

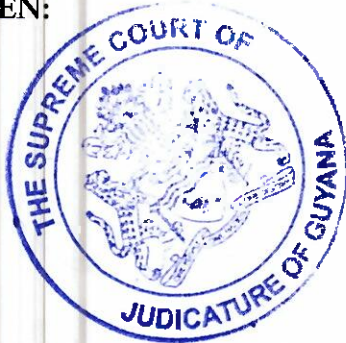


IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA

CIVIL JURISDICTION

2023-HC-DEM-CIV-SOC-230

BETWEEN:



ANAND SWANTANTRA
GOOLSARRAN

Claimant

-and-

BHARRAT JAGDEO

Defendant

BEFORE: **The Hon. Mr. Justice Peter Hugh**

APPEARANCES: **Mr. Khemraj Ramjattan and Christopher Ram** *for the Claimant*

Mr. C.V Satram and Ron Motilal *for the Defendant*

Date of Delivery: **17th September, 2026**

J U D G M E N T

Short Summary

This is the court's decision in the defamation claim brought by Mr. Anand Goolsarran against Dr. Bharrat Jagdeo arising from statements made at a press conference on 23rd March, 2023 and at a public meeting on 26th March, 2023. I have carefully considered the pleadings, the evidence, the submissions of counsel, and the applicable legal authorities.

The claimant contended that remarks made by the defendant accused him of lacking integrity, failing in his duties as Auditor General, remaining silent concerning public accountability issues, and acting as a politically motivated commentator. The claimant submitted that these statements gravely injured his reputation and sought damages and other relief. The defendant denied liability and relied principally on the defences of truth or justification, fair comment, and qualified privilege.

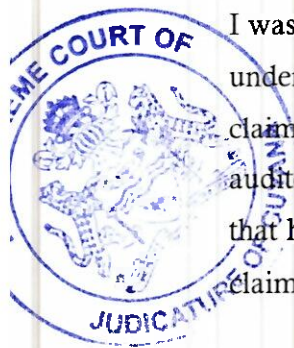
The first questions for determination were whether the statements referred to the claimant and whether they were published by the defendant. There was no serious dispute on either issue. The claimant was expressly identified by name, and the statements were made publicly at a press conference and political rally and were subsequently disseminated through media platforms. Accordingly, those elements of the tort were established.

I have considered whether the words complained of were capable of bearing a defamatory meaning and whether they were in fact defamatory. Applying the established test of the ordinary, reasonable, and fair-minded reader or listener, I found that both statements were capable of lowering the claimant in the estimation of right-thinking members of society. The first statement suggested that the claimant lacked integrity because he remained in office and continued to receive his salary during a period when public accounts were not audited. The second statement suggested that the claimant was politically partisan, selective in his criticisms, and lacking in independence. In their natural and ordinary meaning, the statements were defamatory.

I then considered the defendant's defence of justification or truth. In determining this issue, I was required to identify the essential sting of the publications and consider whether the underlying facts supporting that sting had been established. The evidence revealed that the claimant occupied senior positions within the Audit Office during the material period, that audited public accounts were not produced during those years, that he did not resign, and that he continued to receive his salary. These matters were substantially admitted by the claimant during cross-examination.

While I accept that there were explanations offered by the claimant concerning the circumstances that contributed to the absence of audited accounts, those explanations did not negate the substantial truth of the facts relied upon by the defendant. For the purposes of justification, the defendant must prove that "the main charge, or gist, of the libel" is true, the defendant need not justify statement or comments which do not add to the sting of the charge or introduce any matter by itself actionable. On the evidence, I find that the defendant has established substantial truth.

With respect to the second publication, although the claimant denied formal membership of the AFC, I found that the defendant had established a sufficient factual basis for the opinion expressed regarding the claimant's political associations and public conduct. The



sting of the allegation was not simply political affiliation but the suggestion that the claimant was selective in his criticisms of governmental conduct. I find that the defendant had established the factual foundation necessary to support that allegation.

Accordingly, the defence of justification succeeds in relation to both publications. Since truth is a complete defence to an action in defamation, the claim cannot succeed.

For completeness, the defences of fair comment and qualified privilege were also considered. I found that neither defense was properly pleaded in accordance with the requirements of the Civil Procedure Rules 2016. The pleadings failed to adequately particularise the factual basis and legal elements necessary to sustain those defences. Consequently, the defences of fair comment and qualified privilege were struck out.

However, notwithstanding the failure of those additional defences, the successful defence of justification is dispositive of the proceedings.

Upon a careful consideration of this matter, it is hereby ordered that:

- i. The claim against the defendant is dismissed;
- ii. The claimant shall pay \$250,000 in costs to the defendant given the nature of the matter and the length of the proceedings.

Introduction

- [1] This is a defamation claim arising out of alleged defamatory statements made by the defendant, Vice President Dr. Bharrat Jagdeo, about the claimant, Anand Goolsarran, former Auditor General of Guyana, at a press conference held at Freedom House on the 23rd March, 2023 and at a subsequent rally at Port Mourant on the 26th March, 2023.

Factual Background

- [2] The claimant instituted this proceeding by way of a statement of claim for damages for libel and injunctive relief dated 21st September, 2023.



