

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 IND #0007/2020
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7 REGINA

8 v.
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10 SANDRA TERESA HILL
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15 **Appearances:**

Ms. Darlene Oko for the Crown

16
17 Mr. Clayton Phuran for the Defendant
18

19 **Before:**

Justice Roger Chapple (Actg.)

20 **Judge Alone Trial:**

21 25th May – 26th June 2020
22

23 **HEADNOTE**

24 *Criminal Law – Misuse of an Information and Communications Technology*
25 *(“ICT”) Network, contrary to s.90(1) of the Information and Communications*
26 *Technology Law (2017 and 2019 Revisions).*
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29 **VERDICT JUDGMENT**
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1 1. The Defendant, Sandra Teresa Hill, pleaded not guilty to the two counts contained
2 in this indictment and elected to be tried by a judge sitting alone. The prosecution
3 in the event proceeded only upon count one, an allegation of Misuse of an
4 Information and Communications Technology (“ICT”) Network, contrary to s.90(1)
5 of the *Information and Communications Technology (ICT) Law* (2017 and 2019
6 Revisions). Count 2 will be disposed of, otherwise than by trial, at the conclusion
7 of this case.

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9 2. This trial has taken place over a number of days, commencing on 25th May. Closing
10 submissions concluded on 26th June. I then took time for my deliberations. Due to
11 the COVID-19 pandemic restrictions, extensive use has been made of video
12 conferencing (zoom) facilities throughout these proceedings. I have not been able
13 to travel to the Cayman Islands and thus have conducted this trial via video-link from
14 the United Kingdom. The attorneys, the prosecution’s main witness, Mr. Leslie, and
15 the Defendant, Mrs. Sandra Hill, have appeared by video-link, although latterly, and
16 for the entirety of her evidence of the Defendant, Sandra Hill (and Mr Phuran) have
17 been present in court.



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19 **STATUTORY PROVISIONS**

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21 3. Section 90(1) of the *Information and Communication Technology (ICT) Law*
22 provides as follows:

23 *“a person who knowingly uses an ICT network or ICT service to defraud, abuse,*
24 *annoy, threaten or harass any other person commits an offence...”.*
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28 4. Section 11 of the *Bill of Rights, Freedoms and Responsibilities*, appears in part 1 of
29 the *Constitution of the Cayman Islands*, and is to be found at Schedule 2 of the
30 *Cayman Islands Constitution Order 2009*. It provides as follows:

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“11. (1) No person shall be hindered by government in the enjoyment of his or her freedom of expression, which includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his or her correspondence or other means of communication.

(2) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights, reputations and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telecommunications, posts, broadcasting or other means of communication, or public shows or entertainments; or

(c) for the imposition of restrictions on public officers in the interests of the proper performance of their functions.”



5. I draw attention to the constitutional right of freedom of expression at the earliest opportunity since it is of fundamental importance to the matters I have to resolve. It is a right that is properly highly valued and jealously guarded. It is for that reason that I have given very much more latitude than otherwise would have been the case, particularly to Mr Phuran in cross examination and to Mrs Hill during her evidence. I invited and have the benefit of written submissions from prosecution and defence directed particularly to the interaction of that constitutional right, clearly engaged in this case, with s.90 of the *ICT law*.

6. Section 25 of the *Bill of Rights* provides as follows:

“In any case where the compatibility of primary or subordinate legislation with the Bill of Rights is unclear or ambiguous, such legislation must, so far as it is possible to do so, be read and given effect in a way which is compatible with the rights set out in this Part.”

1 TRIAL BY JUDGE ALONE

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7. Given that this is a trial by judge alone, I have reminded myself, borne in mind and followed the legal analysis helpfully provided by Quin, J in *R v George Dexter Evans*.¹ I must advise myself on the applicable principles of law, give myself appropriate warnings as necessary and state clearly my reasons for acting as I do, so that my reasoning is clear. I also bear in mind the guidance given by Rowe, J in *K. Richards v R*², as follows:

“When a trial judge sitting alone has advised himself to the applicable principles of law and given himself any necessary warnings, he must indicate clearly in his judgement his reasons for acting as he did, in order to demonstrate that he has acted with the requisite degree of caution in mind and has therefore heeded his own warning.”

8. The Judge’s duty and method of approach when sitting in a judge alone trial was recently analysed by the Caribbean Court of Justice, on appeal from the Court of Belize, in the case of *Dioncicio Salazar v The Queen*³. I have found that judgment useful and have followed its guidance. The Caribbean Court of Justice quoted with approval from the judgment of the Court of Appeal in Northern Ireland in *R v Thompson*⁴ in which it was said of the duty of a judge sitting alone in a bench trial:

“He has no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant legal aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that if there is an appeal it can be seen how his view of the law informs his approach to the law.”

9. The Caribbean Court of Justice continued:

¹ Indictment No 18 of 2011 paragraphs 67 to 71
² 2001 CILR 496
³ [2019] CCJ 15
⁴ [1977] NI 74





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“Equally, a judge sitting alone and without a jury is under no duty to “instruct”, “direct” or “remind” him or herself concerning every legal principle or the handling of evidence. This is in fact language that belongs to a jury trial (with lay jurors) and not to a bench trial before a professional judge where the procedural dynamics are quite different (although certainly not similar to those of an inquisitorial or continental bench trial).”

10. Whilst there was no significant dispute as to the Defendant’s actions giving rise to this prosecution, legal submissions, both written and oral, have been lengthy. It has been necessary to consider in detail the constitutional right to freedom of expression, enshrined in the *Cayman Bill of Rights* and the extent to which curtailment of that right may be justified, balancing that right with the rights of others. That being so, it is right to draw attention to what was said by Lord Lowry, LCJ in *R v Thain*⁵:

“Where the trial is conducted and the factual conclusions are reached by the same person, one need not expect every step in the reasoning to be spelled out expressly, nor is the reasoning carried out in sealed compartments with no intercommunication or overlapping, even as the need to arrange a judgment in a logical order may give that impression. It can safely be inferred that, when deliberating on a question of fact with many aspects, even more certainly than when tackling a series of connected legal points, a judge who is himself the tribunal of fact will (a) recognize the issues and (b) view in its entirety a case where one issue is interwoven with another.”

