

Australian actor Craig McLachlan's defamation case postponed following police charges

Richard Phillips
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This week's scheduled defamation trial by Australian stage, film and television actor and performer Craig McLachlan against Fairfax Media, the Australian Broadcasting Corporation (ABC) and actress Christie Whelan Browne was postponed indefinitely last month following a directions hearing in the New South Wales Supreme Court.

The four-week defamation case to be heard by Justice Lucy McCallum was due to start on February 4. It would have followed last year's defamation trial by Oscar-winning actor Geoffrey Rush against the publishers of Sydney's *Daily Telegraph* (see: "Geoffrey Rush's lawyer slams "gutter journalism" in Sydney defamation trial).

McLachlan initiated his case in February 2018, after Whelan Browne, and two other actresses, made a series of #MeToo style accusations that he abused, harassed or sexually assaulted them during the 2014 Australian production of *The Rocky Horror Show* cult musical. McLachlan, who has vigorously denied the allegations, played the lead role of transvestite scientist, Dr Frank N. Furter, in the sexually-charged show.

McLachlan's lawyers requested postponement of the defamation trial after the actor was summoned to appear at a Melbourne Magistrates' Court on February 8 on ten charges, including eight counts of indecent assault, one attempted indecent assault and a common law assault. The indecent assault charges each carry a maximum penalty of ten years' jail.

Victoria Police has provided no other details but the charges are related to *The Rocky Horror Show* allegations. No explanation has been provided as to why the police took almost 12 months to investigate and lay the charges over events that are alleged to have

occurred almost five years ago.

McLachlan has been in the Australian film, television, theatre and music recording industries for over 30 years and is best known for Australian television soaps *Neighbours* and *Home and Away*, and other popular dramas, including *McLeod's Daughters*, *The Wrong Girl* and *The Doctor Blake Mysteries*.

McLachlan's barrister, Stuart Littlemore QC, told NSW Supreme Court Justice McCallum that if the defamation case went ahead it would be like a "sneak preview" of the prosecution case in the criminal trial, which was not expected to begin for at least 12 months.

Littlemore pointed out that if McLachlan testified in the defamation case, he would have essentially waived his "right to silence" in the Victorian trial which would not begin until well after the defamation case had been adjudicated and its evidence made public. However, if the actor did not testify in the defamation case he faced a "serious miscarriage of justice."

Justice McCallum agreed that the criminal charges against McLachlan placed him on the "horns of a dilemma" because he faced having to defend himself in two back-to-back trials. She agreed that if the actor gave evidence at his defamation trial it would force him to waive his fundamental right not to give self-incriminating evidence—evidence that could be used by the prosecution in the criminal trial.

Barrister Tom Blackburn, for the ABC and Whelan Browne, argued that the defamation trial should proceed as scheduled. The "right to silence is fundamental," he said, but insisted there are other factors that "strongly militate against the granting of the stay."

Blackburn said although there was a risk that the jury

in the criminal trial might read defamation trial evidence, jurors are “robust” and could “not be wrapped in cotton wool.”

Justice McCallum, however, rejected Blackburn’s argument and ruled in favour of staying the defamation trial until after the Victorian trial was completed.

Protecting McLachlan’s right not to self-incriminate was “paramount,” she said. It would be “very difficult for the jury in the criminal trial to put out of its mind the verdict reached by the jury in the civil [defamation] trial...

“Let’s not mince words. Mr McLachlan faces the prospect of a custodial sentence, and the liberty of the subject is the most fundamental right,” she added.

Justice McCallum also refused an application by lawyers for Whelan Browne and the media organisations for the defamation action to be dismissed if McLachlan was found guilty in the Victorian criminal case.

The media outlets and Whelan Browne are reported to have worked closely with Tracy Spicer, a former radio and television celebrity and a key figure in the local #MeToo campaign and its witch hunting of targeted individuals. She is one of those who will be questioned by McLachlan’s legal team when the defamation trial begins.

In October 2017, Spicer declared, without providing any verifiable evidence, that there is an “industrial” level of sexual harassment in Australian workplaces. She was purported to have evidence of “sexual misconduct” by over 100 Australian actors, media personalities and political figures. Notwithstanding these sensationalist and unsubstantiated claims, McLachlan is the only performer to have been charged since the #MeToo movement reared its head.

Contrary to its claims to be combatting sexual harassment and assault, #MeToo is a socially regressive, right-wing movement that rejects the legal right to presumption of innocence and due process. It insists that allegations made by those claiming to be victims of “inappropriate” sexual behaviour must be accepted without question and those targeted taken down.

In his attempts to persuade Justice McCallum to rule against the postponement of McLachlan’s defamation trial, Tom Blackburn said this was necessary because Whelan Browne’s reputation was in “an intolerable

position” and she was experiencing stress from ongoing claims and “social media abuse” that her accusations against McLachlan were false.

Whelan Browne, however, continues to work, appearing last year in several plays—including Shakespeare’s *Twelfth Night* and Oscar Wilde’s *An Ideal Husband*—as well as an ABC television series. She has also been the subject of extensive and favourable media articles praising the “courage” and “determination” of her #MeToo accusations.

By contrast, McLachlan has not worked since he was targeted by her #MeToo allegations. He was immediately removed from *The Rocky Horror Show* and *The Doctor Blake Mysteries*. His role as Dr Blake was written out of last year’s one-off telemovie production of the crime show. The long-running, high-rating television series has now been shelved by its producers.

As McLachlan’s lawyers explained in an affidavit presented to the NSW Supreme Court last year, the 53-year-old Gold-Logie winning performer has become reclusive, rarely leaves his home and his acting career “effectively destroyed.”

Like McLachlan, Geoffrey Rush’s career was seriously damaged by the unproven #MeToo allegations. Rush was pressured in late 2017 to stand down as president of the Australian Academy of Cinema and Television Arts and has not appeared in any stage production since the #MeToo allegations.

Last year Rush’s lawyers told a Federal Court in Sydney that the actor was virtually housebound and on medication and woke up “every morning with a terrible sense of dread” in the three months following claims made by the *Daily Telegraph*. He would “rarely attend public events” and felt that his worth to the theatre and film industry had been “irreparably damaged.”

McLachlan, Rush and others are victims of the #MeToo movement’s anti-democratic, lynch-mob methods.



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