

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE  
REGULAR JURISDICTION

2018 HC DEM CIV SOC 359

BETWEEN:

**VISHNU PERSAUD**

Claimant

-and-

**1. VINCENT ALEXANDER**

**2. GUYANA NATIONAL NEWSPAPERS  
LTD.**

**3. NIGEL WILLIAMS**

Defendants

Mr. Nicholas Caryll with Mr. Devindra Kissoon for the Claimant

Mr. Roysdale Forde for the first named Defendant

Mr. Asa Shepherd Stewart for the second and third named Defendants

***Decision of the Honourable Madame Justice Priya Sewnarine-Beharry  
dated 18 August 2020.***

1. The Claimant filed this action against the Defendants for publishing or causing to be published statements which he contends are defamatory of him.
2. The Claimant in his witness statement averred that on the front page(print version) of the Guyana Chronicle Newspaper(the Chronicle), dated June 14 2018, the second named Defendant, Guyana National Newspapers Ltd(which publishes the Guyana Chronicle Newspaper)

and third named Defendant(the Editor in Chief of the Guyana Chronicle Newspaper) published or caused to be published a photo of the Claimant along with a headline entitled:

*"Poor past  
...Alexander says Vishnu Persaud's past performance sank him  
-Myers emerged the more qualified for the top GECOM post"*

3. On page 4 of the said newspaper, the second and third named Defendants published or caused to be published a photo of the Claimant along with the headline above and the following words:

*"Former Deputy Chief Elections Officer (DCEO) of the Guyana Elections Commission (GECOM) Vishnu Persaud, was rejected from rehiring on the grounds of his past performance, **his alleged history of faking his qualifications to the commission...**' He (Justice Patterson) objected to Vishnu based on past performance, based on the other candidate having better qualifications and **based on the history of misrepresentation of qualifications to the commission**', longstanding commissioner Vincent Alexander told the Guyana Chronicle." [First Article]*

4. These words were published on the online version of the Chronicle Newspaper and republished by [www.theworldnews.net/gy-news/poorpast](http://www.theworldnews.net/gy-news/poorpast) an online newspaper which quoted the Guyana Chronicle as a 'trusted source' in relation to this article.

5. On June 16, 2018, the Claimant published an article on the Stabroek News website defending himself.

6. In the comment section under the article published by the Claimant, the first named Defendant published a comment which stated:

*"... **When Mr Persaud was appointed as DCEO it was on the pretext that he was the holder of a first degree.** I contested that then and it was maintained that his diploma was equivalent to a first degree hence my objection then was overruled. I specifically posed that question in the recent interview and he admitted it was not a first*

*degree, hence he was never eligible to be appointed in the first instance. This fact is carefully skirted in his letter. My evidence remained unchallenged.” [Comment]*

7. On page 8 of the print version of the Chronicle Newspaper and the online version of the Guyana Chronicle, dated June 20, 2018, the second and third named Defendants published or caused to be published an article entitled ‘I Challenge Jagdeo to a Face off on the Facts’, which contained the following words:

*“On that matter I stand by my word and hereby restate emphatically that Vishnu Persaud’s candidacy was opposed by me on the grounds that the other candidate is superior, in addition to the fact that **Vishnu was appointed as the PRO of GECOM when he was not qualified for the job. He was elevated to the DCEO on the pretence of being the holder of a first degree, here again, he was appointed to a position for which he was not qualified.**”[Second Article]*

The second named Defendant admitted that he wrote and published or caused to be published the article dated June 20, 2018 but denied using the word “pretence.” He stated that he used the word “pretext.”

8. The Claimant contended that the words published in First Article, Comment and Second Article (the Statements) were defamatory. Moreover, the natural and ordinary meaning of the words in the First Article was that the Claimant faked his qualification to GECOM; and in the Comment and Second Article was that the Claimant was elevated to DCEO on the pretence of being the holder of a first degree.