- [3] The crux of the claim is as follows. The claimant submits that he is a decorated chartered certified accountant and the former Auditor General of Guyana, appointed on the 31st December, 1990.
- [4] The claim alleges that the defendant, who is the General Secretary of the People's Progressive Party, a former President and now Vice President of the Government of Guyana, at a press conference held at Freedom House on 23rd March, 2023, made the following defamatory statements:

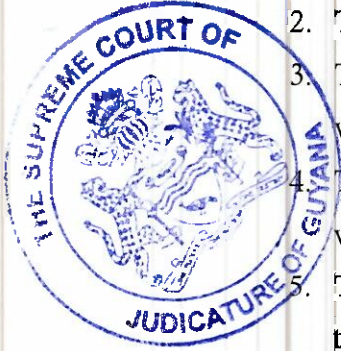
"A Goolsarran who was Auditor General for most of the ten years when not a single audited account for the country was presented in the pre-1992 period. He could have resigned if he had integrity. The job of the Auditor General is to audit the public accounts of the country. If you don't produce audited public accounts, you do not have a work job. So, he sat there almost eight of the ten years when no public accounts were presented for the whole country. And he even didn't resign. If he had integrity, he would have done that. Today, he comes to complain about this. Every single year from 1992 to 2023 public accounts have been audited for this country. From 1992. Prior to that it was 1982 that audits were done-ten years gap."

- [5] The claimant contends that at Port Mourant rally held on 26th March, 2023, the defendant uttered the following words, again defamatory of the claimant:

"The Anand Goolsarran, who was part of the AFC Coalition, could not say a word about the abuse of public accounts and everything else, the corruption in the five years. Suddenly they are approaching elections again, they rolled him out as a fossil."

- [6] The claimant contends that the defendant knew and intended that these words, or their gist, would be republished and/or authorized their repetition.
- [7] The claimant states that before instituting proceedings, he caused his attorney to write the defendant in a letter dated 12th April, 2023, demanding a public withdrawal of the said statements and a suitable apology.
- [8] The defendant, in his reply by a letter dated 18th May, 2023, contended that the statements represented fair comment and matters of public interest.





[9] It is the strong contention of the claimant that, the words, in their ordinary or natural meaning, mean the following:

1. The claimant was Auditor General for eight of ten years (i.e. 1982-1991) when no audited public accounts were produced for the country;
2. The claimant lacked integrity and was not fit to be Auditor General;
3. The claimant was undeserving of being in the salaried office he held because he was doing no work;
4. The claimant is motivated politically and is unbalanced and prejudiced in his writings as a columnist;
5. The claimant, in his Accountability Watch Column, remained silent during the term of office of APNU/AFC coalition; and
6. The AFC coalition used the Claimant for electioneering purposes.

[10] The claimant contends that the above statements complained of have gravely injured the reputation of the claimant, have exposed him to public scandal and contempt and have caused him great embarrassment and distress, considering his standing in society, both locally and internationally.

[11] The claimant contends that the alleged defamatory statements were deliberately calculated and intended to harm the claimant and were deliberately contrived to abuse freedom of speech to the detriment of the claimant.

[12] The defendant, on the other hand, denies that the publications of 23rd March, 2023 and/or 26th March, 2023 were defamatory, false or malicious as alleged or capable of any defamatory meaning whatsoever.

[13] He submits in the alternative that the words complained of are substantially true in substance and fact. The defendant seeks to raise the defences of justification/truth and fair comment.

Issues for determination

[14] The main issue for determination is whether the defendant is liable for defamation. To determine this issue of liability, the following sub-issues will be considered:

- i. **Whether the words complained of were of or concerning the claimant?**
- ii. **Were the statements published by the defendant?**
- iii. **What is the meaning of the words complained of?**

- iv. **Whether the defendant has established a good defence of truth, justification, fair comment and qualified privilege in respect of the publication.**
- v. **In the event the defences fail, what relief should be granted to the claimant?**

Law, Analysis and Discussion

[15] Defamation is the publication of a statement that tends to lower a person in the estimation of right-thinking members of society, causing injury to the person's reputation. Lord Atkin in *Sim v Stretch*¹ proffered that the test to be employed by the courts is whether the words complained of would "*tend to lower the plaintiff in the estimation of right-thinking members of society generally.*"

[16] Moreover, Ramlall J in *Fazil Karimbaksh v Paul Slowe*², proffered that in determining whether a statement is defamatory, such statement must either:

"Lower a person in the estimation of right thinking members of society generally [Sim v Stretch [1936] 2 ALL ER 1237] or expose a person to hatred, contempt or ridicule or cause other persons to shun or avoid him or discredit a person in his trade, profession or called."

[17] Based on this legal foundation, the court will consider the following issues.

Whether the words complained of were of or concerning the claimant?

[18] The claimant asserts that the defendant, at a press conference held at Freedom House on 23rd March, 2023, made the following defamatory statements:

"A Goolsarran who was Auditor General for most of the ten years when not a single audited account for the country was presented in the pre-1992 period. He could have resigned if he had integrity. The job of the Auditor General is to audit the public accounts of the country. If you don't produce audited public accounts, you do not have a work job. So, he sat there almost eight of the ten years when no public accounts were presented for the whole country. And he even didn't resign. If he had integrity, he would have done that. Today, he comes to complain about this. Every single year from 1992 to 2023 public

¹ [1936] 2 All ER 1237

² (2022 HC-Dem-Civ-Soc-24)

accounts have been audited for this country. From 1992. Prior to that it was 1982 that audits were done-ten years gap.”

- [19] The claimant further alleges that at Port Mourant rally held on 26th March, 2023, the defendant uttered the following words, again defamatory of the claimant:

“The Anand Goolsarran, who was part of the AFC Coalition, could not say a word about the abuse of public accounts and everything else, the corruption in the five years. Suddenly they are approaching elections again, they rolled him out as a fossil.”

