

IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO. 561

LOIS YOUNG BARROW

Claimant

BETWEEN AND

**ANDREW STEINHAUER
BELIZE TIMES PRESS LIMITED**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Dean Barrow S.C. for the claimant.
Mr. Kareem Musa for the defendants.

—

JUDGMENT

Lois Young-Barrow, the claimant in these proceedings, is an attorney and a Senior Counsel of the Belize Bar, having being in practice for some three decades. She brought this claim complaining that the defendants published in their newspaper, The Belize Times for 15th October 2006, certain matters that were defamatory of her. As a consequence of this Ms. Young-Barrow claims against the defendants:

- i) Damages on an aggravated footing;
 - ii) An injunction restraining the defendants either by themselves or their agents or howsoever from repeating or making further publication of the defamatory words or any similar words to the like effect of her and
 - iii) Costs.
2. The first defendant is the editor of The Belize Times and the second defendant is its publisher.
3. The Belize Times itself is a weekly newspaper with countrywide readership and available on the Internet.

The Complaint of Libel

4. Ms. Young-Barrow's case is that the defendant's falsely and maliciously wrote, printed and published an article/advertisement about and concerning her together with her picture containing the following words, which she says are defamatory of her:

“Why is this Lady not smiling?

Because even after collecting

- *\$1 million in legal fees from BTL*
- *a Belmopan House at half-price from BTL*
- *\$200,000 for the Chalillo Dam case*
- *\$100,000 for the SATIM case*
- *\$100,000 for the Print Belize case*

She still wants more. She will always be unsatisfied.

Lois is greedy, hypocritical and malicious.

Association Concerned about the Bucks.”

5. I have, with the aid of technology scanned the material complained of and reproduced it here in this judgment:

Why is this Lady not smiling?



President of ACB

Because even after collecting

- \$1 million in legal fees from BTL
- A Belmopan House at half-price from BTL
- \$200,000 for the Chalillo Dam case
- \$100,000 for the SATIIM case
- \$100,000 for the Print Belize case

**She still wants more.
She will always be unsatisfied.
Lois is greedy, hypocritical and malicious**

Association Concerned about the Bucks

at 3rd Bze Times Ad. affidavit of Lois Young Brown
 Belize City 16
 day of October 2006

 A. N. S. P.

Preliminary skirmishes between the parties

6. Ms. Young-Barrow felt so strongly about the publication of 15th September 2006, that she was moved to seek an interim injunction restraining further publication by the defendant. I was, on the materials then before me, constrained to grant the application for an interim injunction on 17th October 2006.
7. Shortly after the defendants applied to have that injunction discharged. There was much argument and submissions about the desirability or propriety of granting an interim injunction in an action for defamation. I expressed the opinion that even with the rule in Bonnard v Perryman (1891) 2 Ch 269, I did not think there was any inviolable statement or principle that interlocutory injunctions were never available in libel cases. Rather, great care and caution are urged in any consideration of a claim for an interlocutory injunction in libel cases.
8. At the hearing of the application to discharge the interim injunction, I inquired of counsel for the defendants if an undertaking would be given not to continue a repetition of the publication by the defendants concerning the claimant until the determination of the case. This was met with a flat rejection by the defendants' then leading counsel with an attitude I described at the time as "Publish and be damned". In the event however, I discharged the interim injunction on 9th November 2006. I was led to this conclusion in the light of the defence the defendants promised

to mount against the Claim. They claimed justification, fair comment on a matter of public interest and a qualified Reynolds privilege. I was also mindful of the constitutionally guaranteed freedom of expression. In those circumstances I lifted the interim injunction.

9. But I cautioned that if there were to be a repetition and the defences proposed to be put forward were to fail, there would be dire consequences. However, there has not been any repetition since the defendants' failure to give the undertaking requested of their counsel by the Court. I therefore commend the defendants for this self-imposed restraint in the light of the conclusions I arrive at ultimately in this case.

Issues

10. In her statement of Claim, Ms. Young-Barrow avers that in their natural and ordinary meaning the words published about her by the defendants were meant and understood to mean:
 - (a) that she is an attorney whose fees are unconscionable and extortionate;
 - (b) that she is a person and an attorney who is greedy, hypocritical and malicious and
 - (c) that she is a money grabbing attorney and unethical, unprincipled and amoral.