9. The Claimant contended that the Statements were formulated as assertions of fact that he misrepresented or faked his qualifications while applying for the DCEO position and clearly referred to him and were published both locally and abroad by the Chronicle Newspaper.

10. He stated that the Statements were untrue as he never misrepresented his qualifications to GECOM as alleged or at all, nor were such allegations

ever levelled against him, a fact which was known to the Defendants or ought to have been known by them with reasonable inquiries.

11. The Claimant said when he was appointed DCEO in 2014, the first named Defendant was a Commissioner would have been aware of the educational criteria for the job, his application, supporting documents and that he did not misrepresent his qualifications. He said throughout his tenure from 2001 to 2017, his qualifications and suitability for positions, were never questioned by anyone.

12. He said on July 20, 2014, GECOM placed an advertisement in the Guyana Chronicle Newspaper for the position of DCEO. The second stated educational requirement was "A Diploma in Public Administration, Management, Sociology or *related discipline from a recognised institution with training in election management practices*".

13. On July 31, 2014, the Claimant applied for the position of DCEO by sending an application letter and Curriculum Vitae to the Chairman of the GECOM (Exhibits J 1-8). In the Curriculum Vitae under the heading "Educational Profile-Tertiary", he listed two qualifications, firstly, a Certificate in Elections Management (Level 5) Chartered Management Institute –UK (Exhibit L1-4) and secondly a Diploma in Public Relations-Chartered Institute of Public Relations (Exhibit K).

14. The Claimant contended that he met the educational requirements as set out in the advertisement, was interviewed and appointed by the Commission.

15. The Claimant contended that the Statements were defamatory because his esteem was lowered by the average Guyanese who read them. He claimed that the words imputed that he was corrupt, dishonest and put his professional reputation in disrepute. He claimed that the words published

affected his social and personal relationships negatively and caused irreparable damage to his professional reputation and employability prospects. The Claimant also alleged that the Defendants published or caused to be published the Statements with view to benefiting them financially, without due consideration to the damage to his reputation and basic responsible journalism which would at the very least required the second and third named Defendants to contact him for a comment or to verify the Statements before publication.

16. The Claimant stated that before instituting proceedings he caused his attorney to write the second and third named defendants demanding a retraction and apology. The third named Defendant replied stating that they corrected their initial stories, had removed the two offending stories from their website and were willing to publish a second apology if required. The Claimant through his attorney responded requesting the publication of an apology he crafted. Further, he demanded that the second and third Defendant inform World News that the article was erroneous and demand a retraction of the article and a republication of the apology he crafted. The Claimant said the third named Defendant refused to publish the retraction and apology as demanded.

17. The Claimant in cross-examination by Counsel for the first named Defendant admitted that he started to work with GECOM as a Public Relations Officer (PRO). He said that he had submitted an application for the position but it was not in response to an advertisement. He said that Dr. Surujbally, the then Chairman, informed him that that he was looking for someone to fill the position. He said at that time he had no diploma or degree. He accepted that when the post of DCEO was advertised he did not have the qualifications of a first degree. He stated that when he was interviewed for the position of DCEO neither the first named defendant nor anyone asked whether he had a first degree. He admitted that he was not

qualified under the first criteria for the post. He agreed that at the date of the publication of the advertisement he would have had a Diploma in Public Relations from the Chartered Institute of Public Relations (UK) and a Certificate in Management and Leadership (Level 5) from the Chartered Management Institute among other qualifications. He agreed that he was not the holder of a Diploma in Public Administration, Management or Sociology as stated in the second requirement of the advertisement but he was the holder of a diploma or similar qualification from a recognised institute. He accepted that the diploma from Institute of Public Relations did not specifically state diploma in Public Communications or by whom it was issued. He did not agree that the diploma in a related discipline is with training in electoral management practices. The Claimant said he sued the first named Defendant because the latter published that he misrepresented his qualifications to the Commission. The Claimant admitted that the third paragraph of the First Article referred to Patterson and agreed the article did not say the first named Defendant said he misrepresented his qualification to the commission. He maintained that during his interview he was never asked if he was the holder of a first degree. He also stated that he would not have been aware of the discussions between the Chairman and the Commissioners of GECOM in relation to his qualifications for DCEO.