11. Returning to the decision in *Salazar*, the Caribbean Court of Justice observed:

“As a rule, the judge will consider the prosecution’s evidence first. If that evidence seems strong enough to carry a conviction, the judge will consider the evidence of the defence. The judge will then look at the totality of the evidence to reach a final decision. It is there where the intercommunication and overlapping take place. It is after this polymorphic process that the judge needs to arrange his or her judgment in a logical order which will not always be able to reflect the complicating thinking process as such.”

12. As I have been preparing this judgment, appreciating as I do the need to explain my reasoning, those observations have struck me as particularly apt. I could not hope, neither is it necessary, to explain every part of my thinking process, or deal with

⁵ [1985] NI 457

1 every legal submission made to me or every piece of evidence and how I have
2 approached or evaluated it.

3
4 **SUMMARY**

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6 13. At the heart of this case is a podcast entitled “*Surviving Matthew Leslie – the cold*
7 *hard truth. An honest and comprehensive exposé.*”

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9 14. It is not in dispute that this podcast, broadcast from the Cayman Marl Road (“CMR”)
10 website on 25th February 2019, was the work of the Defendant, Mrs. Sandra Hill,
11 who, at the start of her evidence, told me that she was the content manager for CMR,
12 which she described as a media house. She compiled and collated the material
13 contained in the podcast and presented it herself. The podcast was available to the
14 public at large – anyone could access the podcast either by listening to it as it was
15 being first broadcast, or, at any time thereafter, by following a link on the CMR
16 website and associated platforms. The link remained accessible from 25th February
17 2019 until the start of this trial, when I ordered that it be removed. If it needs to be
18 said, this was not for a moment by way of pre-judging this case, but simply my
19 assessment of what was appropriate and where the balance of convenience lay, until
20 this case is concluded. I have a recording of the podcast, together with a full
21 transcript of its contents which, as appears from the agreed facts, is accepted to be a
22 true and accurate transcript of what was said.



23
24 15. Prior to 25th February, various advertisements/promotions appeared on the CMR
25 website drawing attention to the upcoming podcast, promising a hard-hitting exposé.

26
27 16. There was a deal of history between the Defendant, Mrs Hill, and Mr. Leslie.



1 17. As the name implies, the focus of the podcast was Mr. Matthew Leslie, who had
2 twice (unsuccessfully) run for public office in the Cayman Islands General Elections
3 in 2013 and 2017. Prior to the podcast, he made various attempts to prevent the
4 podcast from being broadcast. He instructed an attorney who sent a letter to Mrs
5 Hill warning of the possible consequences of broadcast; amongst other things, it
6 drew her attention to s.90 of the *ICT Law*. Mr. Leslie also contacted the Royal
7 Cayman Islands Police Service (RCIPS). Inspector Oremule visited the Defendant,
8 Mrs Hill. Although the detail of their conversation is in some dispute, his purpose
9 was to try to dissuade Mrs Hill from broadcasting the podcast.

10
11 **THE PROSECUTION CASE**

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13 18. There is no dispute that in broadcasting, and thereafter, maintaining a link on the
14 CMR website and/or associated social media platforms, the Defendant Mrs Hill was
15 using an ICT network and no dispute that she did so knowingly. The *actus reus* of
16 the offence is not in dispute. What remains is for the prosecution to prove the
17 appropriate *mens rea*.

18
19 19. In her written submissions (paragraph 10 et seq.), Mrs Oko submits:

20
21 *“The offence under section 90 of the ICT law is not a specific intent offence. It*
22 *is an offence of general intent. There is no language in the section that requires*
23 *the Crown to prove the specific intention of the defendant in engaging in the*
24 *conduct was specifically to abuse, annoy, threaten or harass the complainant....*
25 *The general mens rea....is simply knowingly engaging in conduct through the*
26 *use of an ICT network or service that the defendant knew or ought to have known*
27 *would likely cause the complainant to be abused, annoyed, threatened or*
28 *harassed. No greater meaning can be imputed to “knowingly” in the language*

1 of the section. The Crown is not required to prove the defendant intended the
2 specific consequences to the complainant as enumerated by the section in order
3 to secure a conviction.”

4 **THE DEFENCE CASE**

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6 20. Mr Phuran made a variety of wide-ranging submissions both in writing and orally.

7 Amongst those submissions were the following:

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9 i. The *mens rea* to be proved by the prosecution was that when using an
10 ICT network or service, Mrs Hill did so “with intent to abuse, annoy,
11 threaten or harass” the complainant...and that she knew that the result
12 would be to abuse, annoy, threaten or harass the complainant”
13 (paragraph 2 of his written submissions). That was not, Mr. Phuran
14 continued, Mrs Hill’s intention – rather her intention was “to report what
15 she believes are facts the general public should be made aware of.”

16
17 ii. Further the prosecution must prove that Mrs Hill “targeted Mr. Leslie,
18 that her conduct was directed at him,” whereas here, her target was the
19 listening public; she was reporting on matters she believed to be true
20 about a public figure. If Mr. Leslie was caused any discomfiture (which
21 is denied) this was merely collateral damage.

22
23 iii. As a matter of fact, no abuse, annoyance, threat or harassment was
24 caused to Mr. Leslie. Relying on *R v DPP*⁶, Mr Phuran submitted that
25 these were “relatively strong words” and the requirement for abuse,
26 annoyance, threats or harassment to be caused to Mr. Leslie should not
27 be trivialized. Mr. Leslie was “a public figure, politician and local

⁶ [2006] EWCH 1375 (Admin) para 10



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celebrity. He would have or is expected to frequently be met with scrutiny of a similar nature and these would have little or no emotional impact more than being used as the butt of his jokes with indifference.”

iv. All that is said in the podcast is true. The truth of that which was broadcast, and/or an honest belief in the truth of its contents is a complete defence to the charge.

v. Mrs Hill has a constitutional right to freedom of expression. This prosecution seeks to interfere with that right – an interference which is neither justified nor necessary. “The aim is to muzzle the CMR and particularly the defendant on the basis that the presentation of the content is hard-hitting and not as refined as other local media companies.”