She therefore claims that the publication of those words about her has gravely injured her reputation, exposed her to public scandal and contempt, seriously damaged her professional standing as a senior attorney and has caused her great embarrassment, humiliation and distress.

11. Ms. Young-Barrow further claims that the defendants wrote, printed and published the words about her out of malevolence or spite towards her and she proceeded in her statement of claim to give particulars of what she claims evince the defendants' malice towards her:

'Particulars of Malice

- (a) *The publication complained of was the third in a row by the Defendants to the same effect against the Claimant.*
- (b) *The Claimant is a founding member of the Association of Concerned Belizeans, a civic minded organization that regularly speaks out against what it sees as the great wrongs committed by the executive of the day, which is constituted by the People's United Party of which the Defendants' newspaper, the Belize Times, is a political organ.*
- (c) *The Claimant also spoke critically, on the 25th day of September at the Annual General Meeting of the Belize Telecommunications Limited, and thereafter on radio and television, about the negative consequences to the public good and the rule of law set in motion by statutory instruments Nos. 108 and 109 of 2006 (made by the Minister of Public Utilities, who is also the National Campaign Manager of the People's United Party).*

Those S.I.'s sought, inter alia, to set aside the Articles of Association of BTL, but were amended and struck down respectively by the Supreme Court.

(d) The Defendants were thus deliberately motivated to publish the attacks against the Claimant as a way of retaliating against her public criticism of the executive, and to further their political objectives of destroying her character and disabling her leadership of the Association of Concerned Belizeans.”

12. The Defendants in their Defence filed on 17th November 2006, clearly admitted publishing the words Ms. Young-Barrow complained of. They however deny in paragraph 3 of their Defence that the words meant or were understood to mean or were capable of meaning what Ms. Young-Barrow had set out in paragraph 4(a) and (c) of her Statement of Claim. It is noteworthy that the Defendants failed signally to take issue with subparagraph (b) of paragraph 4 of Ms. Young-Barrow's statement of claim. In other words, as Mr. Barrow S.C. for Ms. Young Barrow correctly in my view submitted, the defendants thereby admitted paragraph 4(b) of her Statement of Claim. That is to say, they admitted that the words they published of her in their natural and ordinary meaning meant and were understood to mean that she is as a person and an attorney one who is greedy, hypocritical and malicious. These words, “greedy”, “hypocritical” and “malicious” Mr. Barrow S.C. submitted, constituted the sting of the libel in the defendants' publication. In fact these words appear in bold print in the publication after the claimant's first name.

13. Therefore Mr. Barrow S.C. submitted, the defendants not having denied these words, they did not therefore contest the sting of the libel against Ms. Young-Barrow. They thereby accepted the interpretation averred for in paragraph 4(b) of Ms. Young-Barrow's statement of claim. This, Mr. Barrow S.C. submitted, essentially grounds Ms. Young-Barrow's claim of libel.

Is the publication defamatory of the Claimant?

14. There is no uniform definition of what is defamatory. But it is now generally accepted that a defamatory imputation is one that tends to make reasonable people think the worse of the claimant – Sim v Stretch (1936) 52 TLR 669; Tolley v J.S. Fry and Sons Ltd. (1931) A.C. 333. Therefore, in law, any imputation that tends to cause a person to be hated or despised or open to ridicule, or to be shunned or avoided or to lower a person in the estimation of others may be regarded as defamatory.

The words by themselves may or may not mean much, but the context and circumstances of their publication would often make the critical difference as to whether they are defamatory or not. It is therefore a matter of fact, whether or not, any imputation is defamatory. And as stated in Gatley on Libel and Slander (London, Sweet and Maxwell) 9th Edition at paragraph 2.18:

“It is ... a matter of fact whether any words convey the defamatory imputation alleged, and this may depend to a great extent on the circumstances and context of a particular publication.”

15. **Gatley** in paragraph 2.19 goes on to cite instances of defamatory words and cites the cases of **Mitchel v Nanaimo District Teachers’ Association** (1994) 94 B.C.L.R. (201) 81 and **Thorley v Lord Kerny** (1812) 4 Taunt 355; and **Griffin v Divers** 1922 S.C. 605, in which the words “greedy sinecurist” and a “hypocrite” were held respectively to be defamatory – **op. cit** at page 41 and the instances of defamatory words and cases there cited.

