

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 363 of 2021

BETWEEN:

[1] GERALD HENRY JR.

Claimant

and

[1] AUDITOR GENERAL  
[2] ATTORNEY GENERAL OF BELIZE

Defendants

**Appearances:**

Rene A. Montero for the Claimant  
Samantha Matute and Israel Alpuche for the Defendants

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2023: May 29, 30

July 25

December 6  
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### JUDGMENT

[1] **CHABOT, J.:** Gerald Henry Jr. is a public officer, and was the president of the Public Service Union of Belize ("PSU"). Mr. Henry filed this claim against the Auditor General of Belize (the "Auditor") alleging that a press release issued by the Auditor on 18<sup>th</sup> March 2021 contained defamatory words calculated to disparage him and his office of president of the PSU, and taint his reputation. In the alternative, the words were false

and published maliciously. Mr. Henry seeks damages as he alleges that the words caused serious injury to his personal and professional reputation.

- [2] The defendants admit the press release was issued, but deny the words used are defamatory. If they are defamatory, the words were true and the Auditor was justified in stating them. The defendants also argue that the Auditor is covered by a qualified privilege as having a legal, social, or moral duty, or in the alternative that the press release was in the public interest or a reply to an attack.
- [3] For the reasons outlined in this judgment, I dismiss the claim. While the words complained of were defamatory, the evidence does not establish that the Auditor acted maliciously as she genuinely believed the words to be true. The defence of qualified privilege succeeds on the grounds that the words were issued in reply to an attack.

## **Background**

- [4] This claim revolves around a press release issued by the Auditor on 18<sup>th</sup> March 2021 in response to statements made by the leadership of the PSU, the Association of Public Service Senior Managers, and the National Trade Union Congress of Belize (together, the “joint unions”) at a press conference held on 17<sup>th</sup> March 2021. The relevant portions of the press release are reproduced below:

The Office of the Auditor General views with grave concern baseless assertions made by the leadership of the Public Service Union (PSU) and the Association of Public Service Senior Managers (*sic*) (APSSM) at its press conference of 17<sup>th</sup> March 2021.

[...]

This is not the first time that the Public Service Union has attacked the Auditor General. As recent as September 2020, just before the general elections, the President, Gerald Henry, wrote the former Prime Minister demanding that he fired the Auditor General. When that call went unanswered, he then proceeded to write the Governor General demanding the same. When those attempts failed, he has now abused the Office of PSU president to pursue his personal agenda. However, what the President has failed to declare is that he has a personal vendetta against the Auditor General because he, as a staff member now seconded to the Union, has been disciplined on several occasions, by the Auditor General, for misconduct on the job. In 2017, he went as far as threatening the Auditor General in the

presence of the Public Service Commission, by saying that “they will pay somebody to hurt her” during one such disciplinary hearing.

- [5] Mr. Henry alleges that the Auditor posted the press release on the Office of the Auditor General’s Facebook page, and sent the press release to various media and news companies in Belize for further publication in their newscast and social media platforms. The Auditor also reiterated the content of the press release in a video interview given to KREM TV. The interview was posted on Facebook and received many comments and reactions.
- [6] Mr. Henry alleges that the words, in their natural and ordinary meaning, or by way of innuendo, meant and were understood to mean that:
  - 1. Mr. Henry is guilty of misconduct on the job and/or that he has been disciplined for the alleged misconduct; and
  - 2. Mr. Henry is guilty of the criminal act of threatening the Auditor in the presence of others by stating “they will pay somebody to hurt her”.
- [7] Mr. Henry argues that the words were calculated to disparage him in his office of president of the PSU, and taint his reputation as a career public officer and an upstanding citizen of Belize. By publishing the defamatory words, the Auditor caused serious injury to Mr. Henry’s personal and professional reputation, and he suffered considerable hurt, distress, and embarrassment as a result. The Auditor prepared and published the press release knowing the statements it contained were untrue, and that she had no facts to substantiate the statements.
- [8] In the alternative, Mr. Henry argues that the words were false and were published maliciously. Mr. Henry has never been disciplined by the Auditor, and he never misconducted himself on the job. In addition, he never said the words “they will pay somebody to hurt her”, never threatened the Auditor, and was cleared by the Public Service Commission (“PSC”) of all complaints made against him by the Auditor. The Auditor acted with malice because she knew the statements to be false. The Auditor filed two complaints and a police report against Mr. Henry that were not successful. The Auditor had no grounds for honestly believing that the allegations made against

Mr. Henry were true. In addition, the Auditor submitted Mr. Henry's name to the Employee Assistance Program ("EAP") in an attempt to embarrass and humiliate him.

[9] Mr. Henry alleges that since the publication of the press release, he has not been able to receive a promotion despite being next in line. Further, members of the PSU distanced themselves from him and comments were made about his fitness to be president of the PSU.

[10] Mr. Henry seeks the following reliefs:

1. Damages, including aggravated damages for libel and/or malicious falsehood contained in words published in a Press Release titled "AUDITOR GENERAL CORRECTS BASELESS ASSERTIONS FROM PSU AND APSSM" dated 18<sup>th</sup> March 2021 which was published and distributed to the general public by the first defendant;
2. An injunction restraining the first defendant, her agents or servants or otherwise, from further publishing the said or any similar libel upon the claimant;
3. Interest pursuant to section 166 of the Supreme Court of Judicature Act;
4. Such further or other relief as the courts sees fit;
5. Costs.

[11] While the defendants admit the press release was issued and an interview was given to KREM TV, they do not admit the press release had the reach Mr. Henry says it did. The defendants say that the Auditor responded to the joint unions' call for her removal from office, which was issued at a press conference.

[12] The defendants deny that the words bear the meaning alleged by Mr. Henry, or any meaning defamatory to Mr. Henry. They further deny that the words were calculated to disparage him as president of the PSU or taint his reputation. In their natural and ordinary meaning, the words mean and were understood to mean that:

1. Mr. Henry has been disciplined by the Auditor for misconduct on the job; and
2. Mr. Henry threatened the Auditor in the presence of the PSC by saying that "they will pay somebody to hurt her" during a disciplinary hearing.