18. In cross-examination by Counsel for the second and third named defendants the Claimant admitted that the office holder of the DCEO position performed a public function. He said he did not know selection process for the DCEO position was in public discourse in 2018. The Claimant acknowledged that after Commissioner Shadick made comments that he was overlooked for the post of DECO he was contacted by Ms. Arianne Gordon, a reporter, attached to the second named Defendant, regarding to his non selection and declined to comment. He admitted that his diploma in public relations did not include training in elections management practices. He did

not accept that *related discipline from a recognised institution* meant training in electoral management practice and that they went together. He did not accept that *with training in electoral management* practices related to a person with a diploma in a related discipline.

19. Mr Vishwanauth Laikram (Claimant's neighbour) deposed to a witness statement on behalf of the Claimant. He said that he held the Claimant in high esteem prior to the publication of the articles but thereafter his estimation and respect for the Claimant was lowered. He deposed that the statements suggested to him that the Claimant cheated to obtain the job. Under cross examination he admitted that the contents of his witness statement were derived from the Claimant not the article. He also stated that the article suggested that the Claimant misrepresented his qualifications when he applied for the DCEO position although it did not expressly state it. He also admitted that he wanted to assist the Claimant, his friend by preparing the witness statement.

20. The first named Defendant in his witness statement denied that the words published in the headline and First Article were attributed to him. He said he used the words below which were reported in a separate paragraph in the First Article:

He (Justice Patterson) objected to Vishnu based on past performance, based on other candidate having better qualifications and **based on the history of misrepresentation of qualifications to the commission'**, longstanding commissioner Vincent Alexander told the Guyana Chronicle." [First Article]

21. He contended that these words do not and could never bear the defamatory meaning attributed to them by the Claimant, that is to say that the Claimant faked his qualifications to GECOM and further he never said the Claimant faked his qualifications to GECOM. The first defendant admitted that he made the Statements in the Comment and Second Article save the

word pretence in the latter. He maintained that he used the word pretext. He contended that the Statements in the Comment and Second Article were not defamatory and assuming the Statements in the First Article, Comment and Second Article were defamatory he relied on the defences of Fair Comment and Justification.

22. He said that he was present at meetings where deliberations were held in respect of identifying the most suitable candidate for the position of DECO and Dr Surujbally, then the Chairman said to the Commissioners that the Claimant did possess a First Degree. The first defendant said he among other Commissioners were of the view that the Claimant did not satisfy the qualifications / requirements for the post of DCEO. He said that the Chairman disregarded the objections and concerns and informed the Commissioners of GECOM that the Claimant was qualified for the position of DCEO. The first defendant said that the statements were not defamatory because they would not tend to lower the estimation of the Claimant in the perspective of a reasonable member of the Guyanese society who read them. He denied publishing or causing the statements to be published knowing they were false or reckless and not caring whether they were true or false. He denied that the Statements were malicious and calculated to injure the Claimant in his personal and professional life, or that he suffered loss and damage.

23. The first named defendant averred that the Claimant was employed at GECOM as a PRO in 2001 and that the principal academic qualification which was advertised for the position was a diploma in Communications. The first named Defendant contended that at the time the Claimant was employed in that capacity he was not a holder of such a diploma. He also contended that the qualification for the office of DCEO in 2014 as advertised was a Bachelor's Degree in Social Sciences, Management or a related Discipline from a recognized Institution with 5 years' experience in the management of



National Elections or a diploma in public administration or a related discipline from a recognized institution with 10 years in the management of national elections. The first named Defendant contended that at the time the Claimant was employed as DCEO he did not satisfy any of the criterion. He further stated that the Claimant admitted that he did not have a first degree during an interview with respect to the 2018 application for the position of DCEO in the his presence and that of other Commissioners of GECOM.