16. In her witness statement dated 23rd November 2006 and tendered in these proceedings it would appear that Ms. Young-Barrow’s stance at the Annual General Meeting of the Belize Telecommunications Co. Ltd. held on Monday the 25th September 2006 at the Belize Biltmore Plaza Hotel in Belize City, was what caused the defendants to unleash coals of fire on her head. She recounts how she attended that meeting as a shareholder, and how she informed the Chairman about an injunction issued by the Court against holding the meeting. She states that she repeatedly informed the Chairman about the injunction against holding the meeting and subsequently informed the Chairman that a Marshall of the Supreme Court was in the lobby of the hotel and was being prevented by BTL’s

security guards from going into the meeting. She further states that she finally had to hand over a copy of the injunction which she had secured from the Marshall to the Chairman. The latter she states ignored the information.

17. The following day, Tuesday the 26th September Ms. Young-Barrow said she gave interviews to both Channels 5 and 7 Television News, recounting what had occurred at the Annual General Meeting of BTL.

Ms. Young-Barrow also said in her witness statement that she is an active member of the Board of Trustees of the Association of Concerned Belizeans (ACB). This organization she said in her statement seeks to promote good governance and comments on matters its members consider to be of public importance. She stated that on Wednesday, 27th September 2006, the ACB issued a press release condemning the board of directors of BTL for pretending that it did not know about the injunction issued by the Court and for ignoring the prohibition against holding the meeting on 25th September, 2006. She also stated that several Non-Governmental Organizations issued press releases condemning BTL's conduct.

18. Ms. Young-Barrow further stated in her witness statement that on Thursday 28th September 2006, the defendants published a "letter" entitled "*The Deadly Sins of Lois Young-Barrow*" together with a copy of her

photograph and accusing her of “greed”, “fanatical hypocrisy” and of behaviour in Court “unbefitting of a Senior Counsel” and of “duplicity”.

19. She further stated that the defendants in the following week on Sunday, October 8th 2006, published a second article in the form of an advertisement entitled “The web we weave”. This article she said made reference to her earnings together with a photograph of her along with her name. She said this advertisement accused her of “grand standing” and “posturing”.
20. Then, on Sunday, 15th October 2006, the defendants published a third article concerning Ms. Young-Barrow. It is this publication that is the subject of these proceedings. I have reproduced it earlier at page 4. It prompted Ms. Young-Barrow to seek an interim injunction against the defendants for fear that they might continue with the publications concerning her. This led to the preliminary skirmishes between them the parties I have recounted at paragraphs 6 through 9 above.
21. The publication has in bold print the words “*Why is this Lady not smiling?*” over a less than complimentary photograph of Ms. Young-Barrow, with the statement “*President of ACB*” underneath the photograph. It then proceeds to answer the seemingly rhetorical question over the photograph by stating that even after Ms. Young-Barrow has collected various fees for some high profile cases she was involved in and in addition to her

collecting a Belmopan House at half-price from BTL, it went on to declaim in slightly bigger print, that: *“She still wants more. She will always be unsatisfied. Lois is greedy, hypocritical and malicious”*. As if for good measure, the publication rounds off with the statements: *“Association Concerned about Bucks”*, a clear play on “ACB” underneath the claimant’s picture of which she is stated falsely as it turned out, to be the president.

22. Having read the publication concerning Ms. Young-Barrow and considering its context and circumstances, I am of the considered view that the defendants seriously defamed Ms. Young-Barrow. I find that it is clearly defamatory of a professional, such as the claimant in this case, who is a senior attorney no less, to say of that professional that even after collecting various sums as fees (the sums of which as stated by the defendants are clearly contradicted by the evidence, see paragraph 20 of Ms. Young Barrow’s witness statement) and receiving some other benefits from a former client (in this case a house said to be at half-price) that the professional person still wants some more and will always be unsatisfied, and then personally name the professional (as in the instant case) and then say she is *“is greedy, hypocritical and malicious”*.