- [13] According to the defendants, these statements are true because the Auditor has warned Mr. Henry for misconduct on several occasions and initiated disciplinary proceedings against him. Mr. Henry was reprimanded by the PSC. The Auditor was present at the disciplinary proceedings before the PSC and heard Mr. Henry state that “they wouldn’t mind, or they were thinking, actually contemplating that they could pay someone to do something to you”. The Auditor perceived these words as a threat.
- [14] If the words are defamatory, then the defendants argue they are protected as they were published on an occasion of qualified privilege. The Auditor had a legal, social, or moral duty by virtue of her constitutional office to respond to the joint unions and provide comments on the functions of her office and the work done by her office. The Auditor and the general public have an interest in the subject matter of the press release, and the Auditor reasonably believed that publishing her response via a press release was in the public interest. She provided the entire background and the reasons for making the comments in the press release, and genuinely believed the facts stated in it. In addition, the press release was issued in response to an attack. The Auditor published the press release in the ordinary course of business, and as such the publication is privileged.
- [15] The defendants deny the press release was issued with any malicious intent. The Auditor genuinely perceived the words uttered by Mr. Henry at the disciplinary proceedings as a threat and took necessary steps, including reporting the information to the Belize Police Department. Actions thereafter taken by the Police Department are not within the purview or control of the defendants. The Auditor does not admit or deny submitting Mr. Henry’s name to the EAP.
- [16] Finally, the defendants deny that Mr. Henry suffered any loss or damage by reason of the publication of the press release. If Mr. Henry suffered any loss or damage, there is no causal nexus between the press release and these losses or damages. If Mr. Henry has been overlooked for promotion, the Auditor denies that it was a result of the press release. Promotions are within the purview of the PSC and not the defendants. Mr.

Henry received two additional increments for having successfully completed his master's degree, which were recommended by the Office of the Auditor General.

[17] In reply, Mr. Henry argues that, while it is a constitutionally protected office, the post of Auditor General does not have immunity from the law or from abiding to the Belize Constitution (Public Service) Regulations, 2014<sup>1</sup> on matters concerning staff. While the Auditor may have a right to respond, she does not have a duty to do so, and her comments relating to Mr. Henry were personal and unjustified. Furthermore, the comments were untrue and perpetuated by malice. Mr. Henry states that he made no comments in regard to the Auditor. The Auditor's comments were a personal attack on Mr. Henry. In addition, personal and untruthful remarks made against Mr. Henry or any member of staff is not a matter of public interest.

### **Issues for determination**

[18] The following issues must be determined:

1. Are the words complained of defamatory?
  - i. What is the natural and ordinary meaning of the words?
  - ii. Can these words bear a defamatory meaning?
2. Are any defences available to the defendants?
  - i. Is the defence of justification available to the defendants?
  - ii. Are the words protected by a qualified privilege?
    1. Were the words published with malice?
    2. Were the words published on an occasion of qualified privilege?
3. Is Mr. Henry entitled to damages?

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<sup>1</sup> Statutory Instrument No. 59 of 2014 ("PSR").

## Analysis

*Are the words complained of defamatory?*

What is the natural and ordinary meaning of the words?

[19] The law of defamation recognizes two types of defamatory statements: libel and slander.<sup>2</sup> This matter involves allegations that the Auditor committed libel because the statement was made in the permanent form of a press release.

[20] The court's first task is to discern the natural and ordinary meaning of the words complained of. The British Court of Appeal in **Skuse v Granada Television Ltd.**<sup>3</sup> offered helpful guidance in that regard, detailing the proper approach as follows:

(1) The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer watching the programme once in 1985.

(2) "The hypothetical reasonable reader [or viewer] is not naive 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) While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue. [...]

(4) The court should not be too literal in its approach. [...]

(5) A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally (*Sim v Stretch* [1936] 2 All ER 1237) or would be likely to affect a person adversely in the estimation of reasonable people generally (*Duncan & Neill on Defamation*, 2nd edition, paragraph 7.07 at p 32).

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<sup>2</sup> Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 218.

<sup>3</sup> [1996] EMLR 278 ("Skuse"). See also *Karen Bevens v Hon John Briceno et al.*, Claim No. 771 of 2020 at para. 17 ("Bevens").

(6) In determining the meaning of the material complained of the court is "not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words" [...]

(7) The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear? (*Slim v Daily Telegraph Ltd*, above, at p 176.)

[21] The governing principle is reasonableness. The court should rule out any meaning which can only be the result of some strained, forced, or unreasonable interpretation.<sup>4</sup>

As summarized by James J. in **Bevans**:

Therefore, it is a question of fact whether, taken as a whole, the words in their natural and ordinary meaning would convey to a reasonable listener who is not naïve but not unduly suspicious and not avid for scandal, a meaning which is defamatory of the claimant and/or whether the words used would convey to a reasonable reader an implied meaning or an inferred or indirect meaning that is defamatory of the claimant.<sup>5</sup>

[22] The specific words in the press release Mr. Henry complains of are the following:

However, what the President has failed to declare is that he has a personal vendetta against the Auditor General because he, as a staff member now seconded to the Union, has been disciplined on several occasions, by the Auditor General, for misconduct on the job. In 2017, he went as far as threatening the Auditor General in the presence of the Public Service Commission, by saying that "they will pay somebody to hurt her" during one such disciplinary hearing.

[23] Mr. Henry alleges that these words, in their natural and ordinary meaning, or by way of innuendo, meant and were understood to mean that he was guilty of professional misconduct, and guilty of a criminal act. I partially agree with Mr. Henry. I agree that the natural and ordinary meaning of the words "has been disciplined on several occasions, by the Auditor General, for misconduct on the job" is that Mr. Henry has been found guilty of professional misconduct, and as a result has been disciplined by the Auditor on several occasions. That discipline was imposed on Mr. Henry implies that he has been found guilty of professional misconduct. That meaning is reinforced

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<sup>4</sup> *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 at para. 14; *Bevans* at para. 18.

<sup>5</sup> *Bevans* at para. 20.



by the mention in the following sentence of a “disciplinary hearing”. A reasonable reader would understand that discipline was imposed on Mr. Henry after he was found guilty of professional misconduct following a disciplinary hearing.

[24] I do not agree, however, that the natural and ordinary meaning of the words “he went as far as threatening the Auditor General in the presence of the Public Service Commission, by saying that ‘they will pay somebody to hurt her’ during one such disciplinary hearing” mean that Mr. Henry is guilty of a criminal act. The press release makes no mention of criminal charges being brought against Mr. Henry, or any guilty verdict by a court of law. The reasonable reader is informed that only a court of law can find a person guilty of a criminal offence. A statement can be characterized as a threat by its receiver without guilt needing to be established. The natural and ordinary meaning of the words is that Mr. Henry threatened the Auditor in the presence of the PSC by uttering the words “they will pay somebody to hurt her”.

