[2013] JMSC Civ. 32

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2008 HCV 05186

BETWEEN	**RENNON WALKER**	**CLAIMANT**
A N D	**T.K. WHYTE**	**1ST DEFENDANT**
A N D	**VERNON DAVIDSON**	**2ND DEFENDANT**
A N D	**JAMAICA OBSERVER LTD.**	**3RD DEFENDANT**

CONSOLIDATED WITH: CLAIM NO. 2008 HCV 05189

BETWEEN	**RENNON WALKER**	**CLAIMANT**
A N D	**T.K. WHYTE**	**1ST DEFENDANT**
A N D	**VERNON DAVIDSON**	**2ND DEFENDANT**
A N D	**JAMAICA OBSERVER LTD.**	**3RD DEFENDANT**

Mr. Sean Kinghorn and Ms. Danielle Archer instructed by Kinghorn & Kinghorn for the claimant.

Mr. Charles E. Piper and Mr. Wayne Piper instructed by Charles Piper & Co. for the 3rd defendant.

Ms. Khara East – Legal Officer and representative of 3rd defendant.

Heard: March 28, 29 & 30, 2012 and March 11, 2013

LIBEL – JUSTIFICATION – WHETHER STATEMENTS MADE IN REPORTS WERE SAID IN COURT – ABSOLUTE PRIVILEGE – REPORTS INCLUDING THINGS NOT SAID IN COURT – QUALIFIED PRIVILEGE – RELIABLE SOURCE – FAIR COMMENT – DEFAMATION ACT SECTIONS 7 AND 8 – LIBEL ACT SECTION 15 – DAMAGES – COMPENSATORY – AGGRAVATED

EVAN BROWN, J

[1] These consolidated claims arose out of two articles published by the 3rd defendant in its tabloid, **Chat!** The trial proceeded against the third defendant as the other defendants were not served. The first article appeared in the edition of the 13th October, 2008 and is quoted in full below:

> *Arrested cops might be linked to car stealing ring*
> *Both constables released until October 21*
> *By T K Whyte*
> *Two Spanish Town policemen, Constables Rennon Walker and Courtney Anderson, were arrested last week on alleged corruption charges. The two men were released when they appeared in the Spanish Town Resident Magistrates' court on Friday, but were ordered by St. Catherine Resident Magistrate Vashti Chatoor to return to court on Tuesday, October 21, for a decision either to set them free or to lay formal charges against them.*
>
> *Their release without formal charges slapped on them was based on evidence given by the Anti-Corruption Branch that their ongoing investigations have taken a different twist, which may involve the cops' connection with a large car stealing ring. He said the two were placed on an identification parade and although Walker was not pointed out as the culprit who took extortion money from the complainant, he was still an integral part of the ongoing investigations. The RM directed that the investigations be completed in one week. "Return to court on October 21, when the court will decide to either free them or lay charges," Chatoor instructed. However, while Walker's release was without conditions, severe restrictions were pinned on Anderson's release. He is to report to the Spanish Town police three times weekly, hand over his passport to police, while a stop order restricting his travel is to be placed at both international airports and all seaports. Additionally, he was also ordered not to have any contact with the investigating officers. Police from the Anti-Corruption Branch contend that the two cops were driving a marked police patrol car and were caught in a sting operation in Eltham Park, Spanish Town at about 9 pm on October 3, collecting $8,000 in marked bills as "extortion money" from a Spanish Town businessman, whom the cops were allegedly 'taxing' regularly while officers from the Anti-Corruption Branch waited in ambush, in an unmarked police car. The decoy police car trailed the corrupt cops, who allegedly fired on them. Both police cars collided, and the two men jumped from the car and one of the constables was held, while the other escaped in bushes. The escaped policeman turned himself over to the police the following morning.*

[2] The second impugned article was published on the 23rd October, 2008. It appeared under the same byline as the first article and is quoted below:

> *Court frees cops on corruption charges*

SPANISH TOWN, ST. Catherine – Constable Courtney Anderson of the Spanish Town police who was arrested on alleged corruption charges a fortnight ago, has been released from custody without any charges laid against him when he appeared in the Spanish Town Criminal Court. Anderson who was represented by defence attorney Lancelot Clarke, was discharged after the investigating officer told the court that statements in the matter have been submitted to the Director of Public Prosecutions (DPP) who is expected to make a ruling by weekend. He said, however, that if Anderson was not charged criminally, he will nevertheless face disciplinary charges from police authorities. "You are released forthwith," St. Catherine Resident Magistrate Marcia Dunbar-Green advised the cop who quickly exited the prisoners dock. Another cop, Constable Rennon Walker, who was also arrested in the matter was released from custody without formal charges last week. Both cops were caught in a sting operation set up by the Anti-Corruption Branch in Eltham Park, Spanish Town, St. Catherine on October, 3, at about 9 PM when investigators alleged they saw the cops collect $8,000 in marked bills from a Spanish Town businessman whom the cops had been allegedly hounding for money regularly. While police from the Anti-Corruption Branch waited in ambush in an unmarked police car, the two cops opened fire at them. Both cars collided, the cops jumped from the police car and escaped in bushes but not before one was held. The other handed himself over the following day.

STING OPERATION

[3] Both articles have their genesis in events which occurred on the 3rd October, 2008, of which the claimant was not a disinterested observer. The Anti-Corruption Branch (ACB) of the Jamaica Constabulary Force, led by Inspector Clunis, undertook what is called in North American slang, a "sting operation". That is, an undercover operation to trap the claimant and his partner, Constable Courtney Anderson, in an act of corruption. The claimant and his colleague constable were both on mobile patrol in a marked police vehicle along Periwinkle Avenue in Eltham Park, Spanish Town, St. Catherine. They were both dressed in uniform and each carried a firearm. The claimant was armed with a pistol and his partner, a rifle.

[4] While on patrol they stopped at the gate of a dwelling house on Periwinkle Avenue, it seems not far from the corner of Orchid Boulevard. From that dwelling house they were approached by Miss Octavia Guthrie. The claimant denied that Ms. Guthrie handed to him $8,000.00 cash. A search of the radio car at the end of the incident

revealed eight $1000 notes with ‘ACB’ marked on them. There was a conversation between the claimant and Ms. Guthrie. During this conversation, according to Inspector Dennis James, the ACB’s liaison officer, Miss Guthrie handed to the claimant “what appeared to be a coil of money.” Following this conversation Miss Guthrie returned to her dwelling house. After Ms. Guthrie’s departure, a white Honda motor car which had been parked some distance away from the claimant’s vehicle, drove towards where the claimant was parked. This turned out to be the unmarked police vehicle being driven by Inspector Dennis James. The Honda motor car collided with the front of the claimant’s stationary vehicle, the claimant testified, while the claimant and apparently Constable Anderson were seated inside.

[5] However, according to Inspector Dennis James, the claimant was slowly driving along Periwinkle Avenue towards him when he collided with the radio car. Simultaneously, another unmarked police vehicle drove up behind the radio car. The claimant tried to drive away but could not, by reason of the proximity of all three vehicles. The claimant alighted from the radio car, leaving it in motion, resulting in the accident.

[6] There was no dispute that the claimant disembarked with pistol in hand. Having disembarked, the claimant said that he approached the Honda motor car. He said he knocked on the door handle as no one seemed to be exiting the car. The claimant said he pulled on the car door and said something. He denied that the occupants of the Honda motor car came out and identified themselves as police personnel. Inspector James said he came from his motor car dressed in a vest marked ‘police’ and shouted that same word.

[7] What happened next, on the evidence of the claimant, was that he heard from behind, “don’t try that yuh nuh”. Turning around, the claimant saw a man whom he did not recognize crouching beside a fence and pointing a pistol at him. The claimant inquired of him who he was. The armed man replied that he was a policeman. The claimant’s reaction to that was to point his firearm at this armed man and instruct the

man to drop his firearm. According to Inspector James, the claimant pointed his firearm at the members of the Anti-Corruption team, moving it from side to side. As the claimant did so he was shouting, “a who dem man yah, bout dem come from Anti-Corruption Branch.”

[8] However, according to the claimant, when the armed man did not comply, the claimant took cover at the rear of his vehicle. During this time Constable Anderson was standing at the side of the vehicle with his rifle in hand. The armed man ‘raised up from the fence’ and discharged one round. That shots were fired was confirmed by Inspector James. However the Inspector did not say who fired the shots. The firing of shots came after something of a stand-off between the claimant and the Anti-Corruption team. During this stand-off the claimant would neither incline his ears to the shouts of ‘police’ nor abide the showing of identification cards by the members of the Anti-Corruption team, according to Inspector James.

[9] Having heard the shot, the claimant said he ‘dropped flat’ to the ground. From there the claimant observed a Toyota Corolla Probox motor car arrive onto the scene from Orchid Boulevard. When the Probox came around the corner the claimant got up from the ground. As he was doing so, he said he noticed someone holding a gun from the front window. Apprehending an ambush by hoodlums, the claimant said he took flight. This was not to ‘bushes’ as was suggested, but to the vicinity of a flower garden, having leaped the fence at the back of the premises in front of which the marked police vehicle was parked.

[10] There he remained for about thirty minutes. During this time the claimant heard voices, people communicating and what sounded like a portable police radio. The possibility that the persons may have been policemen occurred to him but he remained under the cover of the garden. According to the claimant, he reported the incident to Deputy Superintendent of Police Anthony Castelle before he was taken into custody on the 3rd October, 2008, at about 6.30 p.m.