THE EVIDENCE

21. I have heard oral evidence from Mr. Leslie, RCIPS Inspector Oremule and Mrs Hill. The statements of Anhill Carsana and Police Constable Parker were read to me by agreement. I have been referred to a large number of documents, copies of most of which appear in the trial bundle. Copies of documents referred to but not found in the trial bundle have subsequently been provided to the Court. In addition, I have the benefit of a number of agreed facts. Both Mr. Leslie and Mrs Hill gave evidence in exhaustive detail. I attempt no more than a brief summary at this stage of the salient parts of their evidence.

22. As already mentioned, the prosecution case, for the most part, consists of the podcast which, the prosecution say, speaks for itself. Given that an audio-visual

1 copy of that podcast and an agreed transcript of it are exhibits in the case, no useful
2 purpose would be served by lengthy summary of its contents.

3
4 23. By way of background, the Defendant, Mrs Hill, and the Complainant, Mr Leslie,
5 have known each other for some years. According to Mr Leslie, they first met in
6 2008 or thereabouts. According to Mrs Hill it was in 2010-11. For a brief period,
7 they had a business relationship. In short summary, in return for the use of office
8 space, Mrs Hill provided advice and support to Mr. Leslie's company, or group of
9 companies, under the umbrella of the Titan Group. The relationship did not last for
10 long – there was a parting of the ways.

11
12 24. In 2017, Mr Leslie applied to this court for injunctive relief regarding material Mrs
13 Hill had posted on social media concerning Mr. Leslie's behaviour in the context of
14 the Winter Carnival he was organizing. She had suggested that the forthcoming
15 carnival was not going to happen, that it was a scam. Mrs Hill did not defend the
16 action and judgment was entered in default. In February 2019, Mrs Hill uploaded a
17 "wanted" poster of Mr Leslie to a social media platform – a copy of that poster is to
18 be found at page 56 of the exhibits. Under a large banner headline "wanted" Mr
19 Leslie's name appears together with his photograph, under which is the legend "local
20 law firm needs to locate him."

21
22 25. It was obviously inspired by similar posters appearing in Wild West films of
23 criminals wanted by the Sheriff, or similar law enforcement officers. Shortly before
24 the broadcast, Mrs Hill accepts that she received (i) a letter from attorneys instructed
25 by Mr Leslie and (ii) a visit from DI Oremule, both asking her not to broadcast.

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1 26. Mrs Hill told me that her business relationship with Mr Leslie fell apart because he
2 would not take the advice she had, at his request, given (principally about matters of
3 compliance). She felt that she was wasting her time. She had concerns about the
4 way he was operating his business.

5
6 27. At the time of the Cayman Islands 2013 General Election campaign, she said that a
7 number of women had reported to her their view that Mr Leslie was “a pervert.”
8 What she described as a “sex scandal” de-railed his 2017 election campaign.

9
10 28. Mrs. Hill told the Court that in her work with CMR, she believed in two fundamental
11 principles: (i) the truth and (ii) the ability to prove what I am saying. She said: “*It*
12 *never occurred to me that [the podcast] would bother Mr Leslie.*” She pointed out
13 that all the material in the podcast was already in the public domain. She added that
14 a public figure, having placed himself in the limelight, cannot, sensibly, then feel
15 angry, annoyed or harassed.

16
17 29. She explained that a number of young ladies had approached her, complaining of
18 sexual advances from Mr Leslie, but felt frightened of taking those complaints to the
19 police. She told me (and I heard a clip from a “cross-talk” call-in interview with Mr
20 Leslie in 2017) that in the course of that programme, a caller had described Mr Leslie
21 as a pervert. That being so, Mrs Hill argued, “*Why would he be bothered about me*
22 *calling him something he’s been called before?*” She agreed that the “wanted”
23 poster had been her work, but said that it was “tongue in cheek.” She knew that a
24 debt collector was trying to find him. She published the poster in order to assist and
25 did not think there was anything offensive about it.



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1 **LEGAL ANALYSIS**

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3 30. I have had the benefit of both oral and written legal submissions from both parties,
4 in the course of which, I have been referred to many authorities, mostly from
5 England and Wales and decisions of the European Court of Human Rights. It is
6 neither practical nor necessary for me to refer to most of the authorities cited to me.
7 I make reference to only those authorities that have weighed with me significantly.
8 I start, of course, with the words of s.90 of the *ICT Law*. So far as is known, this
9 section has only once been considered by the Cayman Islands Court of Appeal
10 (*Stephens v R*⁷) but not on a point which, in my judgment, assists in this case.

11
12 31. Unusually perhaps, no similar offence exists in England and Wales, and thus there
13 is no guidance or assistance to be derived from that jurisdiction. That said, the words
14 used by the draftsman are entirely straightforward and, with one unimportant
15 exception, unambiguous.

16
17 32. The only question in my mind is whether “knowingly” refers only to the use of an
18 ICT network or to both the use and to the result of the use. In other words, must the
19 prosecution prove that the defendant knowingly abused etc. another person or that
20 merely, as a matter of fact, this was the result? I need not dwell upon this, since the
21 answer is straightforward. I choose the interpretation most favourable to the
22 defendant, that is to say: “knowingly” applies both to the use and to the abuse etc. of
23 another person.