- [20] The claimant is explicitly mentioned by name. There is no factual dispute that the words complained of referred to the claimant and I so find.

Whether the words were published by the defendant?

- [21] It is trite law that the claimant must prove that the words of which he complains were ‘published’. This means that the words must have been communicated by the defendant to at least one other person, other than the claimant himself.³
- [22] The defendant does not deny that he published the statements complained of. The statement of claim avers that the alleged defamatory statements complained of by the claimant were published at the People’s Progressive Party Headquarters at Freedom House on 23rd March, 2023, and that the press conference was published on YouTube at <https://www.youtube.com/watch?v=JZZwloJ1bjU>.
- [23] The second statement alleged by the claimant as defamatory was published at a rally in Port Mourant, Corentyne, Berbice on 26 March 2023, and the rally was published on YouTube at <https://www.youtube.com/watch?v=JZZwloJ1bjU>.
- [24] On both occasions, the defendant uttered the alleged defamatory statements to more than just the claimant. These words were uttered at a press conference and a rally thereby being published to the Guyanese population, the diaspora, and worldwide audiences via YouTube.
- [25] I find that the defendant published the alleged defamatory statements.

Whether the words were defamatory in nature?

³ *Lamont v Emmanuel* (1966) Court of Appeal, Trinidad and Tobago, No 1 of 1965 (unreported) per Wooding CJ



- [26] The meaning of words alleged to be defamatory is a question of fact. Corbin- Lincoln J in *Charles Ceres v Bharrat Jagdeo and others*⁴ cited with approval the following correct approach to determine the meaning of words. Barrow JA in *Vaughn Lewis v Kenny Anthony*⁵ proffered that:

“When the trial is by a judge sitting without a jury the judge is still required to first decide the question what, if any, defamatory meanings the words were capable of bearing...

It is only if the judge is so satisfied (whether she makes the ruling in chambers or at the trial) that she can then go on to consider the second question, whether in fact the words bore the alleged or any defamatory meanings....

The passage in Halsbury’s by which the judge should have guided herself at that stage in her judgment was at paragraph 48. Omitting footnote references, it reads: “It is for the judge to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. If he rules that they are so capable, it is for the jury, or the judge if he is sitting without a jury, to decide whether the words did in fact bear a meaning defamatory of the plaintiff.”

- [27] Corbin-Lincoln J in *Charles Ceres v Bharrat Jagdeo and others*⁶ strongly affirmed that the two-stage test established above has always been applied in the Guyanese jurisdiction. In *Ramsahoye v Peter Taylor and Co Ltd*⁷ Bollers J stated:

“In this Colony, where there is no jury, I can do no better than repeat the dictum of Camacho CJ in Woolford v Bishop,[56] where he stated in his judgment:

On this aspect of the case, the single duty which devolves on this court in its dual role is to determine whether the words are capable of a defamatory meaning and, given such capability, whether the words are in fact libellous of the plaintiff. If the court decides the first question in favour of the plaintiff, the court must then determine whether an ordinary, intelligent and unbiased person reading the words would

⁴ Claim 2019-HC-SOC-DEM-CIV-273

⁵ SLUHCVP2006/02

⁶ Claim 2019-HC-SOC-DEM-CIV-273

⁷ [1964] LRBG 329, p 331.



understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The court will not be astute to find subtle interpretations for plain words of obvious and invidious import."

Stage 1: *Whether the words are capable of a defamatory meaning*

[28] I now turn to the first stage of the test. This necessitates a determination of whether the words, in their "*natural and ordinary meaning*", convey to the mind of the ordinary, reasonable and fair-minded reader a defamatory meaning.⁸ Moreover, in *Kayam Mohammed and Others v Trinidad Publishing Co Ltd*⁹ at paras 11 to 14, Mendonca JA expounded upon this principle as follows:

*"11. The Court should therefore give the article the natural and ordinary meaning the words complained of would have conveyed to the notional ordinary reasonable reader, possessing the traits as mentioned by Lord Nicholls and reading the article once. The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words."*¹⁰

[29] Further to the point, Morrison JA in *Chung v Future Services International Ltd et al*¹¹ stated:

*"[16] I take as a starting point Bonnick v Morris et al*¹², in which Lord Nicholls explained that the correct approach to determining whether a statement can bear or is capable of bearing the defamatory meaning alleged:

"As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarised by Sir Thomas Bingham MR in Skuse v Granada Television Ltd [1996] EMLR 278, 285-287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the [newspaper], reading the article once. The ordinary, reasonable reader is not naive; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The court must read the article as a whole, and eschew over-

⁸ *Lewis v Daily Telegraph* [1964] AC 234; *Jones v Skelton* [1963] 1 WLR 1363.

⁹ Civ App No. 118 of 2008.

¹⁰ Civ App No. 118 of 2008.

¹¹ [2014] JMCA Civ 21

¹² [2002] UKPC 31 at 9



elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant. An appellate court should not disturb the trial judge's conclusion unless satisfied he was wrong."

- [30] In the Full Court matter of *Guyana Publications Inc v Justice Chareles R. Ramson, SC. O.R and Dr. Anand Goolsaran*¹³ Kumar-Chetty and Chandra-Hanif J considered the dicta of Rajukumar JA in *Phillip Alexander v Andrew Gabriel*¹⁴ in determining the methodology to be adopted in finding the meaning of words. Rajkumar JA took guidance from the Privy Council case of *Ramadhar v Ramdhar*¹⁵ in which it was stated that:

"(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve, but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking, but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce (sic) of some strained, or forced, or utterly unreasonable interpretation': see Eady J in Gillick v Brook Advisory Centres approved by this court [2001] EWCA Civ 1263 at [7] and Gatley on Libel & Slander 10th ed, para 30.6. (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense': Nevill v Fine Art and General Insurance Co Ltd [1897] AC 68, 73, per Lord Halsbury LC."

