

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2019/CLE/gen/01340

B E T W E E N

TERRI BELLOT

Claimant

AND

ITALIA DAVIES

First Defendant

AND

**THE INCORPORATED TRUSTEES OF THE CHURCH OF ENGLAND IN THE
BAHAMAS (D/B/A THE ANGLICAN CENTRAL EDUCATION AUTHORITY OF THE
ANGLICAN DIOCESE OF THE BAHAMAS AND THE TURKS & CAICOS ISLANDS)**

Second Defendant

Before: The Honorable Madam Justice Carla Card-Stubbs

Appearances: Mr. V. Moreno Hamilton of Counsel for the Claimant

Mrs. Krystal D. Rolle, KC of Counsel for the Defendants

Hearing dates: June 13, 2023; June 15 2023; February 1, 2024

Practice and procedure - strike out - witness statements – admissibility - legal submissions and inferences in witness statement – hearsay - s. 26 of the Evidence Act – s. 32 Evidence Act

Defamation – libel - defamatory meaning – publication -qualified privilege - common interest and duty - proper recipient - express malice - knowledge of falsity of allegations - excessive language

Negligence and Breach of contract – Pleading and proof of duty, breach and damage - Whether Breach of policy is a sustainable cause of action

The claim arose from a dispute over the delayed issue of Simone Bellot’s school transcript and a later disciplinary letter sent to her mother, Terri Bellot, the Claimant. Simone applied for the transcript on January 2, 2019 and paid the required fee, but the transcript was not produced within the stated 3 to 5 business days because the school’s electronic transcript system was unavailable until January 14, 2019. On that date, Terri Bellot went to the school after making her own draft transcript from existing school records and sought approval or verification.

After that visit, the First Defendant, Italia Davies, sent a letter dated January 21, 2019 accusing Terri Bellot of misconduct, disrespectful behavior, breaching the school’s violence policy, and intending to use a school document without permission. The letter was copied to other school and church officials, required a public apology, and stated that failure to apologize would lead to an indefinite campus ban. Terri Bellot then brought claims for libel, breach of contract, breach of policy, negligence, and procedural unfairness arising from the transcript delay and the disciplinary response.

HELD: The claimant succeeded on her claims for libel and procedural unfairness, but failed on her claims for breach of contract, breach of policy, and negligence.

On libel, the court found that the 21 January 2019 letter was defamatory, was published to third parties, and that although the occasion was capable of attracting qualified privilege, that defence was defeated by express malice. The Court found that the allegations were exaggerated and false and that the First Defendant knew that key allegations were false when the letter was signed.

On procedural fairness, the Court found that the Defendants acted with procedural unfairness by imposing a public-apology requirement and threatening an indefinite campus ban without first giving the Claimant a meaningful opportunity to be heard. The Court granted declaratory relief on that basis, treating the school authority’s exercise of disciplinary power as one that attracted common law fairness obligations.

The Court dismissed the contract and policy claims because the Claimant did not prove an enforceable contractual basis on her pleaded case or an independent actionable policy breach. It dismissed negligence because recoverable loss was not proved.

The parties were directed to make submissions on damages for defamation and costs of the action.

RULING

INTRODUCTION

[1.] Before this Court are the Claimant’s claims for libel (defamation), breach of contract, breach of policy, and negligence against the First and Second Defendants (“Defendants”). The Claimant also seeks a declaration that the Defendants violated the right to due process and procedural fairness. This action arises out of a dispute in January

2019 concerning the late production of a school transcript for Simone Bellot, the daughter of the Claimant, and the events which followed at St. John's College, including a disciplinary letter issued to the Claimant.

[2.] On the 11th day of September, 2026, this Court delivered its decisions with reasons to follow. This judgment sets out the decisions as well as the reasons for the decisions. This Court regrets the protracted delay in delivering this determination.

[3.] For the reasons which follow, the Claimant is successful on her claim for libel (defamation). The Court will grant a Declaration that the Defendants violated the Claimant's right to due process and procedural fairness. The claims of breach of contract, breach of policy, and negligence are dismissed.

BACKGROUND

[4.] On the 18th day of September 2019, the Claimant brought an action against the Defendants by filing a Writ of Summons.

[5.] The Claimant, Mrs. Bellot was, at all material times, a member of the Board of St. John's College ("the School"), a member of the Anglican Diocese, the legal advisor to the vestry of St. Ambrose Anglican Church/Parish, a member of the legal panel of the Anglican Diocese, an alumna of the School and a Counsel & Attorney at Law at the Bar of the Commonwealth of the Bahamas. She is also a parent of former grade 12 student, Simone Bellot, who was in Grade 12 at St. John's College at the time of the incident.

[6.] Mrs. Italia Davies, First Defendant, is the Director of Education of the Second Defendant and was, at all material times, an employee and/or agent of the Second Defendant.

[7.] The Second Defendant, the Incorporated Trustees of the Church of England in The Bahamas (doing business as the Anglican Central Education Authority of the Anglican Diocese of The Bahamas and the Turks & Caicos Islands) ("ACEA") owns and operates St. John's College.

[8.] The parties are agreed that on January 2, 2019 Simone Bellot, the Claimant's daughter, made an application to the School for a transcript, by completing and submitting the School's Transcript Request Form to the School and paying the requisite application fee. It is not disputed that the transcript was not produced within the time frame set out on the Transcript Request Form (i.e. 3 to 5 business days) or that the school's electronic

transcript system was unavailable until January 14, 2019 because of a subscription-payment problem.

[9.] It is also not disputed that Mrs. Bellot, the Claimant, attended the school on January 14, 2019 where she saw and spoke with Mrs. Davies, First Defendant, concerning the production of the transcript. The transcript was sent to the University of Georgia on January 14, 2019 after the system was restored. Subsequently, Ms. Italia Davies sent a letter dated January 21, 2019 to Mrs. Terri Bellot, copying the Bishop, the ACEA Chairperson, and the school Principal.

[10.] The nature of the January 14, 2019 encounter between Mrs. Bellot and Mrs. Davies, what followed thereafter, and the implications of same are in dispute.

The Claimant's case

[11.] The Statement of Claim pleads that the Claimant's daughter, Simone, paid the transcript fee and submitted the request on January 2, 2019 and January 3, 2019, that the school's transcript procedure stated transcripts would be produced within 3 to 5 business days if no outstanding bills existed, and that the Claimant and Simone therefore expected the transcript by January 7, 2019 and no later than January 9, 2019. The Claimant alleges that the transcript was not produced on time, that school staff said the system was "down", and that she made repeated inquiries to school and diocesan personnel, including Mrs. Italia Davies, before preparing a draft manual transcript from Simone's existing school-issued records and going to the school to seek the school's verification of it on January 14, 2019.

[12.] The Claimant's case is that on January 14, 2019, Mrs. Davies told her for the first time that the transcript problem existed because the software supplier would not release the code because the school had not paid the subscription fee. Mrs. Bellot, in turn, criticized the way that the matter had been handled. The Claimant's case is that the school administrators later said that the electronic system had been restored and that the transcript would then be submitted, but that by then the deadline for one college had expired.

[13.] The Claimant alleges that on January 23, 2019, she received a letter dated January 21, 2019 accusing her of misconduct, disrespect, violating the school's policy against violence, and of intending to create and use a school document without permission. The letter required that she make a public apology and threatened an indefinite campus ban if she did not comply.

[14.] The Claimant alleges that the words used were defamatory, and that the publication to the Bishop, the ACEA Chairperson, and the Principal disparaged her in the school, the Diocese, and her profession. She also pleads that she was denied due process because the

disciplinary letter and ban were imposed without prior notice or a fair hearing. On January 24, 2019, the Claimant responded to that letter.

[15.] On January 28, 2019, the Claimant wrote to the Chairperson of ACEA complaining about the January 21, 2019 letter and enquired as to an available appeals process. The Chairperson responded, treating the Claimant's letter as starting the appeal process, invited her to make the apology and purported to rely on witness accounts. The Claimant's case is that neither the witnesses nor their accounts were disclosed to the Claimant and she was not allowed a full opportunity to answer the allegations.

[16.] By way of remedy, the Claimant seeks damages including aggravated or exemplary damages for slander or libel; damages for breach of contract, breach of duty or breach of the school's policy on the production of transcripts, breach of Anglican Central Education Authority Student Handbook and breach of the School Board's Policy Manual; damages for Negligence and a Declaration that the First and Second Defendants breached the Claimant's right to due process and procedural fairness.

The Defendants' case

[17.] The Defendants' case is that Simone Bellot applied for the transcript on January 2, 2019, paid the application fee, and that the school could not provide transcripts at that time because of the temporary unavailability of the electronic transcript system due to "a delay in processing payment of the subscription fee". The system was restored on January 14, 2019.

[18.] The Defendants plead that when Mrs. Davies entered the reception area of the school on January 14, 2019, she greeted Mrs. Bellot and assured Mrs. Bellot that the transcript would be available in a few minutes. The Defendants' pleaded case is that after Mrs. Bellot learnt that the system was down because of a payment issue (viz, the School's payment of the subscription fee), Mrs. Bellot spoke loudly, and berated Ms. Davies about the delay and payment issue, and did so in the presence of a parent, students, and office personnel, in breach of the Respect and Protect Policy.

[19.] Their case is that Mrs. Bellot behaved in a disrespectful manner in the reception area of the Administrative Office on January 14, 2019 and that the January 21, 2019 letter was an appropriate internal communication made on an occasion of qualified privilege.

[20.] The Defendants' case is that Simone's transcript was sent to the University of Georgia on January 14, 2019 when the system was restored, and that the university accepted it for inclusion on Simone Bellot's file. They further plead that the ban on the Claimant, Mrs. Bellot, was imposed only after she was twice invited to remedy her breach

by apologizing and she refused to do so. The Defendants deny that there was any lack of due process and say that Mrs. Bellot's letter of January 24, 2019 comprehensively stated Mrs. Bellot's case and that it "ultimately unequivocally refused to offer apology."

[21.] The Defendants' case is that the Claimant has not established any enforceable contractual entitlement, actionable loss in negligence, nor was there any procedural unfairness.

PRELIMINARY OBJECTIONS

[22.] During the trial, Counsel for both parties raised preliminary objections concerning the evidential status to various parts of the witness statements as set out below.

[23.] At the commencement of the trial and prior to evidence being taken from the Claimant, Counsel for the Defendants made a preliminary objection regarding the evidentiary status of certain statements made by the Claimant in her Witness statement. Counsel for the Claimant submitted that the objection ought not to be heard since there was a case management order in place which set a timetable for interlocutory applications. I note that this matter commenced under the old rules. I note that case management orders under the new rules may specifically address the determination of evidentiary objections. In this case, I considered that the case management order did not prevent this Court from hearing evidentiary objections during the trial. The Court proceeded to hear the objection.

[24.] At the request of Counsel for the Claimant, and with the concurrence of Counsel for the Defendants, this Court decided to make its determinations known in the written judgment and after Counsel for the Claimant had an opportunity to respond by Closing Submissions.

Objections by the Defendants

[25.] The Defendants objected that identified statements in the witness statement of Mrs. Bellot were in fact legal submissions and argument which, they submit, had no place in a witness statement and were inadmissible. They submitted that the witness could only make statements of fact. The Defendants relied on the case of **Rowena Bethel v The National Insurance Board 2019/CLE/GEN/000387** as precedent for the procedure of making the objection at the start of the trial.

[26.] Counsel for the Claimant renewed his objection based on the existence of a case management order making provision for interlocutory applications. He also contended that the portions objected to "do not constitute submissions or opinions, but rather are the

Plaintiff's expressions of her own perception" and relied on Section 26(1) of the Evidence Act.

[27.] Section 26 of the Evidence Act provides:

(1) Where a person is called as a witness in any civil proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

(2) In this section "relevant matter" includes an issue in the proceedings in question.

[28.] The challenged portions of the witness statement are as follows:

Paragraph 58, second sentence

58. The.... As a result of the false allegations against me, I was diminished in the School and In the Anglican Diocese and I remain banned from the School's campus.

Paragraph 59, final sentence

59. The As Dr. Evans was not a member of the ACEA, she did not have the ACEA affiliation claimed by the Defendants in paragraph 20 of the Re-amended Defence and therefore had no duty to receive the January 21, 2019 letter by reason of any such affiliation as pleaded.

Paragraph 60, third and fourth sentences

60. In.... I note that in paragraph 28 of the Re-amended Defence, the Defendants deny even making any allegations of violence or assault against me either by the January 21, 2019 letter or at all. However, since Mrs. Davies alleged that I was in breach of the School's policy against violence, the only reasonable Inference was that I was being accused of violence.

Paragraphs 61, 62 and 63 – in their entirety

61. It was clear to me that the language used by Mrs. Davies in the letter constituted an imputation that I had behaved in a violent manner. Mrs. Davies intentionally characterized my behaviour as violent knowing that this was untrue. In the face of the language used in the letter, the Defendants' assertion in paragraph 28 of the Re-amended Defence that they never accused me of violence is absurd. In the Re-amended Defence, the Defendants' attempt to walk back Mrs. Davies' allegation of violence is an indication that they knew that the words in the January 21, 2019 letter were untrue, excessive, unnecessary and not reasonably appropriate to the occasion.
62. Further, when Mrs. Davies stated in her letter that my creation of the draft composite document was extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school's permission", she knew that this was an Imputation of fraudulent or dishonest behaviour. When she wrote those words, she knew that I had had no intention of utilizing the document without the School's permission, because I had presented the document for the very purpose of obtaining permission.
63. Knowing when she made these allegations against me that they were false, I can only conclude that Mrs. Davies made these allegations maliciously with intent to humiliate me, and to disparage me in the Diocese, in the School as a parent, a school board member and an alumna and in my profession.

