

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2019-485-759

UNDER the Defamation Act 1992

BETWEEN **PQW**
Plaintiff

AND **TREVOR COLIN MALLARD, MP and
Speaker of the House of
Representatives, of Wainuiomata,
Lower Hutt**
Defendant

STATEMENT OF CLAIM

Dated: 13 December 2019

Solicitors for plaintiff:
Bartlett Law
Barristers and Solicitors
PO Box 10852, The Terrace
WELLINGTON 6143
Telephone: (04) 472 5579
Solicitor Acting: Carolyn Heaton
Email: carolyn.heaton@btlaw.co.nz

Counsel for plaintiff:
M F McClelland QC
Harbour Chambers Ltd
Level 10, Equinox House
PO Box 10-242, The Terrace
WELLINGTON 6143
Tel: (04) 499 2684
Email: mmcclelland@legalchambers.co.nz

A J Romanos
Quayside Chambers
Level 7, Civic Assurance House
PO Box 10374, The Terrace
WELLINGTON 6143
Tel: (04) 472 1536
Email: ali@aliromanos.com

The plaintiff by his solicitor sues the defendant and says:

Parties

1. The plaintiff:
 - 1.1. is a former employee of the parliamentary complex, in respect of which employment he held the position of **[redacted]**, working in the **[redacted]** for Parliamentary Service; and
 - 1.2. resides at **[redacted]**.
2. The defendant:
 - 2.1. has been a Member of Parliament since 1984;
 - 2.2. is the Speaker of the House of Representatives; and
 - 2.3. resides in Wainuiomata, Lower Hutt.

Facts

3. On 21 May 2019, Parliamentary Service, Ministerial and Secretariat Services and the Office of the Clerk published a review by Debbie Francis, *Bullying and Harassment in the New Zealand Parliamentary Workplace* (the **Francis Review**).
4. On the morning of 22 May 2019, the defendant took part in a series of media interviews in relation to the Francis Review. These included:
 - 4.1. an interview on RNZ's *Morning Report* show with Susie Ferguson (the **RNZ Interview**); and
 - 4.2. an interview on Television New Zealand's *Breakfast* show with John Campbell (the **TVNZ Interview**).
5. During the RNZ Interview, the defendant made, inter alia, the **bolded** statements identified below (the **Statements to RNZ**).¹

SF = Susie Ferguson
TM = Trevor Mallard

¹ Annexed as Schedule 1, is a full transcript of the RNZ Interview.

SF: Now, some of the most serious offending that we're talking about here – sexual assault – Debbie Francis identified three alleged incidents that she described as “extremely serious and some appeared to be part of a multi-year pattern of predatory behaviour.” Are you aware whether those alleged perpetrators are MPs or staff, and are they still there?

TM: I'm not aware whether they're MPs or staff. **Reading the report carefully, I get the sense that the man is still on the premises.**

SF: Is it one person we're talking about?

TM: **[F]or the very serious offences, that is my interpretation ... of reading the report.**

...

TM: **... What I'm really hoping is that people actually go either directly to the Police or to Rape Crisis or other support agencies.**

...

SF: So, you've talked about Rape Crisis. Is that the level of seriousness that is being spoken about, that people came forward with?

TM: **Well, we're talking about serious sexual assault. Well that, for me, that's rape.**

SF: So people have been raped in Parliament?

TM: **That is the impression I get from the report, yes.**

6. During the TVNZ Interview, the defendant made, inter alia, the **bolded** statements identified below (the **Statements to TVNZ**).²

JC = *John Campbell*

TM = *Trevor Mallard*

JC: Obviously we can't go into details; it's not appropriate in any way. But was the sexual assault a serious assault?

TM: **Well, I think it's pretty clear from the report that there are three assaults which are in the serious category. And I don't know any details of it. We've both read the report and I think both of us can interpret any sexual assault as being serious but three appeared to be in the rape category.**

JC: So we are talking about rape?

² Annexed as Schedule 2, is a full transcript of the TVNZ Interview.

TM: **Well, I mean, my view is that, you know, any serious sexual assault, man on woman, is rape.**

JC: Have you been told the names of the alleged perpetrator?

