[2024] **JMSC Civ 68**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO.SU2021CV01544**

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|---|---|---|
| **BETWEEN** | **DAYTON CAMPBELL** | **CLAIMANT** |
| **AND** | **KAREN CROSS** | **1st DEFENDANT** |
| **AND** | **NATALEE STACK** | **2nd DEFENDANT** |
| **AND** | **MICHELLE STERN** | **3rd DEFENDANT** |

Miss Stephanie Williams and Miss Arianna Mills instructed by Henlin Gibson Henlin for the claimant

Miss Karen Cross the 1st defendant appearing in person

Mr Keith Bishop instructed by Bishop & Partners for the 2nd defendant

Miss Michelle Stern the 3rd defendant appearing in person

**Heard: May 26, 2023, July 7, 2023, October 11, 2023, and June 21, 2024**

*Defamation - Application to strike out defence for failure to comply with a court order-CPR 26.3(1)(a) - Application to strike out defence for failing to disclose reasonable grounds for defending the claim - CPR 26.3(1)(c)-*

*Whether application to amend defence should be granted - CPR 69.3 -The defences of Truth, Fair Comment, Innocent Dissemination and Qualified Privilege -The Defamation Act 2013*

**IN CHAMBERS**

**CORAM: JARRETT, J**

**Introduction**

**[1]** The claimant is a medical doctor, the General Secretary of the People's National Party (PNP) and former Member of Parliament for the constituency of North West St Ann in the parish of St Ann. He claims that the defendants published defamatory words in relation to him, using electronic mail (email), and the social media platforms YouTube and Facebook. In the application before me, filed on March 28, 2022, he asks that the defences of each of the three defendants be struck out; that judgment be entered against them and that damages be assessed. He also seeks a permanent mandatory injunction directing the removal of the social media posts which allege sexual misconduct by him, and a prohibitory injunction, prohibiting further publication of the same or similar allegations of sexual misconduct.

**[2]** The defendants oppose the claimant's application, and in the case of the 3rd defendant, she filed an application requesting permission to amend her defence and simultaneously filed an amended defence. That application is also before me. A review of the claim, the defences and the procedural history of these proceedings will be helpful in determining the issues that arise on the applications.

**The claim**

**[3]** In his claim form filed on March 29, 2021, the claimant describes the 1st defendant, Karen Cross as a political activist, the 2nd defendant Natalee Stack as a blogger and the 3rd defendant Michelle Stern as a businesswoman. He claims that: "on divers days over the period March 16, 2021, and March 27, 2021, and continuing", they created and published letters, and /or emails, and or Facebook live

**[4]** videos and/or Facebook posts and /or YouTube videos which contained words defamatory of him, as a result of which, he suffered injury, loss and damage. He claims damages, aggravated damages and/or exemplary damages, interest pursuant to section 3 of the Law Reform (Miscellaneous Provisions) Act and costs.

*The allegations against the 1st defendant*

**[5]** In paragraph 10 of his particulars of claim, the claimant claims that on March 18, 2021, the 1st defendant published to approximately 70 persons, a letter dated March 16, 2021, which mentioned and referred to him and was defamatory of him. In paragraph 11, he says that the letter was addressed to the Executive Members of the PNP and contained the following words: -

> "The People's National Party currently has as its general secretary …amoral vermin of a human being in the form of comrade Dayton Campbell. His election to this high office has done nothing but show us up as a party where individual loyalty takes precedence over decency and a moral compass. Comrade Campbell is an unbridled, disgraceful libertine, who is undoubtedly a serial pedophile.
>
> Comrades, I want you to understand that it's hard to overstate just how dangerous Dayton Campbell is to the party, young girls and the country.
>
> But you must also know that the insistence of the newly minted party leader to push to have comrade Campbell serve as general secretary against all warnings he received; firstly makes it even more dark in the moral sphere, and secondly makes the party leader complicit for aiding and abetting a known pedophile.
>
> It is said you must never judge a book by its cover, but for Dayton Campbell we can make an exception…One good look at this guy, and it's easy to size him up as a low life, sketchy, creep.

He went ahead and announced to the public his intentions to have this morally unfit, loudmouth, riff raff to be our general Secretary.

Comrade Dayton Campbell came on the political scene like all charlatans throughout history …an unabashed demagogue, with a silver tongue …blowing so much smoke up everyone's ass you simply could not see him for what he is. This loudmouth, attention grabbing, bible quoting, bully mama referencing, cad.

…/Dayton Campbell …World class champion bhuttu.

…and like all serial rapists, con artists, and self-important political upstarts…he did not disappoint … he did what all neva si come si would do. Exploit, rape, victimize, defiled, polluted this once pristine constituency, he followed that path to a T.

As MP for North West St. Ann… his troubled soul met his impulses, his impulses met his new power over people's lives, his power over people's lives met his sick mind, his sick mind met R Kelly, and all that electricity became lightning in a bottle.

From the get go comrade Campbell used the taxpayers money allocated to constituencies to lure underage girls in his harem. It was sex for school fees, sex for help setting up a business, sex for book vouchers, sex for Christmas work, and if you truly want hard cash,… bring a friend or two and make an orgy of it.

Throughout his tenure as member of parliament, he used his influence and power to hold the young girls of the constituency hostage. No sex, no help…from taxpayers money.

My information is that he may have even violated the law in a sexual assault on a young child, and may have committed rape…since the alleged victim was 14 years old at the time...

Psychologists concluded that a serial pedophile is not mentally ill. “Research indicates a dichotomy between the “situational” and the “preferential” serial pedophile. Dayton Campbell is a preferential serial pedophile.. Preferential pedophiles are considered to be intellectually brighter, more likely to be of a higher socio economic status, possess some kind of power over their victims, are more compulsive, show a stronger preference for certain prospective victims, show greater grooming behaviors, …that ranges from threats, and charm, to desire.

They are “ego-syntonic (relatively comfortable this way)”…this is a passage from Richard Kesinger, a psychologist who did an entire series on this subject after the Jerry Sandusky case in relation to the Penn State sexual abuse scandal.

I am going to address at least one more soon since the party leader is on a path of elevating serial sex offenders.

Comrade Campbell’s debauchery was on a scale of wanton, despicable display of a pedophile who is unstoppable because of his prestige and power. Any psychologist will tell you that a sick pedophile is really bad, but a sick pedophile with power is dangerous. So since the party leader elevated him and gave him the keys to the hen house…we can only imagine what he can do.

We have always selected people with high integrity, people with character and competence as much as for their high moral standards and their ability to command respect from the country and within the party. We have been good at this …until now.

He lacks the competence, the integrity and the moral high ground to continue as general secretary for the people’s national party.

> As executive members I am asking you to place the general secretary on suspension until a thorough investigation is done into his conduct when he was a member of Parliament for NW St Ann…specifically into the alleged sexual assault of a 14 year old child.
>
> Comrade Campbell is the most unqualified, unsuitable, morally compromised individual to have ever held this office".

**[6]** The claimant alleges that the aforesaid letter was distributed in Jamaica and worldwide by email and on social media including Facebook. He claims further that the 1st defendant was motivated by malice as the intended effect of her letter was to: "create the impression that the Claimant lacks the ability and competence to hold the position of General Secretary of the PNP because of his immoral and unethical character".

**[7]** In paragraphs 34 and 35 of his particulars of claim the claimant says that the 1st defendant did not offer an apology or retraction when his attorneys-at-law wrote to her in a letter dated March 23, 2021. Instead, the 1st defendant repeated the allegations on her Facebook page on March 24, 2021, and March 27, 2021.

*The allegations against 2nd defendant*

**[8]** In relation to the 2nd defendant, the claimant claims in paragraphs 15 and 16 of the particulars of claim that on March 19, 2021, she and the 1st defendant published or caused to be published on her Facebook live, a live video of an interview purportedly concerning the 1st defendant's letter of March 16, 2021. In doing so, both the 1st and 2nd defendants repeated the allegations in the said letter. According to the claimant, although his name was not mentioned in the interview, both defendants referred to the "accused" in the letter of March 16, 2021, which was directly referable to him.

**[9]** In paragraph 17 of the particulars of claim, he contends that during the said Facebook live interview, the 1st and 2nd defendants published the following words in relation to him falsely and maliciously, knowing them to be false: -

> "Karen Cross:…and all of these young ladies know that they can trust me because I will never reveal their names or their locations …one person sent me this thing about how I could have handled it better because this now would destroy his professional and political life. I don't give a fuck about his professional and political life. I care about the young ladies who are hurting, they are psychologically damaged, they are traumatized the internal pain that they live with every day…and you're talking to me about his career this is not about him…I said any place he wants to take it is fine with me…the Jamaican judges these days are not kind to well-to-do who molest young teenage girls.
>
> Karen Cross:…there is not one officer in the PNP officer corp, presently nor previously who can deny that these things have been going the rounds for a while…and anybody who tell you that they have done investigation and find out that him never do nutn is a damn lie, they might not have the facts they might not be able to put a face to sumn but they know
>
> Natalee Stack: How are they doing, these young women.
>
> Karen Cross: About 2 or 3 of them are doing well in their lives. One in particular is having a really hard time she is the one that the CDA and them have to deal with…she is going to be ok and not to make her forget that she did nothing wrong and that a wrong was done to her that she never had any control over".