Paragraph 64, final sentence

64. Notwithstanding.... This stubborn refusal to either clarify, withdraw or apologize for allegations that they knew to be false is a clear indication to me of malice on the part of the Defendants.

Paragraph 67, final sentence

67. According This obstinate refusal to lift the ban even though the basis for the ban had fallen away, is yet another Indicator of the Defendants' malice towards me.

[29.] Witness statements of witnesses of facts are primarily that - statements of fact. I accept the Defendants' submissions that the witness statements are not to include argument and legal submission. I also accept the Claimant's submissions that they may also include the witness' perception of a matter in dispute – provided it does not traverse the ground of expert opinion.

[30.] It may be an occupational hazard, a hazard to be overcome with intention and effort, for lawyers to occasionally trespass into the path of legal submission when appearing in the capacity of a witness of fact. This is not to be confused with another occupational hazard, more of a “language hazard”, which is that generally unobjectionable utterings may appear objectionable when uttered in legalese. I am mindful of these distinctions in assessing the impugned evidence.

[31.] Paragraph 58, second sentence - To my mind, there is nothing objectionable with Paragraph 58, second sentence. The case of the Claimant is that because of the allegations, which she says are false, her reputation suffered injury. She is entitled to make that allegation of her perception. That she uses words suitable for legal submission ought not to prevent the court from hearing her evidence that she feels/believes that her reputation was injured. That she remained banned from the school campus is a matter of fact and she is entitled to give that evidence.

[32.] I adopt and adapt the reasoning in the immediately preceding paragraph, *mutatis, mutandis* for paragraphs 61 and 63, paragraph 62, second sentence, for the final sentence in paragraph 64 and for the final sentence in paragraph 67. In those cases, I am satisfied that the Claimant gives evidence of fact or of her perception, which is particularly germane in this case given the libel cause of action.

[33.] Paragraph 60, third sentence is her statement of fact, as she asserts it, and is unobjectionable.

[34.] The following statements are matters of legal submission or are inferences to be drawn by the court. They are not matters of fact within the knowledge of the Claimant nor are they “made by way of conveying relevant facts personally perceived by her”. Therefore they are struck from the witness statement as inadmissible:

Paragraph 59, final sentence

Paragraph 60, fourth sentence

Paragraph 62 first sentence

[35.] In the premises, the following sentences are struck from the witness statement of Mrs. Terri Bellot and are inadmissible:

Paragraph 59, final sentence

59. The ~~As Dr. Evans was not a member of the ACEA, she did not have the ACEA affiliation claimed by the Defendants in paragraph 20 of the Re-amended Defence and therefore had no duty to receive the January 21, 2019 letter by reason of any such affiliation as pleaded.~~

Paragraph 60, fourth sentence

60. In.... ~~However, since Mrs. Davies alleged that I was in breach of the School's policy against violence, the only reasonable inference was that I was being accused of violence.~~

Paragraph 62, first sentence

62. ~~Further, when Mrs. Davies stated in her letter that my creation of the draft composite document was extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school's permission", she knew that this was an Imputation of fraudulent or dishonest behaviour.~~

Objections by the Claimant

[36.] Counsel for the Claimant also made objections in relation to statements made in the witness statements of the witnesses for the Defendants. His objections were on the basis of hearsay. He objects that in both instances, the statements are offered for the purpose of proving that the stated facts, which were told to the respective witnesses by other parties, are true.

[37.] Counsel for the Claimant objects that in the case of Mrs. Davies, she relayed as fact something that had been told to her by some anonymous person or persons and that in the case of Mrs. Lewis, she proffered a statement that she said had been made by an unidentified 'secretary'.

[38.] The statements objected to are:

1. In paragraph 47 of her witness statement, Mrs. Davies states:

I am also aware of the fact that despite the imposition of the ban Mrs. Bellot nevertheless attended St. Johns' premises beyond the exceptions which had been granted to her by the Bishop. I am aware because this information was

provided to me in my capacity as Director of the ACEA and consistently with my job of liaising with St. Johns on such matters.

2. In paragraph 9 of her witness statement, Mrs. Junann Lewis states:

I wanted to confirm who it was causing this disturbance and so I picked up my telephone and called the Secretary. The Secretary confirmed to me that the person speaking loudly and abrasively was the Plaintiff, TERRI BELLOT (“Mrs. Bellot”).

[39.] Counsel for the Defendants submit that Mrs. Lewis merely seeks to confirm that it was the Claimant who was on campus and nothing more. Counsel for the Defendants submits that the statement was not being proffered for the truth of what happened but that it happened. For this, she relies on Section 32(1)(A) of the Evidence Act which provides:

32.(1) Subject to subsection (2) and to this Act, hearsay evidence shall not be admitted in evidence.

(2) Hearsay evidence may be admitted —

(a) where the statement is a necessary part of any fact or transaction which is being investigated by the court;

...

[40.] Counsel for the Defendants submit that in relation to Mrs. Davies, she is merely “reciting a statement of affairs, that she derived and gleaned from what had been said to her, but she never said what was said to her. It is -- it is close proximity, we would say, but it's not hearsay.” Counsel argues that Mrs. Davies is an employee with knowledge of the state of affairs.

[41.] In this case, I find that both statements are submitted for the truth of them. There is no dispute that Mrs. Bellot was at the school. What is in dispute is the nature of her conduct. The contention of the Defendants is that Mrs. Bellot’s conduct merited the label and description later attached to it. It seems to me that that is the goal of Mrs. Lewis’ evidence although she did not see Mrs. Bellot when Mrs. Bellot was at the school. However, Counsel for the Claimant cross-examined Mrs. Lewis in detail and included, in his cross-examination, an examination of this statement. That being so, I hold that it renders his objection otiose.

[42.] In relation to Mrs. Davies, she attempts to give evidence about the ban. It is apparent that she does not speak from personal knowledge. Nor does she identify the source of her information. Whether or not Mrs. Bellot could access the school premises would be a matter to be considered if the Claimant were successful in relation to more than one of the pleaded causes of action and if there were to be an assessment of damages. I am satisfied that the statement is being offered for the truth of it and is hearsay.

[43.] The entirety of paragraph 47 of the witness statement of Mrs. Davies is struck out.

ISSUES

[44.] The central issues for determination are:

1. Whether the January 21, 2019 letter was defamatory of the Claimant and whether it was published and, if so, whether the publication was protected by qualified privilege and, if so, whether such privilege was defeated by express malice?
2. Whether the school handbook, transcript procedures, or transcript request materials created legally enforceable contractual obligations; and, if so, did the Defendants owe a contractual obligation to the Claimant and, if so, did the Defendants breach that obligation?
3. Whether the Defendants were in breach of policy?
4. Whether the Defendants were negligent in failing to ensure timely production of Simone Bellot's transcript?
5. Whether the Defendants failed to afford the Claimant a fair hearing in breach of the principles of natural justice and, if so, whether declaratory relief should follow?

DEFAMATION

Issue 1: Whether the January 21, 2019 letter was defamatory of the Claimant and whether it was published, if so, whether the publication was protected by qualified privilege and, if so, whether such privilege was defeated by express malice.

The Claimant's Submissions

[45.] The Claimant's legal submissions are that the January 21, 2019 letter was plainly defamatory because it imputed violence and fraud or dishonesty, and that qualified privilege does not protect its circulation, especially to the school principal, because the Defendants pleaded one basis for her interest and its own evidence contradicted that plea. The letter was copied to Bishop Laish Boyd, Gabrielle Fraser, Chairman and to the Principal of the School, Dr. Nevilene Evans.

[46.] The Claimant argues that any privilege was defeated by express malice because Mrs. Davies knew the fraud implication was false, given that Mrs. Bellot had openly shown the draft transcript to multiple school and diocesan officials for checking and approval, including the Vice Principal, the guidance counsellor, Mrs. Balfour, and Mrs. Davies herself. The Claimant contends that any defence of qualified privilege is also defeated because the language of the letter was excessive and the punishment was unusually harsh compared with how other parents were treated.

[47.] The Claimant submits that the Defendants' willingness to withdraw the allegations and apologize appeared only in a draft letter exchanged during settlement negotiations, and that the original defamatory allegations were never actually withdrawn. She argues that, on that basis, any apology could go only to mitigation of damages and not constitute a complete defence. She further argues that the timing and contents of the Defendants' offer did not satisfy the statutory requirements for effective mitigation.

[48.] The Claimant also contends that the First Defendant acted on behalf of the ACEA and that the contents of the letter may have become known more widely within the ACEA membership, beyond the three named recipients.

The Defendants' Submissions

[49.] The Defendants contend that the January 21, 2019 letter was published on an occasion of qualified privilege because it was written by the Director of ACEA in that capacity and copied only to the Bishop, the ACEA Chairman, and the Principal, all of whom had a common and mutual interest or a corresponding duty in relation to the Respect

and Protect Policy and the school's governance. The Defendants argue that the recipients needed to be informed about conduct at one of their schools, an alleged policy breach, and the decision taken in response and that the Principal needed to be informed because the conduct occurred at St. John's College.

[50.] The Defendants deny malicious intent, deny that the letter alleged violence or assault, and submit that it alleged only that the Claimant berated and was disrespectful to school personnel. The Defendants rely on settlement discussions and proposed retraction letters as showing willingness to withdraw imputations of fraud or intention to deceive. They submit that such letters undermined any allegation of malice and any claim that the communication had a defamatory impact.

Law And Analysis

Defamatory material

[51.] The tort of defamation largely concerns the protection of reputations. In this jurisdiction, the relevant cause of action is either libel or slander. The law recognizes and protects a person's right to his good name subject to various defences.

[52.] Generally, defamation refers to the publication of (untrue) defamatory material. The **Encyclopedia of Forms and Precedents (2021 Revision), Volume 15(1)**, at paragraph 117 defines "defamation" as

"the making to a third party of a false statement that tends to lower someone in the eyes of right thinking persons generally or to expose him to hate, ridicule or contempt and which caused, or is likely to cause, serious harm to the reputation of the claimant."

[53.] In **Sims v Stretch [1936] 2 All ER 1237**, at page 1240, Lord Atkin stated that the proper test is whether the words would "tend to lower the Claimant in the estimation of right-thinking members of society generally".

[54.] The test for defamatory material was also explored in **Rubber Improvement Ltd v Daily Telegraph Ltd [1964] AC 234**. In that case, the defendants published front-page reports stating that the City of London Fraud Squad was investigating the affairs of Rubber Improvement Ltd and referring to its chairman, Mr. Lewis. The claimants alleged that the reports bore the defamatory imputation of fraud. Lord Reid held that the words would be defamatory if they led the ordinary, reasonable reader to conclude that the claimants had committed fraud or were suspected by the police of fraud. However, the governing

principle remained whether the words tended to lower the claimants in the estimation of right-thinking people.

The Letter of January 21, 2019

[55.] In this case, the Claimant's claim in defamation turns on the January 21, 2019 letter. The Claimant's contention was that the letter issued by the First Defendant, which was approved by the Second Defendant, was defamatory in its meaning and effect. The letter reads as follows:

21st January 2019

Mrs. Terri Bellot
P.O. Box N10224
Nassau, Bahamas

Dear Mrs. Bellot,

Re: Misbehaviour

I write on behalf of the **Anglican Central Education Authority** to address your misconduct, bad attitude and disrespect on Monday, 15th January 2019. It was brought to my attention that on this date, you were loud and disrespectful in your tone when addressing Mrs. Jocelyn Smith and Mr. Lyndon Sweeting regarding procuring a signature on a transcript that you produced at home for your daughter Simone Bellot. Additionally, you were abrasive and loud when addressing me in the main administration office of the school.

Your behavior of loudly berating the school personnel for not being able to send off a transcript, that you requested on 3 January 2019, or produce a manual transcript within the time frame that you wished were all in violation of our Respect and Protect Policy and is totally unacceptable. This behavior was displayed in front of a parent and four grade six male students.

I wish to remind you that at Anglican schools, we have rules that govern parents' behavior. Our Respect and Protect Policy speaks about our non-

tolerance of violence in any form. The principle is that everyone is obliged to respect and protect the rights of others with NO tolerance for violence. The purpose of the policy is to give students, parents, staff and the community at large a clear statement concerning the Anglican Schools' stand against violent behavior. The objectives are to ensure the safety of students and staff, their property, and the property of the school, and to maintain a safe, supportive, nurturing, school environment highly conducive to learning

Our Policy Manual States:

The definition of violence is as follows: Violence is any mean word, look, sign or act that hurts or damages a person's body, feelings, or possessions.

No one is entitled to be violent. No form of violence will be tolerated from anybody at school, on school-sponsored transportation, or at school sponsored activities away from school. This will also include parents coming on campus and causing commotion or students bringing someone on campus.

Apart from your unacceptable behavior, what is even more disturbing is the fact that you produced a transcript complete with the school's watermark and crest. This action is extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school's permission. When asked how were you able to breach our protocols you proceeded to explain to me that it was very easy to do and that anyone could do it. You went on to give details in the presence of the four students and the parent, and in the hearing of the clerical staff just how to reproduce the school's crest.