TM: No. No, the whole basis of the report was that people were, or the review was that people were free to come forward; that everything they said would be treated in confidence; that **they would be supported to go to either** employment authorities, **to Rape Crisis, or to the Police.** And that has occurred. But the choices, in the end, are for the individuals. And what was made absolutely clear is that nothing they said would be passed on by the reviewer to anyone.

JC: Okay. Which leaves, of course, the possibility that the person – the man responsible for this – is, is – if we're talking rape and we're talking three offences – is still in Parliament.

TM: **Yes.**

JC: And that – and I don't need to tell you this – is entirely unsatisfactory, isn't it?

TM: It is, and that's why, each of the party leaders, and all of the chief executives, have made it absolutely clear, to staff, that a lot of support will be available to women who come forward. **And what we don't know, John, is whether, whether in fact, women in that situation have already been getting support from Rape Crisis or sexual-help people – or sexual-assault-help people – or the Police.** Now, because, they don't report back to us either.

JC: Do you know enough to be able to tell me whether it's an MP or a staffer?

TM: No, I don't.

JC: Okay. Gosh, this is a nightmare situation, isn't it? Because we don't want to imperil or make precarious the position of the victims. But equally, this is just not sustainable that that man, or men, are still there?

TM: **That's right. We're certainly–, I mean we're already re-traumatising victims by, by this whole exercise; by the interviews by the media that has followed.** But what we all–, what we absolutely can't do is break our word to them [sic] around confidentiality so, you know, through this programme, through the chief executives, through my office, **we're doing a lot of work to encourage people to come forward so that at least the person can be identified and, and some beginning Police matters can start, which would, then, allow us to put protection around other women here.**

7. In the hours following the RNZ and TVNZ Interviews, the defendant had communications with the General Manager of

Parliamentary Service, Rafael Gonzales-Montero, during which the defendant was informed about a complaint against the plaintiff by [redacted] (the **Complaint**). The Complaint was that [redacted] (the **Complaint**).

8. From this time, if not before, the defendant was aware that the Complaint was not, and did not concern, an allegation of rape.
9. At around 3:30pm, the defendant addressed media in Parliament's foyer (the **Foyer Address**).
10. During the Foyer Address, the defendant made, inter alia, the **bolded** statements identified below (the **Foyer Statements**).³

TM = Trevor Mallard

JQ = Journalist Question (journalist identified where possible)

TM: **A member of the Parliamentary Service staff has been stood down following a historic allegation of assault. I don't want to cut across any employment or possible Police investigations but I am satisfied that the Parliamentary Service have removed a threat to the safety of women working in the Parliamentary complex. I want to thank the staff member who has come forward and say that this is obviously a very traumatic time for that individual and will also be the case for other individuals, other women who are involved. I want to encourage anyone who has been assaulted to contact the Safe to Talk hotline, 0800 044334, the Police or the General Manager of the Parliamentary Service. Because the matter is now under investigation as opposed to being part of a review it is not appropriate to go into further details and my appeal to the media is to let the process run and take care not to further traumatise either this woman or other women.**

...

TM: It is not my role to refer it to the Police. It is the role of the woman involved ... That is a decision for her. **Obviously I would prefer if she did but I will not be pressuring her.**

...

JQ: (Jessica Mutch McKay) When was the investigation launched? Were they stood down today?

TM: The person was stood down this afternoon.

JQ: (Audrey Young): Were you aware of these allegations before the

³ Annexed as Schedule 3, is a full transcript of the Foyer Address.

review?

TM: Not of this specific allegation, no.

JQ: (Jenna Lynch) Could you please clarify, you said they were stood down for a historic assault allegation, was it a sexual assault allegation?

TM: **It is an assault of a sexual nature.**

JQ: (Barry Soper) Do you stand by your view that this morning that the sexual, the serious sexual assaults were tantamount to rape?

TM: **Yes, and anyone who's been involved in looking at the rape law would be aware of the definition of rape in New Zealand.**

JQ: (Audrey Young) Do you know who this person is now?

TM: Yes.

JQ: (Jenna Lynch) Are you, can you guarantee women now, that, there is no threat to their safety at Parliament?

TM: One can never make an absolute guarantee of that type and clearly we have a lot of work to do coming out of the review around attitude but **what I can give an assurance is that one of the key dangers is no longer in the building.**

...

JQ: (Jessica Mutch McKay) Can you clarify, there were three allegations of, of serious sexual assault. Was there one person responsible for those allegations in the report?

