

**MARK
O'BRIEN
LEGAL**

ABN 86 002 421 123

Level 19, 68 Pitt Street
Sydney NSW 2000
Australia

Our Ref: MOBL657

16 December 2022

Beverley McGarvey
Executive Vice President & Chief Content Officer
Network Ten Pty Limited and Network Ten (Sydney) Pty Limited
1 Saunders Street
Pyrmont, NSW 2009

Christopher Bendall
Executive Producer
The Project
Como Centre
Level 4, 620 Chapel Street
South Yarra, VIC 3141

Confidential and Not for Publication

By Email: bmcgarvey@networkten.com.au; Cbendall@theprojecttv.com.au

Dear Sir and Madam

DEFAMATION OF BRUCE LEHRMANN

We act for Mr Bruce Lehrmann.

As you would be aware, criminal proceedings were brought against Mr Lehrmann in the Supreme Court of the Australian Capital Territory over the alleged sexual assault of Ms Brittany Higgins.

Mr Lehrmann has at all times vehemently denied sexually assaulting Ms Higgins.

The criminal proceedings brought against Mr Lehrmann were withdrawn on 2 December 2022.

Publication

On or about 15 February 2021 Network Ten broadcast a segment during the program *The Project* in which Ms Lisa Wilkinson interviewed Ms Brittany Higgins. That segment was also published online via www.markobrienlegal.com.au

The Project's YouTube channel on the YouTube website with close to 300,000 views (<https://www.youtube.com/channel/UCorruoVYwGGyND4SZVtrVDQ>) (the **Publications**).

The Publications contained a number of statements regarding Mr Lehmann, including the following:

- a. *Lisa Wilkinson: "Can you describe how you were treated professionally by one of the senior male advisors to Minister Reynolds?"*

Brittany Higgins: "Yeah. So immediately it became clear that this person had a special bond with the Minister. It was very clear that he was sort of her go-to person and he was really quite territorial of that position."

- b. *Lisa Wilkinson: "So he was a bit of a favourite of Minister Reynolds?"*

Brittany Higgins: "Yeah very much so. He had been advising her in the Home Affairs portfolio prior to that. He had a lot of friends everywhere. He was considered one of the sort of rising stars."

- c. *Lisa Wilkinson: "On the 22nd of March 2019, less than three weeks after she'd started in Linda Reynold's office, Brittany organised Friday night drinks with contacts and colleagues in Defence. So how did this senior male colleague act towards you?"*

Brittany Higgins: "He was nice to me. I think he was grateful that I invited him. I was kind of happy that I had an opportunity to kind of demonstrate some value to the team I guess. I noticed that he was buying me a lot of drinks and I was kind of... I just thought of 'job well done', I thought I was kind of broadly being rewarded in a weird way."

- d. *Brittany Higgins: "My senior male colleague who was actually quite helpful in terms of getting me into a cab on the basis that I really couldn't walk. I mean I don't specifically remember the exact conversation but the general tone was 'we live in the same direction but I've got to stop somewhere first.'"*

Lisa Wilkinson: "Where was that somewhere?"

Brittany Higgins: "Parliament."

- e. *Brittany Higgins: "The first thing that sort of awoke me was... I was in a pain. My leg was kind of being crushed. The senior staffer was on top of me. He was clearly almost finished [...] I woke up mid-rape essentially. I don't know why I knew he was almost finished but I'd felt like it had been going on for a while or that he was almost done. He was sweaty. I couldn't get him off of me. At this point I started crying."*

Lisa Wilkinson: "What did you say to him?"

Brittany Higgins: "I told him to stop."

Lisa Wilkinson: "Did he?"

Brittany Higgins: "No."

Lisa Wilkinson: "How many times would you estimate you said to him to stop?"

Brittany Higgins: "I felt like it was on a loop endlessly. At least half a dozen. I was crying the whole way through it."

- f. *Lisa Wilkinson: "You have a photo that you took of a bruise that developed from that night. What does that photograph show?"*

Brittany Higgins: "It's quite a large bruise. It's just the weight obviously of his leg pinning me down."

- g. *Brittany Higgins: "My dress was up around my waist, the straps were kind of down, I was pretty dishevelled."*

- h. *Lisa Wilkinson: "Monday morning, Brittany went to work as usual. So did her senior colleague, the alleged rapist. But no one raised the security breach. That came on Tuesday morning."*

- i. *Brittany Higgins: "[Fiona Brown] came in on the Tuesday morning and asked if the senior colleague and I would go into the office and speak with her. So she originally brought in the senior colleague and they were probably in there for about 45 minutes."*

Lisa Wilkinson: "So this colleague came out?"