Can these words bear a defamatory meaning?

[25] A statement is defamatory “if it would tend to lower [the claimant] in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally”.<sup>6</sup> A statement is also defamatory if it discredits a person in his trade, profession or calling.<sup>7</sup>

[26] I find it is likely that the statement in the press release affected negatively the estimation that members of the Belizean society generally had for Mr. Henry. As president of the PSU, Mr. Henry represented thousands of public officers and he was, by virtue of his position, in the public eye. The words complained of impugn Mr. Henry’s character and integrity, and the lawfulness of his behaviour. The words also tend to discredit Mr. Henry in his profession. Members of the Belizean society hold in higher esteem people who conduct themselves properly at work and uphold the law than those who do not.

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<sup>6</sup> Skuse at 286.

<sup>7</sup> Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 227, citing Gatlley on Libel and Slander, 9th edn, 1998, London: Sweet & Maxwell, Chapter 2.

[27] The legal test does not require actual proof that the Auditor's words lowered Mr. Henry in the estimation of members of the Belizean society generally:

(5) A meaning is defamatory of the claimant if it "[substantially] affects in an adverse manner the attitude of other people towards him, or has a tendency so to do": *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, para 96, per Tugendhat J. This also is an objective test. Although the word "affects" might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence. The "people" envisaged for the purposes of this test are ordinary reasonable readers [emphasis added].<sup>8</sup>

[28] However, Mr. Henry provided some evidence that the words complained of did, in fact, lower Mr. Henry in the estimation of the public. The press release was published on social media, and reported in online newscasts. Mr. Henry entered into evidence various comments made by readers of the social media posts, including the following comments (which I reproduced verbatim):

- *So Gerald Henry threatened the Auditor General that he would pay to KILL her... in the presence of people? And she made a POLICE REPORT? And this man is still the president of the PSU? How can we take that union seriously? How is he even a public servant? He has been reprimanded and disciplined by the public service commission? What the heck is he doing on the negotiating table? He needs to be fired and charged for threats! In this day and age you don't take threats lightly, too many murders go unsolved! Mind blown today! The auditor General told him that if she died doing work then she willing to do that! Wow! He needs to GO!*
- *I find this behavior totally repulsive. This smack in the middle if (sic) our observance of Women's Month is disappointing but not surprising. That a leader would threaten a woman and do so in public means he expects no reprisals. This is telling.*
- *Great work ms Bradley. Continue expose these corrupted crooks.. police need fi arrest dem.*
- *Gerald Henry is NOT fit to be president of the PSU. He should be ashamed of himself for threatening a woman. I feel sorry for his wife and children. From*

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<sup>8</sup> *Lachaux v Independent Print Ltd; Lachaux v Evening Standard Ltd; Lachaux v AOL (UK) Ltd* [2016] QB 402 at para. 15.

*what I read the auditor general has said... I am sure he abuses his wife and kids.*

[29] In his witness statement, Mr. Henry testified that he “received calls and messages from people that I know from Canada, U.S.A and Europe questioning me about the news report. Each time I had to explain to them that it was not true that I was disciplined by the Auditor General. I also had to explain to them that I did not threaten the Auditor General and that I am not a violent person”. This evidence was not challenged in cross-examination.

[30] Mr. Henry also called Dareth Aleja Obermayer as a witness in this matter. Ms. Obermayer is the past president of the PSU from August 2017 to June 2019, and the former chairperson of the Belmopan branch of the PSU from 2013 to 2017. In her witness statement, Ms. Obermayer states that she “received many calls questioning [her] about the character of Mr. Henry as well as the position he held as the President of the Public Service Union. [She] received calls from the national president from Caribbean Public Service (CPS) as well as presidents from other Caribbean countries condemning the President, Mr. Henry”. This statement was not challenged in cross-examination.

[31] I find that the words complained of could and did bear a defamatory meaning as they tended to lower Mr. Henry in the estimation of the Belizean society, and discredit him in his profession. The evidence supports that at least a segment of the general public, and union leaders from the Caribbean, perceived Mr. Henry negatively and questioned his leadership as a result of the press release.

[32] Mr. Henry does not have to allege or prove damages in order to establish a cause of action. Once defamation is proved, damage is presumed.<sup>9</sup> We now turn to the defence.

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<sup>9</sup> Jameel (Mohammed) and another v Wall Street Journal Europe Sprl [2005] QB 904 at para. 3 (“Jameel”); Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 218-219.

*Are any defences available to the defendants?*

[33] Since the court finds the words complained of by Mr. Henry to be defamatory, there is a legal presumption that these words are false. The burden falls on the defendants to plead and prove a justification.<sup>10</sup>

Is the defence of justification available to the defendants?

[34] The defendants can avail themselves of the defence of justification by proving that the words complained of were true in substance and in fact.<sup>11</sup> The defendants must prove (i) that Mr. Henry has been found guilty of professional misconduct, and as a result has been disciplined by the Auditor on several occasions, and (ii) that Mr. Henry threatened the Auditor in the presence of the PSC by uttering the words “they will pay somebody to hurt her”.

**Mr. Henry has been found guilty of professional misconduct, and as a result has been disciplined by the Auditor on several occasions**

[35] As noted above, the natural and ordinary meaning of the words “has been disciplined on several occasions, by the Auditor General, for misconduct on the job” is that Mr. Henry has been found guilty of professional misconduct, and as a result has been disciplined by the Auditor on several occasions. These words are not true.

[36] As the Auditor, Mrs. Bradley recommended that the PSC institute disciplinary proceedings against Mr. Henry on two occasions. In July and again in September 2012, she wrote to the Chairman of the PSC requesting disciplinary action against Mr. Henry for allegedly threatening her. On 20<sup>th</sup> September 2012, the Chief Executive Officer of the Ministry of the Public Service and Elections & Boundaries responded to the Auditor stating that after a review of the evidence, the PSC concluded that the matter did not warrant disciplinary action and indicated that the matter should have been dealt with “in-house”. The PSC recommended that the Auditor sit with Mr. Henry to discuss the matter amicably in order to reach a “respectable resolution”. The Auditor

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<sup>10</sup> Jameel at para. 4; Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 228.

<sup>11</sup> Bevans at para. 44.

thereafter wrote to Mr. Henry to indicate that despite the PSC's response, she considered that Mr. Henry was wrong and that "whilst no discipline will be administered from the Commission, you are advised to refrain from such behaviour".