TM: **That is my understanding, yes.**

JQ: (Jenna Lynch) And that person, has, is the one that's been stood down?

TM: I am not, I am going to be very careful for reasons which were clear from my leaf (?) not to do a solid link in that area.

JQ: (Male journalist) That way this has played out in the media, you announced this morning that there had been a rape in Parliament, and then there was radio silence for hours and hours and hours. For some people it was quite disconcerting. Do you regret the way this has played out in the media?

TM: Yes I do. I think, it is clear that people have – some people in the media – have a different understanding of the law than I do and some people have a different understanding of how people are traumatised and it would have been better if it had not played out that way. I have some responsibility for that and I accept that **the main thing now is to minimise the further trauma that's caused.**

JQ: (Barry Soper) So you know the offender, do you know who the

complainant is?

TM: I am not going to go into that.

...

JQ: (Male journalist) Can you clarify the sequence of events? When did you first become aware, you were made-

TM: The person, the person came... sorry. I was made aware of it after the radio and clearly before now, before the person was stood down.

JQ: (Jessica Mutch McKay) So, sorry, who came forward to you?

TM: Initially the General Manager of the Parliamentary Service who was the person who received the formal complaint.

...

11. By letter dated 29 May 2019, the plaintiff's solicitors, inter alia, put the defendant on notice as to the defamatory statements he had made about the plaintiff and warned him not to repeat them.
12. By email dated 31 May 2019 to the plaintiff's solicitors, the defendant acknowledged receipt of the above letter and indicated he would seek advice "*when and if I consider it necessary*".
13. By letter dated 10 June 2019 to the defendant, the plaintiff's solicitors:
 - 13.1. recorded the plaintiff's disappointment that the defendant had not engaged with the plaintiff's solicitors so as to resolve matters without the need for litigation;
 - 13.2. confirmed that the plaintiff was absolutely committed to litigation if that was the only way he could clear his name and restore his reputation as much as possible;
 - 13.3. recorded that the defendant made his defamatory statements about the plaintiff to the media "with the full knowledge and intention that those statements would be the subject of considerable and ongoing media attention" to the plaintiff's detriment;
 - 13.4. recorded that to resolve matters the plaintiff would require:

- (a) the release to the media of an agreed apology to the plaintiff;
- (b) the apology to be read by the defendant to the House without further comment;
- (c) payment of damages of an agreed amount; and
- (d) a written undertaking that the defendant would not, in the future, make any statements defamatory of the plaintiff; and

13.5. expressed the firm hope and indeed expectation that this matter could be resolved without the need for further action.

14. By letter dated 24 June 2019, the solicitors for the defendant:

14.1. informed the plaintiff's solicitors that:

- (a) the defendant would not be publishing any apology;
- (b) would not agree to pay any damages;
- (c) did not accept the plaintiff had been defamed;
- (d) would defend any claim "vigorously"; and

14.2. claimed that the defendant's statements were either truth, honest opinion, or made on an occasion of qualified privilege; and

14.3. threatened the plaintiff that should he pursue litigation, "*the question of **his** reputation and **his** conduct will be very much the centrepiece of any public proceeding*" (original emphasis) (the **Threat**).

Cause of action: Defamation – the Foyer Statements

The plaintiff by his solicitor repeats 1-14 above and says further:

15. The defendant uttered the Foyer Statements in the knowledge and expectation that media would report them.

16. The Foyer Statements were made by the defendant and understood by the attending journalists, as being in the context

of, and with direct reference to, the Statements to RNZ and TVNZ, in particular the defendant's allegation that there was a rapist working in Parliament.

17. The Foyer Statements meant, in their natural and ordinary meaning, that the plaintiff:
 - 17.1. raped one or more women; and
 - 17.2. was accused of raping one or more women.
18. These meanings are untrue and defamatory of the plaintiff.
19. The plaintiff was identified intrinsically and/or described in the Foyer Statements in the following ways:
 - 19.1. by the defendant as "*a member of parliamentary service*"; "*a threat to the safety of women working in the parliamentary complex*", "*the person*", "*one of the key dangers*", and "*the person [who] was stood down*" and
 - 19.2. by the questioning journalists as "*this person*", "*they*", "*that person*", and "*one person responsible for those allegations in the report*".
20. The plaintiff was identified by matters extrinsic to the publication of the Foyer Statements in the following ways:
 - 20.1. The plaintiff has worked at Parliament for some **[redacted]** years in a front-line position.
 - 20.2. The plaintiff is therefore well known and highly visible to people who work at and visit Parliament on a regular basis.
 - 20.3. The plaintiff is part of a team of approximately **[redacted]**, and there are approximately another **[redacted]** administrative staff in the **[redacted]**. All such personnel are known to and acquainted with each other as normal work colleagues.
 - 20.4. Around 1pm on 22 May 2019, the plaintiff was summonsed to attend a meeting with Mr Gonzales-Montero. The plaintiff was asked to bring a support person.