**[10]** The claimant further alleges in paragraph 24 that on March 20, 2021[1], the 2nd defendant published another live video on her Facebook page with the heading: "Why It Would be wise for the PNP to dismiss Dayton Campbell as General Secretary". He alleges that the 2nd defendant repeated the allegations made by the 1st defendant in her letter of March 16, 2021, and said that he was guilty of those allegations. He pleads that she then published the following words concerning him and did so falsely and maliciously, knowing them to be false: -

> "For those of you who missed last night yesterday Ms Karen Cross who has been in politics…write letter to the PNP executive asking them to do some kind of investigation against the General Secretary of the PNP. That letter went viral and when I saw the letter I invited her … the letter was scathing it made allegations of serious paedophilia against the Gen Sec. It was very dark. The letter painted a very dark picture of this person this human being so I invited her on and she came on and she told everything that she said…he hasn't said anything, no legal representation on his part to defend himself and to dispel these claims against him so what I say…the PNP to save its image to save its brand to put it in place of less controversy…they have to dismiss this man they have to dismiss him because he is casting a negative shadow on the party and the defamation he hasn't said anything to defend himself …I share a letter I wrote and posted on my page this morning…thank you for sharing what you know and I hope justice is served, it was hard to hear and I am so sorry for the girls involved I know that sexual abuse leaves a scar that does not go away…before I go on I want to share my experience of evil with the accused. Two years ago he was Bunting's campaign manager, they recruited a blogger to launch a vicious attack on me because I supported Dr Peter Phillips …they attempted to slander me by creating a rumour that I was a paedophile. I have every reason to believe

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[1] The date in the pleadings is March 20, 2020, but I accept that this is a typographical error.

the evil Ms Cross outlined in her letter to the PNP executive yes I believe her…I mean I am not going to come out here and giving out evidence that is not my job to do as somebody who has experienced they are wicked, evil, conniving, hostile, don't understand boundaries and because of that I believe Karen Cross. I believe that Karen knows people who fell victim to them or him I do believe her only God can come down and tell me that it don't go so.".

**[11]** In response to a letter of demand dated March 23, 2021, from his attorneys-at-law, the claimant claims that the 2nd defendant posted a Facebook live video on her Facebook page refusing to remove the video and / or apologise contending that persons known to the claimant were bullying her. He alleges that the words in the live Facebook videos published on March 19, 2021, and on March 20, 2021, were calculated to disparage him and to question his ethics and competency in his professional capacity and as a political figure. He claims that the intended effect was to tarnish his reputation both as a political figure and an accomplished medical doctor. He says the words referred or were referrable to him and were understood to mean that: -

a) he has psychologically damaged and traumatized young girls from his constituency in North West St Ann;

b) the psychological damage and trauma suffered by young girls was a result of him engaging in sexual intercourse with them for reward or favour;

c) he has a continuous desire for young girls;

d) he molests young girls;

e) it is a known fact that he molests young girls in his constituency and;

f) he took advantage of young girls in his constituency in exchange for sexual favours.

*Allegations against the 3rd defendant*

**[12]** With respect to the 3rd defendant, the claimant contends at paragraph 20 of the particulars of claim that on March 19, 2021, she published the 1st defendant's March 19, 2021, Facebook live , on her YouTube page and informed him by WhatsApp that she would be publishing it to all members of Parliament, all Senators , all members of the PNPYO, Region, Patriots , Women's Movement and Beverly Manley Duncan. She also informed him that she intended to send other letters to the United States Embassy, the British High Commission, the Canadian High Commission, and the European Union. In paragraph 23 he alleges that the 3rd defendant informed him in the said WhatsApp message, that she will continue to publish the Facebook live unless he resigns from his position as General Secretary. She also prepared and sent him a resignation letter for his signature. In paragraph 37, he says that in response to the demand letter from his attorneys-at-law, the 3rd defendant refused to apologise or take down the YouTube video.

**The defences**

*The 1st defendant*

**[13]** The 1st defendant's defence was filed on May 13, 2021. In paragraph 9 she admits to writing the letter of March 16, 2021, and to publishing it as alleged. She however denies that the imputations contained in the letter were defamatory because they were: "true or not materially different from the truth and/or consisted of fair comments". She states further that she relies on statements given to her and witnessed by Justices of the Peace which speak to all the imputations concerning the claimant and which form the basis of the statements and opinions contained in her letter. Three typewritten statements with the names and signatures of the alleged writers redacted are attached to the defence and are referred to by the

defendant in paragraph 9, as the statements she relies on to support her defence of truth and fair comment. The statements are dated March 1, 2021, March 12, 2021, and March 18, 2021, respectively. They bear the signatures and names of persons who identify themselves as Justices of the Peace, each of whom signed to a typewritten notation on each statement to the effect that the writer's identification had been seen. All three statements indicate that the claimant had sexual relations with the writer. In one case, the writer states that she was 14 years old at the time, while in the other two cases, each writer states that she was 15 years old at the time of the sexual encounter. Save for stating that the claimant gave money to them or their families all the time, and that he helped their families, none of the statements make reference to any of the other allegations in the 1st defendant's letter.

**[14]** The 1st defendant admits that on March 19, 2021, she and the 2nd defendant published a live video on the 2nd defendant's Facebook page, in which she was interviewed by the 2nd defendant concerning her March 16, 2021, letter. She also admits that the reference to the "accused" during that live video was a reference to the claimant. She denies that she was motivated by malice and that the statements made by her were false. She admits that she refused to either retract her statements or issue an apology to the claimant and further admits to repeating the allegations on March 24, 2021, and on March 27, 2021, on her Facebook page. She denies the statements made by her are defamatory and says that they are true or materially true and are also fair comment. In support of this posture, she relies on the three typewritten statements attached to her defence.

*The 2nd defendant*

**[15]** The 2nd defendant filed a defence on May 27, 2021. In paragraph 9 she admits to publishing on March 19, 2021, the live video referred to by the claimant in paragraph 15 of the particulars of claim. She contends however, that to the best of her knowledge, the allegations in the 1st defendant's March 16, 2021, letter were not repeated during her interview with the 1st defendant. She does not deny or

admit the allegations made by the claimant that although his name was not mentioned during the interview, the reference to the "accused" in the 1st defendant's letter, was directly referrable to him, as she says she does not recall. In paragraph 11 of her defence, she admits to publishing with the 1st defendant the words referred to in paragraph 17 of the particulars of claim, but says she does not accept the claimant's allegation that the words were published falsely and maliciously, knowing them to be false, because, according to her: " I do not know whether they are true". She denies the interpretation placed by the claimant on the words published and says the interpretation is: "his own".

**[16]** The allegation that she published a live video on her Facebook page on March 20, 2021, is admitted, however, the 2nd defendant pleads that it was her opinion that it was in the best interest of the PNP that the executive dismiss the claimant. She however denies that during that publication she repeated the allegations made by the 1st defendant. At paragraph 18 of her defence is the following response to paragraph 26 of the particulars of claim, in which the claimant alleges that the words published by her on her live video on March 20, 2021, were done falsely and maliciously, knowing them to be false: -

> "Paragraph 26 of the Particulars of Claim is denied. The Claimant either did not quote me accurately, inserted words I did not say, or omitted words I said for clarity. For example, where the Claimant quoted, "I invited her on and she came on and told everything that she said" {in the letter}. That statement is false. I did not say that. Neither did I say something about the Claimant as a statement of fact, in an accusatory manner, or with malicious intent Where the Claimant said I thanked the 1st Defendant for sharing what she knows…I **admit.** As a parent and member of society I believe if someone suspects or knows of abuse especially against children, the matter should be reported to authorities for investigation and where there is guilt justice should be served. It was my opinion. No assertion guilt or malicious intent to harm Claimant."

**[17]** The 2nd defendant denies that she intended by the publications, to disparage the claimant and to destroy his reputation. She says she did not apologise and/or remove the live videos because she did not defame him. She says at paragraph 23 of her defence that: "I did not accuse the Claimant of the allegations, repeat the allegations or commit malicious intent."

**[18]** On October 27, 2022, after the claimant's current application was filed, the 2nd defendant filed an amended defence. No application was made seeking the court's permission to do so. In that amended defence, she pleads the defence of truth and says that before the interview the 1st defendant told her that she had personally spoken to three young ladies who reported their unwilling sexual contact with the claimant who was approached to help them with school fees. They later gave voluntary statements to two Justices of the Peace. She alleges that the claimant did not object to the social media posts before November 2020 and that her interview with the 1st defendant was aimed at disseminating information to the public as a Blogger. She thought the information was true as allegations that the claimant had sexual contact with underage girls had been on social media for many years. She says that at the trial, the Justices of the Peace will be called to give evidence concerning the circumstances surrounding the taking of the statements.

**[19]** The 2nd defendant further alleges in her amended defence that the reference to the claimant as: "the accused" meant she had not passed judgment on him and therefore was fair comment as there was no malicious intent on her part. According to her, any comment made by her during the interview with the 1st defendant were made in her role as journalist and Blogger in good faith and in the exercise of her constitutional right to freedom of speech. She relies on the defence of qualified privilege and denies that the words used in the interview bear the meaning alleged by the claimant. She denies that in the Facebook live video on March 20, 2021, she said that the claimant was guilty of the allegations in the 1st defendant's letter of March 16, 2021, or any words that could convey that meaning, and it was on her lawyer's advice that she did not apologise.