As a lawyer, long standing School Board member, parent and an Anglican, your actions were very disappointing. The clerical staff who witnessed your display were all astounded by your behavior. We cannot condone parents' misbehavior in any form. You are therefore required to offer a public apology for your actions on Tuesday, 29th January 2019 in the school's administrative office. Failure to do so will result in your being banned from the school's campus indefinitely, as we deem it important for our teachers and staff to be treated fairly and with respect. As a parent, it is critical that you develop an amicable relationship with all of your child's teachers, administrators and the staff in the school. We expect that teachers and parents work together for the good of the students. Thank you in advance for your co-operation in this very important matter.

If you need further information, please do not hesitate to contact me at the above address or telephone number 322-3015, 6 or 7.

Sincerely,

Italia Davies (Mrs.)
Director of Education
Anglican Central Education Authority

Cc: Bishop Laish Boyd - Bishop of the Bahamas & The Turks & Caicos Islands
Miss Gabriella Fraser - Chairman, ACEA
Dr. Nevillene Evans, Principal - St. John's College

[56.] The issue before me is not whether the letter criticized the Claimant. The issue is whether it conveyed to the recipients imputations that would tend to lower the Claimant in their estimation.

[57.] In relation to this issue, the Claimant pleads at paragraphs 21 to 24 of the Statement of Claim:

21. The First Defendant, acting in the course of her employment with the Second Defendant and on behalf of the Second Defendant, wrongfully, falsely and maliciously accused the Plaintiff of committing a criminal act of intending to create and utilize the School's property without the School's permission and banned the Plaintiff from the School's campus indefinitely, unless she offered a public apology for her alleged actions on Tuesday, January 29, 2019 in the School's administrative building.

22. By reason of the matters indicated above, the Second Defendant caused to be written and published the words contained in the letter issued by the First Defendant on its behalf, which were malicious and defamatory of the Plaintiff.

23. In their natural and ordinary meaning, the said words contained in the aforesaid letter and in particular the words alleging that the Plaintiff **"... produced a transcript complete with the school's watermark and crest. This action is extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school's permission",...** had misbehaved by being **"loud and disrespectful in your tone when addressing Mrs. Jocelyn Smith and Mr. Lyndon Sweeting regarding procuring a signature on a transcript..."** and that the Plaintiff was "abrasive and loud when addressing the First Defendant in the main 'administration office of the School in

breach of the School's Respect and Protect Policy and Policy Manual meant and were understood to mean that the Plaintiff is a violent person who committed the criminal offences, inter alia, of assault and forgery.

24. The said words were calculated to disparage the Plaintiff in the School in the Anglican Diocese and in her profession as counsel and attorney at law of the Supreme Court of the Bahamas.

[58.] The Claimant submits that the letter imputes violence and fraud or dishonesty. The Claimant submits:

Notwithstanding the Defendants' denial in the Re-amended Defence that the Letter contained any allegation of violence or assault on the part of the Claimant, the imputation is obvious. The First Defendant used the word "**violence**" or "**violent**" seven times over two paragraphs with reference to the Claimant, underlining and capitalizing certain portions for emphasis...

Mrs. Davies' statements went even further, alleging that the production of the draft transcript was "**extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school's permission.**" These words are equally clear, creating one inescapable conclusion in the mind of any ordinary, reasonable reader: that the Claimant acted fraudulently and/or dishonestly.

The language used in the Letter is unequivocal. It is submitted that any reasonable or ordinary person reading the Letter would arrive at the following conclusions:

- (i) that the Claimant behaved in a violent manner, and
- (ii) that the Claimant acted fraudulently and/or dishonestly.

[59.] Paragraph 28 of the Defendants' Re-Amended Defence reads in part:

Further, the Defendants deny making any allegation of violence or assault against the Claimant either by the letter of 21st January, 2019 or at all. The Defendants will aver that the allegation made against the Claimant was an allegation that she had berated and had been disrespectful to school personnel in breach of the School's Respect and Protect Policy.

[60.] However, the Defendants have not forcefully, or at all, offered an interpretation rebutting that of the Claimant. Their stance seems to be dependent not on the construction of the words used but whether there was in fact a tort committed. The Defendants submit:

Assuming without accepting that the Defendants' letter of 21st January 2019 was defamatory of the Claimant the Defendants assert that such defamatory words were

not published as required by law and/or that the communication was an occasion protected by qualified privilege.

[61.] I will now consider the meaning of the words used in the January 21, 2019 letter. My task is to consider what is the natural and ordinary meaning of the words used in the letter as it relates to the Claimant and as a reasonable reader would understand them to mean.

[62.] To my mind, the words employed in the January 21, 2019 letter convey that the Claimant was disruptive and caused a commotion. The words and context do not merely convey a loud interaction but instead a disrupting, commotion-causing behaviour (by the use and juxtaposition of words such as: loud, abrasive, disrespectful, parents coming on campus and causing commotion).

[63.] The words convey that the Claimant was violent – not ‘passively’ so but by “unacceptable behaviour” (by the use and juxtaposition of words such as: in breach of the Respect and Protect Policy [which] speaks about our non-tolerance of violence in any form... NO tolerance for violence... No one is entitled to be violent. No form of violence will be tolerated from anybody at school... This will also include parents coming on campus and causing commotion ...your unacceptable behavior.... The clerical staff who witnessed your display were all astounded by your behavior. We cannot condone parents’ misbehavior in any form).

[64.] The letter accuses the Claimant of “misconduct,” “bad attitude,” and “disrespect,” and refers to alleged violations of the Respect and Protect Policy. There is an attempt in the letter to contextualize The Respect and Protect Policy and the letter purports to provide extracts from the policy including “no form of violence will be tolerated” and sets out categories of violence including physical, social, verbal, and visual violence. In my judgment, the likely and natural effect of combining an accusation of policy breach with reference to a policy of non-tolerance of violence was to suggest to the recipients that the Claimant had engaged in serious threatening or violence-related misconduct, even if not necessarily a physical assault.

[65.] The words suggest that the deemed misbehaviour rose to a level that may have threatened the safety of students and staff. This construction finds support in the nature of the punitive measure taken by the writer who found it appropriate to ban the Claimant from the campus, failing her rendering an apology at the campus.

[66.] Finally, I find that words were used which connote that the Claimant had committed some act of impropriety viz, some type of fraudulent conduct. The letter raised concerns

about the Claimant producing, for use, a transcript bearing the school watermark and crest. This reference, read in context, was capable of conveying that the Claimant had engaged in dishonest or improper conduct concerning the transcript (Words such as: “what is even more disturbing is the fact that you produced a transcript complete with the school’s watermark and crest. This action is extremely disturbing as it shows the intention to create and utilize a document which is the property of the school without the school’s permission. When asked how were you able to breach our protocols you proceeded to explain to me that it was very easy to do and that anyone could do it.”)

[67.] I would also add that the reference to the Claimant’s profession, in the scheme of things, appears unnecessary and appears to be so placed to emphasize a failure in integrity.

[68.] In the premises, I accept the Claimant’s contention that the words impute violence, dishonest intent and fraud.

Publication

[69.] It is the Defendants’ position that the letter was not (1) not published and (2) attracts the defence of qualified privilege.

[70.] An essential element of the tort lies in the publication of the defamatory material to another person for it is in that communication to another that the seeds of injury to reputation lie. Publication is “making known the defamatory matter ... to some person other than the person of whom it is written” or spoken: *Pullman v. Hill* [1891] 1 QB 524, per Lord Esher, M.R. at p. 527.

[71.] The Defendants submit that

“Firstly, it is significant that the Defendants’ letter was written to the Claimant herself and was copied only to members of the ACEA and the Principal of School. It cannot therefore be said that any third party extraneous to the Defendants received the letter.”

[72.] The Defendants rely on the case of *White v. J. and F. Stone (Lighting and Radio), Limited* [1939] 2 K.B. 827 for the proposition that the letter was not published because it was not sent to a party “extraneous to the Defendants”.

[73.] The Claimant submits it is enough if the letter was “communicated by the defendant to at least one person other than the claimant himself”. She relies on **Commonwealth Caribbean Tort Law (5th Edition) by Gilbert Kodilinye** at page 266 for that proposition:

The claimant must prove that the words of which he complains were ‘published’, that is, communicated by the defendant to at least one person other than the claimant himself.

[74.] *White v. J. and F. Stone (Lighting and Radio), Limited* does not depart from the cardinal rule set out in **Commonwealth Caribbean Tort Law (5th Edition) by Gilbert Kodilinye**. It is a case that looked at the issue of publication prior to considering the nature of qualified privilege. In that case, Lord Justice Mackinnon opined at page 834:

The whole essence of liability for libel or slander is the publication of the defamatory statement to some third person, not the use of language of a defamatory kind to the person complaining of it. When Lord Atkinson speaks of "the person to whom it is made," I think he means the person to whom the alleged defamatory statement is published... I think "the person to whom it is made" must be the third person, other than the Claimant, to whom the alleged defamatory statement is published.

[75.] The rule of law is that the defamatory matter is published whenever it is communicated to someone other than the person defamed. On that basis, a letter sent only to the person defamed is not published, but a letter about that person sent to someone else is.

[76.] The letter of January 21, 2019 was written by Ms. Davies, the First Defendant, addressed to the Claimant, Ms. Bellot. It was copied to three other persons, namely Bishop Laish Boyd, “Bishop of the Bahamas & Turks & Caicos Islands”, Ms. Gabriella Fraser, “Chairman, ACEA” and Dr. Nevillene Evans, “Principal - St. John’s College”. As I understand it, the Defendants’ proposition is that the letter was sent to the members of the Second Defendant, by an employee of the Second Defendants, and therefore was not publication.

[77.] I consider that the Defendants’ submission that the letter was not published is misconceived. To treat the First Defendant and the Second Defendants as one and the same is to conflate the person responsible for the publication with the persons exposed to liability. In this case the author was Mrs. Italia Davies, who signed as Director of Education. In their pleadings, the Defendants describe her as an employee of the Second Defendant. The letter was not signed for and on behalf of another person or ACEA Member. The Second Defendant, her employer, adopted her act but the publication went from the First Defendant to members of the Second Defendant.

[78.] Additionally, the letter was also published to the principal of St. John's College who is not an ACEA member. This was conceded by the Defendants themselves on the evidence of Mrs. Davies:

Q. Yes. Now, in that paragraph, I -- I don't think it's disputed and you say, the letter was written by me, in your capacity as Director of the ACEA?

A. Yes.

Q. That's correct. But you must concede, that it was copied to an individual, who was not a Member of the Board of the ACEA?

A. It was copied to the Principal of the School.

Q. Yes. And he's not a Member, on your own evidence, of the ACEA?

A. No.

[79.] Further, I hold that even if the circulation were among ACEA members only, the publication requirement would be met if it were a communication published by the maker to someone other than the person defamed. There are individual members of the ACEA as evident from the recipients copied on the letter. It is sufficient publication if the letter is communicated to the separate individuals about the Claimant. In other words, defamatory material communicated by one board member to another (about another person) is nonetheless publication. Once the defamatory material has been communicated to third parties, it meets the publication requirement and the matter of context of the communication may invoke some defence, such as privilege, but it does not negate publication.

[80.] In the premises I find that publication of the January 21, 2019 is established by the sending of same from Mrs. Davies to the Bishop, the ACEA Chairperson, and the Principal.

[81.] It seems to me that the relevant issue in this case is not whether there was publication, but whether the occasion was protected by qualified privilege because of the context of the communication.

Qualified Privilege

[82.] A written statement circulated to others may be defamatory or libelous. Its publication may, nonetheless, be protected by qualified privilege if it was made on a privileged occasion and without express malice.

[83.] **Adam v Ward [1916-17] All ER Rep 157** is a leading House of Lords authority on common law qualified privilege in defamation. In that case, Adam, a Member of Parliament, made allegations in the House of Commons against an army officer. The Army Council investigated, cleared the officer, and then communicated its conclusions to the press. The conclusions included comments adverse to Adams. As a result, Adams sued for libel. The House of Lords upheld the defence of qualified privilege.

[84.] In **Adam v Ward** Lord Finlay LC explained that an occasion is privileged where the communication is made in the discharge of a duty, or on a matter in which the maker and recipient share a corresponding interest. The privilege is qualified only and is defeated by proof of express malice, which may be inferred from unnecessarily strong language or from facts showing spite or some improper indirect motive. Further, the privilege extends only to communications germane to the privileged subject-matter and does not protect extraneous matter published at the same time.

[85.] Lord Finlay LC opined at page 162:

The law of privilege is well settled. Malice is a necessary element in an action for libel, but from the mere publication of defamatory matter malice is implied, unless the publication were on what is called a privileged occasion. If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be privileged. This privilege is only qualified, and may be rebutted by proof of express malice. It is for the judge, and the judge alone, to determine as a matter of law whether the occasion is privileged, unless the circumstances attending it are in dispute, in which case the facts necessary to raise the question of law should be found by the jury. It is further for the judge to decide whether there is any evidence of express malice fit to be left to the jury - that is, whether there is any evidence on which a reasonable man could find malice. Such malice may be inferred either from the terms of the communication itself, as if the language be unnecessarily strong, or from any facts which show that the defendant in publishing the libel was actuated by spite or some indirect motive. The privilege extends only to a communication upon the subject with respect to which privilege exists, and it does not extend to a communication upon any other extraneous matter which the defendant may have made at the same time. The introduction of such extraneous matter may afford evidence of malice which will take away protection on the subject to which privilege attaches. The communication on the extraneous matter is not made upon a privileged occasion at all, in as much as the existence of privilege on one matter gives no protection to irrelevant libels introduced into the same communication.