23. I therefore find and hold that the imputations in the defendants’ publication concerning her were meant and understood to mean that: i) she is an attorney whose fees are unconscionable and extortionate and ii) she is a money grabbing attorney and unethical, unprincipled and amoral. The

defendants as I stated earlier, have not denied the imputation that she is a person and an attorney who is greedy, hypocritical and malicious.

24. The publication, it is clear on the whole, in my view, set out deliberately to disparage Ms. Young-Barrow. It prints an unflattering photograph of her over the words "President of ACB" which the publication goes on to state as "Association Concerned about the Bucks". I find that there is nothing remotely redeeming in the publication and in the circumstances it reads more like a hatchet job to get at Ms. Young-Barrow for having the temerity to bring the Court's injunction prohibiting the holding of BTL's Annual General Meeting to its chairman's attention and for speaking out against the disobedience of that order.

25. The publication by the defendants, I find, is plainly defamatory of Ms. Young-Barrow with a particularly wounding sting by calling her by name and say that she is "*greedy, hypocritical and malicious*". I find that there is no antidote in the publication; it is all bane - see Lawrence v Lightburn (1981) 31 WIR 107, where the Court of Appeal held that an article in The Reporter Newspaper with the headline: "*YPF LEADER BASHED AND STABBED: RAY LIGHTBURN AND GANG ARE SUSPECTS*" was defamatory of Lightburn in referring to him as the leader of a gang of paid henchman.

Are the defendants justified in their publication concerning the Claimant?

26. The defendants for their part have raised a two-pronged defence. First, they have raised the defence of justification. That is to say, what they published of Ms. Young-Barrow was true and that insofar as the words bear the meaning she contends for, they are true in substance and in fact. The second defence relied upon by the defendants is that of fair comment on a matter of public interest. That is to say, the words Ms. Young-Barrow complains of were comments or expressions of opinion.
27. The defence of justification is of course, a proper defence to a claim for libel. By this plea the defendants admits the libelous nature of the publication but put forth the justification by way of a shield that what is published is the truth. However, because of the importance accorded to reputation under the law there is a presumption that a defamatory statement is false. A defendant can only therefore rebut this presumption by pleading and proving that it is true. The burden of proof of the truth in justification is on the defendant. He however discharges this burden on a balance of probabilities.
28. In this case, the defendants have pleaded that insofar as the words Ms. Young-Barrow complained of bear the meaning she puts on them, they are true in substance and in fact. They gave the following as particulars of justification:

‘PARTICULARS OF JUSTIFICATION

- (1) *The Claimant was a former attorney on record for the Belize Telecommunications Ltd. and had been paid in excess of One Million Dollars in legal fees, as the article contends.*

- (2) *Investigative research has also revealed that the Claimant purchased a house from BTL at half the value, received Two Hundred Thousand Dollars in legal fees for the Chalilo Dam case, received One Hundred Thousand Dollars for the SATIM case and a further One Hundred Thousand Dollars for the Print Belize case.*

- (3) *At the time of the publication of the words, the Claimant was no longer an attorney on record for Belize Telecommunications Ltd.*

- (4) *That the only reason the Claimant appeared in several news media speaking out against her former clients, BTL, was because she was no longer their attorney and as such, was not receiving any legal fees.*

- (5) *That the Claimant, in her interviews criticizing the BTL Annual General Meeting failed to inform the public that she was at one time an attorney of BTL, and that she had litigated several high profile BTL cases for which was well paid.”*

29. In their bid to prove the truth of their publication concerning Ms. Young-Barrow, the defendants' attorney Mr. Kareem Musa cross-examined her at some length on her witness statement. In this statement, Ms. Young-Barrow denied ever being president of the ACB but admitted to being a member. She gave the figures she earned from some of the cases the defendants mentioned in their publication, although she could not recall how much she earned from the Chalillo Dam case nor her earnings from BTL for the five years preceding 2004. It would however appear that from Mr. Musa's cross-examination Ms. Young-Barrow obtained some bargain in her purchase of a house in Belmopan from BTL.
30. Ms. Rhenae Nunez, a journalist serving on the Editorial Board of the second defendant, The Belize Times Press Ltd., made a witness statement and was cross-examined by Mr. Dean Barrow .S.C., counsel for Ms. Young Barrow. In her witness statement Ms. Nunez stated that the Board of the second defendant made the decision to publish the article/advertisement (which is the subject of these proceedings) in response to Ms. Young-Barrow's constant bombardment of the airwaves, both radio and television, expressing anti-government sentiment. In Ms. Nunez's view and no doubt that of the Board of the second defendant, Ms. Young-Barrow is perceived as one-sided in her activism, therefore they consider her commentaries malicious and hypocritical.