[11] In response to the suggestions put, the claimant denied that the persons who came on the scene identified themselves as police personnel. He further denied that he continued to point his firearm at them, notwithstanding having so identified themselves. The claimant refuted the suggestion that Inspector Clunis ordered him to drop his firearm. He also didn't agree that his partner, Constable Anderson was subdued in his presence. Further, the claimant disputed that he ran up Orchid Boulevard. In answer to the suggestion that he was being pursued by members of the ACB team, he said at the time he didn't know that.

THE COURT APPEARANCE

[12] Having been taken into custody, the claimant was made the subject of an identification parade but was not identified. Thereafter, both the claimant and Constable Anderson appeared in court on the 10th October 2008, in furtherance of applications for *habeas corpus*. The applications were heard by Her Hon Miss Vashti Chatoor in the Resident Magistrate's Court at Spanish Town, St. Catherine. At this hearing the claimant was told that he was being detained under reasonable suspicion of breaching the **Corruption (Prevention) Act**.

[13] Inspector Clunis outlined his version of what occurred on the material day to the Magistrate. The Inspector described the manoeuvres of the ACB team as a sting operation, in which two unmarked police vehicles were used. The claimant agreed that Inspector Clunis told the court that he and Constable Anderson were both caught in the sting operation. There was also agreement that Inspector Clunis informed the court that the claimant was seen accepting $8,000.00 from Miss Octavia Guthrie. However, the claimant disagreed that Inspector Clunis told the court that the $8,000.00 was being extorted.

[14] The claimant further testified that Inspector Clunis told the court that Constable Anderson was either detained or arrested at the scene. He disagreed however, that Inspector Clunis went on to tell the court that the claimant ran away into the bushes. The claimant also disputed that Inspector Clunis told the court that he, the claimant,

fired on them. The claimant accepted that certain restrictions were placed on Constable Anderson. First, Constable Anderson was ordered to report to the Spanish Town Police Station three times weekly. Secondly, Constable Anderson was directed to surrender his passport to the police and a stop order was issued in respect of him. Thirdly, Constable Anderson was instructed not to have any contact with the investigating officers.

[15] On the question of ongoing investigations into the claimant's involvement in a car stealing ring, the claimant rejected that the Magistrate told him that he was integral to that. Neither did he recall Inspector Clunis saying so. The claimant also denied that Inspector Clunis told the court that a part of the investigation concerned his involvement in a car stealing ring. Constable Walker accepted that the Resident Magistrate directed that the investigations be completed within one week, but only in relation to Constable Anderson, as he was released unconditionally. Constable Anderson was ordered to return on the 21st October, 2008. On that date he accompanied Constable Anderson to court.

RULING OF THE DIRECTOR OF PUBLIC PROSECUTIONS

[16] Notwithstanding his discharge from detention, the claimant was later charged for two breaches of the **Corruption (Prevention) Act**, arising from the events of the 3rd October, 2008. That was in consequence of a direction from the learned Director of Public Prosecutions. The result was the cessation of active duty for the claimant on the 10th November, 2008. Those charges were later dismissed in the Resident Magistrate's Court. The dismissal of the charges was the result of the Resident Magistrate upholding a submission of no case to answer. From the evidence of Inspector James, it appears that the case against the claimant foundered because the main witness for the crown had left the jurisdiction. Following the dismissal of the charges, the claimant returned to active duty in June 2010.That notwithstanding, the claimant was the subject of disciplinary proceedings at the time of the trial.

THE REPORTER…FACE OF A GHOSTWRITER?

[17] It was the claimant's contention that the reporter, Tasolyn Karl Whyte (T.K. Whyte), retired Superintendent of Police and then freelance reporter for the third defendant, was not present in Resident Magistrate's Court. The claimant so contended because he had never seen Mr. T.K. Whyte in court, although he was previously known to the claimant. Mr. T.K. Whyte proclaimed himself the writer of both articles. He maintained that the article of the 13th October, 2008 was an accurate report of the court proceedings of the 10th October 2008. However, when asked what two charges the claimant had been arrested on, Mr. T.K. Whyte said he was not sure.

[18] The retired Superintendent of Police, Mr. T.K. Whyte, was asked whether he knew the distinction between being arrested on a charge and being arrested on reasonable suspicion. According to him, "being arrested on a charge is when you have committed the offence and after investigation the police make an arrest and charge." On the other hand, his evidence went, arrest on reasonable suspicion occurs "when the police suspect that you have committed the offence and you are arrested and taken into custody for further investigation." With knowledge of that distinction, the retired Superintendent, did not agree, that it would have been incorrect to say that the claimant had been arrested on corruption charges, at the time he wrote the article.

[19] Mr. T.K. Whyte's attention was next drawn to a document which he was invited to read to himself. At the end of that exercise he disagreed that when he wrote the article the claimant had not been arrested on corruption charges. When Inspector James came to the stand he agreed that the claimant was charged in November, 2008. Thereafter Mr. T.K. Whyte's attention was directed to his witness statement where he said, "I was present in court when the matter was mentioned. After the accused were pleaded the Resident Magistrate asked for the allegations." He answered in the affirmative when asked if that was what happened in court on the 10th October, 2008. He said he was unaware that what was before the court on that date was a *habeas corpus* application.

[20] This witness was asked a series of questions which gave the impression that cross-examining counsel doubted whether the witness was present during the hearing. However, Mr. Whyte insisted that although the matter was called up in his absence, the men were in the dock when he entered the courtroom. That notwithstanding, Mr. Whyte could not recall what offences they were pleaded to, as he alleged in his article. He stood his ground in contending that a bail application was made after they were pleaded, against the background of his declaration of knowledge of what a bail application is. The result of the bail application escaped Mr. Whyte as his powers of recall didn't allow him to say if the men had been granted bail or remanded in custody. He remembered, however, that the Resident Magistrate ruled on the bail application.

[21] At this juncture Mr. Whyte's attention was directed to his article which said the men were released but ordered to return to court on the 21st October for a decision either to set them free or to lay charges against them. Here constancy eluded Mr. Whyte. First he said that was an accurate report but couldn't remember if the claimant was released unconditionally. According to Mr. Whyte, it might have happened but he couldn't remember.

[22] Mr. Whyte was next asked about the basis upon which the claimant and his partner were released as alleged in the article. He showed that he understood the technical use of the word 'evidence'. He went on to say that it was Inspector Clunis who gave evidence that the investigation had taken a different twist which may involve the cops' connection with a large car stealing ring. He insisted that Inspector Clunis also told the court that the claimant remained an integral part of the ongoing investigations.

[23] Amid the memory failures, Mr. Whyte was certain Inspector Clunis did not tell the court that the cops were allegedly regularly taxing the businessman. In fact, nobody told the court that, asserted Mr. Whyte. The inevitable follow-up question came, "so why did you write it?" The answer was, "because this is information I picked up, background for the story." Counsel then directed the witness' attention to his witness statement in which he said the source of the entire article was the court proceedings. Mr. Whyte's response

was that he now wished to correct that. Two other aspects of this article also turned out to be background information. First, that the claimant and his colleague allegedly fired upon the members of the Anti-Corruption Branch. Secondly, that the escaped policeman turned himself in the following morning.

[24] Since he 'picked up' the information, Mr. Whyte was aware of only one imperfection, namely, the extortion was of a businesswoman, not a businessman. Having conceded that his article contained information that was not disclosed in court, Mr. Whyte was again confronted with his statement. This time he was challenged on the truthfulness of saying therein that the last two paragraphs of the second article were a summary of the court hearing of the '13th October'. He insisted at first that that was correct. However, he resiled from that position when he was made to understand that his earlier concession would make his insistency on the truth of the statement self-contradictory.

[25] In answer to the court, Mr. Whyte said he did not verify the background information before going to print. He testified that he did so based on the source of the information. The source of the information was the police, and that was considered to be a reliable source. The reference to police meant any policeman involved in the investigation. Though he declined to say which policeman he spoke to, Mr. Whyte asserted that the police was his source in this case. All of this came against the background of his earlier testimony that his article of the 13th October was not a commentary but a report.

THE PRINTED CORRECTION

[26] Mr. T.K. Whyte was also questioned about the corrections printed by the 3rd defendant. **Chat!** published identical corrections of the questioned articles. The first appeared in its issue of Thursday, November 20, 2008. The second was printed in its weekend edition of the 21-23 November, 2008. As the corrections are in identical terms, one only is reproduced below:

> *On Monday, October 13, 2008 Chat! published a report on court proceedings in the Spanish Town Resident Magistrate's Court captioned "ARRESTED COPS MIGHT BE LINKED TO CAR STEALING RING – BOTH CONSTABLES RELEASED UNTIL OCTOBER 21." This report was followed by our publication on October 23, 2008 captioned COURT FREES COP ON CORRUPTION CHARGES.*
>
> *Chat! wishes to advise readers that Constables Rennon walker and Courtney Anderson are not linked to a car stealing ring neither did the officers shoot at members of the Anti-Corruption Branch. Chat! also wishes to clarify to our readers that Constable Courtney Anderson was not charged for any offence. On the application of his attorney, Constable Courtney Anderson appeared before the court on a habeas corpus application for the investigator to explain the reason for his continued detention without charge. Subsequent to our publications, the DPP ruled that Constable Rennon Walker be charged for Breach of the Corruption (Prevention) Act and he appeared in the Spanish Town Resident Magistrate's Court on November 10, 2008 when his matter was postponed for trial on January 23, 2009. The DPP ruled that disciplinary action be taken against Constable Anderson.*

[27] While Mr. Whyte was aware that **Chat!** had twice printed a correction, he had no idea what they had corrected, although he had previously seen the corrections. The editors of **Chat!** 'never ever' spoke to him about the corrections, neither did anyone else in authority. Consequently, he was extremely surprised when he saw the corrections. Naturally, Mr. Whyte did not agree with the corrections. Mr. T.K. Whyte did not agree with the correction insofar as it said "**Chat!** wishes to advise readers that Constables Rennon Walker and Courtney Anderson are not linked to a car stealing ring." He disagreed because that is what was said in court, according to him.