24. Under cross-examination by Counsel for the Claimant the first named Defendant admitted that he was a GECOM Commissioner since 2007 but was not a member of GECOM when the Claimant was appointed PRO. Further Justice Patterson was not involved in GECOM in 2014. The first named Defendant admitted that he repeated to the reporter what Justice Patterson was reported to have said. He admitted further that his witness statement contained no documentary evidence of Patterson's worded statements. He maintained using the word pretext and said that the statement that the Claimant was elevated to DCEO on the pretence of being the holder of a first degree was a fact. He agreed that someone who misrepresented their qualifications would be less trustworthy than someone who did not. However he did not agree that that a reader of the statements would possibly conclude that the Claimant would be less trustworthy. He denied publishing statements that the Claimant misrepresented his qualifications. The first named Defendant admitted that given the two criterion for selection it would be possible for someone to be validly appointed without being the holder of a first degree. He accepted that in the Claimant's application and CV he never said he was the holder of a first degree. He admitted in 2014 the Claimant was appointed DCEO though under protest and that he served his term in 2014 without it being prematurely terminated.

25. Nigel Williams and Ariana Gordon deposed to witness statements on behalf of the second and third Defendants. Mr Williams admitted publishing

the Statements but denied that they were defamatory. Relying on justification he contended that the first named Defendant due to his position as a commissioner would have been able to form the view that the Claimant falsely stated his qualifications for the position based on the application the latter submitted. On behalf of the second and third named Defendants he also contended that the words constituted fair comment by the first Defendant as a Commissioner of GECOM on a matter of public interest namely the lack of qualifications of the Claimant for the positions which he had served.

26. In cross-examination, Mr. Williams admitted that he had the responsibility of screening for libellous statements including seeking confirmation from persons mentioned in the newspaper articles if necessary. He stated among other things that it was not necessary if he was certain of the information provided from the source. He admitted that anyone in the world can read and access publications online and that the Statements were published online. He stated that the articles were removed after Counsel for the Claimant complained. Further the Statements were not removed because they were defamatory but in good faith because previously the second and third named defendants had a good working relationship with the Claimant and they recognised he was hurt by the publication and believed that it was humane to remove the article. He said that the Claimant was moving to the court so the articles were removed so as not to continue the libel.

27. Mr Williams said that though he retracted the article dated June 19 2018 he could not be sure it was still online. He admitted that he did not investigate the article that was republished. He contended that the statements did not mean that the Claimant faked his qualifications. He pointed out that the word alleged preceded the statement of the Claimant faking his qualifications in the opening paragraph of the First Article. He denied that the average Guyanese would think less of the Claimant and

agreed that a man who misrepresented his qualifications in an application for a senior government position was less trustworthy than a man who has not. He agreed that someone's professional reputation depended on their academic qualifications. He accepted that the statements basically said the Claimant faked or misrepresented his qualifications and faking academic qualifications would affect professional reputation. He disagreed that a google search using the Claimant's name would reveal the statements because they were removed. He accepted he did not search for the Claimant's name online. He said he did not publish a second apology because he thought the Claimant did not see the first. Mr Williams maintained that an apology was published in a correcting article where the Claimant denied faking his qualifications and same sought the Claimant's comment and explanation but he refused. He acknowledged that article was not mentioned anywhere in his witness statement.

28. Ms Gordon deposed that she contacted the first named Defendant to seek clarity on an allegation that other GECOM Commissioners were hiring persons on the basis of race and not qualifications. She said she recorded his views and thereafter contacted the Claimant who informed her he was not prepared to speak on GECOM's rejection of his reappointment. She maintained that she sought to produce a balanced article. Under cross-examination she admitted that the Claimant declined to comment on his reappointment to the DCEO position. She could not recall what questions were asked of the Claimant prior to the publication of the Article. She said that the Statements appearing in the first Article was based on a conversation with the first Defendant and that the latter stated that the Claimant had a history of faking his qualifications.