*The 3rd defendant*

**[20]** In her defence filed on May 13, 2021, the 3rd defendant says that she was neither the author nor the originator of either the letter dated March 16, 2021, or the Facebook live video. She denies the meanings attributed by the claimant to the words published by her and the 1st defendant during the March 19, 2021, Facebook live video. She admits to converting the 2nd defendant's Facebook live video of March 19, 2021, to her YouTube account and says that she converts all the 2nd defendant's Facebook live videos and so there was nothing sinister about the conversion of the March 19, 2021, video. She admits that on March 19, 2021, she forwarded to the claimant by WhatsApp, the letter: "purported to be written by the 1st defendant" but denies telling the claimant that she had published the Facebook live video to the PNPYO, Region, Patriots and Women's Movement. She also denies having a personal vendetta against the claimant and denies that in sharing the Facebook live video she was motivated by malice.

**[21]** The 3rd defendant pleads that she did not remove the YouTube converted Facebook live video because the letter from the claimant's attorneys-at-law demanding its removal falsely stated that she was the author of the March 16, 2021, letter and the Facebook live videos, and that the latter contained allegations made in the said letter. She therefore had no cause to comply with the letter. She relies on the defence of innocent dissemination in sections 22(1), 22(4) and 22(5)(e) of the Defamation Act 2013 ("the Act") and contends that she was a secondary publisher under section 22 of the Act. She asks to be removed as a party to the claim. She also says that since the 1st defendant's letter of March 16, 2021, was published before the Facebook live video on March 19, 2021:

> "…any allegations of defamation contained in the said Letter, was already known to the recipients of the email, prior to the publishing of the 2nd Defendant's Facebook Live on 19 March 2021, at around 8PM and the sharing by me, and others, hence the live was secondary publication to them, under section 22(1), (4) and (5) (e) of the Defamation Act 2013".

In closing, the 3rd defendant says that nothing in her defence is to be taken as admitting the accuracy of the transcription of the Facebook Live of March 19, 2021.

**[22]** In her amended defence filed on April 28, 2023, the 3rd defendant adds that she denies that the words used in the Facebook live video were directly referrable to the claimant. She asserts that the statements made by the 1st defendant during the Facebook live interview were her opinion. She denies that the 2nd defendant repeated the allegations in the 1st defendant's letter, states that the opinions expressed during the said interview were fair comment and says that the words are not defamatory of the claimant. She also denies that in the Facebook live video or the YouTube video, the claimant was referred to as a serial paedophile and adds that she relies on the defence of truth based on the statements attached to the 1st defendant's defence. Also added are the following averments at paragraph 14: -

> "14. I contend that the meaning to be attributed to the words complained of in paragraphs (sic) 17 is that they represent the opinion of the 1st Defendant who said that-
>
> a) She promised not to reveal the identity and location of those women who entrusted information to her;
>
> b) And opined that women who are victims of rape suffer real pain and fear, for which we should be more concerned about, than any consequence which may befall the perpetrators;
>
> c) She believes that the women, in seeking justice, is unlikely to be denied by the Jamaican courts, particularly if an abuser is powerful and wealthy;
>
> d) And that three such women are recovering from the trauma they experienced and doing well, while a fourth is being handled by the CDA.

e) It is to be noted that no women or perpetrators were identified or capable of being identified in the words complained of."

**Orders of Hart-Hines and Stamp JJ**

**[23]** On an application for injunctive relief against the defendants filed by the claimant on March 29, 2021, among the orders made by Hart Hines J(Ag), as she then was, on April 1, 2021, were the following: -

1. "An injunction that the 1st defendant her servant and/or agents are required to take down all Facebook and other social media posts relating to the Claimant and allegations of sexual misconduct and in particular posts made by the 1st Defendant on the 24th 27th and 28th March 2021.

2. An injunction that the 2nd Defendant her servant and/or agents are required to take down the following videos posted, and/or uploaded to the 2nd Defendant's Facebook and any other social media page(s):

    a. "Jamaican Matters" accessible at URL https://www.facebook.com/100057067312530/videos/2112226706789975/

    b. Why It Would be wise for PNP to dismiss Dayton Campbell as General Secretary" accessible at URL https://www.facebook.com/nicola.stack.564/videos/212000430712199

    c. https://www.facebook.com/100057067312530/videos/2161511769639791/

3. An injunction that the 3rd Defendant her servant and/or agents are required to take down the following videos posted and/or uploaded to the 3rd Defendant's YouTube page and/or other social media pages:

a. Jamaican Matters “Scathing Letter to the PNP Executive from Karen Cross which is accessible at https://www.youtube.com/watch?v=jQ11DRKPleQ.

b. Jamaican Matters: Why it would be wise for PNP to dismiss Dayton Campbell as General Secretary which is accessible at URL https://www.youtube.com/watch?v=5yP0tTjnqn8

c. Natalee Stack NO Apology which is accessible at URL https://www.youtube.com/watch?v=HF24QCQaTCo

4. The Defendants their servants and/or agents are restrained from uploading, publishing or communicating the videos and Facebook or other social media posts at Orders 1-3 above as well as any further words of the same or similar content as that of the videos and posts that are the subject of this order”.

**[24]** On July 22, 2021, Stamp J found that the 1st and 2nd defendants were in contempt of the Hart Hines J’s orders, and he made the following declaration and orders: -

1. “A Declaration that the 1st and 2nd Respondents committed contempt of Court by disobeying orders 1-4 of the orders of the Honourable Ms Justice Hart-Hines made on April 1, 2021.

2. The 1st and 2nd Respondents are to pay a fine of Seven Hundred and Fifty Thousand Dollars ($750,000.00), which is to be paid into court as security for good behaviour within fourteen (14) days of the date hereof failing which the 1st and 2nd Respondents be committed to prison for contempt of court for a period of six (6) months.

3. Costs to the Applicant to be taxed if not agreed.

4. Permission to appeal is granted”.

**The claimant's application**

**[25]** In the claimant's 1st Further Amended Notice of Application filed on March 28, 2022 (as amended by counsel during oral arguments), he seeks the following orders:

1. "The 1st, 2nd and 3rd Defendants' statement of case are struck out.
2. Judgment is entered against the 1st, 2nd, and 3rd Defendants.
3. An injunction requiring the 1st, 2nd and 3rd Defendants, their servants and/or agents to take down all Facebook and other social media posts relating to the Claimant and allegations of sexual misconduct and in particular posts made by the 1st Defendant on 24th, 27th, 28th March 2021 and 12th March 2022.
4. An Injunction restraining the 1st, 2nd and 3rd Defendants, their servants and/or agents from uploading, publishing, or communicating by social media or any other media any further words of the same or similar content relating to the Claimant and allegations of sexual misconduct.
5. Damages to be assessed.
6. Costs to the Claimant to be agreed or taxed.
7. Such Further and/or other relief as this Honourable Court deems just".

**[26]** The claimant grounds his application on the basis that the 1st and 2nd defendants have failed to comply with the orders of Hart Hines and Stamp JJ, and that they continue to make defamatory statements about him on the internet and mainstream media. He also invokes CPR 26.3(1)(b) and 26.3(1) (c) and contends that the defendants' defences disclose no reasonable grounds to defend the claim.

*The evidence in support*

**[27]** In his affidavit filed on March 25, 2022, the claimant says that the 1st defendant breached order number 4 of Hart Hines J's orders when on March 12, 2022, she published a video on Facebook making further allegations of sexual misconduct by him. He says the following defamatory comments were made by the 1st defendant in that video: -

> "…I reported Dayton Campbell to the People's National Party in a private letter to [John Jnr] to say to him Dayton Campbell is a known paedophile. Many ah unnuh watching this video knows it. All of St Ann Knows it. Most of the hierarchy and leadership of the PNP knows it. He is. That is what he's been doing since he became Member of Parliament in Northwest St Ann. And no matter what nobody says, that is a fact, and we talk bout it.
>
> …
>
> Dayton Campbell have absolutely nowhere to go but down and away. He will never see the House of Parliament again as long as he live, I give you my word".

According to the claimant, at the time of making his application, the video was still on the PNP Resistance Facebook page and had over 2000 views and 35 comments.

**[28]** The claimant also exhibits to his affidavit a statement from the Jamaica Constabulary Force ("JCF") on their investigations into the allegations made against him. The statement reads in part as follows: -

> "After extensive investigations into the claims that were made by Karen Cross via social media made against Dr Campbell, the Police have found no basis to the allegations that were made. Although a formal statement was given by Ms Cross, she provided no evidence to substantiate the claims

that she made, nor was she able to provide any person interested in making a complaint against Dr Campbell.

Neither Ms Cross nor anyone else provided anything that could establish the allegations as credible. As such, the investigation into this matter has come to a natural end. However, if Ms Cross or any other person wishes to provide credible information about this matter at a later date, we are willing to reopen our investigations."

**[29]** In an affidavit of Shawn Wenzel ("Mr Wenzel'), Information Management Consultant, filed on June 2, 2021, he says that on or about March 2021, he was retained by the claimant to monitor and preserve defamatory posts made by the defendants on Facebook, YouTube and on other media. He describes himself as: "an eForensics expert" and says that he continued to monitor posts relating to the claimant and the allegations of paedophilia made against him, as well as those made by the 1st and 2nd defendant after the injunctions granted by Hart Hines J, alleging that the claimant was having sex with minors. Of relevance to the permanent injunctive relief sought in the application before me is his assertion that the 1st defendant did not remove one of the two posts, she was ordered by Hart Hines J to remove. That post is exhibited by Mr Wenzel and was made on March 24, 2021.