31. I am unable however, to find anything approaching the truth in the slightest that justifies the publication by the defendants concerning Ms. Young-Barrow. Even if her activism was one-sided as the defendants believe, and the fact that she was critical of BTL over an injunction ordered by the Court, this did not, I find, justify the publication by the defendants. To try to justify the publication on the basis of truth is, in my view, hopeless. From the evidence, there is nothing in the particulars of justification offered by the defendants that can explain or excuse their publication. Ms. Nunez, in answers in cross-examination by Mr. Barrow S.C., made facile attempts to explain away the publication as an advertisement and not an article or an essay. This does not, I find, make it any the less libelous. In Ms. Nunez's view, in an advertisement you can say anything and leave the rest to the imagination. This led me to conclude that according to Ms. Nunez, you can take liberties with the truth in an advertisement. This may be so perhaps but if the advertisement is about a person there may be consequences in law.

32. I therefore find that there is no merit whatsoever in the plea of justification advanced by the defendants. They seemed to have embarked upon an unmeritorious tit-for-tat against Ms. Young-Barrow, or in the words of Ms. Nunez, they decided to publish the said article/advertisement *"in response to (her) constant bombardment of the airwaves with anti-government sentiment"* and the belief that her criticism of BTL was because she no longer worked for the company as its attorney. But it was a perilous venture in which the

defendants, I find, ignored or lost sight of the truth and libeled Ms. Young-Barrow in their publication. They have failed, I find, to establish anything they published of her was in fact true. In particular, there is nothing from the evidence to atone for or justify the sting in their libel that she is “*greedy, hypocritical and malicious*”.

33. I now turn to the defence that the words published of Ms. Young-Barrow were comments or expressions of opinion and constituted fair comment on a matter of public interest.
34. The defendants pleaded particulars of fact upon which they say their comment was based as follows:

“PARTICULARS OF FACT UPON WHICH COMMENT IS BASED

- (1) *The Defendants repeat paragraphs 4(1) to (5) above.*
- (2) *Furthermore, the Claimant is a vocal and active member of the Association of Concerned Belizeans, an anti-governmental pressure group.*
- (3) *The Claimant has used the ACB as a public platform to criticize the legality of an annual general meeting of BTL, her former client.*
- (4) *That the Defendants published the article in order to add clarity to the matter, and in so doing, brought to light all other unknown factors with respect to the*

Claimant's media outburst against BTL (the Claimant's former client), including the benefits that the Claimant had obtained from BTL but not disclosed in her interviews, which was also a matter of fair comment in the publication complained of."

35. From this, it is clear that the defendants are in fact relying on justification or the truth of what they published about the claimant in addition to averring that their publication was comment on a matter of public interest.
36. Fair comment and criticism on matters which have become public property are protected, even though involving imputations on the character of individuals – Gatley op. cit at para. 22-159.
37. Can the defendants therefore avail themselves of this defence in the light of the evidence and facts of this case? In my view, I find that they cannot.
38. In the first place, there is the unambiguous testimony of Ms. Rhenae Nunez, a member of the Editorial Board of the second defendant. Under relentless cross-examination by Mr. Barrow S.C. to show which part of the publication was comment, she stated rather disarmingly that as the publication was only an advertisement it need not support or substantiate the conclusions it contained. I find this candour refreshing but it tellingly shows that the defendants were not making comments but stating what they perceived as facts about the claimant. This does not therefore

address the sting of the libel that Ms. Young-Barrow is “*greedy, hypocritical and malicious*”.