Brittany Higgins: "Yes so he immediately walked out of the office and started packing up his things."

- j. *Lisa Wilkinson: "What was her tone towards you until you told her that you had been raped?"*

[...]

Brittany Higgins: "She asked me to recount the events of the night [...] that was sort of the first time I'd vocalised that I'd been raped. And I think as I was telling it, it was the first time I had sort of pieced it together myself what had happened was an assault..."

- k. *Lisa Wilkinson: "We now return to our interview with Brittany Higgins, the young Liberal staffer who tells us she was raped inside Parliament House."*

- l. *Lisa Wilkinson: "So you had just told a senior advisor to Prime Minister Scott Morrison that you had been raped on Minister Reynold's couch in her private office?"*

Brittany Higgins: "Yes."

Lisa Wilkinson: "That's a serious crime."

Brittany Higgins: "Yeah."

- m. *Brittany Higgins: "It felt like everyone had all this information on my own assault and I didn't have any..."*
- n. *Brittany Higgins: "We actually went into the room where it happened [...] it was the first time I had ever had to go back there. And so between sort of me and their table was the couch and I just remember feeling so [...] I was just so cognisant of this is where it's happened, it's right there, that's exactly where... and it was just this loop playing in my mind of this trauma that I'd just sort of come to terms with. And I just thought it was unfathomable that they would put me in that space again [...] I felt like I was reliving it every second of being in that room."*
- o. *Lisa Wilkinson: "So what's happened to the man that you say raped you on Minister Reynolds's couch?"*
- Brittany Higgins: "He's fine. He's working in Sydney. He's got a good job. People don't know why he left and I don't think he's suffered any consequences for it at all."*
- p. *Lisa Wilkinson: "If everything that you say is true, it sounds to me like the easiest place in this country to rape a woman, and get away with it, is Parliament House in Canberra."*
- Brittany Higgins: "Yeah."*

Identification

The Publications were clearly of and concerning Mr Lehrmann, with Mr Lehrmann being identifiable to many viewers by reason of the Publications stating that the assailant of Ms Higgins:

- a. was a "senior male advisor to Minister Reynolds";
- b. was Minister Reynolds "go-to person";
- c. was "a bit of a favourite of Minister Reynolds";
- d. "had been advising her in the Home Affairs portfolio prior that";
- e. attended Friday night drinks organised by Ms Higgins on 22 March 2019;
- f. started packing up his belongings on the Tuesday morning after the alleged incident following a meeting with Fiona Brown; and

g. was working in Sydney in February 2021.

It was therefore readily apparent to any person working for the Liberal Party in Parliament House and indeed many other people in that workplace (where several thousand people work) that the assailant could only be Mr Lehrmann.

The Publications invited readers to speculate about the identity of Mr Lehrmann and within the following hours and days his name was widely trafficked as the culprit on social media and the internet generally. See for instance:

- <https://kangarocourtofaustralia.com/2021/02/27/were-young-women-sexually-assaulted-when-bruce-lehrmann-the-alleged-parliament-house-rapist-was-an-official-at-the-anu-un-conference/>
- <https://twitter.com/blakandblack/status/1363106005404549121?lang=en>
- <https://blotreport.com/2021/02/17/did-morrison-almost-tell-the-truth/>
- <https://twitter.com/PeterWMurphy1/status/1362759012719026177>
- <https://www.clownworldau.com/story/brittany-higgins/>
- <https://twitter.com/peakhourimages/status/1363960533964128256?lang=en>
- <https://www.clownworldau.com/story/bruce-lehrmann-david-sharaz/>
- <https://www.youtube.com/watch?v=xqUjBWw1q9c>
- <https://www.townsvillemaggpie.com.au/unfriendly-fire-the-real-reason-behind-the-facebook-ban-morrison-s-lip-service-to-stiffen-rupert-s-business-end/>

Further, by the time of broadcast of The Project segment on 15 February 2021, it was notorious within Parliament House and elsewhere that Mr Lehrmann was the person alleged to have sexually assaulted Ms Higgins. This is evidenced by numerous persons having contacted Mr Lehrmann on the evening of 15 February 2021 and thereafter in relation to the segment, having plainly identified him.