24
25 33. In his written submissions, Mr Phuran helpfully sets out an extract from paragraph
26 17-49 of *Archbold*, as to the meaning of “knowingly.” In the context of this case, in
27 my judgement, the prosecution must establish that the Defendant, Mrs Hill, either

⁷ [2017] 2 CILR 704

1 intended to abuse, annoy, threaten or harass Mr Leslie or that she was aware that this
2 would be the likely result of her actions.

3
4 34. I gave a short ruling to this effect at an earlier stage of this trial, prompted by my
5 concern at the direction Mr Phuran was taking in his cross-examination of Mr Leslie.
6 I also made clear that in my judgement, contrary to Mr Phuran's submissions, the
7 truth or otherwise of the contents of the podcast was not a matter of relevance to this
8 trial.

9
10 35. My ruling read as follows:



11
12 *"In the course of Mr Phuran's detailed cross-examination of Mr. Leslie, Mrs*
13 *Oko and I became increasingly concerned that Mr. Phuran was exploring, at*
14 *length, the truth or otherwise of the allegations Mrs Hill made in her exposé. I*
15 *use that word because it is the word used by Mr. Phuran to describe her podcast*
16 *in his skeleton argument, and, of course, it is that podcast which is at the heart*
17 *of this case. Every instinct in me tells me that this trial is not the appropriate*
18 *forum in which to explore that question.*

19
20 *In the absence of Mr. Leslie, I have heard argument from both attorneys,*
21 *particularly as to the ingredients of the offence created by s.90(1) of the*
22 ***Information and Communication Technology (ICT) Law***, *and particularly the*
23 *mens rea, the mental element, which the Prosecution must prove.*

24
25 *There is very little authority to assist in the interpretation of this section. To my*
26 *knowledge, only one case, to which I have properly been referred, the case of*
27 ***Stephens***, *that went to the consideration of the Cayman Islands Court of Appeal.*
28 *Section 90 of the ICT Law, unusually, has no mirror offence in England and*
29 *Wales and, therefore, no body of authority that might assist.*

30
31 *I am anxious to make progress in this case. This is now the fourth day of the trial*
32 *and we are still on the first witness. This is not a detailed judgment because I*
33 *think it important that we get on with the evidence. If it becomes relevant, I will*
34 *give detailed reasons for my decisions at a later stage. For now, I hold that the*
35 *mens rea of this offence is, firstly, that Mrs Hill knowingly used an information*
36 *and communications technology network or service, and as I understand it, there*
37 *is no dispute about that. Secondly, that when she did so, she either intended to*
38 *abuse, annoy or harass Mr. Leslie, or that she was aware that this would be the*
39 *likely result of her actions, her use of the ICT network, between the dates*
40 *specified in the indictment.*

41
42 *It is altogether unnecessary for the prosecution to prove that the podcast was*
43 *directed particularly, or targeted at, Mr. Leslie. It is enough that she*
44 *contemplated that it would come to his attention and, if and when it did so, she*



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was aware of the likelihood that it would cause him some abuse, or it would cause abuse, annoyance or harassment.

The Prosecution must also prove that Mr. Leslie was, as a matter of fact, abused, annoyed or harassed. But I think I state the obvious in this case, that one would have thought that, if private conversations between husband and wife during obvious matrimonial strife are published on the internet, if allegations are made that someone is a paedophile, having sex with prostitutes, and is narcissistic, it does not take much to prove that the recipient, in this case Mr. Leslie, at whom this was aimed, would be caused, at the very least, annoyance.

Whether what Mrs Hill was alleging is true or not is not relevant in this case and further cross-examination directed towards that question will not be permitted. Whether Mrs Hill did, in fact, believe that what she was alleging was true is altogether a different question that has plain relevance in the case. If she chooses to give evidence in due course, and that is a matter entirely for her, those are matters about which she can quite properly give evidence and matters that can properly be explored.

Mr. Phuran, in the course of his submissions, sought to widen matters to take in the rights guaranteed by the **Cayman Islands Constitution**, particularly the right of freedom of expression and particularly as that applies to the press. Those rights - and I am bound to say the right to freedom of expression - whilst properly jealously guarded, are conditional rights.

There are other rights to be balanced. These questions will have to be considered, but not at this stage. I repeat, we are still dealing with the first witness. That discussion as to the rights guaranteed by the **Cayman Islands Constitution** will more appropriately take place at the conclusion of all the evidence. All I say, by way of preparation for that discussion in due course, is that emotive expressions, such as "muzzling the press", used by Mr. Phuran in his skeleton arguments, are highly unlikely to assist. I hope, in due course, that we can have a more elevated, less emotive conversation than that.

Before I leave, I should simply say this: It does bear saying at this stage that a free press is an important tenet of any civilised and free society, but, as all reasonable journalists would agree, that freedom is not and cannot be unfettered. But, as I say, that interesting question is for a later stage in the course of this trial."

36. A person can be abused, harassed etc. by material which is true as well as by material that is not true. In this jurisdiction, criminal libel still exists - to be found at s.171 to s.179 of the **Penal Code**. These sections contain detailed provisions creating a number of defences to a charge of criminal libel. By way of example, s.174 provides a defence that "*the matter is true and it was for the benefit of the public that it should be published.*" Section 176 onwards contain highly detailed provisions as to when

1 good faith, fair comment and so on can provide a defence. The short point is this:
2 neither of these provisions, nor anything like them, appear in s.90 of the ICT law.
3 As a basic rule of construction, one can be confident that the legislature did not
4 proceed in ignorance of such provisions in the *Penal Code*. The fact that they do not
5 appear in s.90 means that no such defences are available to this charge.
6

7 37. To summarize, I conclude that the prosecution must prove the following:

8
9 i. That Mrs Hill knowingly used an ICT network of service – as to which
10 there is no dispute;

11
12 ii. That as a matter of fact, Mr Leslie was abused, annoyed, threatened or
13 harassed by her use of the network;

14
15 iii. That when she used the network, she either intended to abuse, annoy,
16 threaten or harass Mr Leslie, or that she was aware that this would be
17 the likely result.