29. The issues that fall for determination of the court are:

I. Whether the Statements are defamatory;

II. If I., is answered in the affirmative, whether the defences of justification or fair comment avail the Defendants;

III. If the defences in II. are inapplicable, to what relief is the Claimant entitled?

### **I. Whether the Statements are defamatory;**

30. The learned authors of **Gatley on Libel & Slander** 8<sup>th</sup> Edition (1981) page 4 speaking to libel and slander state that a man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another. The learned authors of **Gatley** opined further at page 6, that any imputation which may tend to lower the plaintiff in the estimation of right-thinking members of society generally, cut him off from society, or expose him to hatred, contempt or ridicule, is defamatory of him.

31. Whether or not a defamatory imputation is conveyed by any particular words is determined on an objective test, that is, by the meaning in which the ordinary reasonable man knowing the circumstances in which the words were published would understand them. It is settled that the true intention of the writer of any document is that apparent from the natural and ordinary interpretation of the written words.

32. In this regard, the court must take into consideration both the literal meaning of the words and any inferences that could be drawn. **Halsbury's Laws of England, 5<sup>th</sup> edition, Vol 32 speaking to this issue** at page 354 state:

"In determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context."

See also **Bain vs UWI JM 2017 SC 94** where the court applied the dicta of Lord Reid in **Rubber Improvement Ltd and Another vs Daily Telegraph and Associated Newspaper Ltd [1964] AC 234**. In **Rubber Improvement Lord Reid at page 258 posited:**

“What the ordinary man would infer without special knowledge has generally been called the natural and ordinary of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. Sometimes it is necessary to go beyond the words themselves as where the plaintiff has been called a thief or a murderer but more often the sting is not so much in the words themselves as in what the ordinary man will *infer* from them and that is also regarded as part of their natural and ordinary meaning.”

33. The decision as to whether the words are capable of a defamatory meaning is a question of law for the judge. What is the particular defamatory meaning is a question of fact and the words alleged to be defamatory must be read in their context. See the judgement of the Court of Appeal in **France et al v Simmonds KN 1986 CA 6**.

34. In the St Kitts & Nevis case, **Simmonds v France et al KN 1985 HC 1**, Singh J stated at paragraphs 50:

“In English Law, speaking generally, every man is entitled to his good name and to the esteem in which he is held by others and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him without lawful justification or excuse and a statement is defamatory of that person of whom it is published if it tends to lower him in the estimation of right thinking members of the society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided. It is also defamatory if it imputes lack of qualification, knowledge, skill, capacity, judgment of or efficiency in the context of his trade business or profession. I will have to find what meaning the words complained of would convey to the ordinary man and whether a reasonable man to whom the publication is made and under the circumstances under which the words were published would be likely to understand it in a defamatory sense.”

On context, Singh J went on to say at paragraph 52:

*"The words complained of must be put in their proper context. In Evans v. Jones (1962) 4 W.I.R. 502 Small J, at 509 had this to say:*

*"The real issue is a question of construction or interpretation of the words and the implication of the article published.*

*Among first questions to be decided are these (1) Are the words capable of a defamatory meaning and if so (2) are they defamatory of the plaintiff? The principles have been well laid down in Hanter v. Ferguson & Co. [1906] 8F (Ct. of Sess) 574 that the question is not the meaning to be derived from a critical reading about what meaning the words convey to an ordinary reader, reading them as newspaper articles are usually read. It is accepted that no part of the article should be isolated from the context and that the question is what is the impression created by the totality of the article".*"

Words will be defamatory if they impute conduct the reasonable person considers discreditable. See **Halsbury's Laws of England** *supra* at page 353.