**[30]** In relation to the 2nd defendant, Mr Wenzel says that he identified 38 posts made by her after the order of Hart Hines J, which either defame the claimant by repeating the allegations or having a guest who does so; allude to the allegations and sometimes refers to the claimant as "Sayton"; mock the legal process, the court or the injunction; and suggest that as a citizen of the United States of America, she is at liberty to ignore the injunction. He says that the posts also reveal that the 2nd defendant's motivation for the defamation is revenge in that she alleges that in 2019 the claimant led a team of bloggers to accuse her of criminal activities and claimed that she was a registered sex offender in the United States of America.

Mr Wenzel exhibits spreadsheets of the posts. He also exhibits a flash drive on which he collated the posts and videos.

**[31]** Ronece Simpson ("Ms Simpson") is an attorney-at-law in the law firm of Henlin Gibson Henlin, attorneys-at-law for the claimant. In her affidavit filed on July 5, 2023, she says that she became aware of social media posts on the Instagram platform made by the 1st defendant using her Instagram handle: "*@karencross"*. Ms Simpson says further that on February 13, 2023, the 1st defendant made a post on the social media platform Twitter, using the handle: *"@karenccross"* in which she referred to the claimant as " Dutty Mon Pedophile Dayton Campbell". While in or about March 2023, there was another post by the 1st defendant on her Instagram page in which she placed a caption with the words: "It's a pedophile's birthday", on a picture of the claimant.

**[32]** According to Ms Simpson she also became aware of social media posts by the 2nd defendant on the Twitter platform with the username:*"Empress Divine"* and the Twitter handle: *"@MaroonSpirit 21*". She says that on June 26, 2023, the 2nd defendant reposted a post of a picture of the claimant with the caption: "Lost seat, accused pedophile"; and on June 29, 2023, she reposted another post, this time with a picture of the claimant and a reference to him as: "a pedophile (mouthamassy)" who : "lost his seat and is now the face of the PNP". She says the following post was made on July 2, 2023, at 8:59am: -

> "½ Dayton & his gutter rats say I'll be arrested next time I'm in Jamaica. Judge presiding over civil case asked Dayton's attorney last hearing when they spoke of my unpaid fine, "Why isn't she in custody then?"
>
> The judge was sarcastically telling them they're a bunch of idiots who can't do me nothing, & I dare them to try when I come back there. US citizens are entitled to free speech and its protected as long as there is no threat to harm/injure.

> I am such a powerful woman. All of this because I said Dayton unfit to be gen sec because the accusation will compromise the party, and because I've been hammering their sabotage operations to the public.
>
> In summary, I will pay NO FINE, all if Jesus ordered it. I will not compromise my freedom of speech. Dayton go SYM. Yuh & Bunting & Golding can't politically victimize mi. This is one woman who ago tek it to unu.
>
> See you in court July 7th.
>
> So when the judge asked why she isn't in custody, the idiots whispered under their breath, "My Lady, because she's not in the country." I do not live in the country fool! & you do not have a court approved legal document to pursue or enforce arrest.
>
> Karen reported Dayton a pedophile. Dayton took advise from Bunting to sue me. They thought I'd pay their silly fine but I don't bow to serpents. Instead, I paid my lawyers & continue to exercise my free speech to expose them for the demons they are.
>
> When they can't rape & kill women, they sue them. This once has been a real challenge cause all not they can't win mi."

**[33]** The most recent post made by the 2nd defendant, says Ms Simpson, was at 9:25am on July 2, 2023, in which she posted the following words under a picture of the claimant: -

> "The only Jamaican politician to be investigated by FBI, regarding accusation of pedophilia. Jamaica police did their due diligence by seeking FBI help. It's playing out in court, & that's where the real test of our Justice system will be. The accuser's defence is "truth"."

Ms Simpson says that the 1st and 2nd defendants have failed, neglected and/or refused to comply with the court's orders and are in contempt of court.

*The evidence in response*

**[34]** The 1st defendant filed two affidavits in opposition to the claimant's application. The first one was filed on July 27, 2023, and the other on October 10, 2023. Save for the video made on March 12, 2022, the 1st defendant says that all the other posts which the claimant alleges she made in breach of Hart Hines J's orders were not made by her. She says that the social media accounts referred to by Ms Simpson are not her accounts as they are fake. In support of this assertion, she exhibits posts from accounts which she says are her real accounts. As to the March 12, 2022 video, the 1st defendant says that this video does not violate the court's order as all she did was to repeat what was already in the public domain and her purpose for repeating the allegations against the claimant was: "purely for effect and comparison in the larger body of what [she] was saying on the video".

**[35]** The 2nd defendant did not file an affidavit in response to the application.

**[36]** The 3rd defendant in her affidavit filed on April 28, 2023, asks that the claimant's application be refused, as she relies on truth, fair comment and innocent dissemination in her defence. She says that in her amended defence she added the defence of truth, since the 1st defendant exhibited statements and gave an undertaking to produce the makers at trial. According to her, she believes that the interview the 2nd defendant had with the 1st defendant, and the subsequent comments on the Facebook live video are fair comment on a matter of public importance.

**The 3rd defendant's application**

**[37]** In the 3rd defendant's application filed on April 28, 2023, she seeks the court's permission to file an amended defence. In it, she indicates that amendments to her defence were made last year, but since then, she received additional information

which made it necessary to make further adjustments to strengthen it. In her affidavit in support of the application, she says that she does not believe that under CPR 20.1, she needed the court's permission to file an amended defence, but she has done so out of an abundance of caution.

**Submissions**

*The claimant*

**[38]** Miss Williams counsel for the claimant argued that given the evidence of the social media posts made by the 1st and 2nd defendants in breach of the order of Hart Hines J and even after Stamp J found them in contempt of court, it is appropriate that their statements of case be struck out. Counsel argued that their continued posts reflect a total disregard for the court and its orders and is intentional and contumelious. She submitted that although the 1st defendant says that the posts are not hers, she acknowledges in her October 10, 2023, affidavit that the March 12, 2022, video was made by her and that repeating the allegation was for effect. According to learned counsel, this is an admission by the 1st defendant that she intentionally repeated the allegation, and this is sufficient evidence of non-compliance with the orders of Hart Hines J.

**[39]** In relation to the 2nd defendant, counsel Miss Williams said that she also continues to be in breach of the orders of Hart Hines J. Heavy reliance was placed on the affidavit of Ronece Simpson to which, Miss Williams argued, there has been no affidavit in response refuting that evidence. According to counsel, by her words, the 2nd defendant has demonstrated a lack of regard for the court's orders and not even the contempt of court order of Stamp J has restrained her. Striking out her statement of case is therefore appropriate in the circumstances given her continued contempt of court. She sought support for this argument in the decision of **Bastion Holdings et al v Jorril Financial Inc [2007] UKPC 60.**

**[40]** Miss Williams further argued that as an alternative ground, the defendants' statements of case should be struck out pursuant to CPR 26.3(1) (c) for failing to

disclose any reasonable ground to defend the claim. As it relates to the 1st defendant, counsel argued that 'truth' is her defence, but the allegations she makes against the claimant are not based on her own knowledge, but on statements allegedly made by unknown persons who are not before the court. Counsel further argued that a defendant who relies on truth as a defence, must prove that the allegations are true or not materially different from the truth. The 1st defendant in an earlier affidavit filed on February 17, 2022, said that the accusers will not give evidence in this matter as they have been threatened and harassed. As far as the Justices of the Peace are concerned, Miss Williams argued that they cannot speak to the truth of the statements made by the alleged accusers and can only attest to their signatures being affixed to the statements. According to her, the 1st defendant has not provided any "evidence" to show that that which was allegedly said to her is true. She cited several authorities in support of this submission, including **Sally Ann Fulton v Chas E Ramson [2019] JMSC Comm 32**; and **Anthony v Da Breo 758 of 1997, unreported decision from Eastern Caribbean Supreme Court**.

**[41]** As to the 2nd defendant, it was submitted that her defence filed on May 27, 2021, discloses no defence to the claim. She has not pleaded any basis to contend that the republication of the 1st defendant's letter was based on credible facts. Counsel urged me to reject the amended defence filed on October 27, 2022, without the permission of the court, given that it was filed after the claimant's current application and was filed to correct the deficiencies identified by the claimant in that application. For this proposition, she relied on **CPR 20.1, 20.2,** along with several decided cases including **Index Communication Network Limited v Capital Solutions Limited and others [2012] JMSC Civ 50**

**[42]** It was argued that neither the 3rd defendant's defence filed on May 13, 2021, nor the amended defence which she now seeks permission to file, disclose any reasonable basis to defend the claim. The defence of truth based on the statements relied on by the 1st defendant will fail for the same reasons it will fail for the 1st defendant. It was also argued that the defence of fair comment will also fail

because to succeed the comment must represent the honest opinion of the maker and be based upon true facts, however there are no pleadings of the factual basis on which the comments were made. The reliance by the 2nd defendant on qualified privilege in her amended defence also has no prospect of succeeding as none of the requirements of that defence has been met. In respect of the 3rd defendant's defence of innocent dissemination, learned counsel argued that she ought to have known that her republication of the comments made by the 2nd defendant and by extension the 1st defendant's letter, were capable of being defamatory of the claimant and therefore section 22 (2) of the Act cannot avail her. After she received the counsel's demand letter, she could no longer claim innocence. The decision in **Stern v Piper [1997] QB 123** was relied on to argue that it is no defence to defamation to prove that you merely repeated an earlier published defamatory statement.