[86.] Lord Atkinson similarly remarked at page 170:

It was not disputed in this case on either side that a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

[87.] In *White v. J. and F. Stone (Lighting and Radio), Limited [1939] 2 K.B. 827*, White was employed by the defendant company and was dismissed after being accused by a director (Comras), in the presence of other employees (Turnham and Peers), of being short in company funds. White sued for slander and wrongful dismissal. In relation to slander, he claimed that the statements implied criminal conduct (embezzlement). The main legal issue was whether the statements made by the director were spoken on a privileged occasion, which would protect the company from liability for slander unless malice was proven. A jury found in favour of White's claim for slander. The defendants appealed, arguing, inter alia, that the occasion was privileged. The Court of Appeal held that the occasion was not privileged because the third parties present (the other employees) did not have a corresponding interest or duty to receive the defamatory statements.

[88.] Mckinnon, LJ at pages 833 to 835 opined:

We have had a number of cases cited to us, but I do not think that the definition of a privileged occasion can be put more clearly or accurately than in the words used by Lord Atkinson in *Adam v. Ward* (1), where his Lordship says: "It was not disputed in this case on either side, that a privileged occasion is, in reference to qualified privilege" - and that is all we are concerned with - "an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential." Applying that test to this case, I think the question is whether Comras, in making a communication, had an interest or duty, legal, social or moral, to make it to Turnham or Peers and whether Turnham and Peers had a corresponding interest or duty to receive it. ...

Now that the point is raised and in view of the frequent repetition of this definition of the nature of a privileged occasion, clearly stated by Lord Atkinson in the passage already quoted from *Adam v. Ward* (1), I think that the privileged occasion can only arise when the publication is made to a person, other than the Claimant, to whom the speaker has a duty or interest to make it, and that hearer has a corresponding duty or interest to receive it.

That qualification does not seem to me to have arisen here in the case either of Turnham or Peers, and I think this was not a privileged occasion.

[89.] Lastly, In **David v Hosany [2017] EWHC 2787 (QB)**, Judge Moloney QC, at paragraph 4.2, discusses the common law principle of qualified privilege and pronounced:

4.2 One of the most commonly used defences is that of common-law qualified privilege. This focuses not so much on the content of the words complained as on the occasion on which they were published. Were the circumstances such that the publisher had a legal, social or moral duty or interest to make the publication, and the publishee a corresponding duty or interest to receive it? If so, the publication took place on an occasion of qualified privilege, the qualification being that the publisher must not be actuated by express malice. But unless the claimant can prove such malice, the defendant will have a complete defence (see Duncan & Neill above, para 17.05 and following).

[90.] In the case before me, by paragraph 20 of their Re-Amended Defence filed on April 22, 2022, the Defendants pleaded qualified privilege. The Defendants contend that the letter was published on an occasion of qualified privilege because it was written by the Director of ACEA in that capacity and copied only to the Bishop, the ACEA Chairman, and the Principal, all of whom allegedly were members of the ACEA and who had a common and mutual interest or a corresponding duty in relation to the Respect and Protect Policy and the school's governance.

[91.] The evidence of Mrs. Davies is that she copied Dr. Evans on the letter because Dr. Evans was principal of the school and she was communicating the position of the ACEA to the principal. At paragraph 43 of her witness statement she avers:

43. I specifically included Dr. Evans because as the Principal of St. Johns Dr. Evans had a duty and obligation to implement and enforce the determinations of the ACEA relative to the St. John's campus. I therefore had to communicate the position of the ACEA in this matter to Dr. Evans to facilitate her carrying out her resultant duties and obligations on her campus.

[92.] As noted above, at trial, the Defendants conceded that the principal was not an ACEA member.

[93.] The Claimant contended that the Defendants could not rely on qualified privilege because qualified privilege does not protect its circulation, especially to the school

principal. The Claimant contends that the Defendants pleaded one basis for the principal's interest and that their own evidence contradicted that plea and that the Defendants are bound by their pleading. The Claimant submitted that the letter exceeded what was necessary and was copied to the Principal, who was not an ACEA member.

[94.] I have considered the Claimant's submission that the Principal was not a member of ACEA and that the Defendants are bound by their pleading, which wrongly described him as such. Notwithstanding that pleading, the First Defendant's evidence indicated that the Principal was responsible for reporting to the ACEA board on the School's administration. While this evidence from the Defendant contradicts their pleading, I do not think that this Court is estopped from considering it. The Defendants raised the defence of Qualified Privilege. The letter, *ex facie*, was written to Dr. Evans in her capacity as Principal. It is a factual issue, that ought not have taken the Claimant by surprise. Whether or not Dr. Evans was a member of the ACEA is a separate consideration. The capacity in which Dr. Evans was written is a matter of evidence and of fact to be determined by the Court and not by any label attached by a party to the recipient.

[95.] I also consider that the capacity in which Dr. Evans was written was a live issue raised by the plea of the defence of qualified privilege. Therefore the Claimant should not have been taken by surprise by the consequent legal issue, and, in my estimation, was not taken by surprise. The legal issue is whether the letter was written on an occasion of qualified privilege, covering ACEA members and whether, if the principal was not an ACEA member, whether that defeats the defence of Qualified Privilege.

[96.] There is some force in the Claimant's argument that Principal Evans could have been merely notified of the result of the letter. Ms. Davies, in cross-examination, accepted that that could have been an option. However, the legal test is whether the principal had a real duty, role, or corresponding interest in receiving a communication about a parent's alleged misconduct and a proposed or imposed campus ban.

[97.] There's no gainsaying that the principal had an institutional interest in the matter. The evidence is that there was a transcript-related dispute which involved the school administration, and that the Claimant had prior communications about same with the Principal orally on January 7, 2019 and by email on January 8, 2019. Where, as in this case, the ban concerned access to the school campus, day-to-day school operations, parent presence on campus, and implementation of the school's response, then the principal would, in the usual scheme of things, have a direct operational interest in knowing that decision. In this case, the reasons for the decision would be germane since the ban is said to flow from the parent's prior conduct. In my view, the principal would fall within the proper circle of recipients and would not be treated as a mere outsider.

[98.] I therefore conclude that Dr. Evans, in her capacity as principal was not an extraneous third party such as to defeat the defence of qualified privilege. She was a proper recipient of the January 21, 2019 letter.

[99.] On the evidence, I find that the letter dated 21 January 2019 was published on an occasion of qualified privilege. Its subject matter did not concern a purely personal dispute between the Claimant and the First Defendant. Rather, it concerned matters arising at the School in relation to the production of Simone's transcript, the alleged conduct of the Claimant on School premises, and ACEA's decision to ban the Claimant from the School in the absence of an apology. This was sufficient to give the recipients, including the principal, an interest in receiving communications concerning events on School premises and matters said to affect School governance and policy enforcement.

Express Malice

[100.] Express malice defeats a defence of Qualified privilege: **Adam v Ward; White v. J. and F. Stone (Lighting and Radio), Limited, supra**. In **Horrock v Lowe [1975] AC 135**, Lord Diplock, at page 149, defined express malice as follows:

"Express malice" is the term of art descriptive of such a motive. Broadly speaking, it means malice in the popular sense of a desire to injure the person who is defamed and this is generally the motive which the Claimant sets out to prove".

[101.] The cloak of qualified privilege is lost if a claimant proves that a defendant was actuated by express malice - that is, if the statement was made for an improper purpose, such as personal spite, or without honest belief in its truth: **Horrocks v Lowe [1975] AC 135**. In that case, The House of Lords clarified that mere prejudice, irrationality, or stupidity does not amount to malice if the defendant genuinely believed the statement to be true. Malice requires proof that the defendant either did not believe the statement, was indifferent to its truth, or was motivated by a dominant improper purpose.

[102.] In **Horrocks v Lowe, Viscount Dilhorne** opined at page 145:

If a man abuses a privileged occasion by making defamatory statements which he knows to be false, express malice may easily be inferred. If, on such an occasion, he makes statements recklessly, not caring whether they be true or false, again malice may be inferred. Such recklessness may be induced by anger, as Lord Esher M.R. pointed out in

Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson [1892] 1 Q.B. 431, 444. Lord Esher M.R. went on to say that gross and unreasoning prejudice

"... not only with regard to particular people, but with regard to a subject matter in question, would have the same effect. If a person charged with the duty of dealing with other people's rights and interests has allowed his mind to fall into such a state of unreasoning prejudice in regard to the subject matter that he was reckless whether what he stated was true or false, there would be evidence upon which a jury might say that he abused the occasion."

Lord Esher M.R. was pointing out that there was a state of mind, short of deliberate falsehood, which may lead to the conclusion that there was an abuse of the privileged occasion. He was not dealing with the case where a man honestly believes the truth of his statements.

[103.] Malice must be specifically pleaded and the burden is on the Claimant to establish that in defaming her the Defendant was actuated by malice.

[104.] In this case, by paragraph 3 of her Reply, the Claimant pleads Malice.

[105.] In this case, the Claimant argues that any privilege was defeated by express malice because Mrs. Davies knew the fraud implication was false, given that Mrs. Bellot had openly shown the draft transcript to multiple school and diocesan officials for checking and approval, and because the language of the letter was excessive and the punishment was unusually harsh compared with how other parents were treated.

[106.] It becomes necessary to consider the parties' accounts of the events of January 14, 2019 which led to the publication of the January 21, 2019 letter.

[107.] I pause here to note that the parties are agreed that central to this issue is what happened on January 14, 2019. However the Defendants submit, as I understand it, that the conduct of Mrs. Bellot is not a factual matter before the court and is not raised on the pleadings. It seems to me that this is an attempt to artificially relegate the dispute to one of solely law. If so, the submission, in my view, is misconceived.

[108.] The pleading of the Claimant is that she went to the school, interacted with school personnel, including the First Defendant, and was subsequently visited with a letter which she alleges to be defamatory. The matter of her conduct is pleaded in the Statement of Claim, including paragraphs 15, 17 and 18. The Defendants, by their re-amended Defence, plead what they allege the conduct of the Claimant was on that day (such as paragraphs 8 and 9). The conduct of Mrs. Belott is an issue joined on the pleadings. The Witness

statements, viva voce evidence and cross-examination devoted much time to the conduct of the Claimant. Not surprisingly so.

[109.] The Defendants plead a defence of Qualified Privilege. By Reply, the Claimant pleads Malice which, if proven, would defeat a defence of Qualified Privilege. In the circumstances of this case, the issue raised by the plea of malice is whether, if the allegations were false, the Defendants knew that to be the case. The Particulars of Malice pleaded in the Claimant's Reply includes the allegation that the First Defendant knew that the Claimant had not acted in a violent manner. This requires a consideration of the evidence of the nature of the Claimant's conduct on that day and of what the First Defendant knew in order to make a determination thereon.

The transcript

[110.] Mrs. Bellot's witness statement of January 27, 2023 served as her evidence-in-chief. In cross-examination, she stated that on January 14, 2019, she attended the School's administrative office and sat in the reception area. She averred that the First Defendant, Mrs. Davies, then entered the area and addressed her in a sarcastic tone.

[111.] During that conversation, Mrs. Davies informed her that the School's system was functioning again and that Simone's transcript had been emailed to the University of Georgia. Mrs. Bellot further stated that Mrs. Davies asked her about the draft transcript she had prepared, and she replied that she had created it in Microsoft Word. It is important to consider this aspect of the evidence as to what took place prior to, and during, that encounter.

[112.] The Claimant, by her witness statement, averred:

16. All of the school administrators expressed concern and empathy over the situation and indicated that the matter was with the Director but that in the meantime, there was nothing that they could do. During my conversation with the Principal, Dr. Evans, I enquired about the possibility of the school preparing manual transcripts since electronic versions were unavailable and she informed me that there were concerns that manually issued transcripts would not be presentable.

17. After my attempts to reach Mrs. Davies on 7th and 8th January proved to be unsuccessful, I sent her the email on January 8, 2019, in which I reminded her that this was a time when 12th grade students were applying to universities. I indicated that my daughter had not been able to complete a number of applications because transcripts were not available

and that it had at that point become very urgent. I emphasized that time was of the essence and I requested a response as to the status of the matter. My email of January 8, 2019 to Mrs. Davies is at (TAB 4).

18. Mrs. Davies never responded to my email nor did she return any of my telephone calls. During my conversation with Mrs. Balfour on January 8, she indicated to me that she was not aware of the issue with the electronic grading system, but that she would look into it and get back to me. When she returned the call to me on January 9, she indicated that she had spoken to Mrs. Davies who was aware of the matter and that she, Mrs. Balfour, hoped it would be resolved soon.

19. On Sunday, January 13, 2019, out of my concern that Simone had already missed a deadline for submitting the transcript and that additional time was passing with no resolution, I prepared a document incorporating Simone's grades up to grade 11 as reported on her latest transcript and including her grades from the first term of grade 12 as reported on her end of term report card. Given the school administrators' expressed concern regarding the presentation of a manual transcript and given that they had all indicated that there was nothing they could do, my intention was to present this document to the school's administration as a possible solution.

20. On Monday, 14th January, 2019 (twelve calendar days and seven business days after the transcript had been requested), I went to the high school's administrative office where Mr. Sweeting's office was located. As I entered the reception area, I could overhear Mr. Sweeting and Ms. Smith, the Guidance Counselor, both of whom were in Mr. Sweeting's office, discussing the problem with producing transcripts. Shortly afterwards, Mr. Sweeting and Ms. Smith came to the reception area.