35. Therefore the court has to examine each of the Statements in its entirety to determine its true meaning. In the First Article the reporter, Ms Gordon stated several grounds for rejection of the claimant's reappointment to his former position as DCEO by the Chairman of GECOM including the Claimant's history of misrepresentation of his qualifications to the Commission which was mentioned about three times in the article. These words suggest that the Claimant dishonestly obtained his position by putting to the Commission qualifications he did not in fact have. These words are defamatory of the claimant. However, it must be noted that the reporter indicated to the readers that the newspaper was unable to verify the allegations by the first defendant.

36. In the second Article prepared by the first named Defendant, it appears that the article attempts to refute the allegations that the Chairman of GECOM was biased in the selection process of the DCEO. The first named Defendant highlighted among the reasons for Chairman's objection of the Claimant's reappointment as DCEO was on account of his ineligibility for the

position. The 1<sup>st</sup> Defendant also indicated that the Claimant was unqualified for the post of PRO which he previously held. The article clearly expressed that Claimant was not qualified for the posts of PRO and DCEO. Further he was only elevated to DCEO because he represented that he had a first degree when in fact he did not have a first degree. The ordinary person reading the words used would not only infer that the Claimant lacked the relevant qualifications for the positions of PRO and DCEO but that the Claimant was involved in dishonest conduct to obtain the DCEO position. These statements were an attack on the Claimant's professional reputation and amounts to defamation.

37. In the Comment, the words used by the first defendant indicate that the Claimant was ineligible for the position of DCEO and that he assumed a post for which he was not qualified. Further, he was appointed DCEO on the basis of having a first degree when in fact he did not have a first degree. The average person reading these words would be likely to believe that the Claimant misrepresented his qualifications to obtain his position.

38. The first named Defendant maintained that he used the word "pretext" and not "pretence" in the Statements. I do not find that there is any real difference in the literal meaning of the words or the inferences that can be drawn from them in the context of which either word is used in the Statements. It is undisputed that the articles referred to the Claimant and were published extensively. I find that the Statements are capable of being defamatory and, in the context used, are in fact defamatory of the Claimant.

II. Whether the defences of justification or fair comment avail the Defendants?

### **Justification**

39. The Claimant establishes a prima facie cause of action as soon as he has proved the publication of defamatory words. He does not have to prove that the defamatory words are false for the law presumes this in his favour. See **Belt vs Lawes** (1882) 51 LJQB 361. If the defamatory imputation is true that is a complete defence to an action for libel. To establish the plea of justification the defendants must prove that the defamatory imputations are true in substance and fact. The onus lies on the Defendant to satisfy the court that that the statement justified is substantially true, even if the proof does not establish every detail. See paragraph 591 of **Halsbury's Laws of England** supra.

40. Where a defendant repeats a defamatory statement made by another he must prove that the statement was true and not merely that it was made. As stated by LJ Geer in **Cookson vs Harewood** [1932] 2 KB 485 " If you repeat a rumour you cannot say it is true by proving that the rumour in fact existed; you have to prove that the subject matter of the rumour is true."

41. The first defendant's evidence is that he repeated what Justice Patterson was reported to have said. It is no defence for the first defendant to say that he was merely repeating what Patterson said he must prove that what Justice Patterson said was true. Similarly the second and third defendants cannot rely on the fact that the first Defendant uttered the words to Ms Gordon as a defence they have to prove what was said is true.

42. In order to avail themselves of the plea of justification the Defendants must prove that the Claimant had a history of misrepresenting his qualifications to GECOM and that he purported to have a first degree when he did not have one. The Claimant's application and CV made no reference to having a first degree or anything equivalent of a first degree. Instead the application demonstrated the Claimants suitability under the second requirement/criteria of the advertisement as he had a certificate in Elections



Management and Leadership (level 5) with specific expertise in Electoral Processes and a Diploma in Public Relations along with 10 years' experience in the management of elections working as PRO and PA to the Chairman since 2004.