18
19 38. The burden of proof, I remind myself, rests with the prosecution from beginning to
20 end. Mrs Hill does not have to prove her innocence. The standard of proof is a high
21 one. It is only if I feel sure of guilt that I should find her guilty. If I am less than
22 sure of her guilt, I must find her not guilty.

23
24 39. So, if I am not satisfied, to the required standard, that the prosecution has proved the
25 essential ingredients of the offence, as summarized above, then that, of course, is the
26 end of this case. If I am so satisfied, I must then go on to consider Mrs Hill's
27 constitutional rights.



1 40. There can be no doubt that s.11 of the *Bill of Rights* is engaged in this case. A
2 conviction would clearly restrict Mrs Hill’s freedom of expression. I have already
3 referred to the importance of this constitutional right. Freedom of expression is a
4 jealously guarded and highly-valued right. It is not to be lightly curtailed. As
5 Sedley, J observed in *Redman-Bate v DPP*⁸, “*freedom only to speak inoffensively is*
6 *not worth having.*” Whether Mrs Hill is properly described as a journalist/member
7 of the press, is, on all the evidence, something of a moot point. In today’s fast-
8 moving digital age, the boundaries and definitions have become blurred. She did not,
9 she told me, apply any particular code of ethics or recognized journalistic standards
10 of operating in her work. What is plain is that she was broadcasting material she
11 believed to be true and that she clearly fervently believed in her cause – as she saw
12 it – to better inform the public of Mr Leslie’s many faults, failings, proclivities and
13 misdeeds.

14
15 41. Despite Mrs Hill’s reluctance to accept it, I am satisfied that she and CMR are
16 effectively one and the same thing. It is clear from the evidence that she/it stands on
17 a platform of campaigning, forthright statements and cutting-edge comment.

18
19 42. There is no dispute that the right to freedom of expression is a qualified right. Section
20 11 does not provide the citizen with an unfettered freedom to express herself in any
21 way she chooses, regardless of the rights, sensibilities and interests of others. The
22 right of freedom of expression must be balanced against other interests and
23 perspectives.

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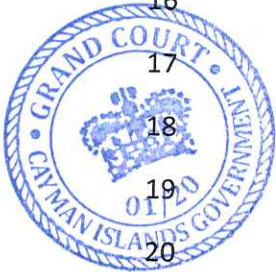


⁸ DC.23.7.99

1 43. Essentially in this case, again assuming that I am satisfied so that I feel sure that the
2 basic ingredients of the offence are made out, I have to balance Mrs Hill's rights
3 against the need, if such there be, to protect Mr Leslie's rights, reputation and
4 sensibilities. How does the court go about that balancing exercise?

5
6 44. I have, in the course of argument, been referred to a considerable volume of decided
7 cases. I can dispose of one matter shortly. Mr Phuran submitted that in the light of
8 Mrs Hill's constitutional rights, the prosecutor's decision to prosecute was
9 disproportionate. The answer to that submission is to be found in *DPP v Bauer*⁹, in
10 which it was held that the criminal courts are not concerned with the proportionality
11 of the decision to prosecute.

12
13 45. In *Abdul v DPP*¹⁰ - a decision to which I was not referred in argument but my own
14 research has discovered – the principles governing the relationship between s.5 of
15 the *Public Order Act* 1986 (using threatening or abusive words or behaviour) and
16 Article 10 of the *European Convention of Human Rights* (which mirrors the
17 Caymanian right to freedom of expression) were summarized. The starting point is
18 the importance of the right to freedom of expression. That right must extend beyond
19 protecting people who hold popular, mainstream views so that minority views can
20 be freely expressed, even if distasteful or offensive to some. The restrictions in
21 Article 10(2) are to be narrowly construed, because justification for interference with
22 the right to freedom of expression must be convincingly established. In that case the
23 justification for invoking the criminal law was a threat to public order. Of the many
24 cases to which I've been referred, the most helpful in this regard have been *Sunday*
25 *Times v United Kingdom*¹¹, a decision of the European Court of Human Rights, and



⁹ 2013 EWHC 634 (Admin)

¹⁰ 2011 EWHL 247 (Admin)

¹¹ Application 6538/74; (1980) 3 EHRR 317

1 *Connolly v DPP*¹², a decision arising from a prosecution under s.127(1) of the
2 *Communications Act 2003* – a significantly different offence to that created by s.90
3 of the *ICT Law*. Nevertheless, the approach laid down in both authorities is helpful
4 and it is the approach I have adopted in this case. I am required to ask myself three
5 questions, as follows:

- 6
- 7 i. Is the potential interference with the right to freedom of expression
8 prescribed by law?
- 9
- 10 ii. Is the interference in pursuit of one of the legitimate aims under s.11(2)
11 of the Bill of Rights?
- 12
- 13 iii. Is the prosecution and conviction of the defendant “necessary in a
14 democratic society”?

15 **ASSESSMENT OF THE EVIDENCE AND CONCLUSIONS**

16
17 The Podcast

18
19 46. I have reviewed and listened again to the podcast, now with the benefit of having
20 heard at length from both Mrs Hill and Mr Leslie. The podcast lasts an hour or so.
21 Shortly after it begins, a slide appears on screen with a “legal disclaimer” which Mrs
22 Hill reads, as follows:
23

24 *“The statements made in this podcast are those of the host who has undertaken*
25 *an extensive investigation into the subject. Wherever possible we’ve attempted*
26 *to verify stories shared with us by viewing messages sent between alleged victims*
27 *and Matthew Leslie. Legal documents discussed herein have been viewed by the*
28 *podcast host personally. Despite that, we are aware that he has never been*

¹² [2008] 1 WLR 276



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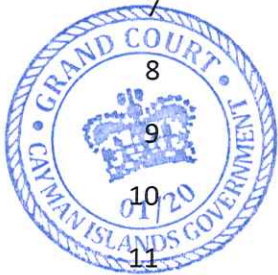
charged with a criminal offence in this jurisdiction and wish to make that clear. All statements below are to be considered a matter of opinion and stories shared by others unless otherwise stated.”