*The 1st defendant*

**[43]** The 1st defendant submitted that there is no application citing her for contempt of court and that save for the video she made on March 12, 2022, all the other posts which the claimant alleges were made by her after the orders of Hart Hines J are not hers and the claimant is fully aware of her legitimate social media presence. She argued that the March 12, 2022, video is not a violation of the court's order because all she did was to repeat what was already in the public domain and therefore not a new accusation. According to her, the decision in **Bastion Holdings Limited et al v Jorril Financial Inc** is unhelpful. She sought support from that decision to argue that judicial approach to contempt must depend on the circumstances of the case and rigid rules are inappropriate.

**[44]** It was also argued that the decision in **Sally Ann Fulton v Chas E Ramson** is inapplicable as in that case the court struck out the claimant's case as it was relying on hearsay. In her case, she says she is relying on three statements, signed and certified by Justices of the Peace. Her defence of truth is reasonable ground on which to defend the claim. In closing, she said that the orders of Hart Hines J took

away her constitutional right to freedom of speech and was granted without giving her the opportunity to have counsel. She admitted to disobeying those orders and said she paid the fine ordered by Stamp J. She submitted that after all of that, the claimant now seeks to strike out her defence so that he is prevented from facing his accusers. She argued that in the interest of justice, his accusers must be allowed to face him, and he must be given an opportunity to face them. She urged me not to grant the orders sought by the claimant.

*The 2nd defendant*

**[45]** Mr Bishop, counsel for the 2nd defendant commenced his submissions by arguing that the evidence of Ms Simpson is inadmissible since, unlike Mr Wenzel, she has not given evidence of her qualifications to enable her to produce before the court, computer generated documents reflecting copies of alleged social media posts by his client. He argued that there is also no evidence from her, explaining how the alleged posts: "moved from a social media site to a computer". Counsel submitted that there is nothing before the court to say that the name "*Empress Design"* is used by the 2nd defendant or that the social postings were made by her. He said that she wanted to call an expert and did not want to come before the court with a bare denial, hence the reason she has not filed an affidavit.

**[46]** Learned counsel argued that the court needs to be satisfied that the social media sites referred to in the affidavit of Ms Simpson, are operated by the 2nd defendant and that the screen shots exhibited are from that site. He said there is no evidence establishing that the 2nd defendant is associated with the social media site referred to by Ms Simpson. The same thing applies to the alleged tweets. In any event, submitted Mr Bishop, the words accompanying the posts referred to by Ms Simpson are not defamatory and the statement that the claimant is unfit to be General Secretary is simply someone venting and is not a breach of Hart Hines J's orders. I was urged to take account of the fact that when the matter was before the learned judge, the defendants were unrepresented, and the 2nd defendant drafted her defence herself. His interpretation of the CPR did not require his client to seek

permission to amend her defence, but his instructions now are to make such an application. He said she is a blogger and did not consider that she was defaming the claimant. The three statements relied on by the 1st defendant were brought to his client's attention and they cannot be pushed aside as weak. The fact, he argued, that they were made before Justices of the Peace give them some credibility, and since they are produced, this means that witness statements will be given by the three young ladies at trial.

*The 3rd defendant*

**[47]** The 3rd defendant submitted that her original defence was one of innocent dissemination and a denial that the words in the Facebook live video carry the meaning attributed to them by the claimant. She relied on the decision in **Kenneth Black v The Right Hon. Mr Edward Seaga Suit No. CLB 257 of 2001, unreported Supreme Court decision delivered November 15, 2002,** to argue that having raised the issue of the meaning of the words, her defence ought not to be struck out. She said she amended her defence having read the authorities and realised that she needed to explain what the words meant if she disputed the meaning placed on them by the claimant, and she was attempting to be compliant with CPR 10.5(4)(a) and (b). She was also entitled, she argued, to rely on the three statements attached to the 1st defendant's defence to raise the defence of truth. There were also sections of her original defence in which she omitted to either admit or deny the claimant's allegations. She argued that her decision to amend her defence had nothing to do with the claimant's application.

**[48]** At this stage, argued the 3rd defendant, the court is not deciding the merits of the case, and it is only a judge at trial who can determine whether the defence of truth based on the three statements produced by the 1st defendant, is meritorious. According to her, the statements are not hearsay as they were signed by a Justice of the Peace. She submitted that the decision in **Sally Ann Fulton v Chas E Ramson** is distinguishable as the claimant in that case did not have any evidence in support of her case and that is why it was thrown out by the court. Several

authorities were cited by the 3rd defendant in support of her application to amend her defence. She argued that her omissions were mistakes, and the amendments are necessary to determine the real issues between the parties. She asked that the court refuse to strike out her defence as it has a real prospect of success, and to grant her application to amend her defence.

**Analysis and discussion**

**[49]** As I embark on an analysis of the issues that arise on the applications before me, I bear in mind that the law of defamation is concerned with protecting reputations. Lord Atkin in **Sim v Stretch [1936] 2 All ER 1237**, famously described a defamatory statement as one which: "tends to lower the plaintiff in the estimation of right-thinking members of society generally". Parke B in **Parmitter v Coupland and Another (1840) 6 M & W** had earlier expressed the view that it is a statement that: "injures the reputation of another by exposing him to hatred, contempt or ridicule". In any defamation claim then, the first enquiry is the meaning of the impugned statement.

**[50]** Morrison P in **Jamaica Observer Limited v Joseph Matalon [2019]JMCA Civ 38 at para 55,** approved of the following summary of the leading authorities on meaning given by Sir Anthony Clarke in **Jeynes v News Magazine Ltd and Another [2008]EWCA Civ 130**:-

> "14. The legal principles relevant to meaning have been summarized many times and are not in dispute ... They are derived from a number of cases including, notably, **Skuse v Granada Television Limited [1996] EMLR 278,** per Sir Thomas Bingham MR at 285-7. They may be summarized in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve, but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking, but he must be treated

> as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation…' (see Eady J in **Gillick v Brook Advisory Centres approved by this court [2001] EWCA Civ 1263 at paragraph 7** and **Gatley on Libel and Slander (10th edition), paragraph 30.6).** (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense". **Neville v Fine Arts Company [1897] AC 68** per Lord Halsbury LC at 73. 15. Those are the principles applicable to the determination of meaning at a trial and thus in a jury trial by the jury. …"

The President added at paragraph 56 that:

> "[56] To this summary, I would …add …. as Lord Halsbury LC observed in the leading older case of **Lord William Nevill v The Fine Art and General Insurance Company, Limited**, 'it is necessary to take into consideration, not only the actual words used, but the context of the words, and the persons to whom the communications were made'"

**[51]** I now turn to the four issues that I must determine:

a) Whether the 1st and 2nd defendants are in breach of the orders of Hart Hines J and therefore should have their defences struck out under CPR 26.3(1)(a)[2] .

b) Whether the defendants' defences fail to disclose reasonable grounds for defending the claim and should be struck out under CPR 26.3(1) (c).

c) Whether the 2nd defendant should be allowed to rely on her amended defence without an application seeking the court's permission to do so.

d) Whether the 3rd defendant's application to amend her defence should be granted and her amended defence allowed to stand.

*Whether the 1st and 2nd defendants are in breach of the orders of Hart Hines J and therefore should have their defences struck out under CPR 26.3(1)(a).*

**[52]** The claimant's primary argument is that the 1st and 2nd defendants' are in continued contempt of the order of Hart Hines J which injuncted all the defendants from communicating or publishing the same or similar words as those contained in the Facebook live videos of March 19, 2021 and March 20, 2021, the YouTube video of March 19, 2021 and the 1st defendant's letter of March 16, 2021, and therefore their defences should be struck out for failing to comply with the court's orders . As has been shown, the 1st defendant admits to making and publishing the March 12, 2022, video referred to at paragraph 27 of this judgment but says all she was doing was repeating what was already in the public sphere and made the post purely for effect.

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[2] The 1st Further Amended Notice of Application actually cites the rule as CPR 26.3(b), but it is accepted that this is a typographical error as the narrative used in respect of the ground to support the rule is that the defendants have failed to comply with an order or direction of the court, which is in fact CPR 26.3(1)(a).

**[53]** There can be no doubt, that the March 12, 2022, video is on the face of it, defamatory of the claimant. The 1st defendant says clearly in that video that she wrote a letter saying that the claimant is a known paedophile. This is an allegation made by the 1st defendant in her March 16, 2021, letter. By repeating it, she is unquestionably in breach of order number 4 made by Hart Hines J. The fact that she was repeating what she had earlier published is precisely what she was injuncted by the learned judge from doing. Her posting of the video is unquestionably a failure to comply with the court's order. Although she argues that the other posts referred to by Mr Wenzel and Ms Simpson were not made by her, her concession that she made the March 12, 2022, post is enough to find that she has failed to comply with an order of the court.