43. The Defendants submitted that the Claimant was not qualified for the position of PRO and the comment regarding his appointment was justified. The Claimant's evidence is that he applied for PRO upon invitation of the Chairman. Prior to his appointment there was no PRO position and no advertisement for a vacancy. Considering the absence of any qualification criteria at the time of his employment the imputation that there was any wrongdoing on the part of the Claimant in relation to his appointment as PRO so far that he was not qualified is misconceived.

44. The Defendants failed to adduce evidence to support the contention that the Claimant misrepresented or faked his qualifications to GECOM and so the plea of justification fails.

45. The defendants contended that the claimant was appointed on the basis of requirement one of the advertisement. However, there was no evidence adduced proving that the claimant was appointed on the basis of the first requirement that is on the basis of holding a first degree. Moreover, there is no evidence that the claimant held out himself as possessing a first degree. There is also no evidence of the claimant misrepresenting his qualifications to GECOM. The first defendant relies on the comments of the previous chairman, Mr Surujbally as misrepresenting the claimant's qualifications. However, the defendant failed to adduce evidence in support of this contention. From the Claimant's qualifications tendered before the court it appears that the claimant was qualified under the alternative criteria in the advertisement for the DCEO. Therefore justification fails on account of the defendant's failure to establish that the words published were true.

## Fair Comment

46. The Defendants also rely on the defence of fair comment. In order to succeed on this defence the statement must appear on its face to be a comment or opinion and not a statement of fact. In **Simmonds v France et al supra**, the court noted that the comment must be based on true facts. The court at paragraph 93 stated:

“When the defence seeks to justify his comment he must prove that the facts and inferences from both fact and comment are true. The comment must be based on a matter of public interest, based on a fact or facts that are truly stated and a fair comment on such fact or facts within the wide limits which the law allows. Fair comment applies only to comments being a mere expression of opinion and not an assertion of fact. The comment must be one which any man could honestly make on facts proved however prejudicial or obstinate he may be. The defence does not extend to cover mis-statements of fact however bona fide ( Thomas v. Bradbury Agnew) [1906] 2 K. B. 638 and the press has no right of comment on public matter greater than that shared by every member of the public Campbell v. Spottiswood (1863) 3B S769 Silkin v. Beaverbrook Newspapers [1958] W.L.R. 743 at 746. The comment must be such as can fairly be called criticism and not be mere invective and it must be an expression of the author's opinion and must not be made maliciously (*Gately on Libel & Slander*).

The onus lies on the defendants to prove that the subject matter of the article is one of public interest and that the words are a fair comment on it.

47. In the instant case a plain reading of the Statements reveal that they are stated as fact. There is no element of opinion or subjectivity in these statements. The 1<sup>st</sup> defendant admitted under cross examination that the words in question were statements and/or assertions of facts. Even if the Statements were opinions, such opinions must be based upon true facts for the defence of fair comment to succeed. It has been demonstrated that the Statements were based on falsehoods, consequently, the threshold for the defence of fair comment has not been met and the defence fails.

### III. What relief is the Claimant entitled to?

#### **Damages**

48. Having found the Defendants liable in defamation the court has to determine the measure of damages that ought to be awarded to the Claimant.

49. A successful Plaintiff in a defamation action is entitled to recover as general compensatory damages a sum that will compensate him for the wrong he suffered. That sum must compensate him for damage to his reputation, vindicate his good name and take account of the distress, hurt and humiliation which the defamatory publication caused. See ***John vs MGN Ltd*** (1997) QB 586. In ***John***, Sir Thomas Bingham MR opined that in determining the appropriate award for injury to reputation the most important factors were (1) the gravity of the libel: the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be; (2) The extent of publication: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. (3) A successful plaintiff may properly look to an award of damages to vindicate his reputation: the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place.

50. The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: ***Steel and Morris vs. United Kingdom*** (2004) 41 EHRR 37. The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to

show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. The impact of a libel on a person's reputation can also be affected by their role in society and the extent to which the publishers of the defamatory imputation are authoritative and credible.

