

IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST
DEFAMATION

CIV 1840 of 2023

B E T W E E N:

Linda Karen REYNOLDS

Plaintiff

and

Brittany Mae HIGGINS

Defendant

FURTHER AMENDED REPLY

Date of Document: ~~3 November 2023~~ 7 June 2024 9 July 2024
Filed on behalf of: The Plaintiff
Date of Filing: ~~3 November 2023~~ 7 June 2024 9 July 2024

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1 Except in so far as the Defendant's' Re-Amended Defence dated ~~31 October 2023~~ 8 July 2024 (**Defence**) consists of admissions and save as pleaded in this Reply, the Plaintiff joins issue with each allegation in the Defence as if it were set out herein and traversed seriatim.

2 The Plaintiff adopts, where appropriate, the defined terms used in the Second Further Re-Amended Statement of Claim dated ~~14 September 2023~~ 27 June 2024 (**Statement of Claim**) and the Defence.

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SUPREME COURT

- 3 The plaintiff admits paragraph 1(b) of the Defence.
- 4 The plaintiff admits paragraph 2(a)(ii) of the Defence.
- 5 As to paragraph 5(b)(ii)(A) of the Defence, the plaintiff admits that the defendant met with police on or about 5 – 6 February 2021 but otherwise does not admit the matters pleaded in paragraph 5(b)(ii)(A) of the Defence, and says further in any event such matters were not generally known to readers of the Publications.
- 6 In relation to paragraph 5(b)(ii)(B) of the Defence, the plaintiff:
- 6.1 admits that the defendant had previously participated in a preliminary interview or interviews with the Australian Federal Police in relation to the Rape Allegation; and
- 6.2 says further that the first preliminary interview in fact occurred on 1 April 2019, not 27 March 2019.
- 7 The plaintiff admits paragraph 5(f) of the Defence.
- 7A In respect of the plea in paragraph 8(c) of the Defence, the plaintiff says that in the circumstances referred to in paragraphs 5.2 and 5.3 of the Statement of Claim and the extrinsic facts the alleged imputation was not conveyed.
- 7B In respect of the plea in paragraph 15E of the Defence the plaintiff:
- 7B.1 admits paragraph 15E(a);
- 7B.2 says that it was reasonable for her not to have commenced an action against the defendant as a publisher of the 27 January 2022 Tweet within 1 year in that:

7B.2(i) the facts pleaded by the plaintiff in paragraph 15B.1 of the Statement of Claim were not known to the plaintiff until 14 May 2024;

7B.2(ii) the plaintiff since 14 May 2024 has acted promptly to assert her claim against the defendant;

7.B.3 In the circumstances, the plaintiff is entitled to a grant of leave by this Honourable Court pursuant to section 40 of the *Limitation Act 2005*.

7C In respect of the allegation in paragraph 16 of the Defence that the plaintiff suffered the damage alleged in paragraph 16 of the Statement of Claim in 2021, the plea is bad at law in that the defendant is not entitled to assert that the plaintiff's damage was caused by other publications.

7D The plaintiff denies paragraph 17(d) of the Defence.

7E As to the plea in paragraph 22G:

7E.1 the plaintiff admits paragraph 22G(a);

7E.2 the plaintiff denies paragraph 22(g)(b) and 22G(c) of the Defence and says further that:

7E.2(i) the tort of conspiring to injure is not an action for damages relating to a personal injury as alleged;

7E.2(ii) further the tortious conduct occurred in the Australian Capital Territory;

7E.2(iii) if (which is denied) the tortious conduct is an action for damages relating to a personal injury the limitation period is prescribed by Section 16B of the *Limitation Act 1985 (ACT)*;

7E.2(iv) for the purpose of determining the limitation period the plaintiff first became aware that the injury was related to the defendant's acts in June 2023 when the audio of The Project interview referred to in paragraph 17(b) of the Statement of Claim was disclosed.

Justification: at common law and pursuant to section 25 of the Defamation Act 2005 (WA) (Defamation Act)

8 The plaintiff denies paragraph 23 of the Defence and, although it is not the practice in Western Australia to plead to particulars, the plaintiff responds to Annexure A as follows and to the extent the plaintiff does not refer to particulars, she otherwise joins issue with each of the particulars ~~.The plaintiff:~~

8.1 the plaintiff admits paragraph 2 of Annexure A.

8.2 the plaintiff denies paragraph 4 of Annexure A and states that Mr Lehrmann was a mid-level advisor and the defendant shortly after commencing was promoted from the most junior position to a higher position of Assistant Media Advisor.

