

Last week Rocky Horror Show actor Craig McLachlan issued defamation proceedings against Fairfax Media, the ABC and former co-star Christie Whelan Browne, one of the women who has accused McLachlan of sexual harassment. While no criminal charges have been laid, police are [currently investigating](#) allegations McLachlan committed multiple sexual offences while performing in the Rocky Horror Show in 2014. McLachlan has denied the allegations.

This follows [defamation proceedings launched by Geoffrey Rush](#) against the Daily Telegraph after the newspaper published allegations Rush had behaved inappropriately towards a female cast member at the Sydney Theatre Company. Rush has strenuously denied these allegations too.

The #metoo campaign, with women coming forward with stories of sexual harassment and abuse, often on social media, has proved to be a powerful force in uniting victims and providing a platform for airing allegations. This is a welcome change. While reporting rates have improved in the last 20 years in Australia as victims' rights have been accelerated through legislation, we know that only about 15% of sexual assault victims in Australia report incidents to the police. There is a strong case for the outcomes of these cases to be reported more publicly to give us a better understanding of their prevalence.

However, the [#metoo movement has been criticised](#) for not giving due process and damaging the reputations of those accused. Just as an abuse victim can be irreparably harmed by a sexual indiscretion, so, too, can their abuser be seriously damaged by a false accusation.

Lawmakers are keenly aware of this, too. For example, a person who is alleged to have committed a crime of a sexual nature in South Australia, [cannot be publicly named](#) unless and until he or she has been committed for trial. If they are ultimately acquitted, the publication that has reported the fact of the trial must give equal prominence to the acquittal.

The case

On January 8, 2018 the Sydney Morning Herald published a front-page story from investigative journalist Kate McClymont that detailed specific allegations against McLachlan. The allegations were that, during the Rocky Horror Show tour of 2014, McLachlan had exposed himself to his co-stars, bullied female colleagues, and touched at least one of them indecently.

The ABC's 7.30 Report repeated the allegations, and aired interviews with three women. One of them, McLachlan's former Rocky Horror co-star Christie Whelan Browne, gave graphic descriptions of incidents of unsolicited sexual conduct of McLachlan in relation to her. McLachlan has since stood down from his role in the show.

Fairfax, the ABC, and Whelan Browne are the defendants in McLachlan's defamation action.

A balancing act

In the law of defamation, there is an assumption that the defamatory allegations published about a person are false. That means that Fairfax, the ABC and Whelan Browne have to find a defence or else they will be liable in damages to him. And losing his opportunities in show business (being dropped from the Rocky Horror tour for a start) will allow him to claim a sizeable sum.

There are a number of defences to defamation. But, in this instance, there is only one that is relevant: contextual truth. That is, if the allegation is defamatory (and alleging unwanted sexually lewd behaviour is certainly defamatory), then satisfying the court that the behaviour did, contextually, occur is sufficient to defeat the McLachlan legal suit.

"Contextually" means that the defendants don't have to prove every last detail of the allegations. It will be enough to show (to the satisfaction of the judge or jury) that the Rocky Horror star engaged in a pattern of sleazy behaviour and uninvited contact of a sexual nature.

Here the law is being asked to tread a difficult path between diametrically opposed accounts. Intimate behaviour, appropriate or not, is rarely witnessed by a third person. The issue most often comes down to one person's word against another. Memories are being tested, too. The claims against McLachlan are more than three years old.

It is simply impossible to guarantee fairness in such a scenario. We have a passionate plea from victims who tell us that their lives have been irreparably tormented by an actor who cannot draw the line between what happens on stage and off. But we have an equally passionate plea from an accused person whose reputation has been eviscerated by the portrayals of him as a sexual predator.

It is difficult to say whether the accuser or accused is more likely to win any such battle. Legislation in Australia makes unlawful any incident where an employee is made to feel intimidated, insulted or humiliated because of their sex or sexuality. These matters are designed to be conciliated away from the public eye, so our knowledge of their incidence (and outcomes) is seriously limited. There is a strong case for making conciliated outcomes more publicly available, while respecting the privacy of the parties concerned.

We know a lot more about the potential consequences of matters that proceed through the criminal process. Of all [complaints of a sexual nature](#) reported to police, only about 11% result in a conviction for any sexual offence.

In the meantime, we will simply have to rely upon the courts making findings of fact, and applying the consequences of their deliberations accordingly. Defamation outcomes are completely unpredictable. The law walks a tightrope here. And, as any tightrope walker knows, you need to keep your balance or you will slip painfully. In that event you will quickly lose public confidence. In matters such as these that should not be allowed to happen.

Rick Sarre does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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