[28] The correction of the 20th November, 2008 was published "in recognition of the fact that [the] previous articles were open to interpretation that may have placed the policemen in an unfavourable light." That was according to Ms. Yasmine Peru, editor of **Chat!** at the time the articles were published. Ms. Peru was not available for the trial, so her statement was admitted into evidence as hearsay under r. 29.8(3) of the **Civil Procedure Rules, 2002**.

THE CLAIM

[29] In his statement of case, the claimant contended that the words of the article of the 13th October, 2008, "in their natural and ordinary meaning meant and were understood to mean":

> *(i) The claimant was being investigated in relation to the criminal offence of the stealing of motor vehicles and could be implicated in that offence. The said offence is contrary to the Larceny Act and is punishable by (sic) imprisonment.*
>
> *(ii) The claimant had extorted money from a "Spanish Town Businessman" contrary to the Corruptions Act (sic) and had been so extorting money from the said Businessman (sic) for some time.*
>
> *(iii) The claimant used his firearm to open fire on members of the Anti Corruption Branch, thereby committing the criminal offence of Illegal Possession of Firearm and Shooting with intent to cause Grievous Bodily Harm which said offences are punishable with imprisonment.*
>
> *(iv) The claimant was "corrupt" which meant among other things that the claimant had breached the provisions of the Corruption Act (sic) which said breach would be punishable by (sic) imprisonment.*
>
> *(v) The claimant attempted to escape apprehension and the custody of the police which said act constituted a criminal offence punishable by (sic) imprisonment.*
>
> *(vi) The claimant was to return to court on the 21st October 2008 in relation to the "corruption charges" brought against him.*

[30] In respect of the article of the 23rd October, 2008, three meanings were contended for. The first and second of those are identical to numbers two and three, respectively, in the preceding paragraph. The third meaning differed from number five above in the omission of the words "attempted to", leaving it to stand at "escaped apprehension". The claimant averred that:

> *As a consequence of the said defamatory words the Claimant has been embarrassed, humiliated and put to great distress. The Claimant has been subjected and exposed to public odium and continue (sic) to face such public odium in the course of his duties as a Police Officer. Further the Claimant has suffered loss and damage.*

[31] The claimant's Attorneys-at-Law wrote to the defendants on the 21st October, 2008, "demanding a retraction and an apology and pointing out that the said article was

defamatory of the Claimant." That demand was repeated on the 27th October, 2008. The defendants failed and, or refused to apologize, the claimant averred. The statement of case was filed on the 4th November, 2008.

THE DEFENCE

[32] In its defence, the third defendant admitted receiving the letters of the 21st and 27th October, 2008 from the claimant's attorneys-at-law. However, the 3rd defendant denied that the words published were defamatory of the claimant. Further, the third defendant refuted that the words had the meanings ascribed to them by the claimant. In particular, the third defendant counter-averred that, firstly, "the claimant is and was under investigation for breaching the **Corruption (Prevention) Act**", secondly, "the claimant has been charged for breaching the provisions of the **Corruption (Prevention) Act**" and thirdly, "by virtue of section 52 of the **Firearms Act**, the claimant could not be charged with illegal possession of firearm in the circumstances described."

[33] The third defendant also averred that the words were published on an occasion of absolute privilege. In particular, "the words complained of comprised a fair and accurate report of proceedings in the Resident Magistrate's Court for the parish of Saint Catherine held on Friday October 10, 2008." In addition, "the report was published contemporaneously with the said proceedings." With these qualifications, the third defendant asserted that "in their natural and ordinary meaning, the said words are true in substance."

[34] Having made reference to the published correction, the third defendant contended that "the report comprised an honest report published without malice on a matter of public interest and in the public interest. This defendant had a duty to raise and the public had a right to receive the issues published and the public had a right to receive the information in respect of and engage in the debate on the said issue, which legitimately raise questions of significance to the public and national interest." The third defendant also said the "article represents fair comment upon a matter of public interest." Accordingly, the third defendant denied that the claimant "suffered the alleged

or any injury to his character, credit or reputation or that he was brought into the alleged or any public odium because those allegations are untrue."

SUBMISSIONS ON LIABILITY

[35] In its closing submissions, the third defendant admitted that if the court accepts the claimant's proffered meanings, on the face of them, they are defamatory. In this vein, it was submitted that "the correction had the effect of removing the sting from the defamatory allegations contained in the published articles." Against that background, the third defendant submitted that four defences are open to it. The defences underline issues two to five raised by the third defendant. The first issue is, so far as is relevant, "were the publications justified in the sense that the factual allegations are true or substantially true?" Secondly, "if the answer [to the foregoing] is no, were the articles published on an occasion of absolute privilege?" Thirdly, "if the answer [to the second issue] is no, were the publications made on an occasion of qualified privilege?" Fourthly, "if the answer [to issue three] is no, were the publications fair comment on matters of public interest?"

JUSTIFICATION

[36] According to the submission, the success of the defence of justification rests on the court resolving certain disputed facts in the third defendant's favour. The disputed facts submitted for resolution are, first, "whether it was reported in court that the investigations had taken a different twist which may involve the claimant and Constable Anderson's connection with a large car stealing ring." Secondly, "whether what occurred on Periwinkle Avenue on October 3, 2008 is as described by the claimant or as described in the published reports of October 13 and 23, 2008 and as described by Inspector James." Thirdly, "whether the matters described in the two … articles as having occurred on Periwinkle Avenue were related in court by the investigating officer." Fourthly, "whether the claimant and Constable Anderson had shot at members of the Anti Corruption Branch." Fifthly, "the circumstances in which the claimant left the scene and was subsequently arrested."

[37] On the other side of the litigation line, the claimant predicated his response to this submission on the following statement of principle, extracted from **Halsbury's Laws of England** 4th ed. Volume 28 para. 82:

> *"The defence of justification is that the words complained of were true in substance and in fact. Since the law presumes that every person is of good repute until the contrary is proved, it is for the defendant to plead and prove affirmatively that the defamatory words are or substantially true."*

[38] Accordingly, the question is, has the third defendant produced credible evidence or any evidence at all to support the offending words of the article? The claimant's summary of the offending words, are in substance, similar to the disputed facts submitted by the third defendant for resolution. The notable addition made by the claimant is the allegation "that on the 10th October, 2008, when the claimant came before the Spanish Town Resident Magistrate Court he had been arrested on corruption charges."

[39] The claimant submitted that the third defendant presented no evidence in support of the allegations. In respect of the allegation that the claimant opened fire on members of the Anti Corruption Branch, the fact of the retraction embodied in the published correction emboldened the claimant to accuse the third defendant of 'disingenuousness' in its assertion of truth. That the plea of justification cannot avail the third defendant is premised on the absence of evidence from then Inspector Clunis and the 'shocking and unfortunate' evidence of Mr. T. K. Whyte, the submission continued.

ABSOLUTE PRIVILEGE

[40] In the submission under this head, learned senior counsel for the third defendant relied on the directions to the jury of Salmon J (as he then was) in **Burnett & Hallamshire Fuel Limited v Sheffield Telegraph & Star Ltd** [1960] 1 WLR 502,504. The directions are quoted in full below:

> *"For many, many years now it has been clearly established that anything said in open court is absolutely privileged so far as the law of libel is concerned. The vast majority of the public have other occupations than attending court, and a principle has grown which is merely an extension of*

the principle that which I have indicated to you, that the press has the freedom to report any proceedings in open court, providing that the report is fair and accurate, so that justice is seen to be done not only by the few members of the public who can spare the time to come to court, but buy the whole, vast public who is reached by the press. One of the reasons, at any rate, why the standard of the administration of justice in this country is as high as it is today is because justice is done so publicly, and it would be a very sad day that a case may be reported- if the report is fair and accurate- should ever be doubted or departed from, because it is one of the principles upon which our whole system of administering justice is based."

[41] The learned Judge said further, at page 505:

"In considering whether a report is fair and accurate you have got to use your common sense. You do not go through the report with a fine tooth comb and say: If I can find that little inaccuracy, that is the end of the defence. Minor and irrelevant inaccuracies are of no consequence. The law takes a broad and sensible view that a minor and immaterial inaccuracy is of no importance."

[42] The directions continued, at page 506:

"There is no rule of law that a newspaper, before publishing a report of proceedings in court, is bound to verify whether what counsel, a solicitor or a witness has said is accurate. The function of a news paper is to give a fair and accurate report of what happens in court. The public is entitled to be in court and listen, and the public is entitled to know what is going on in the court through their newspapers. That is a fundamental right of the public, and it depends to no little extent upon what is called freedom of the press. It is the freedom of us all. So you can consider whether this is a fair and accurate report untrammeled by any rule of law. it is entirely a matter of fact for you to say, "is that a fair and accurate report of those judicial proceedings?"