47. Thereafter, Mrs Hill launches into her exposé of Mr Leslie. She quickly sets the tone, at page 26 of the transcript:

“The truth of the matter is that he is an extremely dishonest person and time and again we have been able to demonstrate his dishonesty. The issue with Matthew is his lies always catch up with him and I will personally or in my personal circle don’t tolerate liars don’t tolerate con artists don’t tolerate paedophiles and so on,” referring to him as *“Cayman’s perhaps biggest liar.”*

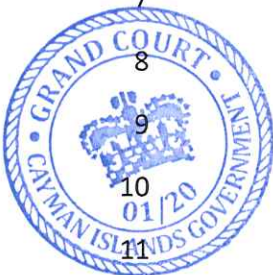
48. At page 31, she shares her diagnosis of him as a narcissist. Her invective against Mr Leslie is wide-ranging, but she concentrates on two main allegations (although she for the most-part puts them across as fact rather than allegations), as follows: (i) that he is a paedophile and a sexual predator and (ii) that he is dishonest, conducts business fraudulently and it is “a pillar of con-artistry” (page 44). A few quotations will suffice, to give the flavour of her presentation, firstly as to his sexual misconduct:

“He is a sexual predator – “especially when it comes to under-age girls, or boys for that matter – his disgusting behaviour – thirteen-year-old girls – he’s not going to stop. Molesting our children – he’s a predator. He messages these girls. He offers them money. He goes after vulnerable girls. I’ll say allegedly but I have seen the messages with my own two eyes.....the predatory behaviour continues time and again.... Nobody in this community should be surprised to know how I feel about child molesters or wannabe child molesters, including Matthew.....We need to see how far this goes back. 2007, his exit from RCIPS -



1 *allegations of inappropriate sexual behaviour. Escorted on a plane from Texas*
2 *in an orange jump suit. Check out that criminal history from Texas.”*

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49. She refers to Mr Leslie’s short-lived marriage as a “*shit show*” – “*he was just basically using this girl for political gain, to make himself look good, so that during the election all of the women that he had been harassing for years, all the underage girls that he’s been messaging and trying to pay money to, to show their breasts, all of a sudden they were going to forget all that, just because you married a really nice-looking girl. Behind the scenes he was paying for it, still out there paying for women because something is wrong with this man. If is not paying for sexual favours, he’s not happy.*”

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50. She introduces her second main theme in this way: “*let’s talk about the financial mess this man is in. This man has never had a successful business in his life*” (page 40). She talks of various law suits filed against Mr Leslie, that his own grandmother brought an action against him. Those who invested in the winter carnival were deceived and have lost their money.

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51. She concludes the podcast as follows: “*What I am obsessed with is why the people in this community time again continue to ignore the stories. They would rather say Sandra is a bitch, Sandra is obsessed with Matthew, make up stories about me, blah, blah, blah, than see the truth for what it is - address the behaviour. Why is this man allowed to walk around amongst young children? Why is he putting on – knowing what he does - why is he putting on a carnival? Seriously, why is the dude putting on a carnival, ... a lot of them unsupervised because parents think there’s no harm in sending my children to carnival, when the person who was putting on the carnival and he was running it has a history of predatory behaviour from even when he was*

1 *in the RCIPS so you guys talk about I'm the one with the issue, I don't even know*
2 *what to say. I'm just flabbergasted. The people in this community have not woken up*
3 *and you don't want to see it, if you don't wanna see these predators..... at some*
4 *point, you got to pay the piper and at some point, I think it's fair to say that*
5 *Matthew's gig has got to be up even in a community is naïve as this one. There just*
6 *has to be a point when we say enough is enough."*

7
8 52. As Mrs Oko says, the podcast rather speaks for itself. Mrs Hill's closing remarks
9 confirm the overwhelming impression I have of the podcast taken as a whole. It
10 amounts to a comprehensive and enthusiastic character assassination of Mr Leslie –
11 that, of course, was Mrs Hill's intention, convinced as she was of the truth of what
12 she regarded as her mission, to convince the people of the Cayman Islands to wake
13 up to the reality about Mr Leslie. She regarded herself as a crusader for her version
14 of justice and truth. As is properly conceded by the prosecution, she believed, and
15 fervently believed all that she said about him. Contrary to her assertions to her
16 audience, it seems clear to me that she had a very sizeable axe to grind. In my
17 judgement, she was obsessed with the crusade she had been conducting against Mr
18 Leslie for some time, to the extent that she had lost all sense of proportion,
19 perspective and objectivity. It is clear that nothing would deflect Mrs Hill from her
20 mission to "expose" Mr Leslie to the public.

21
22 The Complainant - Mr Leslie:

23
24 53. I heard from Mr Leslie over a number of days. I have reservations about some of
25 his evidence to me. As I have already emphasised, the truth or otherwise of the
26 assertions made in the podcast is not a matter of relevance in this case. I cannot and
27 do not come to any conclusion upon any of the suggestions made against Mr Leslie
28 in the podcast. He gave detailed evidence of his service with the RCIPS and the



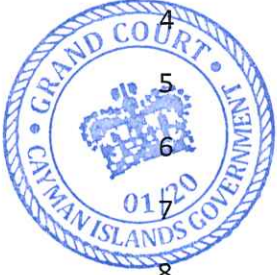
1 circumstances in which he came to leave the force; he did so because Mrs Hill had
2 seen fit to raise it in her podcast - all this was over 20 years ago. Whatever the rights
3 and wrongs of it all, it should now be consigned to history. The same applies to
4 whatever might have gone on in Texas.