21. I presented both of them with the document I had prepared. At the same time, I presented the following documents: (i) An original of Simone's last issued transcript showing her performance up to the end of grade 11, bearing Ms. Smith's original signature and the school's seal, and (ii) Simone's original report card for the first term of grade 12. I laid all of the documents out on the desk in the reception area. I asked Mr. Sweeting and Ms. Smith to examine the document I had prepared, to verify the information using the original school-issued documents, and proposed that if they found everything to be in order, to authenticate it by affixing the appropriate signature and seal.

22. I also pointed out that I had not even included Simone's career average, because I wanted to leave it to the school to manually calculate the overall average, which could then be inserted into the document. Mr. Sweeting indicated that they were unable to authenticate this document without the approval of Mrs. Davies. I indicated that I would personally seek this

approval from Mrs. Davies. I then left the school's campus with the documents and went to Addington House where Mrs. Davies's office is located, with the intention of speaking with Mrs. Davies in person.

23. I arrived at Addington House at approximately 9:00 am. I was informed by a staff member that Mrs. Davies had not yet arrived at the office. While awaiting her arrival, I noticed that Mrs. Balfour, whose office is visible from the reception area, was in office. I approached her and asked whether I could speak to her and she invited me into her office. As I had done in the presence of Mr. Sweeting and Ms. Smith, I showed her the document I had prepared, explained to her the reason I had prepared it and showed her the original transcript and the original report card which I had used as the basis for preparing the document.

24. Mrs. Balfour then telephoned Mrs. Davies from her office and In my presence, explained exactly why I was there and what I had proposed. She explained that I had presented Simone's original transcript and report card and that I had prepared a document consolidating the information and was seeking to have it verified and authenticated by the School. After Mrs. Balfour's conversation with Mrs. Davies had ended, she reported to me that Mrs. Davies had indicated that if the information on the document could be verified by the School, then she had no objection to it being signed and issued. Mrs. Balfour also informed me that Mrs. Davies had said that she was heading directly to the School.

25. I left Addington House and went back to the School's Campus. I went directly to Mr. Sweeting's office and he informed me that the system was now up and running. He indicated that Mrs. Smith was preparing Simone's transcript and would send it Immediately. I indicated to Mr. Sweeting that I would wait in the main administration office until I received confirmation that the transcript had been sent.

26. I then went to the main administration office and sat in the reception area. Shortly afterwards, Mrs. Davies emerged from the back area and addressed me in sarcastic tone. I approached the reception desk where she was standing. From my position in front of the reception desk and her position behind the reception desk, our conversation ensued. Mrs. Davies Informed me that Simone's transcript had been sent. I asked her about the nature of the problem they had had with the system and she stated that they had not been able to access the system because they did not have the code. I enquired as to why they had not had the code and she stated that the software supplier had not released the code because they had not paid the subscription fee. She Indicated that since the fee had just been paid, they had just been given the code to access the system.

27. I was very surprised by Mrs. Davies's revelation that they had failed to pay the subscription fee when they knew that students needed transcripts to complete college and scholarship applications. Furthermore, I knew that every term parents were required to pay an "Edline fee" to the School, a fee that was specifically earmarked for the purpose of maintaining the electronic grading system that was used by the School for producing transcripts. A copy of the fee slip showing the billing for the Edline fee is at (TAB 5). Therefore, I expected the School to maintain its subscription for this system so that transcripts would be available in a timely manner. I felt that the School had placed their students at a disadvantage because of this failure. Mrs. Davies very flippantly stated that they could prepare a letter to the relevant universities explaining that the delay in submitting transcripts was the School's fault. I stated that Simone's deadline for the University of Georgia had expired a week before and I doubted whether the university would be Interested In receiving such a letter in relation to one applicant out of their 20,000 applicants.

28. I also voiced my opinion that they could have shown more concern for their students and could have been more proactive, first, by not allowing the subscription to lapse In the first place and secondly, at the very least, by trying to mitigate their failure by preparing manual transcripts to assist the students. She enquired about how I had been able to prepare the draft composite, and I told her that it was nothing that the School could not have also done if they had cared to do so. Mrs. Davies expressed no regret or concern regarding the situation and I felt that she was very dismissive of the matter.

29. My conversation with Mrs. Davies was not unduly loud nor was my tone overly aggressive. Mrs. Davies herself adopted a confrontational approach towards me. Nevertheless, I was not rude or disrespectful, but I was blunt and candid, which in my view, was warranted because I considered Mrs. Davies to have been indifferent to the needs of her students, unresponsive to my enquiries, and negligent in her duties.

30. Mrs. Davies had initiated the conversation in the reception area and at no point during the conversation did she invite me into one of the offices, so our entire conversation took place in the open reception area.

[113.] The First Defendant's evidence, by her witness statement is:

26. On the morning of 14th January, 2019, I received a call from Mrs. Balfour, the Administrator of St. John's who informed me that Mrs. Bellot had come into the Administrative Office requesting verification of a student transcript which she had herself prepared.

27. Upon further conversation with Mrs. Balfour, it was discovered that Mrs. Bellot had previously visited St. John's and had requested verification from the Secondary Department's Vice Principal and the Guidance Counsellor of the transcript she had prepared.

28. Mrs. Balfour confirmed that Mrs. Bellot was advised that the Principal and Guidance Counsellor could not verify the transcript without first receiving permission from myself as Director.

29. Upon being advised by Mrs. Balfour about the manner in which Mrs. Bellot was behaving I informed Mrs. Balfour that I was on my way to St. John's College and would address the matter when I got to the Administrative Office. At this time the System had been restored and my intention was to advise Mrs. Bellot that the System was now able to generate and produce transcripts.

30. Upon my arrival at the office, I requested Simone's student file. I then calmly approached Mrs. Bellot and assured her that Simone's transcript requests were being processed.

31. Suddenly and to my surprise, Mrs. Bellot became visibly upset and proceeded to raise her voice towards me while stating how the process of receiving a transcript was ridiculous. Mrs. Bellot openly criticized St. John's and stated how the school was not considering the children in all of the so called "back and forth".

32. Mrs. Bellot then proceeded to show me a piece of paper which she described as "a transcript" and stated that she had collected all of Simone's report cards in order to produce the document. I looked at the document and noticed that the document bore the watermark crest of St. John's. I then questioned Mrs. Bellot about the origin of the document and she informed me, in the presence of four (4) sixth grade students and a parent of one of the students at St. John's, that she had produced the document and that the production was simple to perform and that anyone could easily place the St. John's crest (watermark) on a document to produce a transcript.

33. Despite the fact that I was greatly disturbed about the production of the document bearing the school's watermark crest and the fact that the document bore a striking likeness to an authorised transcript produced by the school due to its similar colour of the ink used, font and overall general format of the document. I was more troubled by the fact that Mrs. Bellot made these remarks in the presence of impressionable minds such as the sixth graders who were present and within the sound of her voice.

34. In any event, I once again assured Mrs. Bellot that the matter was being addressed and informed her that the System was now functioning since Rediker Software Inc had verified that the payment was made.

35. The knowledge that the System was down as a result of a payment issue appeared to make Mrs. Bellot even more irate. By this point teachers and administrators alike had ventured into the area where Mrs. Bellot and I were present due to the tone and the volume of her voice. After this, the situation continued to escalate and I tried my best to manage the situation by remaining calm and maintaining my voice at a respectable and levelled tone while simultaneously reassuring Mrs. Bellot that the situation was being handled.

36. During the exchange between Mrs. Bellot and myself she expressed concern that Simone's transcript was not going to arrive to what she described as Simone's university of first choice. I then informed Mrs. Bellot that as the Director, if necessary, I would write a letter explaining to the University the circumstances as to why the transcript was late. However, Simone's transcript was processed and sent the University of Georgia by Mrs. Jocelyn Smith, the Guidance Counsellor prior to the deadline.

37. Shortly after offering this gesture Mrs. Bellot left the Administration Office and proceeded towards the High School.

[114.] On cross-examination, Mrs. Davies reluctantly conceded that Mrs. Bellot had appeared at the school for purposes of seeking her approval to use the transcript that she had manually produced and that Mrs. Bellot was open and transparent about it. Mrs. Davies conceded that Mrs. Bellot explained how and why she prepared the draft transcript. When asked why the letter stated that the Claimant intended to create and use school property without permission, the First Defendant replied, "I cannot say." Although the letter was drafted by ACEA with attorneys' input, she acknowledged that she read and signed it, endorsing its contents (pages 63 to 64 June 15 transcript):

Q. Okay, stop right there for me. Now, Ms. Davis (sic), why would you use the words, you just read, extremely disturbing; shows an intention to create and utilize a document, which is the property of the School, without the School's permission; if you knew that Ms. Bellot had already sought permission?

A. I cannot say.

Q. Okay. And you are an Educator, right?

A. Yes, sir.

Q. And so, you know that words matter?

A. Yes, sir.

Q. And so, you know that when you wrote this statement in the letter, you were accusing Ms. Bellot of dishonestly, because you used the words, "Extremely disturbing"?

A. I did not write this letter. This letter was crafted by the ACEA and signed by me, as the ACEA's Agent. This letter was not crafted by me alone.

Q. You signed the letter?

A. Yes.

Q. So, if you signed the letter, wouldn't that have meant, that you approved the letter?

A. Well, if I was given directions by our Lawyer and our Lawyer would have seen that ACEA would have done this, I, as the Director, was asked to sign it.

[115.] The First Defendant's awareness of the draft transcript and the Claimant's efforts to obtain approval are inconsistent with any intention to use it without authorization.

[116.] The letter bearing the signature of Mrs. Davies claimed that the Claimant's preparation of a draft transcript bearing the School's watermark and crest "shows the intention to create and utilize a document which is the property of the school without permission." The words complained of meant that the Claimant acted dishonestly or improperly by creating and intending to use a document bearing the School's watermark and crest without approval.

[117.] I have already found that the referenced words conveyed that the Claimant intended to use an unauthorized School document, thereby imputing dishonesty or fraud. That was a serious imputation against Mrs. Bellot integrity. However, the evidence does not support the allegation.

[118.] Viewing the evidence as a whole, it shows that Mrs. Bellot prepared the draft transcript, took it to the School with her daughter's grades, and sought verification and approval before any use. I am satisfied that the Claimant did not intend to pass it off as an authorized School document or submit it to a college *without* the School's permission. The Claimant sought approval through the Vice Principal and Guidance Counsellor, was told that only the First Defendant could approve it, then attended Mrs. Davies' office and later met Mrs. Davies at the School with the draft transcript. When asked by Mrs. Davies how it was prepared, the Claimant candidly said she used Microsoft Word.

[119.] On the evidence, the imputation of dishonesty and fraud was unjustified. I therefore find that the imputation of dishonesty or fraud was false and defamatory.

[120.] Mrs. Davies was at all times, on her own evidence, made aware of the Claimant's wish to have the draft document verified and approved. Mrs. Davies was asked by Mrs. Bellot to sign off on same. It was Mrs. Davies who sought to find out how the document came to be produced. She admits being told how. I am satisfied that when Mrs. Davies signed that letter which was sent to the Claimant alleging an "intention to create and utilise a document which is the property of the school without permission", that Mrs. Davies knew that that allegation was false.

[121.] I find that Mrs. Davies abused a privileged occasion by making defamatory statements which she knew to be false. To send a letter with an allegation imputing fraud and dishonesty while knowing the allegation to be false is an act of express malice and I so find.

Conduct of Mrs. Bellot

[122.] Mrs. Bellot's evidence is that her conversation with Mrs. Davies was not unduly loud, that her tone was not overly aggressive, and that she was neither rude nor disrespectful, contrary to Mrs. Davies' account. She, however, agreed that she was candid and blunt. Mrs. Bellot further stated that Mrs. Davies became confrontational during their conversation in the reception area. Mrs. Bellot also gave evidence that, when informed that the system had been inoperable because the School had failed to pay the subscription fee, she, Mrs. Bellot, responded, "What kind of school are you running?"

[123.] Mrs. Davies described Mrs. Bellot's tone and conduct as abrasive, loud, and disrespectful. She stated that Mrs. Bellot became irate when she learnt that the transcript system had been inoperative due to a payment issue. Mrs. Davies' evidence is that teachers and administrators then entered the area in response to Mrs. Bellot's tone and volume. Mrs. Davies' evidence is that Mrs. Bellot "raised her voice towards me" and was loud in the presence of students, administrators, teachers and a parent. Mrs. Davies said she attempted to manage the situation by remaining calm, speaking respectfully and in a level tone, and reassuring the Claimant that the matter was being addressed.

[124.] Mrs. Davies' evidence was that she regarded Mrs. Bellot's conduct as a breach of the School's Respect and Protect Policy and that it was her genuine belief that the conduct described in the letter of January 21, 2019 amounted to a violation of that policy, particularly because it occurred in the presence of four grade six students, a parent, teachers, and administrators. Mrs. Davies' evidence is that the policy applies to parents who come onto campus and cause a commotion.

[125.] The Respect and Protect (Programme) Policy defines and categorizes acts of violence. On Cross-examination about the nature of the behaviour that would have offended the Respect and Protect Policy, Mrs. Davies conceded that Mrs. Bellot did not display behaviour that amounted to physical violence or social violence or visual violence or cyber bullying. In relation to verbal violence, her evidence is that of all the descriptors, Mrs. Bellot spoke in an "ominous tone of voice". Her evidence is:

Q.....You would accept that Ms. Bellot did not commit any of those offences listed under "Verbal Violence" as well?