[43] This was counsel's platform to submit that in the instant case, the question is whether, in practical terms, taking a holistic view of the articles, they represent a fair and accurate report of what was said in court. The court should not be side tracked by what counsel characterized as 'minor discrepancies' such as what is 'evidence' and when the claimant is charged, the submission ran. It was his submission that this question should be answered in the affirmative.

[44] The third defendant also submitted that the court ought properly to take into account factors such the age of Mr. T.K. Whyte and the fact of his having suffered a stroke in earlier years. The latter fact should be considered when dealing with Mr. Whyte's inability to recall events which occurred sixteen years prior to the trial and the contradictions in his evidence, it was submitted. The court was invited to view his testimony against the backdrop of the published correction, in spite of his absence of participation in it. It was further advanced by the third defendant that Mr. Whyte's evidence that a part of his report was based on information he received as 'background' from his police sources should be set against the "uncontroverted evidence". Among the things learned counsel for the third defendant asked the court to accept as having been said at the *habeas corpus* hearing, was the suspicion of involvement in a car stealing ring.

[45] The claimant in response, submitted that the essence of this defence is that it is a fair and accurate report, published contemporaneously with the proceedings. While the report need not be verbatim, it must in addition to being fair, it must be impartial, and communicate the substance of what took place in court. By its own admission, the submission continued, the report was not accurate and, therefore unfair. That charge is predicated on an assessment of Mr. Whyte's evidence which demonstrates that "his report is riddled with errors, uncertain, unsupported and lacks verification." Additionally, the claimant submitted, the third defendant "was constrained to retract the article … as being incorrect." Lastly, the claimant argued that the second article could not have been contemporaneous as it was for the most part "merely repeating the defamatory words already published 13 days earlier."

QUALIFIED PRIVILEGE

[46] Under this head the third defendant relied on the law as stated by the learned authors of **Gatley on Libel and Slander** 10th edition page 379 para. 14.1. The submission ran, this defence is available to publishers in circumstance in which, on grounds of public policy and convenience, a person may, without incurring liability for defamation, make statements about another which are defamatory and untrue.

Protection is accorded if the statement was “fairly warranted by the occasion” that is, the statements fell within the scope of the purpose for which the law grants privilege, and were made without malice.

[47] Learned counsel submitted that this “defence is afforded to publishers for the common convenience and welfare of society.” He quoted the following passage from **Gatley**, page 382 para. 14.4

> *“it is in the public interest that persons should be allowed to (sic) freely on occasions when it is their duty to speak and to tell all that they know or believe, or on occasions when it is necessary to speak in the protection of some (self or) common interest.”*

This defence is anchored in the principle that words published on an occasion on which the public has a right to know, with a corresponding duty on the publisher to communicate to the public matters of public interest, without malice, are privileged. In the case at bar there is agreement that the publications concerned matters of public interest, therefore the duty interest is satisfied, submitted the third defendant.

[48] Did the publications represent responsible journalism in the circumstances? That’s the guiding principle in the submission of the third defendant. In this regard, **Reynolds v Times Newspaper Limited** [1999] 4 All E R 609, **Jameel (Mohamed) v Wall Street Journal Europe Sprl** [2007] AC 359 and **Edward Seaga v Leslie Harper** (Privy Council Appeal No. 90/2006, delivered January 30, 2008) were cited and relied upon by the third defendant. It was further contended that the last case is authority for a flexible application of the factors set out in **Reynolds v Times Newspaper Limited** to determine responsible journalism.

[49] The third defendant submitted that its witness Mr. T.K. Whyte testified to having verified the facts by speaking to the police. Mr. Whyte need not have sought the input of the claimant. That contention was based on the claimant’s admissions and the consistency of the contemporaneous information being circulated with the publication. In the absence of an allegation that the words were published with malice, there is nothing in fact or law to warrant the failure of this defence, concluded the submission.

[50] While the claimant agreed with the third defendant's exposé of the law, he submitted that there is a judicial reluctance to hold words, such as those the subject of this claim and the occasion of their publication, as falling under the rubric of this defence. **C.V.M. Television v Fabian Tewari** SCCA No. 46/2003 delivered on November 8, 2006 was cited in support. In that case the appellant carried a broadcast in which it falsely reported that the respondent was a member of a police party that fatally shot a citizen. Among the contentions on appeal was the applicability of qualified privilege. The following passage from the judgment of Panton J.A. (as he then was) was cited:

> *"I am of the view that whereas the appellant may have a duty to publish news of criminal activities and of the behavior of the police in that respect, and there may be a right on the part of the general public to receive such information, there is no duty to publish inaccuracies. There is certainly no duty to publish a story that gave false details as to an act amounting to murder having been committed by the respondent. A television station takes unto itself the duty of reporting facts and events. It may also provide commentaries but such commentaries must be on the facts. It has no duty to report falsehoods and inaccuracies. Where there are such mistaken reports, immediate sincere apologies are required accompanied by publication of corrections. The constitutional right of freedom of the expression that a person has in Jamaica is not a licence for the taking away of another person's constitutional right to protection of the law. Hence, freedom of expression does not allow one to injure another's reputation. In the instant case, given all the circumstances, there can be no doubt that the defence of qualified privilege cannot avail the appellant."*

FAIR COMMENT

[51] The third defendant submitted that **Telnikoff v Matusevitch** [1991] 3 W.L.R. 952 is authority for the proposition that it is the claimant who must show both that the comment was unfair and made with express malice. If the court were to, as the court ought reasonably, resolve the disputed facts in favour of the third defendant, then the stated facts are true and the comments thereon fair, argued the third defendant. Consequently, this defence should succeed.

[52] The claimant in response cited a somewhat lengthy extract from the speech of Lord Nicholls of Birkenhead in **Reynolds v Times Newspaper Ltd** [1999] 3 W.L.R. 1010. The last paragraph of that quotation is reproduced hereunder:

> *"It is important to keep in mind that this defence is concerned with the protection of comment, not imputation of facts. If the imputation is one of fact, a ground of defence must be sought elsewhere. Further, to be within this defence, the comment must be recognizable as comment, as distinct from an imputation of fact. The comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made."*

[53] Against this background, the claimant submitted that the starting point is whether the 'statement' is in fact a 'comment'. It was the claimant's contention that what the third defendant did was to impute facts. There is no evidence, the claimant maintained, showing that the third defendant even attempted to say it was commenting on facts. Reference was made to the evidence of Mr. T.K. Whyte where he said the last published article was a report of what occurred in court on the 21st October, 2008, excepting for the penultimate and ultimate paragraphs; the latter two being a summary of what was said in court on the previous occasion. Additionally, Mr. Whyte told the court that he never wrote commentaries for **Chat!** his function was to make reports, the claimant concluded.

FINDINGS AND ANALYSIS

[54] Defamation has been said to be "a statement made by one individual to another which tends to bring the character or reputation of a third person into disrepute, or to expose that person to personal embarrassment in the minds of ordinary well-thinking members of society." That is the meaning ascribed by the committee set up to review Jamaica's defamation laws, which reported in 2008 and was chaired by Justice Hugh Small (**Small Committee Report** pages 8-9). In short, defamation is the publication of a statement containing an untrue imputation against the reputation of another, to a third person.

[55] In the learning of **Gatley on Libel and Slander** Eighth edition, paragraph 4, the imputation may “cut him off from society” or “expose him to hatred, contempt or ridicule”. The Small committee went on to say, “if the statement tends to injure the reputation of the person it is presumed to be false.” That presumption is assailed by proof “that the material parts of the challenged statement are accurate.” That presumption is premised on the proposition that “the law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit,” per Cave J in **Scott v Sampson** (1882) 8 Q.B.D. at p.503.

[56] At the end of the trial there was convergence of views that in their natural and ordinary meanings, the published words are defamatory of the claimant. That is, that the words tend to lower the claimant in the estimation of right thinking members of society, or expose him to public hatred, contempt or ridicule” or “cause him to be shunned or avoided”. Even without that agreement, it is palpable that the statements contained in the articles are defamatory. So, has the third defendant run afoul of the time honoured recognition at law of the right of every person to the possession of a good name during his lifetime? (**Broom v Ritchie** (1904) 6 F. 942).

[57] The question becomes, has the third defendant established the plea of justification? Justification provides a complete defence to a claim for libel. The claimant does not have to prove that the statement is false. Rather, it is for the defendant to prove that the statement is true. According to the learned authors of **Gatley on Libel and Slander** Eighth edition, paragraph 351, “the truth of the imputation is an answer to the action, not because it negatives malice, but because the plaintiff has no right to a character free from that imputation, and if he has no right to it, he cannot in justice recover damages for the loss of it.”

[58] In support of its plea of justification, the third defendant relied on section 7 of the **Defamation Act**. That reliance appears in its written, closing submission and not the statement of case. The section is reproduced below:

> *In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charged is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.*

[59] According to the learned authors of **Clerk & Lindsell on Torts** Nineteenth edition, paragraph 23-84, what is required of the defendant is not proof of the literal truth of every fact imputed but 'the truth of the defamatory sting of the publication'. It is sufficient if the defendant proves 'the substantial truth of every material fact'. In other words, justification of the sting of a libel, that is, the gravamen or real thrust of the allegation, may be sufficient without extending to every epithet or detail in the impugned words: **Halsbury's Laws of England** Fourth edition Volume 28 paragraph 84.