5
6 54. He told me thereafter of his various business ventures, how he met Mrs Hill and the
7 short business relationship between them. I have the distinct feeling that both Mr
8 Leslie and Mrs Hill were economical with the truth in the accounts they gave to me
9 of the course of that relationship. It is difficult to understand how, on the sanitised
10 evidence presented to me, feelings ran as high as they obviously did, leastwise with
11 Mrs Hill, when she presented the podcast. However, to dwell on this further would
12 amount to speculation. I am permitted to draw reasonable inferences from the
13 evidence, but I am not permitted to indulge in speculation.



14
15 55. He first became aware of the “wanted” poster in February 2019 when friends had
16 forwarded it to him. He described it as “outrageous”. People who had seen it were
17 asking him if he was in hiding from the police. He then found out about the
18 forthcoming podcast exposé – which, he said “blew his mind.” There was, he said,
19 huge hype building in the days prior to the podcast – people were constantly
20 messaging him. He tried to prevent it being broadcast, going to the police and
21 instructing an attorney. He was asked several times about his reaction to the podcast.
22 He told me it made him angry, sad and highly upset. Listening to it had been one of
23 the hardest things to swallow emotionally. It was very damaging, mentally and
24 emotionally – “was everything smashing down on me.” It had, he continued, affected
25 his business – an investor had pulled out of a property investment scheme in which
26 he was involved as a result of listening to the podcast.

27



1 56. He agreed that in his election campaigns in 2013 and 2017, he had stood on a
2 platform of transparency and trust. During those campaigns, he accepted he was a
3 public figure, but said that thereafter he “put himself back into private life.” During
4 the 2017 campaign, it became known that he was cheating on his wife, which was
5 damaging to his campaign. In answer to Mr Phuran’s suggestion that he had not been
6 offended by any of Mrs Hill’s various postings or the podcast, Mr Leslie replied,
7 “Are you out of your mind?” adding that he had, as a result, been unable to sleep and
8 his blood pressure had been affected. “When you start suggesting under age sex,
9 you’re right out of hand.”

10
11 57. I am altogether satisfied that he was abused by Mrs Hill in that podcast and was
12 caused intense annoyance. I am also satisfied that the podcast, either standing alone
13 or in the context of previous postings, amounted to harassment. It really could hardly
14 be otherwise, given the relentless onslaught to which his character and reputation
15 were subjected.

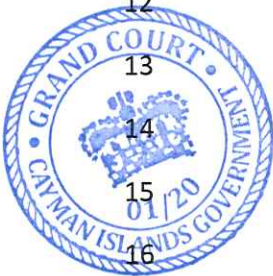
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17 The Defendant - Mrs Hill

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19 58. She had first met Mr Leslie in 2010: “He needed a lot of help with admin and HR. I
20 was also advising him on compliance.” The arrangement only lasted a couple of
21 months. Sometime thereafter (I was not clear as to when), a number of women had
22 come to see her. She told Mr Leslie that young ladies had accused him of being a
23 pervert, since she felt he ought to know – “he shrugged it off.” She maintained he
24 was a very public figure in the Cayman Islands, not only during the elections. He
25 was well known and was a prolific user of social media. She told me that the
26 allegations she made in the podcast had been in the public domain for many years.
27 She explained that she didn’t think any of the podcast would annoy him – “it never
28 occurred to me that this would bother Mr Leslie.” In any event, she added, “you

1 cannot feel angry, annoyed or harassed by the truth” She felt that to refer to someone
2 as a paedophile meant that he had an attraction to barely legal girls, but not that he
3 necessarily acted on those inclinations. She had blocked him from the CMR website.

4
5 59. In cross examination, she explained that CMR was a limited company – she was the
6 sole director. CMR had an administrator based in the Middle East who occasionally
7 posts content on the site. There were other contributors. Mrs Hill said that she had
8 no editorial control.

9
10 60. The “wanted” poster was her idea and creation – “it didn’t cross my mind that he
11 would be annoyed by that.” She agreed that the podcast had been heavily advertised
12 and promoted and that several hundred had watched it live – and it had been watched
13 by many more who later followed the link. She did not think Mr Leslie would access
14 the podcast. She saw nothing wrong with her podcast, to this very day. She agreed
15 that such was his concern about her previous postings that he had applied for an
16 injunction. She did not defend the action since she regarded it as frivolous. She had
17 been served with the papers including affidavits in support but had not read them –
18 she simply threw them in the garbage.



19
20 61. I have mentioned that there were times when I felt that both Mrs Hill and Mr Leslie
21 were being economical with the truth. With Mrs Hill, in my judgement, it goes
22 further. She was on occasions evasive in the way she dealt with questions. By way
23 of example, for reasons I do not understand, she was very reluctant to tell me the
24 truth about her relationship with CMR. To tell me, as she did at the start of her
25 evidence, that she was simply the content manager for CMR was misleading, and, I
26 am satisfied, a deliberate attempt to mislead as to the true position – which, she was
27 later to concede when pressed in cross-examination – was that she was the sole
28 director of the limited company that is CMR.



1 62. For her to tell me, as she did, that she did not think Mr Leslie would be annoyed by
2 the “wanted” poster is, frankly, absurd. The obvious implication of the poster was
3 that Mr Leslie was a criminal and a wanted man in that sense. Rejecting, as I do, her
4 explanation that this was simply a piece of “tongue in cheek” fun, I have wondered
5 what other purpose there could have been in making the poster and then displaying
6 it on social media, apart from wanting to annoy Mr Leslie; it was a further
7 opportunity for her to tarnish his reputation.
8

9 63. She told me that she did not think Mr Leslie would watch the podcast. Given
10 particularly that he had mobilized the police and his attorney to try to prevent it from
11 being broadcast, and was threatening, amongst other things, a libel action, that is an
12 altogether ludicrous suggestion.

13
14 64. I am satisfied that Mrs Hill was lying to me. I am sure she knew perfectly well that
15 he would listen to the podcast and, if she did not intend to abuse, annoy or harass
16 him, she was very well aware that this would be the likely, not to say, inevitable,
17 result.
18

19 65. It follows that I find all the ingredients of this offence proved, to the extent that I am
20 sure about them.