- 20.5. At 2:10pm on 22 May 2019, the plaintiff attended a meeting with Mr Gonzales-Montero (the **Meeting**), with **[redacted]**, in attendance as the plaintiff's support person.
- 20.6. The Meeting took place in **[redacted]**.
- 20.7. At the Meeting, the plaintiff was notified about an investigation in respect of the Complaint and was stood down.
- 20.8. After the Meeting, the plaintiff left the parliamentary precinct.
- 20.9. The Foyer Statements was made about an hour after the Meeting concluded.
- 20.10. On 23 May 2019, the **[redacted]** staff roster (the **Roster**) was amended to remove the plaintiff from his future shifts and to record that the plaintiff was now on leave.
- 20.11. **[Redacted]** (the **Email**).
- 20.12. Identified persons drew a natural and probable link between the Foyer Statements – in particular the defendant's statement that a member of Parliamentary Service had been "*stood down this afternoon*" and that the defendant was "*satisfied that the Parliamentary Service have removed a threat to the safety of women working in the Parliamentary complex*" – and the plaintiff's sudden, and permanent, departure and absence from Parliament.
- 20.13. These identified persons included:
- (a) members of the Press Gallery including Barry Soper;
 - (b) the plaintiff's colleagues in Parliamentary Services, including **[Redacted]**, who were either at or walked past the Meeting and/or saw the Roster the following day and/or read the Email.
 - (c) former colleagues who have become aware of the plaintiff's sudden and permanent departure and absence from Parliament;

- 20.14. It is a reasonable inference that many other people working at Parliament, if not every single person, would have drawn the same link between the Foyer Statements and the plaintiff's sudden and permanent departure and absence from Parliament.
21. The defendant has aggravated the harm to the plaintiff's reputation, feelings and/or wellbeing in the following ways:
- 21.1. As a result of the nature of the allegations and the status of the defendant as Speaker of the House, news media around New Zealand and across the world reported on the defendant's allegations, an outcome that was reasonably foreseeable to the defendant.
- 21.2. The Threat was understood by the plaintiff to mean that the defendant would endeavour to embarrass him publicly in court proceedings.
- 21.3. The defendant's conduct in making the Foyer Statements and his correspondence thereafter, is bullying behaviour.
- 21.4. At the time the Foyer Statements were made, the defendant was aware explicitly of the nature of the Complaint; and therefore, was dishonest by representing that the allegations against the plaintiff were "*rape*" or "*tantamount to rape*".
22. The plaintiff claims punitive damages on the basis the defendant acted in flagrant disregard of the plaintiff's rights. For particulars, the plaintiff repeats paragraph 21.4 above.

Wherefore the plaintiff claims:

- (a) a declaration in terms of s24 of the Defamation Act 1992 that the defendant is liable to the plaintiff in defamation.
- (b) general damages of \$400,000.
- (c) punitive damages of \$50,000.
- (d) interest pursuant to s9 of the Interest on Money Claims Act 2016;

- (e) a permanent injunction enjoining the defendant from republishing the defamatory meanings; and
- (f) costs.

This statement of claim is filed by Carolyn Heaton, solicitor for the plaintiff. The address for service of the plaintiff, is at the offices of Bartlett Law, Level 9, Equinox House, 111 The Terrace, Wellington.

Documents for service on the plaintiff may be left at that address for service or may be—

- (a) posted to the solicitor at PO Box 10852, The Terrace, Wellington; or
- (b) sent to the solicitor by email: carolyn.heaton@btlaw.co.nz

It is requested that any documents served by email on the plaintiff are carbon copied to Counsel for the plaintiff, whose address is listed on the cover page.