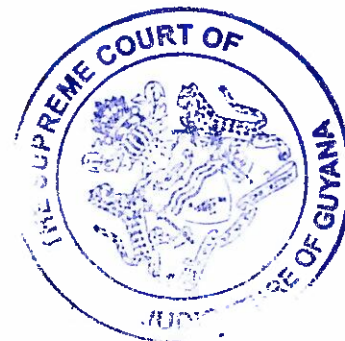
- [31] In the case before this court, there are two statements contended to be defamatory by the claimant.

- [32] The first statement is:

¹³ (2024 – HC – DEM – CIV – FCA – 22)

¹⁴ [Trinidad Civil Appeal P215 of 2019]- November, 2023]

¹⁵ [2020] UKPC 7





“A Goolsarran who was Auditor General for most of the ten years when not a single audited account for the country was presented in the pre-1992 period. He could have resigned if he had integrity. The job of the Auditor General is to audit the public accounts of the country. If you don’t produce audited public accounts, you do not have a work job. So, he sat there almost eight of the ten years when no public accounts were presented for the whole country. And he even didn’t resign. If he had integrity, he would have done that. Today, he comes to complain about this. Every single year from 1992 to 2023 public accounts have been audited for this country. From 1992. Prior to that it was 1982 that audits were done-ten years gap.”

[33] Upon an examination of the statement at hand and the guidance from the dicta above, I find that the ordinary, reasonable citizen would understand from those plain words that the Goolsarran being spoken of was a public servant who spent ten (10) years in his position where no audits were produced during his tenure. The defendant further states that “a person of integrity would have resigned in those circumstances, but he did not.

[34] A reasonable Guyanese would clearly understand from that statement that the public officer failed in his professional duty to provide audited accounts for the country, was either complicit in this grave failure of the audit office or at least tolerated it, and thus lacked the moral integrity to do the right and honourable thing.

[35] Ergo, I find that the words in their natural and ordinary meaning are capable of a defamatory meaning in relation to this first statement.

Second statement

[36] The claimant further alleges that at the Port Mourant rally held on 26th March, 2023, the defendant uttered the following words, again defamatory of the claimant:

“The Anand Goolsarran, who was part of the AFC Coalition, could not say a word about the abuse of public accounts and everything else, the corruption in the five years. Suddenly they are approaching elections again, they rolled him out as a fossil.”

[37] The same rules apply to this determination. The statement must be assessed from a reasonable and not unduly suspicious reader. In my opinion, this statement, in its ordinary and natural meaning, when broken down, suggests that the claimant was a

part of the AFC Coalition, that he could not say a word about the abuse of public accounts under the coalition's tenure and that they rolled him out as a fossil as elections were then approaching.

[38] In my judgment, the ordinary reasonable reader would understand from those words that the claimant was silent on the alleged corruption which happened during the tenure of the coalition government due to his partisan affiliation. The ordinary meaning suggests that there was an inability of the claimant to speak against any wrongdoing which ordinarily fell within his area of expertise.

[39] The statement also calls him a fossil. The Merriam-Webster Dictionary defines fossil as a person whose views are outmoded.¹⁶ Taken alone, the term is not defamatory. However, according to *Ramadhar*, "the article must be read as a whole, and any 'bane and antidote' taken together." Given that the ordinary meaning of the words preceding the fossil remark suggests that the claimant was deliberately silent on the abuse of public accounts because of his affiliation to the AFC coalition, the term fossil read together suggests that the claimant is a discredited, outmoded figure whose comments are not attributable to any genuine conviction but are opportunistic and politically driven.

Stage 2: Whether the words are in fact defamatory of the plaintiff

[40] The second stage of the test is determining whether the words are in fact defamatory of the plaintiff.

[41] I have already determined that the words in their natural and ordinary meaning are capable of being defamatory. I must now determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement to the claimant.

[42] *Luckhoo C in Jagan v Burnham*¹⁷ establishes that the court must put itself in the place of a reasonable, fair-minded person reading the column article. The court espoused:

"...one has to be sure that the trial judge did not assess the imputation arising in a spirit either unusually suspicious or unusually naïve, but between the two extremes, and considered the whole context of the words complained of. It would be wrong for him to attempt to construe the words as would a lawyer- "...the layman's capacity for implication" " being "much greater than the lawyer's. The lawyer's rule is that

¹⁶ 'Fossil' (Merriam-Webster) <https://www.merriam-webster.com/dictionary/fossil> accessed 9th September 2026

¹⁷ (1973) 20 WIR 96 at 103

the implication must be necessary as well as reasonable. The layman reads in an implication much more freely, and unfortunately, as the law of defamation has to take into account, is prone especially to do so when it is derogatory” (per Lord Devlin in Lewis v Daily Telegraph (1) [1964] A.C at p 277.).

The trial judge, therefore, in placing himself in the position of ordinary reasonable men and women of different temperaments and outlooks, would have to try to envisage what is the most damaging meaning they would put to the words in question.”

[43] Massiah J in the local case of *Bacchus v Bacchus*¹⁸ authoritatively stated that the test is whether the words would be understood by the ordinary, reasonable, and intelligent Guyanese citizen as tending to lower the claimant in the estimation of right-thinking members of society, or causing others to shun or avoid him or her.