[37] On 3<sup>rd</sup> August 2015, the Auditor once again wrote to the Chairman of the PSC recommending that disciplinary action be instituted against Mr. Henry, this time for insubordination and rudeness; for aiding, abetting, or inciting major misconduct by another public officer; and for making false claims under Regulations 82(1)(f), (2)(b), and (2)(c) of the PSR. The Auditor also wrote to Mr. Henry to advise him to "desist" in his effort to discredit the Office of the Auditor General, the Auditor herself, and the Ministry of the Public Service. A disciplinary hearing was held by the PSC in March of 2016. On 6<sup>th</sup> April 2016, the PSC informed the Auditor that it did not find Mr. Henry guilty of any of the three charges brought forth by the Auditor.

[38] The Auditor's position is that the words "has been disciplined on several occasions, by the Auditor General, for misconduct on the job" are true because she has warned Mr. Henry, and therefore she has disciplined him as provided for in Part 10 of the PSR. The Auditor rejects Mr. Henry's contention that a warning is not a form of discipline under the PSR. According to the Auditor, as the Head of Department for the Office of the Auditor General, she had the authority under Regulation 83 of the PSR to discipline Mr. Henry by issuing an oral warning for a minor misconduct, and a further warning in writing.

[39] I agree with Mr. Henry that a warning does not amount to "discipline" under the PSR. A warning is a pre-requisite to the institution of disciplinary proceedings for a minor misconduct under the PSR. Regulation 83 provides as follows:

83. (1) A Chief Executive Officer or head of department shall issue an oral warning to a public officer for minor misconduct under regulation 82(1).

(2) If, after the oral warning a public officer's conduct does not improve, the Chief Executive Officer or head of department shall warn the public officer in writing and the public officer shall, in writing, acknowledge receipt of such warning.

(3) The Chief Executive Officer or head of department may copy the warning issued under subregulation (2) to the Ministry.

(4) Subject to subregulations (1) and (2), where a public officer fails to improve his conduct, the Chief Executive Officer may recommend disciplinary procedures as follows –

- (a) the public officer shall be notified in writing of the grounds upon which it is intended that he be disciplined, and he shall be given full opportunity to explicate himself;
- (b) where the public officer fails to respond to the notice under paragraph (a) or acts in such a manner as to obstruct the process, the Chief Executive Officer may report the matter to the Commission pursuant to regulation 81; and
- (c) The Chief Executive Officer shall, as soon as possible, forward to the Commission a report containing the following information –
  - (i) the grounds for disciplinary action;
  - (ii) the public officer's explanation; and
  - (iii) such other reports and documentary evidence relevant to the case.

(5) Pursuant to subregulation (4)(c), the Commission may make a determination on the case in accordance with regulation 82 and apply any of the following measures –

- (a) dismiss the case;
- (b) impose any of the following penalties –
  - (i) caution;
  - (ii) surcharge;
  - (iii) fine; or
  - (iv) suspension of increment; or
- (c) refer the public officer to the following programmes
  - (i) coaching or mentorship programme; or
  - (ii) employee assistance programme under regulation 206

[40] Under Regulation 83, an oral warning and, thereafter, a written warning are mandatory before disciplinary proceedings can be instituted against a public officer. A warning provides public officers with an opportunity to improve their conduct *before* disciplinary proceedings are initiated. It is only where the conduct does not improve that disciplinary proceedings can be initiated. Pursuant to Regulation 83(5), it is the PSC, not the Head of Department, which is empowered to impose discipline where the PSC determines that a public officer engaged in misconduct under Regulation 82. I note that under Regulation 83(5)(b)(i), the PSC can caution a public officer as a means of disciplining the public officer. Despite the Auditor's testimony that Mr. Henry was "cautioned", there is no evidence that a caution as defined in Regulation 83(5)(b)(i) has been issued by the PSC. The warnings issued by the Auditor do not constitute "discipline" by the Auditor. Mr. Henry has never been found guilty of professional misconduct by the PSC, and therefore has not been disciplined on several occasions by the Auditor.

[41] I note the Auditor's submission that Mr. Henry has been disciplined by a former Auditor General. This is irrelevant. It is clear from the press release that the Auditor speaks only about discipline she allegedly imposed on Mr. Henry because the press release speaks of a "personal vendetta" by Mr. Henry against the Auditor. In that context, the words "has been disciplined on several occasions, by the Auditor General, for misconduct on the job" can only be understood as referring to discipline imposed by Mrs. Bradley, and not by the previous Auditor General against whom no "personal vendetta" is alleged.

**Mr. Henry threatened the Auditor in the presence of the PSC by uttering the words "they will pay somebody to hurt her"**

[42] I find that, read in the context in which the words were uttered, it is not true that Mr. Henry threatened the Auditor in the presence of the PSC by uttering the words "they will pay somebody to hurt her".

[43] The transcript of the hearing at which Mr. Henry allegedly uttered these words was provided to the court. Albeit quoted as being "they will pay somebody to hurt her", the

words actually uttered by Mr. Henry are: “they have said that they wouldn’t mind or they were thinking, actually contemplating paying somebody to do something to you”.

[44] To understand who “they” refer to, it is necessary to take a step back and consider the context in which the actual words were uttered by Mr. Henry. Mr. Henry pronounced these words during a disciplinary hearing held by the PSC on 3<sup>rd</sup> March 2016. This was the second of a two-day hearing following a recommendation by the Auditor that Mr. Henry be disciplined for insubordination and rudeness, for aiding, abetting, or inciting major misconduct by another public officer, and for making false claims under Regulations 82(1)(f), (2)(b), and (2)(c) of the PSR. The words complained of are found towards the end of the transcript, immediately following Mr. Henry’s closing statement:

Gerald Henry Jr.: Ladies and gentlemen one other thing that I would like to just throw out and it’s not coming from me; like I said I do not have anything personal or any hatred towards anybody but because of that I have to tell Mrs. Bradley something that somebody had already told me. This forms a part of it and it is not personal. What happened is that someone already said because like I said it is not only me. I am just saying this.

Ray David: What he has to say Mrs. Bradley definitely needs to hear it.

Gerald Henry Jr. She needs to hear it because it is very important that she said it because I personally do not want to see anything like that. I honestly do not want to see it. You have done me a lot of bad thing but I honestly do not want to see something bad like that happened.

Someone had communicated to me confidentially but I have to tell you. They are at the point where they said, it is not part of my closing but I need to tell Ms. Bradley. They have said that they wouldn’t mind or they were thinking, actually contemplating paying somebody to do something to you.