8.3 the plaintiff denies paragraph 5 of Annexure A and states that Mr Lehrmann commenced employment in the plaintiff's parliamentary office in Canberra in or around September 2018;

8.4 the plaintiff admits paragraph 6 of Annexure A;

8.5 the plaintiff does not join issue in respect of the matters particularised at paragraphs 7 to 14 of Annexure A;

8.5A the plaintiff admits paragraph 15 of Annexure A;

8.5B the plaintiff admits paragraph 17 of Annexure A;

- 8.5C the plaintiff admits sub-paragraphs 18(a), ~~(da)~~(e), (f) and ~~(g)~~(h) of Annexure A;
- 8.5D the plaintiff admits paragraph 22 of Annexure A;
- 8.5E save to say that it was Daniel Wong from the Prime Minister's Office, not Dr John Kunkel, that Fiona Brown informed the plaintiff admits paragraph 23 of Annexure A;
- 8.5F the plaintiff admits paragraph 23A of Annexure A;
- 8.5G the plaintiff admits paragraph 26 of Annexure A;
- 8.5H the plaintiff admits paragraph 27 of Annexure A;
- 8.5I the plaintiff admits paragraph 27A of Annexure A;
- 8.5J the plaintiff admits paragraph 27B of Annexure A;
- 8.5K the plaintiff admits paragraph 27C of Annexure A;
- 8.5L the plaintiff admits paragraph 27D of Annexure A;
- 8.5M the plaintiff admits paragraph 27E, of Annexure A;
- 8.5N the plaintiff admits paragraph 28(a) of Annexure A;
- 8.5O the plaintiff admits paragraph 28(aa) of Annexure A;
- 8.5P the plaintiff admits paragraph 28(ab) of Annexure A;
- 8.5Q the plaintiff admits paragraph 28(ac) of Annexure A;
- 8.5R the plaintiff admits paragraph 28(b) of Annexure A;
- 8.5S the plaintiff admits paragraph 28(d) of Annexure A;
- 8.5T the plaintiff admits paragraph 28(da) of Annexure A;

8.5U as to paragraph 28(db) of Annexure A the plaintiff admits that the defendant told Ms Brown that she recalled Mr Lehrmann being on top of her, but denies that she said she was barely lucid;

8.5V the plaintiff admits paragraph 28(e) of Annexure A;

8.5W the plaintiff admits paragraph 28(f) of Annexure A;

8.5X the plaintiff admits paragraph 30 of Annexure A;

8.5Y the plaintiff admits paragraph 31 of Annexure A;

8.6 the plaintiff denies paragraph 33 of Annexure A and will rely herein upon the defendant's false description of the meeting, which has previously been published in the media, in support of aggravated damages;

Particulars of media publications

- (a) Samantha Maiden, "Young staffer Brittany Higgins says she was raped at Parliament House" published by news.com.au dated 15 February 2021 (Maiden Article);
- (b) Aaron Patrick, "Ego: Malcolm Turnbull and the Liberal Party's Civil War" published by HarperCollins on or about 15 June 2022;
- (c) Further particulars may be provided following the provision of discovery and inspection and return of subpoenas.

8.7 the plaintiff admits particular 35 but says that at the time the meeting was convened on 1 April 2019:

8.7.1 the defendant had not made any allegation of rape or non-consensual sexual activity (as confirmed by the defendant in the Maiden Article); and

8.7.2 the defendant had not raised any objection to the location of the meeting.

8.8 the plaintiff denies paragraph 36 of Annexure A and says she and Ms Fiona Brown supported the defendant ~~plaintiff~~ by:

8.8.1 Ms Brown taking the following steps in accordance with verbal advice received from Ms Lauren Barons of the Department of Finance:

- (a) making the defendant aware of the Employee Assistance Program (**EAP**) and other support services available;
- (b) notifying the defendant that should she choose to, she is able to pursue a complaint, including a complaint made to the police;
- (c) informing the defendant that if she required assistance in making a complaint, she would be supported by the plaintiff and Ms Brown;
- (d) inviting the defendant to come to Ms Brown for further assistance, support or guidance at any time;
- (e) encouraging the defendant to access the EAP provider as soon as possible;
- (f) checking on the defendant on days she was not in the office to ensure she is ok and had support at home;

- (g) providing the defendant with leave to attend medical and EAP appointments;