21
22 66. That being so, I must now consider Mrs Hill’s constitutional right to freedom of
23 expression and ask myself the three questions to which I have already referred. Mr
24 Phuran has helpfully referred me to the case of *Jersild v Denmark*¹³, a decision of
25 the *ECHR*, which I have found instructive and useful, dealing, as it does, with a
26 documentary made by a journalist investigating sensitive issues.
27

¹³ (1995) 19 EHRR 1

1 67. There is no dispute about the first question. The potential interference with the right
2 to freedom of expression was prescribed by statute, appearing as it does in the *ICT*
3 *Law*.

4
5 68. The second question is this: Was the interference in pursuit of one of the legitimate
6 aims under s.11(2) of the *Bill of Rights*?

7
8 69. I remind myself of the provisions of s.11(2), in so far as they are relevant here:

9
10 *“Nothing in any law.....shall be held to contravene this statute to the extent that*
11 *it is reasonably justifiable in a democratic society.....(b) for the purpose of*
12 *protecting the rights, reputations and freedoms of other persons.”*
13

14
15 70. Citizens have a clear right not to be harassed, threatened or seriously abused by
16 another citizen. To protect one citizen from abusing, threatening or harassing another
17 is, in my judgement, a legitimate aim. I have not mentioned the word “annoy” in this
18 context, since I very much doubt that it is any business of the criminal law to protect
19 one member of the public from annoyance by another. That sets the bar too low. Had
20 that word stood on its own in s.90 of the *ICT Law*, I would not have regarded it as a
21 legitimate aim. We all have to suffer some annoyance caused by what others say
22 from time to time. It would be altogether wrong and disproportionate to curtail the
23 right to freedom of expression simply on the basis that what was being said caused
24 annoyance to others.

25
26 71. It will have been noted that I have added “seriously” to the word abuse. That
27 adjective does not appear in s.90 but I have added it since, in my judgement, rather
28 like an annoyance, some forms of abuse are relatively trivial and should not, to my
29 way of thinking, restrict freedom of expression. But the prevention of serious abuse
30 is legitimate. Abuse by way of repeatedly calling someone who has not been arrested
31 for, charged with, still less, convicted by a competent court of any relevant offence,



1 a paedophile and a sexual predator, is clearly serious abuse – and it is a legitimate
2 aim to protect others from it.

3

4 72. The third and final question is this: Is the prosecution and conviction of the defendant
5 necessary in a democratic society?

6

7 73. I take a step back and look at matters in the round. As I have said, I am satisfied so
8 that I feel sure that Mr Leslie was seriously abused and that Mrs Hill’s sustained
9 attack upon him amounts to harassment. This was a deliberate, long-standing
10 campaign to damage his reputation, culminating in the hour-long podcast. As Mrs
11 Hill herself said in the course of her evidence, “*media is different now to what it was*
12 *5–10 years ago. We live in a day and age where anyone can be a reporter and put it*
13 *up there.*” When history comes to be written, the development of the internet will
14 surely be counted as one of the most significant and astonishing developments of all
15 time. It has transformed our lives, mostly for the good. Social media messages and
16 broadcasts can reach thousands of people worldwide instantaneously. But there is,
17 as always, another side to the coin. All are now familiar with the term
18 “cyberbullying.” It is an unpleasant, damaging and, on occasions, harmful
19 phenomenon. Dreadful allegations can be disseminated to huge numbers very
20 rapidly and enormous damage can be done. Cyberbullying seems to me an entirely
21 apt description, when taking a step back and looking at the podcast in context. As I
22 have earlier observed, I am being called upon to carry out a balancing exercise
23 between Mrs Hill’s right to freedom of expression on the one hand, and Mr Leslie’s
24 right not to be seriously abused and harassed in the way that I am satisfied he was.

25

26



1 74. Mrs Hill gave the impression to her audience that this was a piece of strident
2 investigative journalism. It was certainly fearless – and in my judgment careless of
3 its effect. Investigative journalism, as long as it is carried out in a fair and responsible
4 way, is a force for good, exposing crime and injustice. Exposés have in the past
5 uncovered misdeeds that would otherwise have gone unpunished, and injustice, that,
6 as a result (of such exposés) has been righted. Thanks to responsible, balanced
7 journalism, convictions have been secured where otherwise offenders would not
8 have been brought to justice.

9
10 75. As I have said, I very much doubt that Mrs Hill can properly be described as a
11 journalist – she is certainly not a responsible one. She accepted that she had had no
12 journalistic training and had no code of conduct by which she felt bound. Whatever
13 her status, her podcast bears none of the hallmarks of responsible investigative
14 journalism. The legal disclaimer at the beginning of her podcast was a step in the
15 right direction, but it was considerably diluted by her repeated presentation of
16 allegations as fact. The disclaimer is finally neutralized when Mrs Hill, speaking of
17 Mr Leslie molesting young and vulnerable girls says, “I say “allegedly”, but I have
18 seen the messages with my own two eyes. A responsible investigative journalist will
19 always give the subject of that investigation the opportunity to put his side of things
20 – conspicuous by its absence here.

21
22 76. I repeat that this was deliberate character assassination and harassment, broadcast
23 over the Internet to which the world had access, both at the time of the broadcast and
24 for well over a year thereafter.



1 77. The effect upon Mr Leslie has been considerable. This is unsurprising, given that,
2 amongst other things, she tells her audience that, albeit he has not been convicted by
3 any court, he is guilty of sexual offences involving children, he is a con artist, serially
4 dishonest – the list goes on – added to which his private voice mails to his wife were
5 broadcast. It cannot go unmarked. I am satisfied that this behavior is the business
6 of the criminal courts and accordingly, having carried out the balancing exercise, I
7 regard a conviction as both necessary and appropriate in a democratic society.

8

9 78. Accordingly, I find Mrs Hill guilty of this charge.

10

11

12 **Dated this the 6th August 2020**



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Justice Roger Chapple
Acting Judge of the Grand Court