Imputations

The Publications convey, amongst others, the following imputations of and concerning Mr Lehrmann:

- a. *He raped Brittany Higgins in Defence Minister Linda Reynolds' office in 2019.*
- b. *He continued to rape Brittany Higgins after she woke up mid-rape and was crying and telling him to stop at least half a dozen times.*

- c. *He, whilst raping Brittany Higgins, crushed his leg against her leg so forcefully that to caused a large bruise.*
- d. *After he finished raping Brittany Higgins, he left her on a couch in a state of undress with her dress up around her waist.*

Mr Lehrmann vehemently denies that he sexually assaulted Ms Higgins, and the imputations are therefore grossly and indefensibly defamatory of him, noting that in a civil case Ms Higgins' allegations would be required to be proven to the standard in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Limitation period

As at 15 February 2021 Section 56A of the *Limitation Act 1969* (NSW) was in the following terms:

- (1) *A person claiming to have a cause of action for defamation may apply to the court for an order extending the limitation period for the cause of action.*
- (2) *A court may extend the limitation period to a period of up to 3 years running from the date of the alleged publication of the matter if the plaintiff satisfies the court that it is just and reasonable to allow an action to proceed.*
- (3) *In determining whether to extend the limitation period, the court is to have regard to all of the circumstances of the case and in particular to—*
 - (a) *the length of, and the reasons for, the plaintiff's delay, and*
 - (b) *if a reason for the delay was that some or all of the facts relevant to the cause of action became known to the plaintiff after the limitation period expired—*
 - (i) *the day on which the facts became known to the plaintiff, and*
 - (ii) *the extent to which the plaintiff acted promptly and reasonably once the plaintiff knew whether or not the facts might be capable of giving rise to an action, and*
 - (c) *the extent, having regard to the delay, to which relevant evidence is likely to be unavailable or less cogent than if the action had been brought within the limitation period.*

It is well established that a putative applicant is entitled to wait until criminal or coronial proceedings traversing the same issues are disposed of before commencing defamation proceedings. In such circumstances the Court has a discretion to extend the limitation period for a period of time. See for instance:

- a. *Houda v New South Wales* [2012] NSWSC 1036 where the Court was prepared to extend time from mid-December (when the DPP decided not to appeal the Magistrate's dismissal of the charges) until 19 March of the following year.
- b. *Barrett v TCN Channel Nine Pty Ltd* [2017] NSWCA 304. In this case the coronial decision was in February and the plaintiff had sought legal advice and given instructions to commence proceedings at a conference in May of the same year. The trial judge was prepared to extend time until the end of June (but a period of unexplained delay meaning proceedings were not filed until later that year meant the extension application failed).

In summary, given the ACT Director of Public Prosecutions only announced on 2 December 2022 he was withdrawing the criminal proceedings brought against Mr Lehrmann in relation to the allegation that he sexually assaulted Ms Higgins, Mr Lehrmann will be entitled to an extension of time for the commencement of proceedings over the Publications.

Next Steps

We have retained Steven Whybrow SC and Matthew Richardson SC to act in defamation proceedings against Network Ten in relation to the Publications.

However, Mr Lehrmann is prepared to consider a non-litigious resolution of his concerns before proceedings are commenced. In that regard we refer you to the provisions of the *Civil Dispute Resolution Act 2011* (C'th) in addition to the *Defamation Act 2005* (NSW).

Mr Lehrmann offers to resolve the dispute on the following terms:

- (a) Payment of the sum of \$235,000 for damages to Mr Lehrmann.
- (b) Network Ten provides to Mr Lehrmann a letter of apology on Network Ten letterhead and signed by the Executive Vice President & Chief Content Officer in the following terms:

"Apology to Bruce Lehrmann

On about 15 February 2021, Network Ten broadcast a segment on the program The Project in which Ms Lisa Wilkinson interviewed Ms Brittany Higgins.

The broadcast alleged that Ms Higgins was raped by a senior colleague working in the same ministerial office as Ms Higgins. That colleague was immediately identified by many persons as Mr Bruce Lehrmann.

Network Ten only ever intended to suggest that Ms Higgins had made allegations against Mr Lehrmann and not that he was guilty of those allegations.

On 2 December 2022, the Director of Public Prosecutions in the Australian Capital Territory announced the withdrawal of the charges against Mr Lehrmann.

We accept in those circumstances that Mr Lehrmann is entitled to the presumption of innocence, and we apologise to him for the publication of the broadcast.”

(c) Payment of Mr Lehrmann’s costs, including Counsels’ fees, incurred to date.

This offer is open for 14 days from the date of this letter.

In the event the offer is not accepted, Mr Lehrmann will rely upon the sending of this letter, and any response to it (or lack of response) on any issue arising in the proceedings, including aggravated damages and indemnity costs.

Yours faithfully



Mark O'Brien
Principal
T +61 2 9216 9828
M +61 412 637 304
E mark.obrien@markobrienlegal.com.au

Copy to: **Stuart Thomas**
stthomas@networkten.com.au

Tasha Smithies
tsmithies@networkten.com.au