[44] The claimant submits that the words complained of, published and in their natural and ordinary meaning, to the reasonable reader of the defendants' publications, mean that:

“-The defendant lacked integrity in the performance of duties as Deputy Auditor General and Auditor General of Guyana;

- he received emoluments from the Treasury for doing nothing;

- he was dishonest and deceitful;

- he was duplicitous and of dubious credibility;

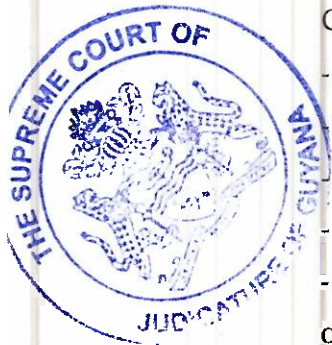
- he could not be trusted;

- and he was unfit for the positions of Deputy Auditor General and Auditor General of Guyana.”

[45] Counsel for the defendant argues that the words in their ordinary and natural meaning are not capable of being construed to mean that the claimant was unprofessional in performing his duties as Auditor General. Moreover, Counsel argues that the use of “IF” renders the defendant’s statements to be mere hypotheticals. The use of “if” as a subordinating conjunction introduces a hypothetical or a conditional. In light of this, I must therefore consider whether the words were capable of being defamatory to the claimant.

[46] In relation to the press conference held at Freedom House, the defendant asserted that the claimant sat there for most of the ten years when not a single audited account for the country was presented in the pre-1992 period; he did not resign, and if he had

¹⁸ [1973] LRG 115 (High Court, Guyana).



integrity, he would have done that. I find that the ordinary, reasonable, intelligent Guyanese would decipher and understand them to mean precisely what the ordinary meaning suggests and what the claimant contends it to mean.

[47] The words uttered by the defendant would mean to a reasonable Guyanese that the claimant lacked integrity in the execution of his duties, as he did not do as required, which was to audit the nation's accounts, and his continued tenure in those circumstances, without resignation, connotes that he lacked honesty and integrity.

[48] I do not find it to be an unduly suspicious reading or understanding of the statements made. Therefore, I find that the reasonable, ordinary, intelligent Guyanese would understand the first statement to lower the claimant in the esteem of right-thinking members of society.

[49] In relation to the second statement, I also find it to be defamatory of the claimant. The ordinary reasonable listener would understand these words to mean that the claimant's selective silence on corruption was deliberate and based on his political affiliation. This suggests that the claimant is disingenuous and of questionable credibility. The term 'rolled out as a fossil' read together with the preceding words, clearly imputes that the claimant is a discredited figure being used for political advantage. This is directly linked to credibility.

[50] Based on the test enunciated in *Bacchus v Bacchus*, I find both statements would be understood by the ordinary, reasonable and intelligent Guyanese as tending to lower the claimant in the estimation of right-thinking members of society. The first statement portrays the claimant as a public servant with no integrity who sat idly by and failed to discharge his duty to audit public accounts. The second statement portrays him as a partisan and duplicitous person, lacking independence, whose statements and critiques are driven by political affiliations.

[51] Having found the statements to be defamatory of the claimant I must consider the defences raised.

Whether the defendant has established a good defence of truth, fair comment and qualified privilege in respect of the publication.

Justification (Truth)

[52] The defendant relies on defence of truth. Counsel submits that the words complained of in the SOC are substantially true.



- [53] *Gatley on Libel and Slander* at paragraph 11.9 sets out the requirement to establish the defence of truth. It states:

"...for the purposes of justification, if the defendant proves that "the main charge, or gist, of the libel" is true, he need not justify statement or comments which do not add to the sting of the charge or introduce any matter by itself actionable.

It is sufficient if the substance of the libellous statement be justified, it is unnecessary to repeat every word which might have been the subject of the original comment. As much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.

When considering the substantial truth it is important to "isolate the essential core of the libel and not be distracted by inaccuracies around the edge-however substantial..."

- [54] *Gatley on Libel and Slander* also states the following on the defence of justification at paragraph 11.13:

"Defence of truth and levels of meaning- An allegation can be published in such a way that it is made with varying degrees of certainty. This variation was analysed in Chase v News Group Newspapers, in which the Court of Appeal offered three distinct levels:

that the claimant is guilty of some impugned behaviour; (ii) that there are grounds to suspect that the claimant is guilty of the impugned behaviour; and (iii) that there are grounds for investigating whether the claimant is guilty of the impugned behaviour. The approach to the defence of truth in these respective scenarios is somewhat different. When an allegation is made with the highest degree of certitude, then the imputation of guilt must be defended."

- [55] At paragraph 11.20 *Gatley* stated:

"Under the defence of truth, if a publication contains defamatory statements both of fact and opinion, then the defendant must prove that the statements of fact are true and that the statements of opinion are correct."