**[54]** The 2nd defendant has not filed any evidence to refute the assertions made by Ms Simpson that after she was found in contempt of court by Stamp J, she has published posts on social media in breach of order number 4 of Hart Hines J's orders. Instead, she challenges the admissibility of the evidence of Ms Simpson. As I understand Mr Bishop's submissions, his argument is that the exhibits to Ms Simpson's affidavit of alleged postings by the 2nd defendant in breach of Hart Hines J's orders, have not been authenticated and therefore her evidence is inadmissible. I agree with him. In the flash drive which Mr Wenzel exhibits to his affidavit which is before me and which, it appears, was also before Stamp J, there are postings made by the 2nd defendant with the username: *"Empress Divine*". However, there is no evidence from Ms Simpson authenticating the use of that username by the 2nd defendant in the posts on which she relies in her affidavit. There is no evidence from Ms Simpson explaining how she accessed the alleged posts, how she was able to determine that the posts were in fact made by the 2nd defendant**,** and the various steps she took to convert those posts into exhibits to her affidavit. It cannot be overstated that authenticating evidence, especially, videos, photographs and computer-generated content takes on even greater importance in today's world of artificial intelligence, the dark web and fake news.

**[55]** I should make the point that of relevance to the claimant's application, are breaches of the orders of Hart Hines J which occurred after Stamp J's contempt orders. I take the view that Stamp J's orders and the fine he imposed, constitute the sanction for the breaches which were before him, and it would be unfair and unjust to sanction the defendants twice for the same breaches.

**[56]** CPR 26.3(1)(a) gives the court a discretion whether to strike out a statement of case for a failure to comply with its orders. It provides that in addition to any other powers the court has under the CPR, it may strike out a statement of case or part of a statement of case if it appears to the court that there has been a failure to comply with a rule or practice direction or with an order or direction given by the court in the proceedings. The rationale for this rule is quite simple. Court orders must be obeyed unless and until they are set aside. To do otherwise undermines the rule of law and erodes the principles of justice which are the pillars of any civilised society.

**[57]** The 1st defendant admits openly to posting the March 12, 2022, Facebook video but has expressed no contrition in relation to that post. She boldly says that she merely repeated what was already in the public domain and did so: "purely for effect". It is difficult to understand how she can contend that in publishing this video in which she repeats that she wrote a letter saying the claimant is a known paedophile, and that this is known by all of St Ann, she did not violate Hart Hines J's order. Order number 4 of Hart Hines J's orders clearly states that the defendants are restrained from publishing any further words of the same or similar content as the words used in the videos and posts which were the subject of her orders. I find that the 1st defendant has indeed failed to comply with that order. Her lack of contrition, even after being found in contempt by Stamp J, leads me to conclude that her continued failure to abide by the court's orders is indeed intentional. I agree with Miss Williams and therefore find, that this is a case where it is appropriate to strike out the 1st defendant's statement of case for failing to comply with order number 4 made by Hart Hines J on April 1, 2021.

**[58]** For the reasons already expressed, I find that the evidence of the alleged social media posts of the 2nd defendant given by Ms Simpson is inadmissible. Consequently, I will not strike out the 2nd defendant's statement of case for a failure to comply with the orders of Hart Hines J.

*Whether the defendants' defences fail to disclose reasonable grounds for defending the claim and should be struck out under CPR 26.3(1) (c).*

**[59]** The authorities make it clear that striking out a statement of case should only be done in plain and obvious cases. Striking out a defence under CPR 26.3(1) (c) on the basis that the defence discloses no reasonable grounds for defending the case, requires the court to look at the pleadings and decide whether the facts alleged in the defence, establish a reasonable defence having regard to the cause of action and the available defences to it, known to law. (See for example the decision of Batts J in **City Properties Limited v New Era Finance Limited [2013] JMSC Civil 23**) Although I have found that the 1st defendant's defence ought to be struck out for failing to comply with Hart Hines J's order, I will review it through the lens of CPR 26.3(1)(c), since the defence of truth relied on in it, has implications for the defences of truth and fair comment pleaded by the 2nd and 3rd defendants. Both these defendants rely on facts pleaded by the 1st defendant in support of the defence of truth.

**[60]** On November 29, 2013, the Defamation Act 2013 ("the Act") was passed into law. It repealed the Defamation Act and the Libel and Slander Act. By section 19, the Act provides that a defence under Part V is in addition to any other defences or exclusion of liability available to a defendant apart from the Act and does not vitiate, limit or abrogate any other defence or exclusion of liability. The defence of truth is contained in section 20 of the Act. It is important to set it out in full: -

> "20.- (1) In proceedings for defamation, the defence known before the commencement of this Act as the defence of justification shall, in

relation to an action for defamation brought after the commencement of this Act, be known as the defence of truth.

(2) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.

(3) In proceedings for defamation, a defence of truth shall succeed if-

a) the defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or

b) where the proceedings are based on all or any of the matter contained in a publication, the defendant proves that the publication taken as a whole was in substance true or was in substance not materially different from the truth, if the words not proven to be true do not materially injure the claimant's reputation having regard to the truth of the remaining imputations."

**[61]** The CPR has specific procedural rules in respect of defamation claims. In relation to the defences of truth and fair comment CPR 69.3 provides that: -

"69.3 A defendant (or in the case of a counterclaim, the claimant) who alleges that,

a) in so far as the words complained of consists of statements of fact, they are true in substance and in fact; and

b) in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest; or

c) pleads to like effect,

must give particulars stating –

i. which of the words complained of are alleged to be statements of fact;
and

ii. the facts and matters relied on in support of the allegation that the words are true."

**[62]** The rationale behind the defence of truth is that the law protects a claimant's reputation only from attacks which are without merit. Under the Act, as it is at common law, the truth of an imputation is a complete defence, but the defendant must prove that the imputations are true or not materially different from the truth. Additionally, in his or her pleadings, a defendant must state which of the words the claimant complains of are alleged statements of facts and give particulars of the facts and matters relied on in support of the allegation that the words are true. In other words, the defendant must specifically plead which meaning he intends to justify. (See for example **Lucas- Box v News Group Newspapers Ltd [1985] EWCA Civ J1030-7**). Unlike the common law, where any imputation which remains unproven results in the entire defence failing, under section 20 (3)(b) of the Act, a defendant can still succeed where he can prove the truth of only a part of the several imputations made but must show that the claimant's reputation has not been materially injured by those imputations not proven.

**[63]** The 1st defendant admits to publishing her letter to the Executive Members of the PNP. I am of the view that without strained meaning or elaborate analysis, the words used by her would be clearly understood by those to whom she published it to mean that the claimant: -

a) is lacking in morals;

b) is sexually attracted to children;

c) is dangerous to young girls and the country;

d) is morally unfit to be General Secretary of the PNP;

e) falsely claims to have skill and knowledge in politics;

f) is a serial rapist;

g) exploits, rapes, and victimizes persons in his constituency;

h) uses taxpayers' money allocated to his constituency to lure underage girls to himself;

i) lacks the integrity and moral high ground to be General Secretary;

j) may have committed sexual assault on a 14-year-old and ;

k) has sexual relations with underage girls.

There is no question in my mind that on the face of it, these allegations made by the 1st defendant in her letter of March 16, 2021, are defamatory of the claimant.

**[64]** The three statements the 1st defendant hangs her defence on to support these allegations, all have the makers' names redacted and so their identities are unknown. The 1st defendant has said she will never reveal their identities in order to protect them. The statement from the JCF indicates that the police found no basis for the allegations made by the 1st defendant, she provided no evidence to substantiate her claims and she was unable to provide anyone who was interested in making a complaint against the claimant. It is odd, that after not being able to provide the police with anyone willing to make a complaint against the claimant, and not disclosing the identities of these alleged complainants even in the wake of the current application seeking to strike out her defence, that the 1st defendant argues that she will provide the makers of the statements at trial. One would have thought, that if the true intention is to seek justice for the young underaged girls whom the 1st defendant alleges have been wronged and abused by the claimant and to have him face them, the thing to do would be to bring the evidence to the police and allow them to conduct a successful investigation leading to charges

being laid against the claimant. Why wait until the trial of a defamation civil suit, to provide that evidence in your defence to the suit?

**[65]** To say that the statements are signed by Justices of the Peace and therefore are validated, is not a sound argument. I agree with Miss Williams that at best, all the Justices of Peace can do, is to verify that statements were taken in their presence, but they certainly cannot confirm or corroborate the contents of those statements. To further say that the impugned words are an expression of the constitutional right to freedom of expression is to ignore the fact that no constitutional right is absolute, and that the exercise of one's constitutional right should not prejudice the rights and freedoms of others. The right to freedom of expression must therefore be balanced against the protection of one's reputation, which is part and parcel of the concern for human dignity and, in my view, the right to privacy. The right to freedom of expression cannot be a licence to utter unmerited attacks which tarnish a person's reputation. As Panton P put it in **Jamaica Observer v Orville Mattis [2011] JMCA Civ 13 at para 17,** the right to free speech under the Constitution does not permit defamation of one's good character.

**[66]** In the circumstances therefore, in the absence of signed statements from the alleged victims , with their identities to date being unknown and with the police investigation not resulting in anyone coming forward to lodge a complaint against the claimant, I am not prepared to find that the 1st defendant has satisfied the requirement to provide the facts and matters she relies on to support the allegations she makes in her March 16, 2021, letter. Furthermore, even if I were to accept the three redacted statements as supporting the imputation that the claimant has sexual relations with underage girls and may have committed sexual assault on an underage girl, those statements would not support the defence of truth, because the other allegations made by the 1st defendant in her letter would materially injure the claimant's reputation and are unsupported by the statements. In short, based on the 1st defendant's pleadings, there are no reasonable grounds to support the defence of truth.