8.8.2 arranging a meeting between the plaintiff, the defendant and Ms Brown on 1 April 2019 so that the plaintiff could check on her welfare, during which:

- (a) The defendant described her actions in relation to accessing the plaintiff's Ministerial Suite on the morning of 23 March 2019 as unprofessional and stated she did not want to lose her job;
- (b) The defendant became increasingly distressed and visibly upset as she was attempting to recollect the events of the evening of 22 March 2019 and the morning of 23 March 2019;
- (c) The defendant stated she had been out on the evening of 22 March 2019 and had drunk too much;
- (d) The defendant could not clearly explain why she came into Parliament House or the plaintiff's Ministerial Suite on 23 March 2019;
- (e) The defendant stated words to the effect that she had no recollection of what happened other than that she woke up in the morning, got dressed and left;
- (f) The defendant indicated she was concerned about the impact on her career and the plaintiff said there would be no impact on her career;

- (g) Although the defendant did not use the words ‘rape’ or ‘sexual assault’, the plaintiff understood the defendant was concerned a sexual act may have occurred between the defendant and Mr Lehrmann in the plaintiff’s Ministerial Office;
- (h) The defendant told the plaintiff she had obtained information about availability of the EAP program for counselling and had accessed such counselling;
- (ia) the plaintiff explained the purpose of the meeting was to check on Ms Higgins welfare and that she “did not know exactly what happened but something doesn’t seem right”;
- (ib) the plaintiff said to the defendant “what you choose to do we will support” and suggested counselling and talking to the EAP;
- (i) The plaintiff suggested to the defendant that she speak with the Australian Federal Police (AFP) about the events of 22-23 March 2019 and they could:
 - (i) provide the defendant advice that the plaintiff was not in a position to do;
 - (ii) quietly look into things and provide the defendant with options;
- (ja) the plaintiff reiterated that first and foremost what was important was the defendant’s welfare and that the defendant was in control to make decisions once she had identified her options;

- (j) The plaintiff indicated that if something had happened, she and Ms Brown would fully support the defendant if she wanted to make a complaint and go to the police;
- (k) In response to the defendant's expressed concerns about the "impact this event could have on my career prospects" the plaintiff responded that:
 - (i) the defendant's welfare was her primary concern;
 - (ii) the defendant had the plaintiff's unconditional support; and
 - (iii) there would be no impact on the defendant's career.

8.8.3 with the agreement of the defendant, Ms Brown arranging for the defendant to speak with the AFP in Parliament House and:

- (a) Ms Brown offering to, and accompanying the defendant to the meeting;
- (b) Ms Brown offering to attend the meeting with the defendant;
- (c) Ms Brown offering to wait and walk the defendant back after her meeting with the AFP;
- (d) Ms Brown offering to return to pick up the defendant after the meeting;
- (e) Ms Brown asking the defendant to let her know when she was back in the office so she knew that the defendant was ok;

- (f) Ms Brown taking steps to ensure the meeting was held discreetly that is in the AFP offices in the basement of Parliament House instead of the meeting room in the Minister's Suite;

~~(a)~~8.8.4 the plaintiff meeting with AFP Assistant Commissioner Leanne Close on 4 April 2019, during which:

- ~~(b)~~(a) Assistant Commissioner advised her that the defendant intended to progress a complaint or make a report against Mr Lehrmann in relation to the events of 22-23 March 2019;

- ~~(e)~~(b) the plaintiff asked Assistant Commissioner Close how she and Ms Brown could best support the defendant;

- ~~(d)~~(c) Assistant Commissioner Close said words to the effect that the plaintiff and Ms Brown were doing the right things and should continue to do so, and that they should take their cues from the defendant at all times as to how she would prefer to respond to the incident;

8.8.4 offering the defendant the options of staying in Canberra, travelling to Perth to campaign, or undertaking media monitoring work from the Gold Coast (an option not available to other employees) for the election campaign;

8.8.5 on 4 April 2023, Ms Brown seeking prospective approval of a non-standard home base, if required, for the defendant in the event she chose that option;

8.8.6 The plaintiff will provide further particulars as to the support provided following discovery and inspection and/or the return of subpoenas.