- [56] Thus, the defendant's own belief in the truth of the statement is not sufficient for the defence of justification to succeed and is not relevant to establishing the defence.¹⁹

¹⁹ *Dr Balwant Singh Hospital v Melissa Atwell* (HC 246 of 2019) per Corbin J

[57] Part 69.02(2) of our CPR 2016 provides further particulars in relation to when a defendant seeks to rely on the defence of truth. Such a defendant must:

*“(a) specify the defamatory meanings which he seeks to justify; and
(b) give particulars of the matters on which he relies in support of the allegation that the words are true.”*

[58] The defendant has done so, and the particulars are summarised as follows:

- i. The office and functions of the Auditor General are established by Article 223 of the Constitution of Guyana.
- ii. The duties of the deputy auditor general include but are not limited to:
 - ensuring that the functions of the Auditor General were carried;
 - being responsible for the general administration of the Audit office;
 - giving directions to the Assistant Auditor General and other staff of the Audit Office
 - the preparation of the draft final audited reports for the review by the Auditor General.
- iii. The claimant held senior positions within the audit office in the years before he was appointed Auditor General in or about 1990.
- iv. During the period 1982 to 1991, the Government of Guyana did not produce any audited financial statements.
- v. The claimant, as deputy auditor general and later auditor general, did not publicly comment or express displeasure or dissatisfaction about the government's lack of compliance with the provisions of the Constitution.
- vi. At no point in time during the period 1982 to 1991 did the claimant resign from the audit office.
- vii. The creation of special reports based on preliminary audits within government departments for consideration by the National Assembly for years 1982, 1983, 1984 and 1985 after the fact had no basis in law.
- viii. The claimant continued to collect a salary from the audit office of Guyana despite there being no public accounts prepared by that office for the period 1982 to 1991.
- ix. Audited public accounts were prepared in 1992 after the PPP/C government won the elections.

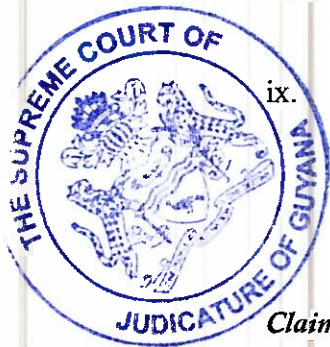


- x. During the period 2015-2020, the claimant was selected by the APNU-AFC led government to conduct a number of forensic audits on public corporations and government agencies.
- xi. The awards of the forensic audit contracts in question to the claimant were contrary to the provisions of the Procurement Act, Cap 73:05 and the Audit Act, Cap. 73:01. The claimant knew, or ought to have known that the award of these contracts was contrary to the Procurement Act and established audit practice and the ethical principles and values of his profession and were therefore unlawful and unethical.
- xii. The claimant received public funds as compensation for the conducting of the said forensic audits.

[59] The defendant specifically relies on the following meaning of the term “if he had integrity” by way of the particulars stated below:

- i. The defendant will rely on the fact that the claimant held a senior position within the Audit Office during 1982-1991 while no audited accounts were prepared.
- ii. The defendant will contend and rely on the fact that the claimant collected a salary, emoluments and other benefits from his position at the audit office during the period 1982 to 1991.
- iii. The defendant will contend and will establish at trial that someone with ‘integrity’ would not have continued to be employed in the audit office, for almost ten (10) years, while that agency continuously failed to discharge its constitutional responsibilities.
- iv. The defendant will contend at trial that, while collecting salary, emoluments and other benefits from his employment at the audit office of Guyana between 1982 to 1991, the claimant did not display integrity i.e he did not display strong moral principles, did not comply with the law and acceptable standards of transparency and accountability in public office.
- v. The defendant will contend at trial, that by accepting and conducting forensic audits of public corporations and government agencies during the period 2015-2020, the claimant breached the Procurement Act, the Audit Act and established accounting and audit principles.





- vi. The defendant will contend that by accepting and conducting forensic audits of public corporations and government agencies during the period 2015-2020, the claimant did not display integrity i.e he did not display strong moral principles, did not comply with the law and acceptable standards of transparency and accountability.
- vii. The defendant contends that by collecting payment and emoluments for the aforesaid audits during the period 2015-2020, the claimant did not display integrity i.e he did not display strong moral principles, did not comply with the law and acceptable standards of transparency and accountability.
- viii. The defendant will contend that the claimant ignored and/or breached the principles of accountability that he publishes about in the press and elsewhere.
- ix. The defendant will contend that the fact that the claimant did not resign from an effectively non-functioning audit office during the period of 1982 to 1991 meant that he was comfortable with and/or condoned the prevailing and pervasive lack of accountability for which he was in part responsible.

Claimant's evidence

- [60] Counsel for the defendant cross-examined the claimant. His testimony was as follows. The claimant admitted that he worked for the audit office in 1987 and served until September 1990. He admits that he was auditor general from 1990-2005. The claimant admits that no audited accounts were produced in 1987-1990 and therefore none laid before the national assembly. He admits that in 1987 there were no public accounts produced since 1982. He avers that he assisted the Auditor-General with preliminary audits from 1987-1990. He admits to serving as the CEO of the audit office and assisted the Auditor-General in preparing draft reports of public accounts. He admits that the first audit done in that period was in September, 1993 and that yearly reports were produced thereafter. The claimant testified that the government computers had crashed, and that he believed this happened, but believed that the audits could have proceeded manually. He admitted that the failure of the then government between 1982 to 1992 was a serious violation of public accountability and the law. The claimant testified that he spoke out about the failure to produce audit reports during this time and that he wrote about this issue in his column.
- [61] The claimant also admitted that he did not tender his resignation between 1987 to 1992 and received full salary during this time.

- [62] The claimant accepted that he was retained by the then government to conduct audits for NICIL, the Marriott Hotel, the EPA and GFC. The claimant admitted that the audits were not awarded through public open tendering and that he was not the only provider of the service, as required by sole sourcing.

Defendant's evidence

- [63] The defendant did not appear personally. Instead, the Attorney General of Guyana testified. The AG stated that the PPP/C was the primary target of the claimant's commentary. The AG stated that the defendant's comments had to be taken in a certain context, that is to say, someone who goes to work, collects a salary without doing work or producing output has no integrity. He testified that in that context, the claimant had no integrity.
- [64] The AG stated that the claimant was being represented by the chairman of the AFC, his son was a candidate of the party in previous elections and that the claimant benefitted from sole sourcing auditing of state entities under the APNU/AFC government.