A. I'm reading the rest. At the bottom it says: "Ridiculing, shaming, speaking in an ominous tone of voice."

Q. Sorry?

A. Speaking in an ominous tone of voice.

Q. Yes. So I mean, I don't think it's denied that she criticize; right? Not --

A. No, by speaking in an ominous tone of voice.

Q. And what do you understand that to mean?

A. Being loud.

Q. Yeah. But you would admit, that certainly she didn't do any of those other things?

A. No, she didn't do any of those things.

Q. Okay. And, of course, there's the other section on Page 181 called "Visual Violence"; right. I don't -- I won't ask you to read it. But I think you would accept that she didn't commit any --

A. No.

[126.] The Defendants also called Junann Lewis, then Vice Principal of the Preparatory School. Her evidence was that on the morning of January 14, 2019, she was in her office when she heard a loud outburst. She avers:

4. On the morning of 14th January, 2019 I was in my office conducting a meeting with representatives from the Parent Teacher's Association ("PTA"), which included parents of the school, when I heard a very loud outburst emanating from the front section of the Administrative Office.

5. The outburst was so loud that it actually disturbed the meeting.

6. The right wall of my office is shared with the foyer area of the Administration Office and my office door is located behind the Administration desk.

7. It was also difficult for me to understand what exactly was taking place because I heard no response to the outburst. I only heard one person speaking loudly and abrasively.

8. The representatives of the PTA along with myself were both perplexed and disturbed as we wondered not only what was taking place but we questioned who the person was causing such a great disturbance. As amongst ourselves we were alarmed and were actually discussing what we were hearing. This was definitely a disturbance to us and our meeting.

9. I wanted to confirm who it was that was causing this disturbance and so I picked up my telephone and called the Secretary. The Secretary confirmed to me that the person speaking loudly and abrasively was the Claimant, TERRI BELLOT ("Mrs. Bellot").

10. I then further inquired as to whether any staff was assisting Mrs. Bellot because like I indicated previously, I only heard one loud voice as opposed to an exchange of voices or a conversation.

11. I was informed by the Secretary that the First Defendant, ITALIA DAVIES, ("Mrs. Davies") was handling the situation.

12. I must mention that I was surprised because I had no idea that Mrs. Davies was present in the Administrative Office and like I said I could only hear one voice from the front area of the Administrative Office.

13. Once I learnt that Mrs. Davies was addressing the situation, I then told the Secretary that if my assistance was needed in any way to please let me know.

14. Eventually, it became quiet again, and I completed the meeting with the representatives of the PTA.

15. After the meeting I left my office to speak with Mrs. Davies face-to-face in order to find out the status of the situation and of course to inquire if she was okay.

16. I was informed by Mrs. Davies that the situation was taken care of.

17. Overall, I was embarrassed and shocked by the level of the outburst of Mrs. Bellot mainly due to the fact that I was in the company of parents and Administrative Staff who like myself heard the outburst

18. After hearing the reason behind Mrs. Bellot's behaviour I was even more shocked and greatly disappointed.

[127.] On cross-examination, Mrs. Junann Lewis' evidence was that her office is at the left of the Reception area, that it is not unusual to hear voices from the reception area and she is used to parents' loud outbursts. Her evidence was:

Q. Now, can you give us a description of where your office is from the Main Reception Area?

A. Yes. Once you walk into the main office building --

Q. Then --

A. -- you walk directly to the Reception Area.

Q. Yes.

A. And my office is at the left.

Q. Yes.

A. So, my right wall cuts off the Reception Area.

Q. Yes. And I think in -- if you can look at Paragraph 6 of your Witness Statement, on Page 164, I think you give a description of where your office is from the Administrative Office area. And you would say that that description in Paragraph 6 is correct?

A. Yes, sir.

Q. So, given the proximity of your office to the Reception Area, is it not unusual for you to hear voices from the Reception Area?

A. Yes -- unusual you said?

Q. Yes.

A. No, it's not unusual.

Q. All right. Now, I want you to go to Paragraph 7 of your Witness Statement, which is on Page 164?

A. Okay

Q. And just -- just read it?

A. "It was also difficult for me to understand what exactly was taking place, because I heard no out -- no response to outburst. I only heard one speaking load loudly and abrasively."

Q. Now, you've already admitted, that you heard a loud outburst. What you say in Paragraph 7, you said that it was difficult for you to understand what was going on; right?

A. Yes, sir.

Q. So, you would agree that, it wasn't loud enough for to you make out what was being said?

A. No, it wasn't loud to make out what was being said. No.

Q. So, really what you were hearing was, could we say, may be muffled voices coming from the --

A. Not muffled per say. It was very loud. It

was obviously somebody arguing. But what I heard was one-sided.

Q. Yeah. Now, given that you said, you had difficulty hearing and you saying it wasn't muffle per say, wouldn't you agree, that it was muffled to the extent, that you could not understand what was going on?

A. No, not to the full extent.

Q. Yes. So, how could you tell whether there was one voice or two?

A. Because I didn't hear anyone answering. You cannot -- from where my office is, I can determine if it was more than one person in the office and if there's more than one persons talking.

And because of the -- how loud it was, I can tell that there's no response.

Q. Okay

A. No, I can't say that there was no response.

But the response was not as loud as what I was hearing.

[128.] At this point I note that much of Mrs. Lewis' evidence was about what was told to her by other persons. Such evidence was initially objected to as hearsay evidence by Counsel for the Claimant. However, Counsel subsequently spent considerable effort in cross-examining Mrs. Lewis on her evidence. In the premises, this Court will consider Mrs. Lewis' evidence as far as it concerns what was reported to her as to the conduct of Mrs. Bellot not for the truth of the statements made but for the fact that the statements were made -- especially in the light of the action being one of defamation. I will also consider Mrs. Lewis' evidence as it relates to what she said were her own observations.

[129.] Mrs. Lewis' evidence was that her office adjoined the reception area and that she was used to hearing persons talking. Given that proximity, she agreed that it was not unusual for her to hear voices from the reception area. Yet her evidence is that she could not hear who Mrs. Bellot was speaking to. Not only did she not hear who Mrs. Bellot was speaking to, Mrs. Lewis' evidence was that there was apparently some response -- just not as loud. Her evidence is equivocal as to whether she heard another voice and how she came to the determination that there was a response. This is peculiar especially since Mrs. Davies' own evidence was that she did in fact speak with Mrs. Bellot and Mrs. Lewis' evidence is that from her office she can hear if there is more than one person "talking". The evidence also is that Mrs. Lewis is used to hearing parents' outbursts and for this one, she did not leave her office to investigate it because she called her secretary and was told that it was being dealt with by Mrs. Davies. This begs the question as to whether this outburst, if there was one, was so unusual as to attract, and require, special attention.

[130.] With a loud outburst right outside her office, Mrs. Lewis could not say, of her own hearing and observation, what the "outburst" was in relation to. Mrs. Lewis' answers to

questions posed in cross-examination were not, by my observation, offered with the confidence of a bystander, sure of what they had heard or of what they did not hear. In particular,

Q. So, it would be true to say that, you really aren't sure exactly what you heard?

A. That there was a loud outburst. I -- I am sure that I heard a loud outburst. I am sure that I you heard shouting in the office. Yes.

[131.] Notably, Mrs. Lewis did not see Mrs. Bellot or witness anything that happened in the reception area. It may be that Mrs. Lewis heard raised voices, which she interpreted as yet another parental outburst, after making an enquiry of the secretary. However, her evidence as to what she heard does not satisfy me that Mrs. Bellot was causing the sort of commotion that the Defendants contend took place.

[132.] In assessing the evidence, I consider the demeanour and credibility of the witnesses. I found Mrs. Bellot to be a credible and convincing witness. Her evidence was cogent and consistent. Her responses to questions posed in cross-examination were forthright and spontaneous. On the other hand, Mrs. Davies was, at times, deliberately obtuse. Her concessions were forced and, often, answers to questions came after deliberation and, sometimes, with a retraction.

[133.] Mrs. Davies' evidence is that the Respect and Protect Programme Policy applies to students and parents. In this regard, I note that the policy appears in a "Student Handbook" that spells out several provisions governing student behaviour. The Respect and Protect Policy follows the rubric "The Disciplinary System" with an "ultimate aim... to develop self-discipline in students". It introduces the Respect & Protect Programme Policy. While it may be desirable that the policy apply to parents, it does not read that way. Specifically, at the end of the policy are the words in bold:

"SHOULD ANY OF THESE THINGS HAPPEN TO YOU PLEASE REPORT THE INCIDENT TO THE CLASS TEACHER OR THE FIRST TEACHER YOU MEET – THEN TO THE RESPECT & PROTECT CO-ORDINATOR DURING THE BREAKS".

[134.] It appears that the policy is addressed to students who may, presumably, report the violent behaviour of any one on the school campus. However, the policy is not explicitly pitched to parents in the way represented by Mrs. Davies. Further, there is no evidence before me that the words in the January 21, 2019 letter signed by Mrs. Davies, viz, "This will also include parents coming on campus and causing commotion or students bringing

someone on campus” appear in the Policy as asserted by the writer in that letter. That it applies to parents may be the interpretation of the policy by the Director, but those words seem to be absent from the copy of the policy produced to the court.

[135.] I pause here to note that Mrs. Davies’ evidence is that she did not write the letter, that it was drafted by lawyers and the input of the ACEA. Her evidence is also that she made no corrections to it and that she did sign it. I find that the inclusion of those words, represented to be part of the policy, were so included in an effort to make out a case of an infringement of the policy by Mrs. Bellot.

[136.] I find, as conceded by Mrs. Bellot, that she was assertive about the issue of the transcripts and I find that she was angry when she learnt about the reason for the delay. I find that she did raise her voice in speaking with Mrs. Davies. However, I do not find that it was such an outburst that prevented Mrs. Davies from engaging with her. Indeed, Mrs. Davies’ evidence is that she spoke with Mrs. Bellot “in a level tone”. Even if it were a loud outburst, such outbursts were, apparently, not unusual at the School. I find that there is no evidence to support a conclusion that Mrs. Bellot was so loud as to trigger the policy against verbal violence of “speaking in an ominous tone of voice”.

[137.] What is the ordinary meaning of ominous? The following online dictionaries give the following meanings and synonyms:

1. Cambridge: “suggesting that something unpleasant is likely to happen”

<https://dictionary.cambridge.org/dictionary/english/ominous>

2. Dictionary.com: “portending evil or harm”

Synonyms: foreboding; threatening; inauspicious.

<https://www.dictionary.com/browse/ominous>

3. Collins Dictionary: “in a manner that forebodes evil”

Synonyms: threateningly, menacingly, sinisterly

<https://www.collinsdictionary.com/dictionary/english-thesaurus/ominously>

[138.] Mrs. Davies’s evidence is that she did not feel threatened, but that Mrs. Bellot was “loud”. It is clear to me why “ominous” in its natural and ordinary meaning would fit within the context of a policy against verbal violence. It strains credibility that Mrs. Davies, Director of Education, would consider “loud” or even “loud and abrasive” to be

synonymous with “ominous” – especially in the context of Mrs. Davies’ admission that she did not feel threatened by Mrs. Bellot.

[139.] I also consider that the Defendants by paragraph 28 of their Re-amended Defence denied that the letter contained any allegation of violence yet, under cross-examination, Mrs. Davies sought to justify an allegation of violence against Mrs. Bellot and a breach of the policy.

[140.] On my reading of the Respect and Protect Policy, it appears to address the conduct of students enrolled at the School. Therefore, it is difficult to see how Mrs. Bellot, a parent, could have been held to be in breach of that policy. In any event, if I am wrong in that regard and if the policy were to apply to parents, I am not satisfied that Mrs. Bellot’s conduct amounted to a breach of the Respect and Protect Programme Policy on the evidence before me. The evidence does not support that allegation. Nor does it support a conclusion that Mrs. Davies held a genuine belief that the conduct amounted to a breach of that policy.

[141.] In cross-examination, Mrs. Davies agreed that Mrs. Bellot did not engage in physical violence, verbal abuse, or threatening behaviour. While Mrs. Bellot was at the School, there is no evidence that she posed any threat to the safety of the parents, teachers, administrators, or other persons present. The statement that Mrs. Bellot was “loud and abrasive” and thereby breached the Respect and Protect Policy against verbal violence is unsupported by the wording of the policy.

[142.] On the evidence, was there a motivation for the making of the allegation of violence? Mrs. Bellot had openly criticized the school’s handling of the transcript issue, and that criticism was expressed directly to Mrs. Davies in the reception area in, according to Mrs. Davies’ evidence, the hearing of others. Mrs. Davies’ evidence supports a resolve to make an example of Mrs. Bellot.

[143.] On re-examination, Mrs. Davies’ evidence was:

Q. Okay. Now, a number of questions were put to you, relative to this "Policy" and the use of the word "violence" in your letter.

And you were taken to the Policy. And you may recall "Physical Violence, Social Violence, Verbal Violence" and the like.

And a specific question was put to you, whether or not you believed that Ms. Bellot posed a threat to the School. And your response was, no.

And the only reason I'm raising this on re-examination, is you started to say something else,

but you were cut off.
Do you remember what it was that you wanted to say, because you know, I have the ability to allow you to elaborate after you were cut off?