Chairman: Please do not bring that up there.

Gerald Henry Jr.: I am just letting her know that someone told me it didn’t come from me but I just want you to be aware that things



are happening in the Department and you are aware of it.  
I do not need to prove it to anyone.

[45] This excerpt clearly shows that Mr. Henry did not threaten to pay someone to hurt the Auditor. Mr. Henry reported that others, unidentified persons had communicated to him that they were thinking or contemplating paying somebody to “do something” to the Auditor. Mr. Henry did not include himself in that group. It is possible that, given the contentious professional relationship between Mr. Henry and the Auditor, the Auditor perceived these words as a threat by Mr. Henry to her safety. However, considered objectively, these words do not amount to a threat from Mr. Henry to the Auditor. The defence of justification is not available to the defendants because the defamatory statement is not true.

Are the words protected by a qualified privilege?

[46] The Auditor argues that the words in the press release are protected by a qualified privilege. Before considering the privileges raised by the Auditor, it is necessary to first determine whether the Auditor displayed any malice towards Mr. Henry. If malice is proven, then the Auditor is not entitled to the protection offered by any qualified privilege.

1. Were the words published with malice?

[47] Despite finding that the words in the press release are not true, I do not find that they were published by the Auditor with malice. Malice, in the context of a claim in libel, was described by the English Court of Appeal in **Alexander v Arts Council of Wales and another**<sup>12</sup> as follows:

The classic passage from the speech of Lord Diplock in *Horrocks'* case [1974] 1 All ER 662 at 668–670, [1975] AC 135 at 149–150, in which he enunciates the law relating to malice in libel cases, is too well known to require extended citation. For present purposes the essential features are as follows. To entitle a person to the protection of qualified privilege, he has to have a positive belief in the truth of what he published. Such a belief is presumed unless the contrary is proved, and so the burden of establishing malice lies on the person who asserts it, in this instance the claimant. What the claimant has to establish is a dominant and

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<sup>12</sup> [2001] 4 All ER 205 (“Alexander”).

improper motive on the part of the defendant comprising a desire to injure the claimant. This dominant motive can only be inferred from what the defendant did or said or knew. If it is proved that he did not believe that what he published was true, that is generally conclusive evidence of express malice. But a person may have an honest belief in what he publishes despite imperfection of the mental process by which the belief is arrived at. To this may be added the important clarification that, to establish malice, what has to be inferred is the defendant's subjective state of mind and intention (see the passage from the judgment of Hirst LJ in *Loveless'* case, to which I have already referred). There is also the point made by Lord Donaldson MR in *Heath's* case that malice is not to be inferred from the hypothetical untruth of a proposition derived from a misconstruction of a publication. In my view, it is important to emphasise in the present context that the essential question is necessarily one of inference; and that the motive which the claimant has to establish relates to the defamatory publication [emphasis added].<sup>13</sup>

- [48] Mr. Henry did not discharge his burden of proving that the Auditor acted with malice when she published the words complained of. The fact that the words were not true is not conclusive evidence that they were published maliciously; it is the Auditor's *belief* in the truth of the words that is determinative. As explained by Lord Diplock in **Horrocks v Lowe**:<sup>14</sup>

In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be "honest," that is, a positive belief that the conclusions they have reached are true. The law demands no more.<sup>15</sup>

- [49] The burden resting on a claimant to prove malice is a heavy one. As noted in **Horrocks**, judges should be very slow to draw inferences that have the effect of depriving a person of the protection of the qualified privilege:

Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that

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<sup>13</sup> Alexander at para. 34.

<sup>14</sup> [1975] AC 135 ("Horrocks").

<sup>15</sup> Horrocks at 150.

what he said or wrote was true or that he was indifferent to its truth or falsity. The motives with which human beings act are mixed. They find it difficult to hate the sin but love the sinner. Qualified privilege would be illusory, and the public interest that it is meant to serve defeated, if the protection which it affords were lost merely because a person, although acting in compliance with a duty or in protection of a legitimate interest, disliked the person whom he defamed or was indignant at what he believed to be that person's conduct and welcomed the opportunity of exposing it. It is only where his desire to comply with the relevant duty or to protect the relevant interest plays no significant part in his motives for publishing what he believes to be true that "express malice" can properly be found [emphasis added].<sup>16</sup>

[50] I find that the Auditor believed in the words in the press release. Her belief that she had disciplined Mr. Henry by issuing oral and written warnings to him in accordance with Part 10 of the PSR, while mistaken, was genuine. That the Auditor genuinely believed in the truth of her words appears from the following exchange:

Mr. Montero: You would agree with me that it is the Public Services Commission that imposes any disciplinary measure against public officers including the claimant.

Mrs. Bradley: That they impose measures yes.

Mr. Montero: And you will agree with me that the Auditor General by herself cannot impose any disciplinary action against a public officer.

Mrs. Bradley: I would say to you that the Auditor General can based on the Public Service Regulations, that it gives me that right...

Mr. Montero: Ok, miss... miss... Bradley your attorney will clarify any... Ms. Bradley, I put it to you Ms. Bradley that by law, by the Public Service Regulations you as the Auditor General could not discipline the claimant. Yes or no Ms. Bradley?

Mrs. Bradley: I don't agree with you.

Mr. Montero: I put it to you Ms. Bradley, that at the highest, all you could have done is to issue a warning to the claimant and thereafter make a report to the Public Service Commission.

Mrs. Bradley: A warning and a discipline, at this level, I classify the same.

[...]

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<sup>16</sup> Horrocks at 150.

Mr. Montero: Did you provide in your witness statement any evidence where you as the Auditor General personally disciplined the claimant?

Mrs. Bradley: The letters that were submitted.

Mr. Montero: Ms. Bradley, which letters do you refer to?

Mrs. Bradley: Actually, counsel, it would be... No I did not, I saw those letters from Mr. Henry. I think. I believe...

Mr. Montero: Ok that's fine. Did you provide in your witness statement, any factual proof that you as the Auditor General personally discipline the claimant?

Mrs. Bradley: No I'm not seeing any here.

Mr. Montero: Ms. Bradley, even though you did not personally discipline the claimant, you went ahead and decided to write and publish the press release on March 18<sup>th</sup>, 2021.

Mrs. Bradley: No, the witness statement might not have had those copies submitted, but I have those and he was disciplined. Reprimanded, orally and written by me.