51. In the Guyanese case **Ramsahoye vs. Lall and another [CCJ] 2016 18 AJ**, the CCJ upheld the trial judge's award of damages of \$ 4,500,000. The court noted that:

"the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant'. The trial judge recognized that these factors were not exhaustive. He stated that the quantum of damages to be awarded was compensatory in nature and dependent on the peculiar circumstances of each case. He then summarized the uncontroverted evidence that Dr Ramsahoye was a medical practitioner of 32 years' standing and that his distinctions recognized his significant personal sacrifice and dedication to the practice of medicine, his supremacy in diagnosis, his obsession with perfection and his abiding sense of civic responsibility. The judge referred to the testimony of Raymond Gaskin and concluded that the doctor was of good character and outstanding in his profession."

52. The judge found that the offending publications unlawfully injured Dr Ramsahoye's character and reputation in that he was 'effectively painted as incompetent demeaned and humiliated in the eyes of the public which no doubt caused injury to his feeling'. He recognized that this was aggravated by the lack of an apology, the insistence on the defence of fair and accurate comment and the general attempt to defend the publications. He also took into account that the Kaieteur News at the time was not a daily publication and was not available on the internet which would restrict its reach and effect. Finally, the judge expressed himself mindful of comparatively higher awards in more developed countries but considered that the local socio-economic realities had to be borne in mind."

53. In the instant case, the publication of the defamatory statements tarnished the Claimant's professional and personal reputation which he garnered over the years through educational pursuits and work experience

at GECOM and would have affected his ability to secure future employment opportunities. Although the Claimant's witness provided little to no evidence regarding the injury to the Claimant's reputation, the Claimant in his witness statement detailed in paragraphs 26 to 32 the extent of the injury of his reputation and this was uncontradicted by evidence. He was shunned, harassed and insulted. His family, friends and colleagues locally and abroad questioned his integrity.

54. Here, the publications were made locally and on the worldwide web. The extent of the damage was compounded by the fact that the publications were made by the first named Defendant who was a long standing GECOM Commissioner and a significant figure in civil society and who the average Guyanese would tend to trust and believe, more so because he was well placed to know the facts. The first named Defendant went out of his way to publish the statements on platforms which reached readers locally and worldwide. He ignored the demand letter sent by the Claimant's attorney. Rather than publishing a retraction of the article and an apology he defended the statements as true in spite of plain evidence to the contrary. The repeated publication on the part of the first named defendant after the Claimant was not selected for the position of DCEO in 2018 is indicative of malice as it served no other purpose than to damage the Claimant's reputation.

55. The Chronicle is available locally, overseas and on the worldwide web. The prominence of the newspaper was highlighted by [www.worldnews.net](http://www.worldnews.net) which cited the Chronicle as a trusted source. The First Article made the headline on the front page of the newspaper and both the headline and the article carried photographs of the Claimant. The second and third Defendants published the Statements without verifying them or seeking to obtain the Claimant's comments on the allegations against him so as to offer a fair and balanced report. In mitigation, they made corrections to the

publications, retracted the articles and offered to publish a second apology (evidenced by Exhibit VP "V"2) although they did not publish the apology crafted by the Claimant. In contrast the case of the first named Defendant there appeared to be an absence of malice on the part of the second and third named defendants.

56. Having considered the aggravating and mitigating factors above, the first named Defendant is ordered to pay damages in the sum of two million five hundred thousand dollars (\$2,500,000) to the Claimant; the second and third named Defendants are ordered to pay damages in the sum of one million five hundred thousand dollars (\$1,500,000) to the Claimant jointly and severally. The first named Defendant is ordered to pay costs to the Claimant in the sum of one hundred and fifty thousand dollars (\$150,000) on or before 30<sup>th</sup> September 2020. The second and third named Defendants are ordered to pay the Claimants the sum of one hundred and fifty thousand dollars (\$150,000) jointly and severally on or before 30<sup>th</sup> September 2020.

**Priya Sewnarine-Beharry**

**Puisne Judge**

**18<sup>th</sup> August 2020.**