A. I was saying, no, she was not a threat to the School, but the threat to the Policy. We had children there, who can recite this Policy about no violence. **We teach our children about shouting. We teach about confrontation and everything. And so to me, we had to make -- we had to make a stance,** because not only were children there, a parent was there. We also had Teachers coming in, who observed what was going on. And we had a Member of Administration, who was somebody who do stand by our Policy on -- on no violence.

[Emphasis supplied]

[144.] It seems to me that Mrs. Bellot's offence was being loud. Maybe Mrs. Davies was concerned, and rightly so, about how this confrontation looked, especially in the presence of students. However, my determination is that Mrs. Bellot's behaviour did not rise to a level to infringe the school policy and that Mrs. Davies knew that. The natural and ordinary meaning of the words used by Mrs. Davies in the January 21, 2019 letter was that the Claimant behaved violently at the School. On the evidence, the imputation of violence was false.

[145.] I find that Mrs. Davies knew that being loud or shouting did not amount to a type of violence that triggered the policy. Therefore to sign a letter concerning Mrs. Bellot's behaviour, riddled with references to violent behaviour, was not mere exaggeration but, in my determination, malicious embellishment.

The draft/proposed retraction letters

[146.] The Defendants submitted that subsequent proposed retraction letters undermine any allegation of malice. The Defendants rely on those draft retraction letters as showing willingness to withdraw imputations of fraud or intention to deceive. Their argument is that the process of engaging in a retraction letter by the Defendants negates any assertion of malice. I will address this succinctly.

[147.] Qualified privilege is lost if malice is proved. A court must assess whether the publisher had an honest belief when he made the statements that they were true or whether he knew the statements to be false or was reckless as to whether the statement was true or

false: **Horrocks v Lowe**. Therefore, a finding of malice turns on the publisher's subjective state of mind *at the time* when the statements were made. In other words, malice is assessed by reference to the defendant's state of mind when the defamatory statement was published.

[148.] It follows therefore that a later retraction letter cannot undo malice that has already defeated qualified privilege. A later retraction letter may be relevant to issues such as mitigation or, in an appropriate case, to what can be inferred about the earlier state of mind, but it cannot itself be used to negate or cure malice that existed at publication.

Conclusions on Defamation

[149.] The January 21, 2019 letter suggested that the Claimant violated the School's policy, that she was violent and that she had acted dishonestly or fraudulently by producing a draft transcript of Simone's grades and purporting to pass it off as authorized by the School. The letter misrepresented the facts by invoking violence-policy language and by implying dishonest or deceptive conduct concerning the transcript. In my judgment, that was an escalation of the facts. The Defendants were entitled to communicate concern about the Claimant's conduct, but they were not entitled, under cover of privilege, to frame the matter in terms carrying a graver defamatory sting than the known facts reasonably supported.

[150.] It is my opinion that Qualified Privilege in this case fails because it included defamatory matter going beyond what was necessary for school governance or for implementation of the ban. It is my opinion that the contents of the letter exceeded what the occasion required and that would be sufficient to defeat a defence of qualified privilege fails on the facts of this case. However, the Claimant's challenge to the defence of Qualified Privilege was on the basis of express malice.

[151.] In that regard, the question for determination is Mrs. Davies' knowledge at the time of publication. The evidence is that Mrs. Bellot did not secretly fabricate a transcript and attempt to pass it off behind the school's back. Rather, she prepared a draft from existing records and openly presented it to school personnel, including Mrs. Davies, for checking or authentication. That is inconsistent with a genuine belief that she was acting covertly or with an intention to deceive.

[152.] I find that Mrs. Davies did not have a genuine belief that Mrs. Bellot's conduct rose to the level of infringement of the policy against violence. The contents of the letter reflected an attempt to fit an inflated version of events into an ill-suited policy. That to my mind supports a finding of express malice.

[153.] Similarly, even if Mrs. Bellot's behavior on January 14, 2019 was loud and abrasive, even if she was shouting, the evidence does not support conduct amounting to violence in breach of the school's Respect and Protect Programme policy, or any violence at all. The use of the language of violence in the letter materially overstated the factual position. In this case, malice is inferred because of the unnecessarily strong language of the letter.

[154.] I also find that Mrs. Davies' intention was to make an example of Mrs. Bellot which is an improper motive in these circumstances and is another expression of malice.

[155.] In the premises, considering the admitted openness of Mrs. Bellot's conduct regarding the draft transcript, the exaggerated framing of the incident under a violence policy, the juxtaposition of the Claimant's profession against the allegations of impropriety and the threatened indefinite ban, I am satisfied that this was an excessive response containing allegations known to be false. I therefore find that malice is proved and is sufficient to defeat the defence of Qualified Privilege.

[156.] Accordingly, I conclude that the letter, copied to Bishop Laish Boyd, Chairman Fraser, and Principal Dr. Evans, was defamatory of the Claimant. In this case, although the letter was published on an occasion capable of attracting qualified privilege, that privilege was defeated by malice.

[157.] On the action for defamation, I find the Defendants liable in libel. The Court will give directions for the parties to make substantive submissions on the assessment of damages.

Breach of Contract and Breach of Policy

Issue 2: Whether the school handbook, transcript procedures, or transcript request materials created legally enforceable contractual obligations; and, if so, did the Defendants owe a contractual obligation to the Claimant and, if so, did the Defendants breach that obligation?

Issue 3: Whether the Defendants were in breach of policy?

[158.] The formation of a binding contract requires, at a minimum, an offer, acceptance, consideration, an intention to create legal relations, and the parties' capacity to contract.

The absence of any one of these elements means that no enforceable contract exists. Against this backdrop, it must be determined whether the Defendants owed the Claimant a contractual obligation to produce Simone's transcripts in a specified time frame, and whether that obligation was breached when the transcripts were not produced within the requisite timeframe.

[159.] In **Rose and Frank Co. v J.R. Crompton and Brothers Ltd et al [1923] 2 K.B. 261**, it was established that a contract arises when the parties objectively manifest an intention to create legal relations, not merely by agreeing to contractual terms. Banks L.J., at page 283, stated:

...There is, I think, no doubt that it is essential to the creation of a contract, using that word in its legal sense, that the parties to an agreement shall not only be ad idem as to the terms of their agreement, but that they shall have intended that it shall have legal consequences and be legally enforceable. In the case of agreements regulating business relations it follows almost as a matter of course that the parties intend legal consequences to follow...

[160.] It also necessary to identify the parties to a contract and whether the party seeking relief is entitled to enforce it: **Dunlop Pneumatic Tyre v Selfridge [1915] AC 847**.

[161.] I also consider the following time-tested principles of law:

- (1) It is a general principle of law that a party is bound by his pleadings. Succinctly put, a party must plead a legal cause of action for that is what gives rise to a recourse in law. In pleading a cause of action, a party must plead duty, breach and damage i.e. (1) the duty in law said to be owed, (2) the duty said to be breached and the nature of the breach and (3) the damage or loss sustained as a result of the breach of duty.
- (2) In a case of breach of contract, the party alleging a breach must identify the contract and the term(s) said to be breached as well as the loss flowing from the breach for which relief is sought.
- (3) It is also a general principle of law that special damages must be pleaded with sufficient particularity. Where the loss is quantifiable and/or the sum has crystalized, this must be pleaded. The sum being sought as relief must be stated in such a case.

[162.] The rationale for such principles include fair notice to the other side and the avoidance of trial by ambush. The principles allow for the issues between the parties to be

properly and accurately joined for purposes of determining where the true dispute(s) lie and the resolution of the said dispute(s).

[163.] By her Statement of Claim, the Claimant plead as follows:

6. At all material times, it was an express term of the School's policy and contract between the Plaintiff and the Second Defendant, as stated on the School's Transcript Request Form, and the Anglican Central Education Authority Student Handbook that:

- a. The first copy of a transcript is \$6.00 and each additional copy is \$4.00.
- b. transcripts will be produced within three to five business days after the submission of the application.
- c. The School would produce a transcript ~once the requisite transcript fee has been paid and the student does not have any outstanding bills with the School.

7. By reason of the School's policy, and the Anglican Central Education Authority Student Handbook, the Plaintiff and her daughter, Simone Bellot, formed a reasonable and legitimate expectation that the first requested transcript would be produced by January 7, 2019 but no later than January 9, 2019.

....

19. The aforesaid actions of the First and Second Defendants were negligent, in breach of the School's policy and in breach of contract or the duty owed by the Defendants to the Plaintiff as a Parent of a student at the School.

PARTICULARS OF NEGLIGENCE, BREACH OF POLICY, BREACH OF
CONTRACT AND BREACH OF DUTY

a. The school fees charged by the Second Defendant include an "Edline Fee" for the maintenance of the School's electronic grading system. Notwithstanding the collection of the Edline Fee from parents of students of the School including the Plaintiff, the School or the Second Defendant failed to pay or ensure payment of the subscription fee to the software supplier of the electronic system that would produce the transcript for Simone and other 12th grade students when they knew or ought to have known that admission applications to various universities could not be completed without the transcripts.

b. The First and Second Defendants failed to produce Simone's transcripts within three (3) to five (5) business days after the submission of the applications for the transcripts despite repeated request by the Plaintiff for

them to do so when they knew or were informed that the admission deadlines for the U.S. universities were fast approaching.

c. The First and Second Defendants contrary to the provisions of the Anglican Central Education Authority Student Handbook failed to produce Simone's transcript even though the requisite transcript request fee of \$6.00 had been paid in each instance and the First and Second Defendants knew that the Plaintiff and Simone had no outstanding bills with the School.

.....

[164.] By that pleading, the Claimant contended that the school handbook, transcript procedures, and transcript request form gave rise to legally enforceable contractual obligations, including an obligation to provide the transcript within 3 to 5 business days.

[165.] The Defendants, by re-Amended Defence, pleaded as follows at paragraph 5:

As regards Paragraph 6 of the Plaintiff's Statement of Claim, the Defendants admit that both the Transcript Application Form and the ACEA Student Handbook set out the procedure for requests for transcripts from the School ("Transcript Application Procedure"). The Defendants also admit that the Transcript Application Procedure includes the matters set out in Paragraph 6 a, b and c of the Plaintiff's Statement of Claim. The Defendants deny that the Transcript Application Procedure as set out in the Transcript Application Form, the ACEA Student Handbook or at all has contractual force or that they formed a binding and enforceable contract as between the Defendant and the Plaintiff or at all. The Defendants put the Plaintiff to the strict proof of the existence of such contract.

[166.] At trial, the Claimant's breach of contract case turned on the Student Application Form. The form provides that "*signing this application constitutes a contract subject to the laws of the Commonwealth of The Bahamas.*" The Defendants object that this was never the case that was pleaded. The case that they answered was whether the transcript form and ACEA handbook had contractual force as between the Defendants and the Plaintiff.

[167.] The Statement of Claim pleaded that the transcript fee was paid by Simone Bellot. The Defence also posited the issue of, if these documents created an enforceable contract, whether the Claimant was the proper party to enforce same since the allegations concerned a payment by the student and purported loss by the student.

[168.] On the matter of loss, the Claimant's pleaded case concerned the failure to deliver the transcript to a university on time. The Defendant's case was that the transcript was

delivered to the university albeit outside of the time frame noted on the Transcript Request form and that therefore there was no loss.

[169.] To mount a claim for breach of contract, a Claimant is to plead the existence of the contract, the contracting parties, the material terms relied on, the specific obligation said to arise under those terms, and the manner of breach. In this case, the Claimant effectively pleaded what amounts to an alleged obligation under a contract but did not identify the contract which she says binds the parties to that obligation. There does appear to be evidence on which the Claimant could rely for the formation of the contract. The evidence, the school application form, is part and parcel of several school-affiliated documents presented by both parties. However, the Claimant never identified the Application form in tis pleadings as the document which created a binding contract between the parties. I find that the Defendants had not been given a fair opportunity to meet a case based on the School Application form.

[170.] The Claimant did plead that certain fees had been paid but this was not pleaded as losses to be recovered: the Edline Fee, the transcript fee and “all other fees that were a condition for the issuance of the transcript”. I note that it was not until trial, by submission, that the loss had been characterized as (1) the Edline Fee of \$5, (2) the transcript fee of \$6 and (3) “a fair portion of the general school fees paid by the Claimant”. It is apparent that all categories represent quantifiable loss and that the loss for the first 2 categories, at least, had crystalized. These would represent special damages. These were not pleaded.

[171.] On this cause of action, I find that the pleaded contract was not the Student Application Form. Additionally, at trial, the Claimant did not pursue a case to establish that Transcript Request Form and the ACEA Student Handbook were enforceable as contractual documents in their own right. The Claimant also failed to plead any recoverable special damages.

Conclusion on Breach of Contract

[172.] I find that the Claimant has not proved her claims of breach of contract on her pleaded case. In those circumstances, the Claimant’s action on breach of contract is dismissed.

Breach of policy

[173.] In relation to the breach of policy claim, the Claimant submits:

In relation to the claim for breach of policy, it is submitted that the school's policies relating to the issuance of transcripts amounted to terms of the contract between the Plaintiff and the Second Defendant. As such, breach of its policies constituted a breach of contract and the issues are one and the same. In this regard, the Plaintiff repeats the submissions put forward in relation to breach of contract.

[174.] It has not been demonstrated to me that there is an actionable legal wrong known to the law in a private law action case such as this as "breach of policy". The claim seems to be founded on matters of breach of contract. The Claimant refers to the Defendants' initial allegation that the Claimant breached its Respect and Protect Policy and relies on this to contend that there was an intention to create legal relations and a binding and enforceable contract.