8.9 the plaintiff says further in respect of paragraph 36 of Annexure A, on 7 June 2019, which was the defendant's last day in the plaintiff's office, the defendant:

8.9.1 presented the plaintiff with flowers to thank the plaintiff for her understanding, kindness and support; and

8.9.2 sent Ms Brown a text message *saying "I wanted to say this in person but I cannot overstate how much I've valued your support and advice throughout this period. You've been absolutely incredible and I'm so appreciative"* ~~to the effect that she could not overstate how much she valued Ms Brown's support and advice throughout this period, and that Ms Brown had been absolutely incredible and the defendant was so appreciative.~~

8.10A the plaintiff admits paragraph 37 of Annexure A;

8.10B the plaintiff admits paragraph 38 of Annexure A;

8.10C the plaintiff admits paragraph 38A of Annexure A;

8.10D the plaintiff admits that on or around 4 April 2019 the plaintiff and Ms Brown were told by Assistant Commissioner Leanne Close of the Australian Federal Police that the defendant was making a complaint and taking the matter further. The plaintiff does not otherwise admit paragraph 41;

8.10E the plaintiff admits paragraph 43 of Annexure A;

8.10F the plaintiff admits paragraph 44 of Annexure A;

8.10G the plaintiff admits paragraph 45 of Annexure A;

8.10H the plaintiff admits paragraph 46 of Annexure A;

8.10I the plaintiff admits paragraph 47 of Annexure A;

8.10J the plaintiff admits paragraph 54 of Annexure A;

8.10K the plaintiff admits paragraph 55 of Annexure A;

8.10 the plaintiff denies the allegation in respect of paragraph 57 of Annexure A, and says that:

8.10.1 The defendant attended campaign rallies and events with the plaintiff;

8.10.2 The defendant staffed a pre-polling booth with other staff which the plaintiff occasionally visited;

8.10.3 The plaintiff invited the defendant to, and the defendant attended, a dinner at the Pan Pacific Hotel and an event at the plaintiff's home;

8.10.4A The plaintiff arranged for the defendant to attend a house warming party at Ken Wyatt's home;

8.10.4B The defendant attended a function at the Rose & Crown Hotel in Guildford for Ken Wyatt;

8.10.4C The defendant attended an election night event with the plaintiff and other Liberal Party politicians and staff;

8.10.4D the defendant attended an event at Government House with the then Governor the Hon. Kim Beazley;

8.10.4 While in Perth the defendant posted positively on her Instagram account about enjoying her time in Perth and attending events at the Camfield Public House, Kings Park Anzac Day dawn service

and CBD parade, afternoon tea at Government House, the Swan Valley and an election night event with the plaintiff and other Liberal Party politicians and staff;

8.10.5A While in Perth the defendant sent positive text messages to Mr Ben Dillaway about enjoying her time in Perth and attending events at the Kalamunda Night Market, the Government House with the then Governor the Hon. Kim Beazley, and various other campaign rallies and events;

8.10.5 Further particulars may be provided following the provision of discovery and inspection and return of subpoenas.

8.11 the plaintiff denies the allegation in respect of paragraph 58 of Annexure A, and says further that:

8.11.1 Ms Brown took steps to arrange an alternate home base for the defendant in order to support her;

8.11.2 Neither the plaintiff nor Ms Brown informed the defendant she would not have a job after the election if she chose to work from the Gold Coast;

8.11.3 the defendant chose to travel to Perth for her own reasons;

8.11.4 the plaintiff considered the defendant to be a smart young woman who was good at the media monitoring role she would have undertaken had she chosen to work from the Gold Coast;

8.11.5 the plaintiff would have re-engaged the defendant had she chosen to work from the Gold Coast; and

8.11.6 the only foreseeable circumstance in which the defendant would not be re-engaged by the plaintiff was if the plaintiff was not elected;

8.12 the plaintiff admits paragraph 59 of Annexure A;

8.13 the plaintiff admits paragraph 60 of Annexure A and says further that:

8.13.1 she offered the defendant a position, which the defendant declined;

8.13.2 after the plaintiff's meeting with Assistant Commission Close referred to at paragraph 8.7.4 above, the defendant did not inform the plaintiff that she had decided not to pursue the complaint. Accordingly, the plaintiff understood the defendant to be pursuing the complaint through the AFP at the time she offered the defendant a position;

8.14 the plaintiff admits paragraph 61 and says further that:

8.14.1 when the defendant informed the plaintiff she had accepted a role with Senator Cash, the plaintiff asked her whether she wanted the plaintiff to inform Senator Cash of what had been going on (referring to the Rape Allegation and the police investigation);

8.14.2 the defendant looked horrified and said no.

