defendant issued no apology to the claimant even though the Integrity Commission had done so publicly.

[148] In the view of this court, malice does not arise as an independent issue but falls to be considered when deciding whether the publication attracted qualified privilege at common law as developed in the case of **Reynolds**.[36] It is the misuse of **Reynolds** privilege that is known as malice and the claimant has to adduce evidence to prove it which he has failed to do.

[149] Section 55(5) of the Integrity Commission Act provides that:

> *"For the purposes of the Defamation Act, any report made by the Commission under this Act and any fair and accurate comment thereon shall be deemed to be privileged."*

[150] Defamation Act, sections **21, 23, 24 & 25, paragraphs 5 & 7 of Schedule I** provide:

> *"21.--(1) In an action for defamation in respect of words, including or consisting of expression of opinion, a defence of fair comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation for the opinion.*

[36] See **Bonnick** page 307 at [14]

(2) Nothing in this section affects the liability of the defendant in an action for defamation for the acts of his employee.

23.--(1) Unless the publication is proved to be made with malice, subject to the provisions of this section, the publication in a news medium of any report or other matter mentioned in the First Schedule shall be privileged.

(2) In an action for defamation in respect of the publication of any report or matter mentioned in Part II of the First Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the claimant to publish in the news medium in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner that is not adequate or not reasonable having regard to all the circumstances.

(3) This section is not to be construed as-

(a) *protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit; or*

(b) *limiting or abridging any privilege subsisting before the date of commencement of this Act (otherwise than by virtue of any enactment repealed by section 37 of this Act).*

24.-- In determining the amount of damages to be awarded in any defamation proceedings, the court shall ensure that there is an appropriate and rational relationship between the harm sustained by the claimant and the amount of damages awarded.

25.-- (1) Evidence is admissible on behalf of the defendant, in mitigation of damages for the publication of defamatory matter, that-

a. *the claimant has suffered no harm and is unlikely to suffer harm;*
b. *the defendant has made an apology to the claimant about the publication of the defamatory matter pursuant to section 14;*
c. *the defendant has published a correction of the defamatory matter;*
d. *the claimant has already recovered damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter;*
e. *the claimant has recovered damages, or has brought actions for damages, for defamation in respect of the publication of the defamatory matter to the same effect as the defamatory matter on which the action is founded, or has received or agreed to receive*

compensation in respect of the publication; or

f. the claimant has received or agreed to receive compensation for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter.

(2) Nothing in subsection (1) operates to limit the matters that can be taken into account by a court in mitigation of damages."

[151] Schedule 1 para 5 states that:

> *"A fair and accurate copy of or extract from any register or other document required by law to be open to public inspection."*

[152] Schedule 1 Para 7 states that:

> *"A fair and accurate copy of or extract from matter published by or on the authority of a government or legislature anywhere in the world."*

[153] Qualified privilege as a live issue only arises where a statement is defamatory and untrue. The test of responsible journalism as set out in **Bonnick** is essentially that there is no duty to publish and the public has no interest in reading material which the publisher has not taken reasonable steps to verify. Lord Hobhouse observed in **Bonnick** that "*no public interest is served by publishing or communicating misinformation*."

[154] In **Seaga v Harper**, Lord Carswell stated:

> *"Qualified privilege 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, per Lord Atkinson."*[37]

[155] The defendant having learned that there was a misstatement of fact in the reports did not give the claimant's statement the same prominence it did the article. It did not contact him for clarification neither did it seek to publish a balanced article

[37] [2008] UKPC 9 at [5]

following an interview with the claimant. The defendant stood by its account. The Integrity Commission published an apology thirteen days after the article was published and the defendant did not.

[156] Both journalist and editor in fulfilling their duty to inform the public also have no duty to publish unless he is acting responsibly any more than the public has an interest in reading whatever may be published irresponsibly. That is why in this class of case the question of whether the publisher has behaved responsibly is necessarily and intimately bound up with the question of whether the defence of qualified privilege arises. Unless the publisher is acting responsibly, qualified privilege cannot arise. The defence therefore fails.

Damages

[157] In **Jameel**, Baroness Hale states:

> *"The tort of defamation exists to protect, not the person or the pocket, but the reputation of the person defamed. Indeed, as Tony Weir points out in A Casebook on Tort (10th edition, 2004, at p 519), it is so tender to a person's reputation that it allows him to claim substantial damages without having to show that the statement was false, or that it did him any harm, or that the defendant was at fault in making it. In the case of an individual, all this is so well established that we have ceased to think it odd (if we ever did) and it would certainly take the intervention of Parliament to change it. But the authority for the proposition that a company is in the same position as an individual is the Court of Appeal decision in South Hetton Coal Company Limited v North-Eastern News Association Limited [1894] 1 QB 133.*[38]

Assessment

[158] Section 25 of the Defamation Act sets out the factors to be considered on mitigation. The only factor adduced in evidence by the defendant was that it published a correction.