Conclusion on Breach of Policy

[175.] It seems to me that the breach of policy cause of action is dependent on, or is one and the same, as the breach of contract claim. It is my determination that the Breach of Policy claim cannot stand on its own in law in this case. To the extent that it relies on a finding of a breach of contract, and given my earlier dismissal of that claim, the claim for breach of policy is also dismissed.

Negligence

ISSUE: Whether the Defendants were negligent in failing to ensure timely production of Simone Bellot's transcript?

[176.] The Claimant contends that a claim for negligence lies against the Defendants for their failure to produce the transcript in a timely manner. The negligence claim rests on the substratum of facts used to support the Claimant's case for a breach of contract. The Claimant argues that the same facts also establish negligence because the school failed to pay a recurring subscription fee needed to produce transcripts during university application season.

[177.] In **Lochgelly Iron & Coal Ltd v John McMullan [1933] All ER Rep Ext 1018**, at page 1030, Lord Wright defined negligence as follows:

...In strict analysis, negligence means more than heedless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom that duty was owing...

[178.] In this case, the Claimant must establish that the Defendants owed her a duty of care, that the Defendants failed to discharge such duty and that, as a consequence, she suffered loss: **Hedley Byrne v Heller [1964] AC 465**.

[179.] The Claimant submitted that a special relationship arose from the parties' inherently contractual relationship but also, independently of the contract, by an assumption of responsibility by the Defendants. I accept the submission that the Defendants assumed responsibility for the Claimant's daughter's education, including maintaining her records and providing transcripts.

[180.] The Claimant argues that the non-payment was negligence on the part of the Defendants. The Claimant also argues that the Defendants knew that at the time the application was made, it was during a time when students were submitting college applications and that transcripts would be required. The Defendants contend that they were not negligent, that reasonable steps were taken to pay the fee for the transcript system, that the transcript was sent to the University of Georgia and receipt acknowledged and that there was no loss suffered by the Claimant in this regard.

[181.] I am of the view that the Defendants owed the Claimant a duty of care to process and produce Simone's transcript once it was requested. The ACEA's School was responsible for managing Simone's academic records. The School, in this case, failed to provide the transcripts in the timeline set out in its own documents. The evidence is that the transcript was not produced within the 3 to 5 business days time range (on payment of the applicable fee) as set out on the transcript request form. The reason for the non-production of the transcript during that time period was the inability of the school to produce the transcripts because of the non-payment of a subscription fee by the school.

[182.] The Defendants were responsible for the administration of a system necessary to generate transcripts for students applying to universities. The system was unavailable because of a subscription-fee or payment problem. That was an administrative failure

within the Defendants' sphere of responsibility. There is no evidence to show that the payment of fees lay outside the control of the Defendants.

[183.] I find that the Defendants knew, or ought reasonably to have known, that the transcript was required for the purpose of college applications. I also find, and it is not contradicted on the evidence, that the Defendants knew, or ought to have known, that a late transcript could be detrimental to a student's application. However, in this case, there is no evidence that the Defendants knew that there was an approaching deadline for the University of Georgia. Mrs. Bellot's evidence is that the deadline for submission to the University of Georgia was January 8, 2019. I accept the evidence that the transcript was delivered to, and received by, the University of Georgia on January 14, 2019.

[184.] The evidence is that the transcript was sent but late. The evidence of Mrs. Bellot is that she does not know if the transcript was considered (or not) by that university. I find that there is no evidence that this delay adversely affected the application of the Claimant's daughter to that university.

Conclusions on Negligence

[185.] I find that the Defendants failed to exercise reasonable care in maintaining the system necessary for transcript production but that the Claimant has not proven a recoverable loss flowing from the breach of duty.

[186.] In the premises, the claim in negligence is dismissed.

Breach of principles of natural Justice

Issue 5: Whether the Defendants failed to afford the Claimant a fair hearing in breach of the principles of natural justice, and if so, what declaratory relief should follow?

[187.] In both public and private law, the principle of natural justice, namely a fair hearing, remains a fundamental safeguard against arbitrary, biased, or unfair decision-making. In public law, this principle limits the exercise of governmental, administrative, and regulatory powers, ensuring that public authorities act fairly and lawfully when exercising their powers over others. In private law, this principle is equally important in disciplinary proceedings, employment, contractual decision-making, membership associations, professional bodies, and internal tribunals etc., where one party may exercise authority over another.

[188.] The principle of natural justice, or *audi alteram partem* (the right to be heard before a decision is made), was explored in **Ridge v Baldwin** [1963] 2 All ER 66. Lord Reid, at pages 71-72, pronounced:

The appellant's case is that in proceeding under the Act of 1882 the watch committee were bound to observe what are commonly called the principles of natural justice, that before attempting to reach any decision, they were bound to inform him of the grounds on which they proposed to act and to give him a fair opportunity of being heard in his own defence. The authorities on the applicability of the principles of natural justice are in some confusion and so I find it necessary to examine this matter in some detail. The principle *audi alteram partem* goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighted or measured therefore it does not exist.

[189.] In that case, Lord Evershed delivered a dissenting judgment which turned on the analysis of the facts before him. In consenting on the applicability of the principle of natural justice, His Lordship framed the considerations this way, at pages 84 to 85:

It has been said many times that the exact requirements in any case of the so-called principles of natural justice cannot be precisely defined; that they depend in each case on the circumstances of that case. According to Sir Frederick Pollock the meaning of the phrase "natural justice" is "the ultimate principle of fitness with regard to the nature of man as a rational and social being"; and he went on to point out that the origin of the principles could be traced to Aristotle and the Roman jurists. Your lordships were therefore not unnaturally referred to a great many cases, but as I believe that your lordships agree, it is by no means easy to treat these decisions as entirely uniform and still less easy to be able to extract from them the means of propounding a precise statement of the circumstances or of the cases in which the principles can be invoked before the courts. I am, however, content to assume that the invocation should not be limited to cases where the body concerned, whether a domestic committee or some body established by a statute, is one which is exercising judicial or quasi-judicial functions strictly so called; but that such invocation may also be had in cases where the body concerned can properly be described as administrative—so long as it can be said, in Sir Frederick Pollock's language, that the invocation is required in order to conform to the ultimate principle of fitness with regard to the nature of man as a rational and social being.

[190.] **Ridge v Baldwin** is a case that dealt with a dismissal from a public office. The dismissal affected not only the office itself but also statutory pension rights, meaning the decision had consequences for the office-holder's legal and proprietary interests. The case is a leading authority on modern administrative law's fairness doctrine. However, the right

to be heard is not confined to public law or administrative proceedings: it can also apply in some private contractual or domestic decision-making settings.

[191.] In this case, the Claimant contends that the Defendants breached her rights to due process and procedural fairness by failing to give her an opportunity to be heard or to challenge the allegations arising from her alleged violent, dishonest, or fraudulent conduct at the School on January 14, 2019. She further contends that, based on those allegations, the Defendants imposed a ban on her attending the school's campus unless she proffered an apology. The Claimant's case is that this was done without prior notice of the allegations and without an opportunity to answer them before the sanction was imposed.

[192.] The Defendants argue that the Claimant's claim on this basis should fail because she had no pleaded basis for a right to be heard before the ban, because she had opportunities to respond through correspondence, and because she sought no pleaded loss flowing from the alleged procedural unfairness.

[193.] In this case, the Defendants exercised a right, which the Claimant accepted that they have, to make a determination as to her status and rights of access to the school campus and events thereon. The decision, left unchallenged, would affect her ability to interact with the teachers of her daughter, to attend her daughter's graduation and to attend other school-related events. For reasons related to pleadings, I earlier found that the contractual basis of the parties' relationship was not pleaded and proven. That finding does not affect this claim where the Defendants have assumed and exercised a right to exclude the Claimant from the school campus, with the consequential effects of that. The demonstrated relationship between the parties is that the ACEA has exercised a decision-making power which the Claimant has not contested. In those circumstances, this Court can, and will, consider whether the decision-making process employed by the Defendants afforded the Claimant due process.

[194.] There is nothing before this Court to suggest that the ACEA has the authority, in this matter, to make such a determination in its own discretion.

[195.] To my mind, the current situation is akin to private or domestic decision-making and where the principles of fairness apply when an institution exercises a structured disciplinary power affecting rights, status, or participation. The evidence is that the ban affected the Claimant's access to the campus and, according to her evidence, her participation in School Board, PTA, and related activities. It worth emphasizing that Mrs. Bellot was not only a parent of a student at the school but also a member of the School Board. The ACEA was not withdrawing some gratuitous favour that it had formerly granted to the Claimant - it was exercising disciplinary authority with reputational and participatory consequences.

[196.] It is my finding that the Defendants' exercise of a decision-making power that would affect a parent of a student at their school, and a member of the School Board, is a decision-making that attracts natural justice principles as a matter of common law and as a matter of public policy. Notice of the allegations (and potential consequences) together with an opportunity to respond are required before adverse action.

[197.] This determination must not be construed as meaning that the school was not entitled to address what, on their assessment, was loud or disrespectful conduct. In this case, the Defendants moved straight to a written disciplinary condemnation, demand for a public apology, and an indefinite ban without first giving the Claimant a meaningful opportunity to be heard. The Defendants' January 21, 2019 letter required the Claimant to make a public apology on January 29, 2019 failing which she would be "banned from the school's campus indefinitely." That was a serious sanction. The evidence is that Mrs. Bellot was not given a formal opportunity to answer the allegations against her before the letter was issued.

[198.] During cross-examination, the First Defendant was asked whether the Claimant had been afforded an opportunity to be heard in relation to the allegations made against her and the ACEA's decision, as communicated in the letter dated 21 January 2019, to ban her from the School. The First Defendant answered, "*Not by the ACEA. I do know that she had a meeting with the Bishop.*"

[199.] In her witness statement, the Claimant stated that Bishop Boyd called her and granted her permission to attend Green Mass and the graduation of her daughter.

[200.] Mrs. Bellot's later correspondence to the Defendants may show that she was eventually able to get her side on the record but that does not cure the absence of a pre-decision hearing nor does it not amount to an opportunity to be heard. A later opportunity to protest or defend oneself does not cure the absence of any fair opportunity to be heard before a serious disciplinary decision is taken. The decision to ban her (if she did not apologize) had already been made.

[201.] Mrs. Bellot's January 24, 2019 letter sought the intervention of the ACEA and enquired as to an appeal process. By response, the ACEA reaffirmed its decision and, perhaps by way of reinforcement, referred to their reliance on witness accounts yet those witness accounts had not been revealed to Mrs. Bellot. The inescapable conclusion is that Mrs. Bellot was not given a meaningful opportunity to be heard.

[202.] I therefore find that the process leading to the disciplinary sanction embodied in the 21 January 2019 letter, namely her ban from the school campus and a demand for a public apology was procedurally unfair.

[203.] By her pleading, the Claimant seeks a declaration as a remedy. The Claimant submits that the catch-all phrase in the pleadings “and further relief” should extend to damages. I do not accept that submission. The pleadings dealt with categories of damages being sought by the Claimant. The Pleadings do not address damages sought in relation to this cause of action.

[204.] A Declaration is a remedy that may stand alone. It is a discretionary remedy that serves as a binding statement by the court, often clarifying the rights, obligations, or legal principles applicable to a dispute. I am minded that a court ought not to make a Declaration unless it will serve a useful purpose. I consider that in this case, a Declaration would resolve a part of this dispute, would be an appropriate remedy given the nature of the breach under consideration and will have practical consequences for the parties. The Declaration in this case can serve as a vindication of a right of the Claimant and a clarification of the obligations of the Defendants. I consider that the justice of this case requires an exercise of my discretion in favour of granting the Declaration sought.

[205.] This Court grants a Declaration in the terms of the order of this court reflected below.

Costs

[206.] The Court will hear the parties’ submissions as to costs

CONCLUSION

[207.] In conclusion, I find that the letter dated January 21, 2019 was defamatory of the Claimant. The defence of qualified privilege is defeated by malice. The claim in defamation, therefore, succeeds.

[208.] Conversely, the Claimant has not proved her claims for breach of contract, breach of policy, or negligence.

[209.] This Court will grant a Declaration that the Defendants breached the Claimant's right of due process and procedural fairness.

[210.] Judgment is entered for the Claimant on the claims in libel (defamation) and procedural unfairness.

[211.] The claims for breach of contract, breach of policy and negligence are dismissed.

[212.] The parties are directed to make submissions on damages for libel according to a timetable to be directed by the court.

[213.] The parties are directed to make submissions on costs of the action.

ORDER

[214.] The order and direction of this Court are as follows:

(i) Judgment is entered for the Claimant on the claims in libel (defamation) and procedural unfairness.

(ii) This Court makes the following Declaration:

The First and Second Defendants breached the Claimant's right to due process and procedural fairness by not affording the Claimant, as a parent and elected member of the School Board, the right to be heard and to challenge the allegations made against her before the imposition of the punitive and indefinite banning of the Claimant from the school's campus.

(iii) The claims for breach of contract, breach of policy and negligence are dismissed.

(iv) The parties will make substantive submissions on a timetable to be agreed for the assessment of Damages on the defamation claim and for costs of the action.

Dated this 15th day of September 2026

A handwritten signature in black ink, appearing to read 'Carla D. Card-Stubbs', with a stylized flourish at the end.

Carla D. Card-Stubbs

Justice