Defendant's submissions

- [65] Counsel for the defendant in his submissions relies on the case of *Edwards v Bell*²⁰ to support the contention that the words which have been complained of as statements of fact are true in substance. Counsel submits that it is not necessary for the defendant to establish every epithet in the words complained of.
- [66] The defendant submits that the claimant was employed as a senior functionary within the Audit Office. The claimant collected salaries for a number of years while the Audit Office failed to produce any audited public accounts. He contends that these facts are undisputed and are therefore true in fact.
- [67] The hypothetical statement was a matter of opinion in the form of a comment. Counsel submits that the evidence in the case is that the claimant has an affiliation with the AFC political party even if he denies being a member. In any event, the AFC political party is a legitimate political party that at one time made up the government of Guyana.

²⁰ (1824) 1 Bing 403)



- [68] He further submits that membership in, or association with, the party is not libellous, and that saying someone is associated with a political party cannot amount to defamation, even if the person is politically unaffiliated.

Claimant's submissions

- [69] The claimant, on the other hand, disagrees that the defence has been met. Counsel submits that there are several falsities, namely, that the claimant never worked at the audit office from 1982 to November, 1987. He was Deputy Auditor General from the 1st December 1987 and then Auditor General from 1982 to November, 1987. Counsel accepts that there were no audited accounts coming from the Partick Farnum, the then Auditor General, during the pre-1992 period but this was not due to anything the claimant did. In fact, counsel submits that the claimant's hard work made the yearly audit report available in 1992 and every year up to 2005.
- [70] Counsel rejects the defendant's contention that the claimant was the de facto auditor general. Counsel submits that the audit of the accounts was done in accordance with restricted tendering under s.26 of the Procurement Act where services are highly complex and of a specialised nature and only available from a number of suppliers and contractors.
- [71] Having evaluated all the pleadings and law before the court, I must therefore assess whether the defence can stand.

The defendant stated: “

“A Goolsarran who was Auditor General for most of the ten years when not a single audited account for the country was presented in the pre-1992 period. He could have resigned if he had integrity. The job of the Auditor General is to audit the public accounts of the country. If you don't produce audited public accounts, you do not have a work job. So, he sat there almost eight of the ten years when no public accounts were presented for the whole country. And he even didn't resign. If he had integrity, he would have done that. Today, he comes to complain about this. Every single year from 1992 to 2023 public accounts have been audited for this country. From 1992. Prior to that it was 1982 that audits were done-ten years gap.” The defendant also said *“The Anand Goolsarran, who was part of the AFC Coalition, could not say a word about the abuse of public accounts and everything else, the corruption in the five years. Suddenly they are approaching elections again, they rolled him out as a fossil.”*



- [72] Having considered the above, I must set out the sting of the words complained of. Two publications are in issue. In relation to the first publication, the sting is that the claimant lacks integrity, illustrated by his continued tenure and salary collection during a decade in which no audited reports were produced, and his failure to resign.
- [73] The second publication asserts that the claimant was part of the AFC Coalition and that he could not say a word about public corruption during the 2015-2020 period and that he was rolled out as a fossil for electoral purposes.
- [74] On the first publication, I find that the claimant's own evidence under cross-examination mostly confirms the main factual assertions relied on by the defendant. He admitted that no audited accounts were produced for the years in question and that he did not tender his resignation but instead collected his salary for the period.
- [75] I acknowledge that the claimant's point that he was not the Auditor General during the 'almost eight of the ten years' when audited reports were not produced as identified by the defendant, but I believe this is the inaccuracy around the edge that *Gately* proscribes against. The gist of the statement that the claimant occupied a senior post in the audit office with responsibility to produce audit accounts and same was not executed, that he collected his salary and he did not resign is not disputed.
- [76] While I acknowledge the explanation of the claimant as it relates to the reason why no audit accounts were done and laid before the national assembly, it only explains his conduct during that time but does not invalidate the veracity of the statements which were evidenced to be true.
- [77] In relation to the second statement, that the claimant was a fossil rolled of ahead of election and a part of the AFC Coalition, the defendant's evidence is that the claimant's son was a part of the AFC, he was being represented by the chairman of the AFC and that the claimant had benefitted from the sole-sourced audit contracts awarded on the then government. The claimant denies membership of the party.
- [78] I am reminded that the sting of the statement must be proven true and that political association need not be proven by explicit card-holding membership in my view. I find it sufficient that the defendant establishes a substantial basis of this imputation. I find that this has been established. I do not find that the sting lies in the association but in the statement that could not say a word about the corruption during the AFC tenure.



- [79] Applying the guidance from *Gately* and the *Chase* case, neither statement imputes guilt of a specific criminal or professional offence at its highest level of certainty. I believe that both statements are value judgements of integrity and the claimant's convenience as a political commentator, each buttressed on true facts as to his tenure, payment and contractual benefits.
- [80] As *Gately* espoused, where the defamatory statement combines fact and opinion, the defendant only needs to prove that the statements of fact are true and that the statements of opinion are correct.
- [81] I find that the defendant has sufficiently established the underlying facts of both statements, particularly his tenure, the fact that audit reports were not produced during the period, that he did not resign, he collected his salary despite this, and his later receipt of government auditing contracts not awarded by open tender and his association with the AFC were substantially true. The sting of the allegations was sufficiently justified.
- [82] The defence therefore succeeds.