[159] Mr. Collie argued that there should be a substantial award. Among the factors urged for the making of such an award is the status of the claimant being an

[38] **Jameel** (supra), per Baroness Hale [152]

esteemed public servant, mayor, political representative and of hitherto unblemished reputation in his community. Counsel did not cite the relevant sections of the Defamation Act such as section 24 which provides:

> *"In determining the amount of damages to be awarded in any defamation proceedings, the court shall ensure that there is an appropriate and rational relationship between the harm sustained by the claimant and the amount of damages awarded."*

[160] The claimant seeks exemplary and aggravated damages but no argument was made in support of these heads. I am not satisfied that this is a matter that calls for the award of exemplary/aggravated damages. The main question that remains therefore is how much damage was done to the reputation of this claimant. It is precisely because of the prominence of the claimant that, to my mind, the defendant was in a rush to publish their story without adhering to the ethical standard of accuracy and verification.

[161] He relied on his oral evidence of anxiety speaking in front of reporters from the Gleaner, embarrassment and receiving countless calls since the publication of the article. I find there was very little evidence in proof of reputational harm and the claimant cited no cases in support of this head of the claim. I note, however, the persistence of the defendant in maintaining its stance and the absence of an apology which influenced the quantum and grant of this award.

[162] The law presumes that some damage will flow from the invasion of one's right to reputation and a person is entitled to damages although he proves no actual damage.[39]

[163] In **Seaga v. Harper**[40]**,** the court found that there was proof of libel in respect of the claimant, a Deputy Commission of Police. There was found to be very little evidence in proof of injury to his reputation and aggravated damages were not found to be appropriate. $1.5 million was awarded to the claimant on December

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[39] See **Bowen LJ in Ratcliffe v Evans** [1892] 2 Q.B. 524.
[40] 2005 SCCA 29

11, 2003 for slander. The CPI was then 1786.8 and the CPI in January 2025 is 143.1. The award updates to $120,130.96.

[164] In **CVM Television v Fabian Tewarie**, the claimant a policeman was found to have been defamed by the respondent. He was awarded $3,500,000.00 as general damages in June 2003. The award updates to $302,764.50.

[165] In **Michael Troupe**, Mr Troupe was awarded $11,000,000.00 and Mr Sylvan Reid was awarded $8,500,000.00 as general damages on December 13, 2019. 270.58 which updates to $5,817,503.14 and $4,495,343.33 respectively.

[166] In **Patterson,** an award of $12,000,000.00 was made to the claimant in October 2014 which updates to $7,594,869.52.

[167] In **Michael Troupe**, Lindo J said

> [*174] Various considerations are relevant to the amount of damages to be awarded in defamation cases. In Sealy v First Caribbean National Bank [2010] 75 WIR 102, Sir David Simmons CJ, at paragraph [60] stated the following:*
>
> > *"... a court is entitled to have regard to the position and standing of the plaintiff in the nature, mode and extent of the publication, the presence or absence of an apology, the conduct of the defendant before, during and after the commencement of the action and the plaintiff's injured feelings, distress, embarrassment and humiliation."*
>
> *[175] Some of the relevant factors to be considered were stated by Sir Thomas Bingham MR in John v MGN Ltd. [1997] Q.B. 586 at 607 as follows: "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case*

> *where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feeling by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise..."*[41]

[168] In the instant case, I have considered the authorities, the circumstances and evidence in this case, the position and standing of the claimant; the nature, mode and extent of the publication, the statement issued by the claimant correcting the story, the treatment of that statement by the defendant, the absence of an apology, the conduct of the defendant before, during and after the commencement of the action as well as the plaintiff's injured feelings, distress, embarrassment and humiliation all of which I accept he must have suffered.

[169] An appropriate award is more along the lines of **Patterson**. The court awards the claimant Ten Million Dollars ($10,000,000.00) as adequate compensation given the nature of the damage.

[170] Orders:

1. Judgment for the Claimant.

2. Damages for defamation awarded to Richard Creary in the sum of Ten Million Dollars ($10,000,000.00).

3. An injunction is granted to restrain the Defendant whether by itself, its servants and/or agents from publishing or causing to be published the name of the claimant in any medium in its article of July 1, 2020, or in articles related to the said article under the headline Web of Corruption? and sub-heading Key Enablers?

4. Costs to the Claimant to be taxed if not agreed.

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[41] see **Michael Troupe** at para 172-175