**[67]** The 2nd defendant admits to publishing the live interview with the 1st defendant on March 19, 2021, in which the latter's March 16, 2021, letter was discussed. She also admits to publishing the statements made by the 1st defendant, which are quoted at paragraph 9 of this judgment. To say, as she does, that she cannot recall whether the reference to the "accused' in the 1st defendant's letter was directly referrable to the claimant, is fanciful at best and is contradicted by her own admission that in the interview the letter was discussed. It is unnecessary to repeat the myriad of allegations and accusations levelled at the claimant in that letter. Furthermore, although she denies the interpretation placed on the words used by the 1st defendant, she has not said what interpretation she believes the words bear.

**[68]** While the 2nd defendant contends that the claimant either added words to what was said on her March 20, 2021, live video or omitted words, she has only cited one example of what she says is a misstatement by the claimant. She has not denied that she mentioned in that video that the 1st defendant's letter made allegations that the claimant was a "serious paedophile". She has not denied that she said she was "sorry for the girls involved" as she: "knows that sexual abuse leaves a scar that does not go away". Neither has she denied that she said that she has "every reason to believe the evil Ms Cross outlined in her letter to the PNP executive"; that she believes Ms Cross, and that "only God can come down and tell [her] that it don't go so". When considered in the context of the discussion about the 1st defendant's letter, I am of the view that the words in the live video made on March 20, 2021, are also defamatory. They impute that the claimant has psychologically damaged young ladies, has abused and wronged young teenage girls and that this is well known within the PNP officer corp. The 2nd defendant has not provided any factual basis to justify her belief that the allegations in the 1st defendant's letter are true. Lord Denning said in **Associated Newspapers v Dingle [1964] AC 371** that: -

> "If the report or rumour was true let him justify it. If it was not true, he ought not to have repeated it or aided in its circulation. He must answer for it just as if he had started it himself".

**[69]** In the fine, I agree with Miss Williams, that the 2nd defendant's May 27, 2021, defence is really no defence at all. It does not demonstrate any reasonable grounds to defend the claim brought against her.

**[70]** The 2nd defendant's amended defence was filed after the claimant's application to strike out her earlier defence. No permission was sought to do so. An application seeking permission was needed. Mr Bishop has said his instructions are now to make such an application. No such application was made prior to the conclusion of the hearing. Recently in **Kingston Wharves and Ors v Coast to Coast Traders Limited [2024] JMCC Comm 19** I had this to say in respect of circumstances where an amended fixed date claim form was filed after an application was made to strike it out: -

> "What then of the amended fixed date claim form which was filed after the applicant's application, and which seeks to cure the deficiencies in the claim identified in the application to strike out the claim? The short answer is that permission ought to have been sought before filing it. Mangatal J (as she then was) in **Index Communication Network Limited v Capital Solutions Limited and others [2012] JMSC Civ No 50** graphically described the course taken by the claimants as "pulling the rug" from under the leg of the applicant**.** Miss Grant in her submission made it unequivocal that this was the intent and purpose of the amendment. I adopt Mangatal J's response at paragraph 44, to a similar course taken by the claimant in **Index Communication Network Limited v Capital Solutions Limited and others:**
>
> > "… even if a matter has not reached the case management stage, where an application to strike out the existing Statement of Case is being heard, it is not correct that a party could simply, 'pull the rug out' from under the feet of the party applying to strike out on the basis of alleged weakness in the pleaded case, … by simply turning up with a newly amended statement of case that has been filed without

> the court's leave. …". "Even if the statement of case under attack has not been previously amended, and the case management conference has not yet taken place, once the application under consideration before the court is an application to strike out a party's Statement of Case, the Statement of Case cannot be amended without the leave of the Court."

I continue to hold these views and therefore find that the 2nd defendant's amended defence cannot stand without permission to file it having been sought and granted.

**[71]** Even if the 2nd defendant's amended defence were allowed to stand, I am of the view that it does not disclose any reasonable grounds to defend the claim. She pleads the defence of truth in reliance on the statements produced by the 1st defendant and I have already demonstrated that there are no reasonable grounds for the defence of truth. She suggests that as a blogger she is a journalist and that she was disseminating information to the public that she thought was true. Consequently, she says she relies on the defence of fair comment and qualified privilege. The 2nd defendant has however failed to satisfy the requirements of CPR 69.3 relating to the defence of fair comment, which stipulates, as it does for the defence of truth, that the facts and matters relied on in support of the allegations be set out in the defence. She has not provided any particulars on which she relies, other than the statements attached to the 1st defendant's defence and for the reasons I have already stated, those statements cannot suffice. In **Jamaica Observer v Joseph Matalon,** (supra) Morrison P said this about the defence at paragraph 99: -

> "…I must first say something about the nature and limits of the defence of fair comment. Carter-Ruck states the position as follows:
>
> > "It is a defence to an action for defamation that the words complained of are fair comment on a matter of public interest. The defence gives legal recognition to 'the right of the citizen honestly to express his

> genuine opinion on a subject of public interest, however wrong or exaggerated or prejudiced that opinion may be, a man is not only entitled to hold his own opinion but, provided that it is his honest opinion based upon true facts and related to a matter of public concern, he is entitled to express it to others even though it reflects unfavourably upon some other person. Fair comment is a defence that protects defamatory criticism or expressions of opinion; it does not protect defamatory statements of fact."

As this extract makes plain, fair comment in the law of libel must not only be on a matter of public interest, but it must represent the honest opinion of the author, "based upon true facts". In other words, as Kennedy J explained in **Joynt v Cycle Trade Publishing Co**, "[t]he comment must … not misstate facts, because a comment cannot be fair which is built upon facts which are not truly stated …"

**[72]** As to the defence of qualified privilege, it is not borne out in the 2nd defendant's amended pleadings because, even if I treat her as a journalist, her defence does not reveal that she satisfied the requirements of responsible journalism set out in the decision of **Reynolds v Times Newspapers Ltd [1999] UKHL 45**. I find it helpful to turn once again to the judgment of Morrison P in **Jamaica Observer v Joseph Matalon,** and his commentary on this defence at paragraphs 118 and 119: -

> "[118] The law of defamation has traditionally accorded qualified privilege to statements which, although defamatory, were made pursuant to a public or private interest or duty (whether legal, social or moral) to give certain kinds of information to a person who has a corresponding interest or duty to receive such information. The privilege is qualified because, in a proper case, it can be defeated by proof of malice. Classic instances of statements in this category which have traditionally attracted qualified privilege include information given by a former employer to a prospective employer and

complaints made or information given to the police or appropriate authorities regarding suspected crimes.

[119] However, the law did not recognise any generic privilege extending to publications in the press on matters of public interest. A strong attempt to change that position failed in **Reynolds**, but the case was a landmark because it extended the scope of qualified privilege by recognising that publication of information on a matter of genuine public interest may in a proper case attract the privilege, providing that the publisher acts responsibly. Delivering the leading judgment in the case, Lord Nicholls set out a non-exhaustive list of the various matters which might be taken into account in assessing the question whether the standard of responsible journalism has been met. Among the questions for consideration are (i) the seriousness of the allegation; (ii) the nature of the information, and the extent to which the subject-matter is a matter of public concern; (iii) the source of the information; (iv) the steps taken to verify the information; (v) the status of the information; (vi) the urgency of the matter; (vii) whether comment was sought from the claimant; (viii) whether the article contained the gist of the claimant's side of the story; (ix) the tone of the article; and (x) the circumstances of the publication, including the timing".

**[73]** There is nothing in the amended defence which indicates that any comment was sought from the claimant. Additionally, save for asserting that before the interview she spoke with the 1st defendant and was informed that she had personally spoken with the three young ladies who alleged unwilling sexual contact with the claimant, there is nothing in the amended defence to indicate that steps were taken by the 2nd defendant to verify the allegations made by the 1st defendant. Instead, her own statement on her March 20, 2021, video is that she has "every reason to believe the evil Ms Cross outlined in her letter to the PNP executive"; she believes Ms Cross, and that "only God can come down and tell [her] that it don't go so"; belies any inkling of responsible journalism.

**[74]** As far as the 3rd defendant is concerned, in her defence filed on May 13, 2021, she denies that the words published in her March 19, 2021, live video have the meanings attributed to them by the claimant, but she does not state the meaning she contends they have. The decision in **Kenneth Black v The Right Hon. Mr Edward Seaga** on which she relies, does not assist her. I cannot accept as sound, her submission that it is a defence to simply allege that the words do not bear the meaning claimed by the claimant. **Kenneth Black v The Right Hon. Mr Edward Seaga** was a decision prior to the CPR when there was no procedural rule similar to CPR 10.5 which requires that a defence set out all the facts on which the defendant relies to dispute a claim. It is because there was no such rule, that McIntosh J could say in that case that the defendant (who had pleaded that the words did not bear the meaning alleged by the claimant but did not say what meaning they bore), was entitled to raise that defence at trial since:

> "In our courts evidence is not pleaded but each party has a right to apply for further and better particulars and discovery."

**[75]** The 3rd defendant's defence that she converts all the 2nd defendant's Facebook live videos to her YouTube account is no defence to the claimant's allegation that she published defamatory words referrable to him in the 2nd defendant's live video on March 19, 2021. The fact is, she republished words that were clearly defamatory of the claimant. The decision in **Stern v Piper** (supra) cited by Miss Williams is good authority for the argument advanced by her that it is no defence to defamation to contend that you were merely publishing an earlier defamatory statement. In that case, a newspaper published an article asserting that the plaintiff had failed to honour his debts of more than £3,000,000.00 and referred to a pending claim in the High Court against him, accompanied by quotations from the allegations in the claim. The defendant's plea of justification failed, and it was held among other things, that the repetition rule that it is no defence to an action for defamation for the defendant to plead that he was merely repeating what he had

been told, was applicable. I believe that the dicta of Lord Denning in **Associated Newspapers v Dingle** quoted at paragraph 67 of this judgment is also equally applicable.