[60] In discussing the identical section of the English Defamation Act, **Clerk & Lindsell on Torts** opined that the defence of justification will succeed where the defendant proves three of five separate charges and the other two are not matters of significance to the claimant's reputation, having regard to the three proved. Conversely, the plea of justification will fail where the two unproved charges are themselves of some seriousness and materially impact the claimant's reputation. Indeed, Ashworth J so directed the jury in **Anders v. Gas** (1960) 104 S.J. 211. The point is, although the defendant may not be able to prove the truth of all the libel, if that which remains unproved does not cause much injury to the claimant, the plea of justification should succeed: **Moore v. News of the World** [1972] 1 Q.B. 441, 448.

[61] In its treatment of the section, **Halsbury's Laws of England** Volume 28 says this defence must be specifically pleaded (paragraph 86). **Clerk and Lindsell** concur in that view, and the court in **Moore v. News of the World** [1972] 1 Q.B. 441, 448, said so in as many words. That aside, the English Court of Appeal in **Polly Peck (Holdings) Plc and Others v Trelford and Others** [1986] 2 W.L.R. 845, 870, was of the view that the section requires the distinct charges to be founded on separate words. Whatever the verdict on the distinction of the charges, to which the court will shortly return, the plea of justification takes on a special flavour in the context of this case.

[62] In the context of this case, what has to be determined is whether what was reported concerning the claimant in the articles, had in fact been said in the Resident Magistrate's Court. In other words, the first question for the court is, were these reports faithful and true accounts of the court proceedings? It is worthy of note that there are no court reporters in the Resident Magistrate's Courts. Hence, there was no transcript of the proceedings to which this court could have resort to resolve this dispute. That fact is compounded by the absence of any evidence from the person who supposedly told the court the matters now in dispute. The resolution of the disputed facts therefore rests on the credibility of the witnesses. The court must now ponder the issue of credibility.

[63] Against the background of an absence of official record of court proceedings, it is nothing short of remarkable that the third defendant would have the court resolve the disputed questions without even a glance at the credibility of its reporter, Mr. T.K. Whyte. Instead, the court should have regard to the evidence of the Inspectors of Police James and Henry and the credibility of the claimant. It is to be noted that Inspector James was not in court on the occasion of the *habeas corpus* hearing. Hence, the weight that his evidence brings to bear on the claim is limited to whatever may be accepted from his evidence as uncontroverted.

[64] Taking first the question of the claimant's probable involvement in car stealing, the first complaint in the particulars of claim, Inspector James said categorically that there was no mention of this in his witness statement. In fact, Inspector James didn't stop there. He went on to say that he had no knowledge of that. If such an investigation was afoot, it would represent a serious break down of the internal administrative functions of the ACB if the liaison officer was ignorant of it. The ignorance of Inspector James gives the evidence of Inspector Henry on the point its true character.

[65] Inspector Henry testified to having heard the allegations of possible involvement in car stealing and shooting at the members of the ACB before reading about it in **Chat!** Her sources were fellow officers. That provided grist for counsel for the third defendant to submit that "it is more probable than not" that the investigator would have disclosed

this at the *habeas corpus* hearing. But grist for the rumour mill does not necessarily bear the fertile seeds of suspicion which may germinate into shoots of investigation. Inspector James was unaware of any such investigation and other than Inspector Clunis, Inspector James was the best person to know of it. His task was to communicate with all the witnesses and keep proper records of all matters before the court. That makes it conclusive that no such investigation was in fact taking place. Consequently, it is highly improbable that anything of the sort was said to the Resident Magistrate.

[66] Turning now to the second complaint in the particulars of claim, was the court told that the claimant had extorted money from a Spanish Town businessman and had been so doing for some time? Inspector James told the court that the claimant was seen accepting what turned out to marked currency notes from Miss Octavia Guthrie. That is accepted as a fact. However, something more is needed to turn that acceptance of money into the proceeds of extortion, never mind evidencing a course of conduct of extortion. Here no assistance can be provided by Inspector James as, he was not in court as indicated before and neither did he speak to it in his capacity as liaison officer.

[67] As it turned out, Inspector James was not needed on the point. That became apparent when Mr. T.K. Whyte recanted. It was his evidence that neither Inspector Clunis nor anyone else for that matter, said so to the court. This was background information Mr. T.K. Whyte picked up, resulting in him having to resile from that which he certified in his witness statement to have been the truth. In his witness statement he had said that the source of the entire article was the court proceedings. So, on his confession it was a deliberate falsehood to have certified that this information was uttered in court. This falsehood remained so at the end of his evidence without even the pale shadow of an explanation.

[68] The taint of falsehood also pervades the allegation that the claimant and his colleague fired upon members of the ACB. Inspector James only spoke to hearing explosions in his witness statement. Under cross-examination Inspector James agreed

that he never said in his witness statement that the claimant fired upon the members of the ACB. Inspector James was a witness who, from his description of the events, had a good vantage point to have observed whether or not the claimant discharged his firearm that day. Even if the investigator wasn't similarly advantaged, it is asking a lot of the tribunal of fact to say that the investigator may have told the court so. In any event, Mr. Whyte was crystal clear that Inspector Clunis didn't say so but he got that as background information.

[69] Similarly, the report in the article that the claimant turned himself over to the police the following morning drips with the crimson stain of falsely asserting that the court was the source of the information. Perhaps it is unremarkable that at the time of trial Mr. Whyte was unaware that the claimant's surrender occurred on the day of the incident. Unremarkable because Mr. Whyte didn't verify the so-called background information, as he trusted the reliability of his source. Inspector James was silent on this aspect of the case.

[70] Learned counsel for the third defendant asked the court to bear in mind certain peculiarities affecting Mr. Whyte when assessing him in relation to the defence of absolute privilege. That is, the fact of his senior years and having suffered a stroke in earlier years. Without seeking to be unkind, Mr. Whyte was a vacillating witness who testified with the maladroitness of the drunk vainly trying to walk a straight line. Even with those things in mind, the court finds itself unable to rely on anything Mr. Whyte said occurred in court, unless support can be found for it elsewhere in the evidence. By support, the court means, either that Mr. Whyte's evidence finds consensus with what is agreed between the parties or other evidence, though not agreed, that has been shown to be incontrovertible.

[71] Although he didn't know that the constables were brought before the Resident Magistrate on the 10th October, 2008 as a result of *habeas corpus* applications, it is an agreed fact that they were. *Habeas corpus* applications typically are heard informally without the taking of evidence. However, nothing precludes evidence being taken. The

latter course would be highly unusual. At the end of the application the suspect is ordered released if his continued detention without charge cannot be justified. If the suspect's jailers can justify further detention, that usually manifests itself in charges being laid against the suspect.

[72] Mr. Whyte's total absence of knowledge concerning the nature and quality of the proceedings at the hearing of the *habeas corpus* applications brings his reliability into sharp focus. His report of what supposedly transpired at the hearing on the 10th October, 2008, is as bizarre as it is incredible. The thought that the suspects were pleaded is befuddling. Alas, Mr. Whyte could not say what they were pleaded to. Similarly, the attempt to conceive of a bail application being made at the hearing boggles the mind. That Mr. Whyte's powers of recall failed him in recounting the result of the bail application manifests some incoherence on his part. His own articles said the men were released at that hearing, conditionally or no, so if there was a bail application and they were released on bail that would have been consistent with his report. Against this background, it is very difficult to accept that the Resident Magistrate adopted the highly unusual option of taking evidence at the hearing.

[73] When all of this is put together with the revelations of what was garnered as background information and inserted under the guise of faithful and accurate reporting, the court is left in serious doubt about the presence of Mr. Whyte at that hearing. How could a retired Superintendent of Police cum freelance journalist covering the court not have appreciated the difference in nature and quality of the *habeas corpus* hearing? The hodgepodge of things reported to have taken place at the *habeas corpus* hearing is the manifestation of the work either of someone who is a stranger to the courthouse or a person in an armchair piecing together a story from a potpourri of information. Since Mr. Whyte cannot be fairly characterized as the former, sadly, he must have been the latter.

[74] Therefore, the court accepts, first, the claimant's contention that it was not said at the hearing that the investigations had taken a different twist which may involve the

cops' connection with a large car stealing ring. Secondly, upon the admission of Mr. Whyte, it is also accepted that no one told the Resident Magistrate that the claimant and his partner had been regularly taxing the businessman. Thirdly, it was not said that the claimant and his partner had shot at the members of the ACB. Fourthly, it was not said that the claimant turned himself in the following day.

[75] Further, even on the claimant's case it is more probable than not that the Magistrate court was told that he ran away into bushes. The reason he did so does not change the fact of having done it. The court accepts that the members of the ACB identified themselves to the claimant and his erring partner. Accepting as the court has, the evidence of the stand-off between the claimant and the ACB team, during this time the members of the ACB identified themselves to the claimant. Consequently, the tall tale that the claimant took flight out of fear of an ambush by hoodlums is rejected.

[76] So then, has the third defendant sustained the plea of justification? That is, has it been proved that the libels complained of are no more that what formed the allegations as uttered by the investigator in court or, if not, have they been proven to be true in the classic sense of this defence. The answer to the first part of the question is a resounding no. In respect of the second part of the question, the third defendant has no more that the evidence of Mr. T.K. Whyte to rely on. And from his evidence, the reports of probable involvement in car stealing and shooting with intent have their source in what can fairly be described as rumour.