Mr. Montero: Ms. Bradley, I put it to you that the statement you made in your press release, that you as the Auditor General disciplined the claimant on multiple occasions, was false.

Mrs. Bradley: I do not agree.

Mr. Montero: Ms. Bradley, I put it to you that in your press release that you made on March 18<sup>th</sup>, 2021, that you published that press release knowing that it was false.

Mrs. Bradley: I do not agree.

Mr. Montero: Ms. Bradley, I put it to you in your press release that you were untruthful to the nation by saying that you have disciplined the claimant on multiple occasions for misconduct on the job.

Mrs. Bradley: I do not agree.

[51] This excerpt and various correspondence entered into evidence show that the Auditor understands that she cannot impose disciplinary measures on a public officer. Only the PSC can do so. However, the Auditor appears to be under the impression that her various interventions to correct Mr. Henry's behaviour throughout the years constitute

“discipline” under the PSR. These interventions include requesting the PSC to institute disciplinary proceedings against Mr. Henry, calling Mr. Henry to her office to warn him orally, and issuing Mr. Henry with written warnings. The Auditor also mentioned that the PSC reprimanded Mr. Henry for his behaviour at the March 2016 disciplinary hearing. While none of these interventions constitute “discipline” within the meaning of the PSR, the Auditor genuinely believes that she has “disciplined” Mr. Henry in the ordinary sense of the word by addressing his alleged misbehaviour in the workplace. The misuse of the word “discipline” does not imply malice on the Auditor’s part.

[52] Similarly, I find that the Auditor genuinely believed that Mr. Henry threatened her at the disciplinary hearing before the PSC. The evidence amply supports that to be the case. In the disciplinary hearing itself, after hearing Mr. Henry’s statement that “they have said that they wouldn’t mind or they were thinking, actually contemplating paying somebody to do something to you”, the Auditor responded: “right now I can say to you that I am perceiving that as a threat because I am doing what I am supposed to do. It is what it is”. The Auditor has consistently expressed and maintained that she considered Mr. Henry’s words to be a threat from the moment those words were uttered.

[53] On 6<sup>th</sup> April 2016, the Auditor reported the incident to the police. The report was made approximately one month after Mr. Henry uttered the words at the disciplinary hearing, and on the same day the PSC issued its decision not to impose disciplinary measures on Mr. Henry. Mr. Henry argues that this delay shows that the Auditor did not genuinely consider the words to have been a threat to her; otherwise, she would have made a police report immediately. In re-examination,<sup>17</sup> the Auditor explained the delay by the fact that she first felt the need to advise the Office of the Prime Minister, the Ministry of the Public Service, and the Financial Secretary that she would make a report. She also sought guidance from the attorneys as to how she should proceed before

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<sup>17</sup> Mr. Henry’s counsel objected to the Auditor being given a chance to explain the delay in re-examination. I dismissed the objection on the ground that the Auditor was entitled to explain her responses to the several questions asked by Mr. Montero about this delay in cross-examination. I note that pursuant to section 66(2) of the Evidence Act, Cap. 95 of the Substantive Laws of Belize, Rev. Ed. 2020, “the re-examination must be directed to the explanation of matters referred to in the cross-examination”.

attending the police station to make a report. In cross-examination, the Auditor resisted any suggestion that she reported Mr. Henry's words to embarrass or humiliate Mr. Henry. She also disagreed with the suggestion that she knew the press release, where it stated that "he went as far as threatening the Auditor General in the presence of the Public Service Commission, by saying that "they will pay somebody to hurt her" during one such disciplinary hearing" was false.

[54] The Auditor did not give me any reason to believe she was not truthful in her testimony before the court. I found her to be a credible and reliable witness. She was calm and composed, and offered candid but thoughtful responses to questions in cross-examination. I accept that she did believe in the truth of the words in the press release.

[55] In submissions, Mr. Montero zoomed in on two inconsistencies between statements made by the Auditor about the incident as evidence of her malicious intent. The first is that the Auditor stated in an interview with KREM TV News, and again in the police report, that Mr. Henry uttered the threat "upon leaving the room". This, according to Mr. Henry, was not true because the Auditor then proceeded to make her closing statement before the PSC. I am not persuaded that the transcript of the proceedings before the PSC is complete. The exchange between Mr. Henry and the Auditor is recorded at pages 46 and 47 of the transcript. The transcript switches abruptly from the conversation about the threat to the closing statement of the Auditor as follows:

Chairman:                      Let's move on

Gerald Henry Jr.:        I was just informing you

Dorothy Bradley:        You do not have to try to patronize me!

**CLOSING STATEMENT BY MRS. DOROTHY BRADLEY, AUDITOR  
GENERAL/PRESENTER**

Chairman and members of the Commission, a case has  
been presented against Mr. Henry [...]

[56] The transcript does not appear to be complete because it does not show the Chairman inviting the Auditor to begin her statement. The abrupt transition between the

conversation about the threat and the beginning of the closing statement suggests that not all of the conversation was captured in the transcript. It is therefore unclear whether anyone actually got up and exited the room at that time. Even if the transcript is complete and does accurately reflect the entire conversation that took place between Mr. Henry and the Auditor, I do not find the fact that the Auditor misremembers some of the details surrounding the conversation to be of any significance. It is not clear to me how the Auditor would gain any advantage by lying about the fact that Mr. Henry's statement was made as they were leaving the room, as opposed to when both were sitting around a table. I do not find this inconsistency, if it exists, to be evidence of malice.

[57] The second alleged inconsistency arises from a confusion on the part of Mr. Henry's counsel. In submissions, Mr. Montero notes that in an interview given to KREM TV News on 18<sup>th</sup> March 2021, the day after the press release was issued, the Auditor answered positively to the reporter's question as to whether she had filed a police report after Mr. Henry had threatened her. Mr. Montero submits this was not true since the police report was filed on 6<sup>th</sup> April 2021, after the Auditor gave the interview. But that is not the case. The police report was not made on 6<sup>th</sup> April 2021, but on 6<sup>th</sup> April 2016. At the time she spoke to the reporter, the Auditor had indeed made a police report, and she was, in fact, truthful in her statement. This explains why the Auditor, in answer to Mr. Montero's questions in cross-examination, hesitated and responded that "the dates look funny here".