8.15A the plaintiff admits paragraph 62 of Annexure A;

8.15 the plaintiff denies the allegation in respect of paragraph 65 and 66 of Annexure A, and says that she did not inform the Prime Minister's Office directly of the allegation because to do so would be against the advice of Ms Barons and Assistant Commissioner Close, and the defendant's desire to keep

the matter private but otherwise informed the Prime Minister's Office of the security breach;

8.16 the plaintiff admits paragraph 67 of Annexure A but says that the apology was not an admission that she had in fact mishandled the matter or failed to offer appropriate support to the defendant;

8.17 the plaintiff denies paragraph 72 of Annexure A and says that:

8.17.1 the plaintiff's comment was a spontaneous private reaction to the defendant's false accusation in the Project Interview that the plaintiff had not supported the defendant, within earshot of members of her staff, which was subsequently leaked to the media in a manner that damaged the plaintiff not the defendant;

8.17.2 the plaintiff chose to settle the defendant's defamation claim in part to avoid undermining the defendant's credibility and the criminal investigation.

8.18 the plaintiff admits paragraph 73 of Annexure A.

8.19 as to paragraph 74 of Annexure A, the plaintiff admits she and her partner usually reside in Perth but otherwise denies the paragraph, and says further:

8.19.1 the plaintiff's partner was based in Canberra while working as an advisor to the speaker of the House of Representatives and he periodically attended the trial. His attendance, and relationship with the plaintiff, was known to both the DPP and the Defence. Neither the DPP nor the Defence expressed concern at the time; and

8.19.2 in the week prior to giving evidence the plaintiff was in Rwanda representing the Australian Parliament at the Interparliamentary Union Assembly Meeting in Kigali, Rwanda;

8.20 in respect of paragraph 75 of Annexure A, the plaintiff denies that this is an accurate representation of her evidence under cross-examination and will rely on the transcript of her evidence for its full terms and effect;

8.21 further, in respect of paragraphs 75 – 85 of Annexure A, the plaintiff says:

8.21.1 the Sofronoff Inquiry found:

- (a) ~~at paragraph [593] of the Sofronoff Report, that Mr Drumgold “had no basis upon which to put that suggestion [in respect of the request for the transcript] which was intended to impute impropriety in Senator Reynolds in the eyes of the jurors”;~~
- (b) at paragraph [596] of the Sofronoff Report, that “the suggestion that Senator Reynolds as well as her partner were engaging in potentially criminal conduct was an improper one and should not have been made”;
- (c) at paragraph [597] of the Sofronoff Report, that “it was improper to put to Senator Reynolds that she was ‘politically invested’ in the outcome of the trial. ~~There was not only no basis for this but t~~The nature of the political investment, why it might be important politically for there to be an acquittal, was never identified.”

8.21.2 further, in respect of paragraphs 80 to 81 of Annexure A, the plaintiff says that there is no property in a witness and she considered it appropriate to speak with both the prosecution and defence to ensure a fair trial and in the interests of the proper administration of justice.;

8.22 the plaintiff says the plea as particularised at paragraphs 86 – 91 of Annexure A is bad at law in that the matters particularised do not give rise to a campaign of harassment, or harassment at all, and the plaintiff says further:

- 8.22.1 the defendant attacked the plaintiff and Ms Brown in the media through The Project Interview, the Maiden Article, and the Scarr Article which were published throughout Western Australia and Australia;
- 8.22.2 the defendant's attacks were in furtherance of The Plan as pleaded at paragraph 17.1 of the Statement of Claim;
- 8.22.3 the plaintiff did not respond substantively to the allegations made against her and Ms Brown by the defendant in the media until after the conclusion of the criminal trial and civil claim, so as to avoid undermining the judicial process;
- 8.22.4 further particulars of the defendant's attacks on the plaintiff through the media may be provided following discovery and inspection and the return of subpoenas.

8.23A denies the conduct in paragraphs 86A -91 could be construed as harassing and the plaintiff says further that:

- 8.23A.1 the information provided to Ms Albretchen by the plaintiff was information in the plaintiff's own possession and the plaintiff was entitled to deal with it;
- 8.23A.2 the plaintiff was entitled to question the circumstances of the defendant's personal injury claim against the Commonwealth in circumstances where such a claim was founded on matters that were disputed by the plaintiff;

8.23B the plaintiff says the plea in paragraph 90A is bad at law, the interview occurring on 13 August 2023 being an event after the publications made by the defendant and hence not a fact in existence as at the time of publication;

- 8.23 the plaintiff admits paragraphs 92 and 93 of Annexure A;
- 8.24 in respect of paragraphs 94 - 95 of Annexure A, the plaintiff will refer to her submission to the Sofronoff Inquiry for its full terms and effect.
- 8.25 the plaintiff will respond further to the matters particularised in Annexure A following the provision of discovery and inspection and the return of subpoenas.