[77] Since the claimant complains of separate imputations in the articles, and having regard to the reliance on section 7 of the **Defamation Act**, the issue of severability of the charges arises. That is, to borrow a phrase from **Nolan J in Polly Peck (Holdings) Plc and Others v Trelford and Others** [1986] 1 Q.B. 1000, 1019, are the charges "raised in the articles linked and form the grounds of a single composite criticism?" In other words, do the several defamatory allegations, contextually, have a common sting? It is only if the allegations do not have a common sting that they are to be regarded as separate and distinct. Whether the allegations are separate and distinct is a question of

fact and degree in each case: **Polly Peck (Holdings) Plc and Others v Trelford and Others** [1986] 2 W.L.R. 845, 869.

[78] There was no issue at the trial that the articles represent one seamless allegation of corruption against the claimant. Such a contention could only have been sustained if the meaning of the word was limited to an impairment of integrity. What was alleged as having taken place on Periwinkle Avenue is akin to what is declared to be an act of corruption under the **Corruption (Prevention) Act**, section 14 (1) (a). In essence, it is the inducement of the public officer to misuse his official position. In so far as the claimant is concerned, the receipt of the marked currency notes must have been intended to induce him to misuse his official position to wrongfully refrain from prosecuting the businessman.

[79] However, what was alleged in the articles went beyond the contemplation of the **Corruption (Prevention) Act** to the commission of criminal offences. First, the allegation of involvement in a car stealing ring imputes the charge of larceny punishable with imprisonment for a term not exceeding five years: **Larceny Act** section 5. Secondly, the allegation of shooting at the ACB team carries the imputation of the offence of shooting with intent. That offence carries a minimum sentence of imprisonment for fifteen years. Thirdly, although the claimant asserts that the offence of escaping custody was also imputed, the court cannot agree.

[80] Would the ordinary and reasonable man understand the report that the claimant escaped into bushes to mean that he escaped from custody? All that was said was that the claimant escaped apprehension. On that view, the claimant was never in the custody of the police. To say one of the policemen was held while the other escaped into bushes implies that very fact; that the claimant was never in custody. It appears to be illogical to equate escaped apprehension with escaping from custody.

[81] Even so, what is clear is that the imputations in the articles are independent the one of the other. That is to say they do not bear a common sting and are therefore

severable. Taking first the imputation that the claimant was corrupt, meaning among other things, that he had breached the provisions of the **Corruption (Prevention) Act**, the plea of justification is well made. The plea succeeds both in the sense that it was something said in court and, was in fact true having regard to what transpired on Periwinkle Avenue. The report that the claimant was to return to court on the 21st October, 2008, in relation to corruption charges is rejected. However, that is a detail which does not materially impact the claimant's reputation.

[82] Although the breach of the **Corruption (Prevention) Act** is as much a criminal offence as the other two imputations so characterized, before going on to consider those two it is useful to have regard to the burden of proof. The third defendant is held to no higher standard than a balance of probabilities in proving the commission of the offences, to succeed in its plea of justification. However, "the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged," per Ungoed-Thomas J in **Re Dellows Will Trusts** [1964] 1 W.L.R. 455. The learned judge continued, "the more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it."

[83] So, while the standard is not proof beyond a reasonable doubt, the more serious the allegations the higher the degree of probability that must be attained if justification is to avail the third defendant: **Hornal v Neuberger Products** [1957] 1 Q.B. 247, 258. That is the standard to which the third defendant must be held in this case as the imputations are of a serious crime in the case of larceny and very serious in respect of shooting with intent. But that is wholly unnecessary with evidence that amounts to unverified rumour as the bar would not have been reached even if it had been set at its lowest level of probability.

[84] So, the unproved charges are themselves of some seriousness and materially impact the claimant's reputation. Therefore, although the third defendant has been able to prove the allegation of corruption, the plea of justification fails for want of proof of the

imputations of having committed crimes. In other words, the claimant has a right to a character free from the imputations of involvement in crime and criminality.

[85] The court's attention is now turned to a brief consideration of the defence of absolute privilege. The court and counsel for the third defendant are of the same mind in relation to the relevant law in this area. The court adopts the learning of Salmon J cited in **Burnett & Hallamshire Fuel Limited v Sheffield Telegraph & Star Ltd** [1960] 1 W.L.R 502, 504. Reference is also made to section 15 of the **Libel Act**, which provides:

> *"A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged:*
>
> *Provided that nothing in this section shall authorize the publication of any seditious, blasphemous or indecent matter."*

For present purposes it is worthwhile to note that the privilege extends to the Magistrates' courts: **Law v Llewellyn** [1960] 1 KB 487.

[86] It has been said that this is one of those occasion on which "the law's concern for free discourse outweighs the need to protect personal reputations." (See **Tort Law Text and Materials** Third edition by Mark Lunney and Ken Oliphant). That is, "in certain circumstances people should be free to speak their minds (and others to report on what they say) without fear of being sued, even if what they publish is false and defamatory": **Clerk and Lindsell on Torts** Nineteenth edition para. 23-91.

[87] For this defence to succeed, the first criterion is that the words complained of, true or false, were spoken in the course of the judicial proceedings. No action lies "against judges, counsel, witnesses, or parties, for the words written or spoken in the ordinary course of any proceedings before any court or tribunal recognised by law": **Clerk and Lindsell on Torts** Nineteenth edition para. 23-93. The words must have been said in the course of proceedings in a forum bearing the law's imprimatur. Since there was no dispute that the Resident Magistrate's Court for the parish of St. Catherine was not one recognised by the law, the focus must turn to the words complained of.

[88] The inquiry is here concerned with those aspects of the claim for which the defence of justification failed, namely, the imputations of larceny of motor vehicles and shooting with intent. As counsel for both sides submitted, the court must look to see if the articles represent a fair and accurate report of what was said in the course of the proceedings in the Magistrate's court. In that regard, the court agrees with counsel for the third defendant that the focus should not be on minor discrepancies in making that assessment.

[89] Even without those distractions, the findings made above that these things were not said in court rends down the middle the third defendants claim to the fig leaf of absolute privilege. The court found, in spite of Mr. T.K. Whyte's insistence otherwise, that Inspector Clunis never told the magistrate anything about the claimant being involved in a car stealing ring. And certainly in respect of the imputation of firing upon the members of the ACB, this defence was still born the moment Mr. T.K. Whyte admitted that that was background information he picked up outside of court.

[90] Counsel for the third defendant asked the court to view the evidence of Mr. T.K. Whyte against the silhouette of the published corrections. And elsewhere it was submitted that the effect of the correction was to remove the sting of the libel. So, what does the correction signify in relation to Mr. T.K. Whyte's evidence? The only reasonable and inescapable answer is a repudiation of the accuracy of the previously published reports. So convinced were the editors of **Chat!** of the inaccuracy of the allegations that they published the correction without ever consulting the writer of the articles. That can be the only explanation for the contemptuous disregard for any input Mr. T.K. Whyte might have had to make.

[91] While no evidence was led that the third defendant sought legal advice before publishing the correction, the court notes a singularly important fact. That is, the correction came after two letters from the claimant's Attorneys-at-Law complaining of the defamatory nature of the articles and the filing of the claims. It is also noteworthy that one of the signatures on the third defendant's statement of case is that of its legal

officer. Is it then unreasonable to infer that the legal officer had some input in the decision to publish the correction, the matter having been made a legal issue?

[92] The third defendant ought to have known then that even if the information was false but it emanated from what was said in the course of the proceedings before the Magistrate, there was no need to publish a correction. It could safely anoint itself in the balm of absolute privilege. The third defendant's own investigations must have led it to discover its nakedness, that is, the apocryphal nature of the claim that those things had been said in court, hence the correction.

[93] That was the driver behind the published correction and not the pseudo-reason given by the editor of **Chat!** The defamatory publication, in particular the allegation of shooting with intent, was repeated after the first letter from the claimant's Attorneys-at-Law. So, when was it that the third defendant found the religion of redemption and was consequently moved to erase the unfavourable light in which the articles may have left the claimant? The timing of the publication of the correction gives the proffered reason a decided hollowness that leaves it bereft of any sincerity.

[94] Therefore, viewing Mr. T.K. Whyte's evidence against the backdrop of the published correction does not advance the case of the third defendant. Even if the court is wrong in its analysis of the reasoning behind the publication of the correction, the fact of the publication casts a huge shadow over Mr. T.K. Whyte's veracity. Publishing the correction without any reference to him tells a story of a lack of faith in his *bona fides*. When that is put with his evidence that he knew not what they were correcting, while admitting that a part of that correction was in fact pick up outside the courtroom, this court is constrained to view his evidence with suspicion. Accordingly, the defence of absolute privilege also does not assist the third defendant.

[95] Having established that the statements alleging involvement in car theft and shooting with intent are both defamatory and untrue, the spotlight is now turned to the defence of qualified privilege. The predicate principle underlying qualified privilege is the

reciprocal duty and interest between the publisher and the recipient of the statement. This is superlatively encapsulated in the speech of Lord Atkinson in **Adam v Ward** [1971] A.C. 309, 334:

> *"A privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."*

[96] In this defence the law recognizes a need, in the public interest, for a certain recipient to receive 'frank and uninhibited communication' of specific information from a particular source: **Reynolds v Times Newspapers Ltd and others** [1994] 4 All ER 609, 616.