[58] Mr. Henry also failed to show that in publishing the press release, the Auditor had a dominant and improper motive comprising a desire to injure Mr. Henry. It is clear that Mr. Henry and the Auditor have had a tumultuous working relationship over the years, including several unsuccessful attempts by the Auditor to have the PSC discipline Mr. Henry. However, the press release was issued immediately following a press conference held by the joint unions in the course of which statements were made as to the Auditor's conduct and performance, and calls were made for her removal. The two-page press release is titled "Auditor General corrects baseless assertions from PSU and APSSM", and is for the most part dedicated to explaining the Auditor

General's role and independence. I find that the dominant motive for the words complained of, read in the context of the press release as a whole, was to frame the PSU's position against the Auditor as being grounded in its president's "personal vendetta" against the Auditor. In my view, the dominant motive for the words complained of was not to injure Mr. Henry personally, but to defend the Auditor in the eye of the public.

[59] Mr. Henry further submits that the fact that the press release and the Auditor's interviews were repeated on several newscasts is further evidence of malice. I disagree. The Auditor explains in her witness statement that she gave interviews to several media houses because she "felt it was important to ensure that I protected the integrity of the Office of the Attorney General and myself after the allegations and aspersions made by the Joint Unions" and that her "intention and reason to issue the press release [...] was to respond for the benefit of the public to the baseless assertions and attacks made to me and the Office of the Auditor General". That the Auditor tried to reach as broad of an audience as possible is consistent with the stated purpose of the press release.

[60] Since I find that the Auditor did not act maliciously in publishing the words complained of, we now turn to the grounds of qualified privilege alleged by the defendants.

2. Were the words published on an occasion of qualified privilege?

[61] Words that are otherwise defamatory may, in certain circumstances, be protected by a qualified privilege. The defence of qualified privilege is described generally in **Halsbury's Laws of England** as follows:

On grounds of public policy the law affords protection on certain occasions to a person acting in good faith and without any improper motive who makes a statement about another person even when that statement is in fact untrue and defamatory. Such occasions are called occasions of qualified privilege. Qualified privileges have been developed by the common law and introduced by statute. The principal categories of qualified privilege are:



- (1) limited communications between persons having a common and corresponding duty or interest to make and receive the communication;
- (2) communications to the public at large, or to a section of the public, made pursuant to a legal, social or moral duty to do so, in reply to a public attack, or in the form of peer-reviewed statements in scientific or academic journals (whether published in electronic form or otherwise);
- (3) fair and accurate reports, published generally, of the proceedings of specified persons and bodies;

Since the common law doctrine of qualified privilege is based on policy, it is not possible to list exhaustively all privileged occasions [emphasis added].<sup>18</sup>

[62] The defence of qualified privilege has long existed in common law. In **Reynolds v Times Newspapers Ltd**,<sup>19</sup> the English Court of Appeal summarized the test applicable to a claim of qualified privilege as follows:

It follows that in our judgment, when applying the present English common law of qualified privilege, the following questions need to be answered in relation to any individual occasion.

**1** Was the publisher under a legal, moral or social duty to those to whom the material was published (which in appropriate cases, as noted above, may be the general public) to publish the material in question? (We call this the duty test.)

**2** Did those to whom the material was published (which again in appropriate cases may be the general public) have an interest to receive that material? (We call this the interest test.)

**3** Were the nature, status and source of the material, and the circumstances of the publication, such that the publication should in the public interest be protected in the absence of proof of express malice? (We call this the circumstantial test.)

We make reference to "status" bearing in mind the use of that expression in some of the more recent authorities to denote the degree to which information on a matter of public concern may (because of its character and known provenance) command respect: see the *Perera case* [1949] AC 1, 21; the *Webb case* [1960] 2 QB 535, 568; *Blackshaw v Lord* [1984] QB 1, 26 and 35; and also the judgment,

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<sup>18</sup> Halsbury's Laws of England, Defamation, Vol. 32 (2023) at 606.

<sup>19</sup> [2001] 2 AC 127.

in chambers, of Eady J in *Youngerwood v Guardian Newspapers Ltd* (unreported) 13 June 1997. The higher the status of a report, the more likely it is to meet the circumstantial test. Conversely, unverified information from unidentified and unofficial sources may have little or no status, and where defamatory statements of fact are to be published to the widest audience on the strength of such sources, the publisher undertakes a heavy burden in showing that the publication is "fairly warranted by any reasonable occasion or exigency". In *Blackshaw v Lord* [1984] QB 1, 27, Stephenson LJ gave some examples which put the requirement quite high:

"There may be extreme cases where the urgency of communicating a warning is so great, or the source of the information so reliable, that the publication of suspicion or speculation is justified; for example, where there is a danger to the public from a suspected terrorist or the distribution of contaminated food or drugs; but there is nothing of that sort here."

So far as malice is concerned it is important to bear in mind the heavy burden resting on the plaintiff, as authoritatively stated by Lord Diplock in *Horrocks v Lowe* [1975] AC 135.

- [63] The defendants submit that the Auditor, as a constitutionally appointed office that has a mandate to be impartial and to perform independent auditing of all public offices and institutions, and audit of accounts of all public property for the benefit of all Belizean people, had a social, legal, and moral duty to respond to the joint unions and to provide comments on the functions of her office, respond to criticisms, and defend her constitutionally appointed office. The defendants also say that the words complained of were a matter of public interest and were made in reply to an attack. The day before the press release, the joint unions held a press conference on matters of public interest and called for the removal of the Auditor, commenting that her office has, in the execution of its duties, "failed miserably". The words complained of were not stated in isolation, but rather as part of the Auditor's statement which included commentary and background as to the reason for the making and the publication of the press release. The words were connected to, relevant, and germane to the subject matter of the press conference made by the joint unions on 17<sup>th</sup> March 2021 where the PSU's spokesperson attacked the Auditor's character in the conduct of her affairs. The words complained of were meant as a reply and rational explanation to the general public as to the potential reasons why the joint unions have asked, in the public sphere, for her removal.

[64] I find that the words complained of are not privileged on the ground of any social, legal, and moral duty, or as being in the public interest. While I agree that the press release itself was made in furtherance of such a duty, and was in the public interest because it sought to clarify the role of the Auditor General and rectify some alleged misinformation spread by the joint unions, I do not find Mr. Henry's alleged "personal vendetta" against the Auditor, and his employment record, to be necessary or relevant to the Auditor's discharge of her duties, or in the public interest.

[65] I do, however, find that the words complained of are privileged on the ground that they were made in response to an attack. The court was presented with a partial transcript of the joint unions' press conference held on 17<sup>th</sup> March 2021. The transcript shows that the spokesperson for the PSU, Dean Flowers, stated the following:

I received a message this morning asking "why would you call for the removal of the Auditor General?"