Contextual truth: pursuant of section 26 of the Defamation Act

- ~~9 The plaintiff denies paragraph 24 of the Defence and says that paragraph 24 of the Defence is bad at law in that:~~
- ~~9.1—the imputation pleaded is not defamatory, alternatively does not distil the sting of the imputation; and~~
- ~~9.2—the imputation pleaded does not swamp the imputations pleaded by the plaintiff.~~
- ~~10 The plaintiff otherwise repeats the matters pleaded at paragraph 8 above in response to the matters particularised at Annexure A.~~

Qualified privilege: section 30 of the Defamation Act

- 11 In respect of paragraph 25 of the Defence, if, which is denied, the Publications were published on an occasion of statutory qualified privilege, the conduct of the Defendant was not reasonable in the circumstances:

Particulars of circumstances

4 July Instagram Story

11.1 The plaintiff denies paragraph 11 of Annexure B and says that in respect of the 4 July Instagram story:

11.1.1 The imputations conveyed by the Publications are serious;

11.1.2 The defamatory matter was published in response to media reports that were not relevant to the defendant's Rape Allegation, its prosecution or her Claim or matters about which the defendant has direct and personal knowledge, in that:

- (a) The first headline "'Punitive': Reynolds accuses attorney-general of prejudice over Lehrmann inquiry" related to the Attorney-General's decision to deny the plaintiff sufficient funding for legal assistance to be adequately represented in the Sofronoff Inquiry;
- (b) The second headline, "'Linda Reynolds to refer Brittany Higgins compensation payment to National Anti-Corruption Commission'" related the plaintiff's allegation that the Government had not followed proper processes in settling the defendant's the Claim, and in particular in circumstances where the plaintiff was 'barred from defending herself during the process'.

11.2 As to paragraph 13 of Annexure B, the plaintiff says it was not reasonable in the circumstances for the defendant to not seek comment from the plaintiff and says further:

- 11.2.1 the audience of *The Australian* is different to the audience of the defendant's Instagram and accordingly the failure to seek the plaintiff's comment is not reasonable; and
- 11.2.2 the imputation pleaded at paragraph 8.1 of the Statement of Claim had not previously been the subject of any cross-examination or media report, and it was therefore unreasonable to publish defamatory matter of this nature without providing the plaintiff an opportunity to respond.
- 11.3 As to paragraph 14(a) of Annexure B, the plaintiff denies the subject matter of the 4 July Instagram Story was related to articles that had been published that day and repeats paragraph 11.1.2 above;
- 11.4 As to particular 14(b) of Annexure B, the plaintiff denies that the articles cited by the defendant in the 4 July Instagram Story relevantly commented on matters related to the plaintiff's Rape Allegation and her Claim, and its resolution, or any topic on which the defendant had any relevant duty to her followers to comment.
- 11.5 In respect of paragraph 15 of Annexure B, the plaintiff says it is to be inferred that the defendant was aware that publication of the 4 July Instagram Story as a 'story' to her Instagram was likely to result in media attention and the widespread republication of the defamatory matter in the mainstream media (as was her intention).

20 July Tweets and 20 July Instagram Story

- 11.6 The summary and conclusions drawn by the defendant from the article referred to in the 20 July Tweet and the 20 July Instagram Story are not reasonable given the terms of the article;

11.7 In respect of paragraph 25 of Annexure B, the plaintiff says the defendant:

11.7.1 published the 20 July Instagram Story in order to boost the readership of the 20 July Tweets; and

11.7.2 it is to be inferred was aware that publication of the 20 July Instagram Story as a ‘story’ to her Instagram was likely to result in media attention and the widespread republication of the defamatory matter in the mainstream media (as was her intention).

12 Further if, which is denied, the publications were published on an occasion of statutory qualified privilege, the publication of the defamatory matter was actuated by malice.

Particulars of malice

12.1 The Publications were published in circumstances where the defendant knew the matters contained therein to be untrue as pleaded in paragraph 17.2 of the Statement of Claim and in furtherance of the Plan as pleaded in paragraph 17.1 of the Statement of Claim, and the plaintiff repeats the particulars thereto.