[97] Culled as it was from the classic form of privilege, 'Reynolds privilege' acknowledges a professional duty on the part of the journalist to disseminate information on matters of public interest and a corresponding interest on the part of the public in receiving that information: **Jameel and another v Wall Street Journal Europe SPRL** [2006] 4 All ER 1279, 1298. So that, under 'Reynolds privilege' or 'Reynolds public interest defence' as Lord Hoffman in **Jameel** would prefer, it is the material or information that is privileged. In traditional privilege it is the occasion that is privileged.

[98] Therefore, once it has been established that the published material is one of public interest, the test as to whether qualified privilege attaches is that of responsible journalism. According to Lord Bingham of Cornhill in **Jameel** [2006] 4 All ER 1279, 1291, the rationale of this test is "that there can be no duty to publish and the public have no interest to read material which the publisher has not taken reasonable steps to verify." So then, the publisher of false and defamatory information is afforded the protection of qualified privilege upon a demonstration of having taken such steps as a reasonable journalist would have taken to ensure the story's accuracy and fitness for publication.

[99] In determining whether this defence has been established, Lord Hoffman would have the court ask itself three questions. The first and obvious question is, whether the subject matter of the article was a matter of public interest? In answering that question the defamatory statement must be viewed in the context of the article. The second question is, was it justified to include the defamatory statement? To be justified the defamatory statement must serve a public purpose and be an organic link to the story. The final question is, were the steps taken to collect and publish the material responsible and fair? (See **Jameel** [2006] 4 All ER 1279, 1295-1297)

[100] The first question may be answered in the affirmative without any difficulty. The article as a whole concerned what can be described as the involvement of the police in corruption and the effort of the ACB to uproot that corruption. Specifically, the article exposed the effort of the ACB to catch the claimant and his colleague in the act of corruption. It is axiomatic that the public has an abiding interest in knowing that corruption exists in the Jamaica Constabulary Force and of the efforts to eradicate it. Since corruption is specie of the wider criminal law, normally it would be natural to include in a report about corruption involvement in other criminal activity or the contemporaneous commission of other criminal offences.

[101] However, as was said in **Jameel** at page 1296, the fact that the material was of public interest does not allow the newspaper to drag in damaging allegations which serve no public purpose. In this regard the comments of Lord Hobhouse **in Reynolds v Times Newspaper Ltd** [1999] 4 All ER 609, 657, are most apposite:

> *"The liberty to communicate (and receive) information has a similar place in a free society but it is important to always remember that it is the communication of information, not misinformation, which is the subject of this liberty. There is no human right to disseminate information that is not true. No public interest is served by communicating or publishing misinformation. The working of a democratic society depends on the members of that society being informed, not misinformed. Misleading people and the purveying as facts statements which are not true is destructive of the democratic society and should form no part of such a society. There is no duty to publish what is not true: there is no interest in being misinformed. These are general propositions going beyond the mere protection of reputations."*

Therefore, in answering the second question, misinformation in the article serves no public purpose and so its inclusion in the article cannot be justified.

[102] As has been demonstrated, the allegation that the claimant might have been linked to a car stealing ring was patently false. This was an independent, developing story if it were true. To put the matter another way, there was no link between this story and that about the claimant being caught in an act of corruption, save that both concerned the claimant. So, the third defendant could have published its article about the claimant's activities without any reference to his probable involvement in car stealing. It is therefore clear that the inclusion of this damaging allegation served no public purpose as well as had no vital connection to the report of being caught accepting marked currency notes on Periwinkle Avenue. Its inclusion in the report was therefore not justifiable.

[103] Similarly unjustifiable was the inclusion in the article of the allegation of shooting with intent. If the claimant had indeed shot at the members of the ACB in order to escape apprehension as a result of his corrupt activities, that would have been part of a series of offences warranting its inclusion in the article. Looked at from that perspective, it may be said to bear an organic link to the report of corruption. However, this also was sensational falsehood. And its dissemination served no purpose other than to mislead the public. Consequently, as Lord Hobhouse said, "no public interest is served by publishing … misinformation."

[104] The allegations having been unjustifiably included, did Mr. T.K. Whyte take such steps as a reasonable journalist would have to establish their veracity? Insisting as he was, that Inspector Clunis told the Resident Magistrate of the claimant's suspected involvement in car stealing, Mr. T.K. Whyte gave no evidence of steps he took to verify this allegation. The position in relation to the allegation of shooting with intent is somewhat different.

[105] Also bereft of a foundation of verification at the end of the trial was the allegation of shooting at the members of the ACB. Was it reasonable for Mr. T.K. Whyte to have made no effort to verify this allegation since he got it from the 'police' whom he considered to be a reliable source? Although it was claimed that 'police' included any policeman involved in the investigations that certainly could not have been Inspector James.

[106] Be that as it may, it cannot surely be said that any policeman connected to the investigations, however slight his connection thereto, is well-placed to provide credible information on ongoing investigations. That would render redundant the information arm of the constabulary. Apart from the information arm, there are station diaries and crime diaries which represent the official record of what transpires during police crime fighting activities such as the sting operation. Surely these are things a retired Superintendent of Police ought to have known. But Mr. T.K. Whyte never even tried to verify the allegation. The reasonable journalist would have taken responsible and fair steps to gather and publish this allegation. In rushing to print without verification the conduct of Mr. T.K. Whyte fell well below that expected of the reasonable journalist. Accordingly, the defence of qualified privilege also fails.

[107] This takes the court to the defence of fair comment. If "the words complained of are fair comment on a matter of public interest" the defendant has a good defence. (See **Gatley on Libel and Slander** Eighth edition paragraph 691). According to the same authors, in matters of public interest "it is desirable that all should be able to comment freely, and even harshly, so long as they do so honestly and without malice." Section 8 of the **Defamation Act** is also quite apposite. The section is extracted below:

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

[108] The learned authors of **Clerk and Lindsell on Torts** Nineteenth edition paragraph 23-168 list four elements which must be established in proof of this defence. These are:

1. *The statement must be comment and not fact.*
2. *The comment must have a sufficient factual basis (that is, the comment must be based on facts which are themselves sufficiently true).*
3. *The comment must be objectively "fair" - i.e. it must be an opinion which an honest person could hold. This is an objective test, but should not be confused with reasonableness.*
4. *The subject matter of the comment must be of public interest.*

[109] The initial hurdle is to prove that the statement is an expression of an opinion and not an imputation of a fact. There are five principles to contemplate in making that determination. First, "it has been said that the sense of comment is something which is or can be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc." Secondly, the statement is likely to be considered a comment if it is one of 'pure value judgment, incapable of proof'. Thirdly, it is generally regarded as a comment where reference is made to certain facts and thereafter it is made clear that the relevant statement 'is an inference from the facts'. Fourthly, 'a bald statement with no supporting fact is unlikely to be considered a comment'. Finally, an apparently factual statement which is either true or false may be classified as a comment if it appears to be an inference from other facts. (See **Clerk and Lindsell on Torts** Nineteenth edition paragraph 23-169). Fair comment "does not extend to misstatements of facts however bona fide." (See **Gatley on Libel and Slander** Eighth edition paragraph 698).

[110] So then, are the matters complained of in the articles comment or imputations of fact? When the writer labeled the claimant and his partner 'corrupt', he appears to have deduced that from the allegations of what transpired on Periwinkle Avenue. If that is correct, then it was a deduction and falls within the boundaries of the first principle advanced by **Clerk and Lindsell on Torts** above. Therefore, to characterize the claimant and his partner as corrupt may properly be described as a comment. However,

the court has already accepted the defence of justification in respect of the wider allegations of corruption which ground the comment.

[111] However, the allegations of involvement in car stealing and shooting with intent are palpably imputations of fact. These are not inference from any facts in the articles. Neither are the charges the product of deductions, conclusions, criticisms, remarks or observations. They amount to no more than bald assertions without any factual foundation. As has been demonstrated earlier, these allegations are no more than misstatements of facts and cannot therefore be regarded as fair comment. Mr. T.K. Whyte himself said he was not in the business of writing commentaries for **Chat!** The inference from that is his endeavour was to report facts. Be that as it may, the statements having been adjudged imputations of fact, the third defendant has failed to assail the first hurdle and accordingly this defence also founders.

DAMAGES

[112] The claim is for compensatory as well as aggravated damages. In support of the former head of damages the claimant relies on **CVM Television v Fabian Tewarie** SCCA 46/2003 delivered 8th November, 2006. In that case the jury made an award of $20,000,000.00 as general damages which was reduced on appeal to $3.5 million. Updated, that award is $8,159,854.00. For the reasons which appear below, the claimant submitted that the award should be $12,000,000.00.

[113] The claimant provided a useful chart showing the similarities and dissimilarities between **CVM Television v Fabian Tewarie** and the instant case which is reproduced below.

NO.	SIMILARITIES	DISSIMILARITIES
1.	In both matters, the Claimants were rank and file policemen	The publication in the CVM matter was on television. The publication in this Claim was in the newspaper

2.	In both matters, the defamatory statements were published twice.	The Defendant in this Claim published a retraction. In the CVM matter no such retraction was published.
3.	In both matters, the defamatory words were published twice in the face of complaints being made to the defendants by the Claimants.	The defendant in this Claim has pleaded the defence of justification and is therefore saying that the words published are true.
4.	In both matters, the Defendants failed and/or refused to apologize for the defamatory publication.	
5.	In both matters, the Defendants contested liability from the inception of the matter to the end.	

[114] It was further submitted that whereas the publication in **CVM Television v Tewarie** was transient and momentary, that in the case at bar is archived with the possibility of being resurrected. This fact was urged as a factor capable of increasing the compensatory award.