39. In the second place, the defence of fair comment on a matter of public interest, is on the facts of this case, unsustainable. The Claimant is a senior attorney and perhaps high profile at that and admittedly an active member of the Association of Concerned Belizeans (ACB) but she is nonetheless, a private person as distinct from a person in public office. The public conduct of the latter or anyone who seeks such a position or one of public trust, can be a matter of public interest and therefore fair game for comment or criticism – Gatley op. cit, at para. 12.29. The claimant, though she may bear the eponymous name in her hyphenated surname (Young-Barrow) as that of the Leader of the Opposition, and is the latter’s former wife, is not, I find, a public figure in the legal sense. Her involvement in ACB, does not in itself, I find, make her a public figure. This is an organization founded by eleven professionals including the claimant, to educate Belizeans on public issues of the day and to foster good governance. There is no evidence that she is the president of this Association as falsely stated in the defendants’ publication, which they gratuitously but libelously described as “*Association Concerned about the Bucks*”.

40. There is an admirable tradition of vigorous public debate and criticism in this country especially of public issues and figures. Every weekday the

airwaves are full of this through radio talk shows and call-in programmes. This is sometimes carried on the print media of the newspapers published every week. This is a healthy and robust tradition which the Courts should try to uphold but within the bounds of the law.

41. But at the same time, as has been, if I may say so with respect, correctly observed:

“A newspaper is not entitled to invade private life in order to discuss questions of character with which the public is not concerned

per Lord M'Laren in Gray v S.P.C.A. (1890) 1 T.R. 1185; 27 S.L.C. 906 Ct. of Sess at 1200, cited in Gatley at p. 271. In the context of this case, I respectfully adopt this comment in this respect stated in Gatley *ibid*:

“The mere fact that a person is a politician or is engaged in some occupation which brings him into public notice is not of itself enough to make his private life a matter of public interest so as to justify the kind of defamatory comment to which, so far as his public activities are concerned, he must submit as one of the incidents of his position” – citing Mutch v Sleeman (1928) 29 N.S.W.S.R. 125 at 137.

42. I find that whatever benefits, whether by way of fees or the purchase of a house in Belmopan, the claimant might have obtained, she did so as a

private matter in the pursuit of her profession. These did not make her a public figure or transform her involvement in ACB, into matters of public interest to warrant, even remotely the sting in the defendants' libel of her as *"greedy, hypocritical and malicious"*.

43. The third and perhaps insurmountable barrier in the way of the defendants is that the defence of fair comment can only avail if the statements complained of were published as honest and fair criticism based on a substratum of facts. In this case, I find that the publication by the defendants attributes dishonourable motives to the claimant: *"She still wants more. She will always be unsatisfied. Lois is greedy, hypocritical and malicious."*

44. This, as I have found, was not warranted by the facts, nor was it in the circumstances, fair criticism: no public interest is served by publishing or communicating misinformation. There was nothing, in my view, that engaged the public interest to know what the claimant might have earned from her acting as attorney in the instances the defendants mentioned or that she obtained a Belmopan house at half-price from BTL. As has often been said, the public tends to be interested in many things which are not of the slightest public interest. And, I might add, with due respect to the Fourth Estate, newspapers are not often the best judges of where the line should be drawn. I cannot fathom what public interest was served by the defendants trumpeting the alleged earnings of Ms. Young-Barrow; nor for

that matter, the fact that she obtained a house in Belmopan from BTL, whether at half-price or not. I therefore find the purported justification of the publication by the defendants that it was: *“to add clarity to the matter, and in so doing (bring) to light all the other unknown factors with respect to (Ms. Young-Barrow’s) media outburst against BTL (her former client) including the benefits (She) had obtained from BTL but not disclosed in her interviews...”* to be utterly unsustainable.

45. I accordingly find and hold that the defendants’ publication concerning Ms. Young-Barrow was way outside the bounds of fair comment on a matter of public interest: **South Hetton Coal Co v North Eastern News Association (1884) 1 QB 133** and **Clerk and Lindsel on Torts 18th Edition**, at para. 22-162. In the result, I find and hold there was nothing in the defendants’ publication concerning Ms. Young-Barrow that is remotely fair or commentary on any matter that was of any public interest.
46. It was, I find, as well, an unwarranted, undeserving, unfounded and wounding publication prompted, from the evidence, by the commendable and public-spirited position she took concerning an order of the Court at the Annual General Meeting of BTL on 25th September, 2006. For this she deserves public praise and not the calumny the defendants in their publication sought unfairly and libelously to heap on her. Quite why the

defendants seem eager to take up cudgels on behalf of BTL, a private company, is a mystery.