12.2 Further or alternatively to paragraph 12.1 above, the defendant had demonstrated a desire to injure the plaintiff, in that, knowing the matters the subject of the Publications to be untrue:

12.2.1 During the interview held on 27 January 2021 between the defendant, Mr Sharaz, Ms Wilkinson and Mr Llewellyn at the Star Hotel in Sydney, Mr Sharaz stated:

(a) “And for your reference, we’ll get down to this later, but the reason we’ve chosen the timeline we’ve had is because it’s a sitting week when we want the story to come out,”;

- (b) “And then the Senate recommences in March and that’s when I’m going to talk to, I’ve got a friend in Labor, Katie Gallagher on the Labor side, who will probe and continue it going.”
- (c) “So sitting week, story comes out, they have to answer questions at question time, it’s a mess for them. March, Senate estimates. Hopefully we can try and get the (Parliament CCTV) footage, that sort of stuff, for Britt’s clarity, and then he’s (Scott Morrison) going to call an election in whenever he calls it”
- (d) “That’s why Britt’s picked that timeline.”
- (e) “I asked Britt, ‘ultimately, what do you want out of this?’ And she goes ‘well, I want Bruce to forever have it difficult getting a job, like it’s going to be difficult for me.’”
- (f) Apparently addressing the defendant directly, he then said, ““and then you said, ‘best case scenario, Linda Reynolds’” and the group erupted with laughter.

12.2.2 The defendant recklessly prioritised releasing her story to the media over reactivating her police report, with the aim of damaging the plaintiff, despite being informed this could jeopardise the criminal investigation;

Particulars

- (a) The defendant began speaking with journalist Samantha Maiden in or about January 2021;

- (b) On 18 January 2021 Mr Sharaz contacted Ms Wilkinson to arrange a meeting between Ms Wilkinson and the defendant;
- (c) On or around 18 January 2021 Mr Sharaz and Lisa Wilkinson exchanged emails headed “MeToo Liberal Party Project Pitch”;
- (d) On 27 January 2021 the defendant and Mr Sharaz participated in a 5 hour interview with Angus Llewellyn and Ms Wilkinson;
- (e) On 2 February 2021 the defendant participated in an interview with Ms Wilkinson that was filmed for broadcast on The Project;
- (f) On 4 February 2021 the defendant emailed an AFP officer to re-open her complaint and sought to review or have a copy of the original case file;
- (g) On 5 February 2021 the defendant and Mr Sharaz attended Belconnen police station to enquire about obtaining confirmation she had made a previous report, during which:
 - (i) Mr Sharaz raised the media coverage a number of times and appeared more focused on the media holding the person of interest to account than the Court;

- (ii) The defendant and Mr Sharaz discussed with a Detective Sergeant regarding options for obtaining evidence; and
 - (iii) The Detective Sergeant with whom they spoke clarified both understood that police don't investigate allegations to get a media campaign going, but to try and get a criminal prosecution and that evidence would be gathered as part of that investigation.
- (h) On 6 February 2021 the defendant and Mr Sharaz attended a 'meet and greet' at Belconnen police station with Senior Constable Emma Frizzell and Detective Sergeant Gareth Saunders during which:
 - (i) Mr Sharaz advised they anticipated the AFP would receive media enquiries regarding the allegation and wanted to ensure the sexual assault investigation was 'active' when those media enquiries were made with the AFP;
 - (ii) The defendant was offered the opportunity to participate in an Evidence in Chief Interview (EICI) but declined as she wanted the media release to play out first;
 - (iii) the defendant was advised the investigation would not commence until she provided a statement to

police and that any media coverage may jeopardise any subsequent evidence sought;

- (iv) on or about 25 February 2021 the defendant informed Senior Constable Frizzell that Ms Maiden was reporting to her what she uncovered before she reported it in the media. The defendant stated that at times Ms Maiden's comments influenced her memories and she questioned if her memory is a result of being told information.

- (i) Further particulars may be provided following the provision of discovery and inspection and return of subpoenas.

12.2.3 Collaborating with Mr Sharaz with respect to their social media plan, and at least the 27 January 2022 Tweet so as to ensure maximum audience and reach of their social media posts and in particular the 27 January 2022 Tweet.

12.3 The defendant has previously published allegations about the plaintiff that are untrue:

- (a) The defendant has falsely claimed in The Project Interview, the Samantha Maiden Article and when giving evidence in the Lehrmann trial that the plaintiff and the plaintiff's chief of staff, Ms Fiona Brown, pressured her not to report the Rape Allegation to the police.