My response was, when last have you seen an audit report out of the lands department which from 2008 when the Barrow administration took over, we have been hearing has been the hottest bed of corruption.

We know that every year somebody in the treasury department get ketch the pay dead people pension. Why hasn't that loophole been plugged? We talk about ghost workers on the pay roll. Who is auditing the government staff list? Who is auditing the government's pay roll? [...]

You have dead people not only on government pension but also dead people collecting salary every fifteenth (15<sup>th</sup>) and ending. That's the role of the Auditor General, that da wih last back stop.

And we always here (*sic*) the excuses well we nuh have this or we short of that, that's neither here nor there, you are being paid to do a job.

I can come up with all kind of government ministries in which we know that there is breaches or loopholes.

The Tax department. When last have we seen an Auditor General report that addressed the Tax department? We are 467 million dollars in arrears of which I believe 167 million is current arrears, with penalties and interest. Where is the Auditor General?

I won't be caught up in an immigration Auditor General report which yielded, which did not hold anyone accountable.

I am saying let's get serious, you have held the position, you have failed, you have failed miserably in my humble opinion and so the Joint Unions after deliberation decided that it's time for the Auditor General to go.

[66] Mr. Henry introduced into evidence a news article summarizing what transpired at the press conference held on 17<sup>th</sup> March 2021. The news article states as follows:

During his presentation, Flowers [the PSU's spokesperson] also called for the replacement of the Auditor General, Dorothy Bradley, and the Governor of the Central Bank, Ambassador Joy Grant. He claimed that these individuals also failed to carry out their responsibilities, which are a fundamental part of their specific posts.

The Auditor General was appointed on September 1, 2011, but according to the PSU's Vice President, over the past 10 years during which she has held the post, she failed to carry out audits of certain high risk Ministries and statutory bodies receiving government funds.

One example that Flowers cited is the proverbial "hotbed of corruption" alluded to by former Prime Minister, Dean Barrow. Flowers questioned why a full audit hadn't been done in that department since 2008 when a fire sale of government assets that had been carried out under the previous PUP administration came to light.

[67] That the Auditor perceived the statement made by the joint unions in their press conference as an attack on the Office of the Auditor General is supported by the evidence. The press release itself is replete with mentions of "attacks". In her interview to Plus TV News, the transcript of which is exhibited to Mr. Henry's witness statement, the Auditor reiterated that she considered the statements made by the joint unions at the press conference as an attack, stating:

I view it as an attack, but any attack on Dorothy Bradley would be ok. It is something that maybe I would ignore, but when you talk about the Office of the Auditor General then it is a direct assault and one that must be addressed. So yesterday yes, I was kinda really shocked when I heard that part because it was clipped and sent to me and when I reviewed what was said I realized that from the onset this had to be from an ongoing, an old issue that we've had in the office over a period of time.

It isn't the first time as I've said in the release, that they've made this attack and they have also demanded, really demanded that I be fired.

The constitution made provisions for that, as I have stated, so for me that is not a concern. If you question the work I do, then you have to justify exactly and

explain what is it you want to know and then come to me and let us discuss. It never happened.

As a matter of fact, as late as last week Wednesday, I was in a meeting with the APSSM and we never, at least, the president never made any revelations as to this kind of attack against any public officer for that matter.

So where it is coming from clearly there has been an old issue, one that, I guess has not been addressed to their satisfaction and it would appear that their satisfaction would mean that my not being in that office; but that is not their call.

- [68] A defamatory statement made for the purpose of protecting a person from an attack on their reputation is qualifiedly privileged. The privilege extends only so far as to enable that person to repel the charges brought against them.<sup>20</sup> In **Joseph v Partap and Daily News Ltd**,<sup>21</sup> Jamadar J. (as he then was), summed up this qualified privilege as follows:

The authors of *Gatley on Libel and Slander* point out that the law recognizes that a person whose character or conduct has been attacked is entitled to answer such attack, and any defamatory statements he may make about the person who attacked him will be privileged, provided they are published bona fide and are fairly relevant to the accusations made. Thus, where there has been an attack, a person enjoys qualified privilege to answer the charge, once he responds in good faith, with the intention of repelling the attack, and what he says is fairly an answer and it is done without malice. Such a reply is privileged, even if it is false. In such a reply, a defendant 'is not required to be diffident in protecting himself and is allowed a considerable degree of latitude in this respect.' Thus, attacking the credibility of one's opponent in legitimate self-defence is acceptable, whereas mere retaliation which is neither an answer nor an explanation is not. In answering an attack on conduct or character which has been made in the public media, a person is entitled to have recourse to the public media in his or her defence, and if relevant defamatory statements are made about the attacker, such statements are *prima facie* privileged.

- [69] In **Watts v Times Newspapers Ltd and others**,<sup>22</sup> the English Court of Appeal specified that "where the original defamation has been published in the national media

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<sup>20</sup> Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 269.

<sup>21</sup> (2007) High Court, Trinidad and Tobago, No CV 2005–00437 (unreported), cited in Gilbert Kodilinye, *Commonwealth Caribbean Tort Law*, 4th ed., 2009 at 270.

<sup>22</sup> [1997] Q.B. 650, citing *Laughton v Bishop of Sodor and Man* (1872) L.R. 4 P.C. 495.

the same readers or listeners will generally have a sufficient reciprocal interest to receive the refutation by the person defamed”.

[70] The Auditor did not act maliciously in publishing the words complained of because she believed them to be true. The joint unions, and more specifically the spokesperson for the PSU, attacked the Auditor by criticizing her conduct and calling for her removal from office. The law allowed the Auditor to respond to the attack as she did. The Auditor responded that the president of the PSU had a “personal vendetta” against her in order to explain to the public why the PSU would criticize her conduct and call for her removal. The Auditor supported her allegation of a “personal vendetta” with facts she believed to be true. That they were not is immaterial to the availability of the defence of qualified privilege; in fact, it is its very *raison d’être*. The Auditor’s response was proportional to the attack and did not go further than necessary. Further, the Auditor did not act maliciously by publishing her press release in the media and giving media interviews, as the public had been made aware of the joint unions’ statement through these same media.

[71] For these reasons, I find that the defence of qualified privilege succeeds on the grounds of reply to an attack.

[72] Mr. Henry’s claim is dismissed.

**IT IS HEREBY ORDERED THAT**

- (1) The claim is dismissed.
- (2) Costs are awarded to the defendants.

**Geneviève Chabot**  
High Court Judge