47. In conclusion on the defence in this case, the defendants briefly, at the interlocutory stage in these proceedings adverted to the Reynolds qualified privilege defence (Reynolds v Times Newspaper (1999) 3 WLR 1010, (1999) 3 All E.R. 609). They did not in the event, either in their defence filed or in their submissions mentioned this. This was stated by the English House of Lords as a form of qualified privilege that may avail newspaper publications. This was recently, in October 2006, extended by the House of Lords to cover “responsible journalism” in commenting on matters of public interest – see Jameel and others v Wall Street Journal Europe Sprt (2006) U.K.H.L. 44. I find however, that the defendants’ publication concerning Ms. Young-Barrow in this case is not of the class of fair comment on a matter of public interest but rather undeserving vitriol.
48. I am therefore persuaded in the light of the evidence and facts of this case that the claimant has proved her case and, I accordingly find and hold that the words she complained about were in their natural and ordinary meaning, understood to mean what she contended for.

Remedies for the claimant

49. I find the defence mounted in this case to be unsustainable. The defendants seriously libeled Ms. Young-Barrow. The tort of defamation exists to afford redress for unjustified injury to reputation. By a successful action the injured reputation is vindicated. The ordinary means of vindication is by the verdict of the court and an award of damages (per Lord Bingham of Cornhill in Jameel supra at para. 24).
50. By the verdict of this court, Ms. Young-Barrow stands clear of the calumny the defendants sought by their publication to heap on her. I cannot therefore be unmindful of this and the effects on her – see in particular, paras. 25, 26 and 27 of her witness statement describing the embarrassment, humiliation and distress the publication caused her. Moreover, I find no antidote in the publication itself, nor in the defences the defendants tried to mount in this case. Indeed there is nothing in the conduct of the defendants as evincing some remorse or contrition. However, though their former lead attorney refused to give an undertaking not to continue further or similar publication concerning the claimant, they have sensibly, in view of the outcome of this case, desisted from any such further publication concerning her. This is just as well.
52. However, I bear in mind that we live in a liberal democracy, one of the important pillars of which is freedom of expression and the press. This freedom is expressly recognized in section 12 of the Belize Constitution.

And this Court will not do anything to chill this freedom. But freedom of expression and the press is certainly not a licence to calumniate others. And the same section 12 in subsection (2) paragraph (b) recognizes and protects the right to reputation of others. The law of defamation exists to protect just this right.

53. Ms. Lois Young-Barrow as I said at the start of this judgment, is a senior member of the Belize Bar. The impugned publication by the defendants reflects ill upon her professional standing and practice. This is a serious matter I cannot overlook. The defendants have not shown any remorse, instead they tried to run patently unsustainable defences, given the facts and circumstances of this case. Ms. Young-Barrow must have felt embarrassed, humiliated and distressed by the defendants' publication concerning her. She expressly pleaded that the defendants were actuated by malice towards her. And she gives particulars of the defendants' malice. However, it is the position that where words are published which are both false and defamatory, the law presumes malice on the part of the person who publishes them – Banks J. in Smith v Streatfield (1913) 3 KB 764 at 769 and generally Gatley op cit, Chapter 16.

54. But Ms. Young-Barrow stands vindicated today by the judgment of this court. However, in all the circumstances of this case, I think that an award of \$30,000.00 by way of damages will go some way towards consoling her for the defendants' defamation and the humiliation and distress she must

have endured. It is not unnatural however, that Ms. Young Barrow seeks damages on an aggravated footing. But I have tempered the award because of the considerations I have mentioned earlier.

Accordingly I order:

- i) the sum of \$30,000.00 as damages against the defendants for their libel on Ms. Young-Barrow; and that
- ii) each of the defendants by themselves, their servants or agents or howsoever are hereby prohibited from repeating their publication of 15th October 2006 or any similar words or any similar words to like effect of and concerning Ms. Young-Barrow.

The costs of these proceedings are awarded to the claimant in the sum of \$10,000.00.

A. O. CONTEH
Chief Justice

DATED: 6th February 2007.