Particulars of falsity

- (i) The plaintiff repeats paragraphs 8.6 to 8.8 above;

- (b) The defendant has falsely claimed that she was told by Ms Brown she would lose her job if she did not come to Perth;

Particulars of falsity

- (i) The plaintiff repeats paragraphs 8.6 to 8.8 and 8.10 above;
- (ii) The defendant chose to come to Perth for her own reasons.
- (c) The defendant has falsely claimed in media reports that she was alone and cast out by the plaintiff whilst working in Perth.

Particulars of media reports

- (i) The Project Interview;
- (ii) Lanai Scarr, “Canberra rape allegations: Brittany Higgins suffered breakdown in Perth hotel during 2019 campaign” published by The West Australian on 5 March 2021 (**Scarr Article**).

Particulars of falsity

- (iii) The defendant joined in the election campaign by participating in letterbox drops, attending campaign rallies and events, staffing a pre-polling booth with other staff and socialised with other staff;
- (iv) The defendant was invited by the plaintiff to a dinner at the Pan Pacific Hotel and an event at the plaintiff’s home;

- (v) The plaintiff arranged for the defendant to attend a house warming party at Ken Wyatt's home;
- (vi) The defendant attended a function at the Rose & Crown Hotel in Guildford for Ken Wyatt;
- (vii) The defendant attended an event at Government House with the then Governor the Hon. Kim Beazley;
- (viii) The defendant attended an election night event with the plaintiff and other Liberal Party politicians and staff;
- (ix) The defendant attended various social events with other Liberal Party staff members and campaign workers;
- ~~(v)~~(x) While in Perth the defendant posted positively on her Instagram account about enjoying her time in Perth;
- (xi) While in Perth the defendant sent positive text messages to Mr Ben Dillaway about enjoying her time in Perth;
- ~~(vi)~~(xii) Further particulars may be provided following the provision of discovery and inspection and return of subpoenas.

Qualified privilege: common law *Lange* defence

13 In respect of paragraph 26 of the Defence, the plaintiff:

13.1 Admits paragraphs 26(a) and 26(b); and

13.2 Denies paragraph 26(c).

14 The plaintiff denies paragraph 26(d) and says further, if, which is denied, the Publications were published on an occasion of common law qualified privilege, the conduct of the Defendant was not reasonable in circumstances where:

Particulars of circumstances

(a) The plaintiff repeats paragraph 11 above.

15 Further if, which is denied, the publications were published on an occasion of common law qualified privilege, the publication of the defamatory matter was actuated by malice.

Particulars of malice

(a) The plaintiff repeats the particulars of malice pleaded at paragraph 12 above.

Fair comment/honest opinion: at common law and pursuant to section 31 of the Defamation Act

16 The plaintiff denies paragraph 27 of the Defence and:

16.1 As to paragraphs 1 and 2 of Annexure C, denies that the Publications were expressions of opinion;

16.2 As to paragraph 3(a) of Annexure C, the plaintiff repeats her response to paragraphs 1 to 91 of Annexure A.

16.3 As to paragraph 3(b) of Annexure C the plaintiff repeats her response to paragraphs 92 to 95 of Annexure A.

16.4 The plaintiff denies paragraph 4 of Annexure C and repeats her responses to Annexures A and B.

16.5 The plaintiff does not admit paragraph 5 of Annexure C and says that:

16.5.1 The Publications contain expressions of fact, not opinion;

16.5.2 If, which is not admitted, the publications contain expressions of opinion and such opinions were honestly held by the defendant, such opinions were not based upon proper material and the plaintiff repeats her response to Annexures A and B;

16.6 The plaintiff denies paragraph 6 of Annexure C, and repeats paragraphs 16.1 – 16.5 above.

17 In respect of the plea in paragraph 28(ba) the plaintiff admits receiving payment in the sum of \$90,000 for damages and costs and says:

17.1 the payment was not in respect of a publication of a matter having the same meaning or effect as the defamatory matters;

17.2 the sum included a payment of costs of \$20,000.

18 In respect of the plea in paragraph 28(bb) the plaintiff admits recovery of a sum of money in settlement of a claim made by the plaintiff against Aaron Patrick and HarperCollins and says:

18.1 the payment was not in respect of the publication of matter having the same meaning or effect as the defamatory matter;

18.2 the sum was a contribution to the plaintiff's legal costs (which exceeded the settlement sum) and did not include any payment for damages.

19 As to the plea in paragraph 28(bc), the plea is bad at law and not capable of mitigating damage.

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COUNSEL