[115] Under aggravated damages the claimant submitted five factors for consideration. First, "the wide and massive readership enjoyed by … **Chat!**" Paragraph five of the defence was relied on in support of that. Secondly, the court was asked to look at "the Defendant's subsequent conduct and the conduct of the defence." Special mention was made of the third defendant's attempt to rely on every defence known to the law of defamation. Thirdly, the defendant's failure and, or, refusal to apologize. Fourthly, the court is to have regard to the third defendant's "insistence" on the plea of justification. The claimant described that insistence as "unwarranted and disingenuous". Finally, the claimant cited what he termed "the Defendant's high handed approach in dealing with this matter from the inception … to the trial."

[116] On the other hand, the third defendant submitted that there is nothing on the evidence to warrant an award for aggravated damages, having regard to the principles set out at paragraphs 9.13 and 9.14 of **Gatley on Libel and Slander** Tenth edition. Additionally, 'the prominent and repeated publication of the correction clearly removes the sting from the defamatory meanings conveyed by the articles," the submission continued. Like the claimant, the third defendant also cited **CVM Television v Fabian Tewarie** as well as **Edward Seaga v Leslie Harper** Privy Council Appeal No 90/2006 delivered 30th January, 2008. In the latter case the award was reduced from $3,500,000.00 to $1,500,000.00.

[117] The third defendant submitted that in neither case would the claimant have received a similar award. Five reasons were advanced in support of that contention. First, whereas in those cases the claimants were a Deputy Commissioner of Police and a detective sergeant, respectively, the claimant in this case is a constable. Secondly, "it cannot be said from the evidence that the libel was devastating to Constable Walker." Thirdly, the claimant continues in his occupation without any diminution in status. On the contrary there has been an increase in his status evidenced by his assignment to security duties for a senior officer. Fourthly, based on the evidence of the claimant and Inspector Henry, the fact of the claimant's arrest and charge under the **Corruption (Prevention) Act** is "damaging to his reputation, independently of the publication."

[118] The third defendant cited as well **Jamaica Observer Limited v Orville Mattis** SCCA No. 24/2008 delivered 15th April, 2011. The award in **Orville Mattis**, affirmed on appeal was $1,000,000.00. That is the sum this court should award in the event it has to make one, the submission went on. The third defendant highlighted that in **Orville Mattis** there was nothing to remove the sting of the libel unlike the instant case. Similarly, as in the case at bar, the claimant in **Orville Mattis** was a constable.

ASSESSMENT OF DAMAGES

[119] In a claim for libel, the presumption is that injury flows from the publication of the defamatory statement and the claimant is entitled to damages 'at large'. Consequently,

the assessment of damages rests almost completely on the particular facts of each case. The award should take into account both the harm done to the claimant's reputation and the injury to his feelings. Therefore, the award must be reflective of the seriousness of the charges, the extent of the publication as well as the nature of the third defendant's conduct both in publishing the defamation and subsequently. (See **Tort Law Text and Materials** Third edition Mark Lunney and Ken Oliphant).

[120] First and foremost, since the court is called upon to assess the damage to the claimant's reputation occasioned by the libel, an appreciation of the claimant's reputation at the date of the publication is necessary. As Cave J said in **Scott and Sampson** (1882) 8 Q.B.D. 491, 503:

> *"Speaking generally, the law recognises in every man a right to have the estimation in which he stands in the opinion of others unaffected by the false statements to his discredit; and if such false statements are made without lawful excuse, and damage results to the person of whom they are made, he has a right of action. The damage, however, which he has sustained must depend almost entirely on the estimation in which he was previously held. He complains of an injury to his reputation and seeks to recover damages for that injury; and it seems most material that the jury who have to award those damages should know, if the fact is so, that he is a man of no reputation."*

To do otherwise would be tantamount to saying that "a man of the worst character is entitled to the same measure of damages with one of unsullied and unblemished reputation." (See **Gatley on Libel and Slander** Eighth edition paragraph 1415).

[121] While no evidence was led focusing on the claimant's general reputation, at the end of the trial it could not be concluded that he was a man of unsullied and unblemished reputation. The accepted evidence is that the claimant was seen accepting marked currency notes from a civilian. At first blush that might appear to fall in the category declared inadmissible by Cave J in **Scott v Sampson**. That is the category of 'particular facts tending to show bad character and disposition.' However, in this case it is part and parcel of the claimant's complaint and it would seem artificial to exclude it at this stage of the case. Indeed, this is evidence that is properly before the court, on

which the third defendant is entitled to rely: **Pamplin v Express Newspaper Ltd** [1988] 1 W.L.R. 116.

[122] Having said that, the court is aware that this is not an equivalent situation to the one with which the court in **Pamplin v Express Newspaper Ltd** was presented. In that case the jury awarded the paltry sum of half pence in damages. The claimant there took umbrage to being called an 'unscrupulous spiv'. Of the words initially complained of, spiv was the only one that no longer supported the claim. The jury seemed to have taken the view that the mephitidal (skunk) couldn't complain, if all but the great horned owl complained that its defensive emission is odoriferously rank. Such a claim would have been characteristic of the skunk. The jury may have taken a different view if the allegations had included claims that the skunk behaved injuriously to its kind and was suspected to steal from other animals.

[123] In the instant case, the claimant stood before the court as a man with a damaged reputation at the date of the publication. The submission of the third defendant that the news of his involvement in the activities on Periwinkle Avenue had already been noised abroad before the publication of 13th October, 2008 is well founded. That fact stands as a marked distinction between this case and all the cases cited for consideration of damages. However, it wasn't just an allegation of emitting the foul odour but also that the claimant behaved injuriously towards his kind by shooting at them and was suspected of being a thief. Therefore additional damage was done to the claimant's already damaged reputation. The compensation awarded must manifest the fact of the claimant's previously lowered estimation in the eyes of the public.

[124] Whatever figure the court arrives at by way of compensatory damages, that award will have to be augmented by an award of aggravated damages. **Rookes v Barnard** [1964] A.C. 1191, is authority for making an award where the conduct of the defendant in committing the wrong has injured the dignity of the claimant. The third defendant has submitted that no award should be made under this head, but the very passage to which to the third defendant referred the court does not support that

submission. Among the things appearing under conduct which may aggravate the damages are, “a failure to make any or any sufficient apology and withdrawal;” “a repetition of the libel;” “persistence … in a plea of justification which is bound to fail.” (See **Gatley on Libel and Slander** Tenth edition paragraph 9.13).

[125] Although the third defendant published a correction which could be seen as a withdrawal, the claimant is correct that the third defendant published no apology. Further, as already observed, the correction was published after the claim was filed. Not only was there no apology, the allegation of firing upon the members of the ACB was repeated in the article of the 23rd October, 2008. Additionally, having published the correction, the third defendant ought properly to have desisted in its plea of justification in respect of the matters covered by the correction.

[126] Of all the complaints, the claimant said in his witness statement that he is “particularly ashamed of the fact that the Report states that I may be involved in a car stealing ring and that I opened fire on members of the Anti-Corruption Branch.” He said he can no longer hold his head high. In the streets of Spanish Town he is called “the car thief” or the “thieving policeman”. In respect of the allegation of shooting with intent, he said his colleagues have called him a “traitor” and that he lived in constant disgrace. The third defendant’s persistence in the plea of justification which was bound to fail in respect of these charges could only have exacerbated the injury to the claimant’s feelings.

[127] Taking all these matters into consideration, the task of the court is to assess the value of the harm resulting to the claimant. The Australian approach commends itself to this court, “in assessing the amount of compensation to be awarded, the judge must ensure that there is an appropriate and rational relationship to the harm sustained by the plaintiff.” (See **Small Committee Report** page 21). That is not qualitatively different from what is stated in **Blackstone Commentaries**, volume 4, chapter 8:

> *“As all wrong may be considered as merely a privation of right, the one natural remedy for every species of wrong is the being put in the possession of that right, whereof the party is deprived. This may either be*

effected by a delivery or a restoration of the subject-matter in dispute to the legal owner; where that is not possible, or at least not an adequate remedy, by making the sufferer a pecuniary satisfaction in damages."

[128] One of the theses embedded in **Blackstone's Commentary** is the thesis of limitation. That is to say, the remedy restores only the claimant's right and he gets no more than the right or its equivalent. (See **Corrective Justice** Ernest J. Weinrib page 92) In the case under consideration, the restoration of the claimant's right must take the quantitative form, expressed in a monetary equivalent of the injury: **Corrective Justice** page 94. To put it bluntly, the award the claimant is entitled to is that which does no more than vindicate the breached right and he should not thereby obtain a windfall.

[129] With that rights based connection to the remedy the court rejects the distinction made by the third defendant in the rank of the claimants in **Edward Seaga v Leslie Harper** and **CVM Television v Fabian Tewarie** and the present claimant. The claimant makes the same point by lumping the claimant constable with the detective sergeant in the latter case as rank and file. The difference in the awards made in each case evidences the fallacy in that reasoning. While Detective Sergeant Tewarie received an award of $3.5 million, Deputy Commissioner of Police Harper received $1.5 million. Therefore, the fact that the constable's award in **Jamaica Observer Limited v Orville Mattis** was $1million provides no guidance for the same reason.

AWARD OF DAMAGES

[130] The court therefore makes the following awards:

Compensatory Damages …. $350,000.00

Aggravated Damages ….. $150,000.00

Interest of 3% from the date of judgment.

Costs to the claimant to be agreed or taxed.