Fair Comment and Qualified Privilege

- [83] Despite having found that the defence of justification succeeds, this court shall proceed to consider the other defences raised.
- [84] The defendant in his amended defence has lumped together the defences of fair comment and qualified privilege.
- [85] Part 69.02 (3) and (4) dictate how a defendant must plead the various defences. Part 69.02 (3) governs the defence of fair comment and provides:

"Where a Defendant alleges that the matters complained of consist of expressions of opinion which are fair comment on a matter of public interest, the Defendant must,
(a) specify the defamatory meaning he seeks to defend as fair comment; and
(b) give particulars of the matters on which he relies in support of the allegation that the words are fair comment."

- [86] Part 69.02 (4) guides that:

"Where a Defendant alleges that the words complained of were published on a privileged occasion, the Defendant must specify the circumstances relied on in support of that contention."

- [87] Our rules make it clear that these defences must be specifically and properly particularised. In the matter of *Vincent Alexander v Bharrat Jagdeo*, Corbin J struck out the second and third defendant's defence of fair comment on this basis. She stated:

"[36] A defence of fair comment must be properly particularized. The defence must set out the facts alleged to be true that the comments are based. The defence must identify the matters of public interest on which the comment is made. "A defendant must plead with sufficient precision the comment relied upon as constituting the defence so that a Claimant knows the case he has to meet".

*[37] The defence of fair comment by the 2nd and 3rd defendants is improperly pleaded as it does not set the facts alleged to be true upon which the comments are based. In any event the 2nd and 3rd defendant led no evidence. The defence of fair comment by the 2nd and 3rd defendant fails."*²¹

[88] In the case at hand, the defendant has lumped the particulars of privilege and fair comment. The particulars were stated as follows:

"PARTICULARS OF PRIVILEGE AND FAIR COMMENT"

(a) The allegedly defamatory statements were made in response to public criticisms by the Claimant of the Defendant, the government and the PPP/C. The Defendant will rely on scores of publications authored by the Claimant in the public domain criticising and/or attacking and/or questioning the integrity and/or competence of the Defendant, the PPP/C Government and its Ministers.

(b) The allegedly defamatory statements were made in response to public criticisms of PPP/C, the largest political party in Guyana by the Claimant.

(c) The Defendant repeats and relies upon the facts and matters pleaded at paragraph 9 including the particulars thereto in support of the defence of fair comment.

(d) The Claimant is a political commentator and activist who is a member and/or supportive of the Alliance For Change (AFC) political party.

18. The Defendant reasonably believed that publishing the words complained of was in response to public statements made by the Claimant.

19. The Defendant denies that the publication of the words complained of were actuated by malice.

20. The Claimant is not entitled to aggravated and/or exemplary damages in the circumstances. The Claimant is put to strict proof of his claim for loss and damage.

²¹ 2022- HC-DEM-CIV-SOC-327



21. The Defendant will contend at trial that this action is frivolous, vexatious and without merit and should be dismissed with costs to be assessed.”

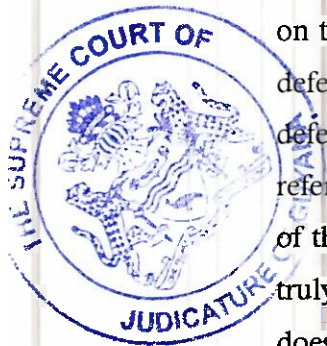
[89] Having considered the ruling of Corbin J, I must determine whether the defences are sufficiently pleaded. I will deal with fair comment first. The CPR requires the defendant to *(a) specify the defamatory meaning he seeks to defend as fair comment; and (b) give particulars of the matters on which he relies in support of the allegation that the words are fair comment.*” On a perusal of the particulars stated, I do not believe these requirements have been met. Nowhere in these particulars has the defendant specifically identified the defamatory meaning he seeks to defend, and neither has he given the particulars of the matters on which he relies to support the allegation that the words are fair comment. The particulars pleaded speak in general terms of the context in which the statements were made in response to public criticism by the claimant and do not specifically state the defamatory meaning said to be defensible as comment.

[90] Secondly, the defendant is required to state that the facts upon which the comment is based are truly stated and pleaded with precision. The defendant seeks to generally rely on the facts and matters pleaded under the truth defence to justify the fair comment defence. I do not accept this as fulfilling the requirement. Fair comment is a distinct defence, and it ought to have been separately and properly pleaded with direct reference to the elements required to establish that defence, including the identification of the facts upon which the comment is based and an averment that those facts are truly stated. A general incorporation of the facts pleaded in support of another defence does not, without more, satisfy the pleading requirements applicable to fair comment.

[91] On this basis, this defence is hereby struck out.

[92] I now turn to the defence of qualified privilege. The CPR requires that *“where a Defendant alleges that the words complained of were published on a privileged occasion, the Defendant must specify the circumstances relied on in support of that contention.”* After a perusal of the lumped particulars, there is insufficient pleading in respect to the circumstances which give rise to the said privilege. Based on this clear inadequacy, this defence must also be struck out.

In the event the defences fail, what relief should be granted to the claimant?



[93] The defendant's defences of fair comment and qualified privilege have been struck out, but his defence of justification/truth has succeeded. In this regard, there is no relief for the claimant to be granted.

Conclusion

[94] Upon a careful consideration of this matter, it is hereby ordered that:

- iii. The claim against the defendant is dismissed;
- iv. The claimant shall pay \$250,000 in costs to the defendant given the nature of the matter and the length of the proceedings.

.....
Justice Peter Hugh

Judge of the High Court

Supreme Court of Judicature