**[76]** In her May 13, 2021, defence, the defence of innocent dissemination under section 22 of the Act is also relied on by the 3rd defendant. The section provides, so far as is relevant, as follows: -

> "22 – (1) It is a defence to the publication of defamatory matter if the defendant proves the following, that is to say that-
>
> a) the defendant published the matter merely in the capacity of a distributor who is subordinate to the publisher of the matter alleged to be defamatory, or as an employee or agent of the distributor or in the capacity of a secondary publisher having received the matter from a reputable wire service;
>
> b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and
>
> c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant.
>
> 2. The defence of innocent dissemination is not available to –
>
> a) a person who knows, or ought reasonably to have known that the matter was or could have been defamatory but proceeded to publish the matter anyway; or
>
> b) a person who fails to remove the defamatory matter from his publication or from circulation promptly after it has been brought to his attention.
>
> 3. …

4. For the purposes of subsection (1), a person is a subordinate distributor of defamatory matter if the person-

    a) was not the first or primary distributor of the matter;

    b) was not the author or originator of the matter; and

    c) did not have any capacity to exercise editorial control over-

        (i) the content of the matter; or

        (ii) the decision to publish the matter

    before it was first published

5. Without limiting subsection 4(a), a person is not the first or primary distributor of matter merely because the person was involved in the publication of the matter in the capacity of –

    a) ..

    b) …

    c) …

    d) …

    e) a broadcaster of a live programme (whether on television, radio or otherwise) containing the matter in circumstances in which the broadcaster has no effective control over the person who makes the statements that comprise the matter;

    f) …

g) …

h) .."

**[77]** The 3rd defendant claims to be a secondary publisher. I understand her reliance on subsection (5)(e) of the section to be that she is not a first or primary distributor since as a broadcaster of her YouTube live video, she had no effective control over the 1st defendant who made the defamatory statements in issue. In my view there are several hurdles in section 22, which the 3rd defendant has not demonstrated that she has overcome. Firstly, I am of the view that the situation contemplated by subsection 5(e), is one where the person making the defamatory statement is on a live programme being broadcast by a publisher who has no control over the person making the statement, and there is nothing, he or she can do to stop the publication. In the case of the 3rd defendant, she was sharing the 2nd defendant's live Facebook broadcast, by simultaneously publishing it on her YouTube channel. There was nothing preventing her from ceasing to share the live Facebook video.

**[78]** Secondly and perhaps more importantly, to succeed with this defence, the 3rd defendant must overcome the hurdle in section 22(b), which is that she neither knew nor ought reasonably to have known that the matter published was or could have been defamatory. This is because on a true construction of section 22(1), subsections (a) – (c) are conjunctive. In other words, a defendant relying on the section must satisfy all three limbs. In my view, the 3rd defendant ought reasonably to have known that the statements in the 2nd defendant's Facebook live video were defamatory or could have been defamatory of the claimant. In fact, she has not pleaded otherwise in her defence. What she pleads is that: "defamation was not proven in the ordinary meaning of the words …" Yet another hurdle which she has not overcome is the provision in subsection 2(b). She did not remove her You Tube video after she received the demand letter from the claimant's attorneys-at-law. It is clear from the section, that the defence of innocent dissemination is not available to a person who fails to remove the defamatory matter from his or her publication after it has been brought to his or her attention.

**[79]** In the circumstances, I find not only that there is no basis to remove the 3rd defendant from the claim, but that her defence filed on May 13, 2021, does not disclose any reasonable grounds to defend the claim.

*Whether the 3rd defendant's application to amend her defence should be granted and her amended defence allowed to stand.*

**[80]** The principles that a court must apply on an application to amend pleadings are well known. In **Jamaica Redevelopment Foundation Inc v Clive Banton and Sadie Banton [2019] JMCA Civ 12**, McDonald Bishop JA summarised them:

i. "The foremost consideration is whether the proposed amendment is needed in order to determine the real issues in dispute between the parties in light of all the relevant circumstances.

ii. The court must have regard to the need to avoid prejudice to the other party as well as to the need for the efficient administration of justice: **Cobbold v London Borough of Greenwich,** 9 August 1999, unreported, CA; [1999] Lexis Citation 1496 per Peter Gibson LJ. The court must have regard to the need to ensure that court and party resources are not unnecessarily wasted: **Bowerbank v Amos (formerly Staff)** [2003] EWCA Civ 1161.

iii. The court's approach to late amendments cannot be radically different from the approach to enforcing compliance with any other process requirements and to case management generally. Tolerance to late amendments may undermine the court's ability to manage the litigation process effectively.

iv. The jurisdiction is now governed by the overriding objective. The older authorities that amendments should be allowed as of right, if a party could be compensated in costs without injustice, had made way for a view which pays greater regard to all the circumstances. This is now summed up by the overriding objective (**Savings and Investment Bank Ltd v Fincken** [2003] EWCA Civ 1630 per Rix LJ).

v. A heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court (**Swain-Mason and others v Mills & Reeve (a firm)** [2011] EWCA Civ 14 per Lloyd LJ).

vi. Applications for permission to amend must necessarily turn on the particular facts and no hard and fast rules are possible. The outcome of an application to amend will, therefore, depend on a fact- based assessment of the various relevant considerations. Decided cases can only illustrate the way in which discretion is exercised.

vii. The interest of justice would not be advanced by amendments that are bound to fail on the merits and so, the court will allow an amendment only if it has a reasonable prospect of success".

**[81]** Having considered the application, the affidavit in support and the proposed amended defence, I am satisfied that in large measure, the amendments do not significantly change the substance of the defence filed on May 13, 2021. Those which I refer to in paragraph 22 of this judgment, are in my view without merit and do not disclose any reasonable prospect of success. To contend that the Facebook

live video was not directly referrable to the claimant is incredible, given what was said during the interview by the 1st and 2nd defendants and given the very context of the interview. Furthermore the 1st defendant admitted in her defence that the reference to "accused" during the live video was a reference to the claimant. While the statements made during the interview did not contain a repetition of the 1st defendant's letter of March 16, 2021, the interview was obviously to discuss its contents.

**[82]** The allegation that the opinions expressed during the interview were fair comment is without merit. As I have observed earlier, to rely on fair comment as a defence, the 3rd defendant must plead the factual basis for the opinions expressed. She has not done so. A statement will only be fair comment if it is based upon facts and those facts are true. As for the allegation that she relies on the defence of truth based on the statements attached to the 1st defendant's defence, I have already endeavoured to show that there is no factual basis for the defence of truth.

**[83]** Paragraph 14 of the amended defence, does not take the 3rd defendant's defence much further and does not change the fact that the statements made by the 1st defendant in her interview with the 2nd defendant on March 19, 2021, are plainly defamatory. In my view those statements, viewed within the context of the 1st defendant's letter of March 16, 2021, convey the meaning that the claimant has psychologically damaged and traumatised young girls from his constituency by having sexual relations with them and this is well known within the PNP officer corp.

**[84]** In the end, I find that the proposed amended defence of the 3rd defendant has no reasonable prospect of success and therefore her application must be refused.

**Conclusion**

**[85]** I find that the 1st defendant has breached order 4 of the orders of Hart Hines J made on April 1, 2021, and that the evidence suggests that she did so intentionally. Her statement of case will therefore be struck out pursuant to CPR 26.3(1)(a) for

failing to comply with an order of the court. I also find that the 2nd defendant's defence does not disclose any reasonable grounds to defend the claim. She will not be allowed to rely on her amended defence which was filed without the court's permission in circumstances where permission was clearly required, the amendment having been made in the wake of the extant application to strike out the defence. In any event, an analysis of her amended defence reveals that it does not demonstrate any reasonable grounds to defend the claim. In relation to the 3rd defendant, I find that her defence filed on May 13, 2021, discloses no reasonable grounds to defend the claim. Her application to amend that defence is refused as the proposed amendments have no reasonable prospects of success. Her amended defence filed on April 28, 2023, will therefore not stand. The claimant will have judgment against the defendants, with damages to be assessed.

**[86]** The orders made by Hart Hines J on April 1, 2021, were interim and made to await the outcome of the trial. Having regard to my findings, it is appropriate that, with the necessary changes, these injunctions be made permanent.

**Disposition**

**[87]** Having regard to the foregoing I make the following orders: -

a) The defence of the 1st, 2nd and 3rd defendants are struck out.

b) Judgment for the claimant against the 1st, 2nd and 3rd defendants with damages to be assessed.

c) The 1st defendant is to forthwith remove social media posts made on March 24, 2021, and March 12, 2022, respectively.

d) The 1st, 2nd and 3rd defendants are restrained, whether by themselves, their servants and/or agents from uploading, publishing or communicating by social media or any other media any further words of the same or similar content as the videos and posts the subject of the claim.

e) This matter is to proceed to a case management conference before an assessment judge.

f) Costs to the claimant to be agreed or taxed.

g) Leave to appeal granted to the 1st , 2nd and 3rd defendants.

h) The claimant's attorneys-at-law to prepare file and serve the formal order.

**A Jarrett**
**Puisne Judge**