

Australian actor Geoffrey Rush wins defamation lawsuit against Murdoch media

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Yesterday afternoon, in a rigorous and carefully worded judgment, Federal Court Justice Michael Wigney upheld Australian actor Geoffrey Rush's defamation action against Rupert Murdoch's tabloid *Daily Telegraph*, published by Nationwide News, and its celebrity gossip columnist Jonathon Moran.

Justice Wigney read from a 20-page summary of his exhaustive 200-page judgement, which he strongly advised journalists covering the case to carefully read.

Rush was awarded aggravated compensatory damages of \$850,000, with a further, still to be calculated, amount for "economic loss" due to "special damages." This was to compensate for the monetary loss caused by the defamatory articles, including the loss of earning capacity, "for some period of time into the future."

Speaking in the Federal Court before a television camera and a packed audience, Justice Wigney described the case, which had ended up pitting Rush against his former close friend and acting colleague, Eryn Jean Norvill, as "sad and unfortunate."

"It plainly would have been better for all concerned if the issues that arose in the saga that played out in this courtroom in October and November last year had been allowed to be dealt with in a different way and in a different place to the harsh adversarial world of a defamation proceeding," he said, at the start of his judgment.

"But they were not. And so it has come to this."

Rush and Norvill had played the roles of King Lear and his youngest daughter Cordelia, in an acclaimed Sydney Theatre Company (STC) production of *King Lear* in late 2015 and early 2016. For a significant period of time the two had enjoyed a close and playful relationship, involving word games, texting and occasional outings.

"Well over a year later, however," Justice Wigney explained, "in the midst of the 'Harvey Weinstein scandal' and the worldwide explosion of the phenomenon which later became known as the #MeToo movement, Sydney's *The Daily Telegraph* newspaper published what was said to be a 'world exclusive' story concerning the behaviour of Mr

Rush during the STC production. That story ran on 30 November 2017."

While the #MeToo movement was not formally on trial in the case, it was the key motivation behind the outrageous and vindictive slanders against Rush contained in the *Daily Telegraph*'s articles.

The actor claimed he had been portrayed as a pervert and sexual predator, engaged in inappropriate behaviour of a sexual nature, among other defamatory accusations, during the STC's production of *King Lear*. The allegations were made in *Telegraph* articles and a poster on 30 November and in further articles on 1 December, 2017, accompanied by lurid headlines and photographs, and alleged corroboration by two "witnesses."

Moreover, as Justice Wigney pointed out, the articles appeared to link the Rush accusations to those made in "other cases where prominent movie executives, actors and 'show business' personalities, both overseas and in Australia, had been accused of sexual harassment or misconduct."

In defending their actions, the *Daily Telegraph* and Moran claimed that their publications "did not convey the alleged imputations." Justice Wigney found, to the contrary, that all but two of them certainly did.

Under Australian defamation law, if defamatory imputations are found to be, on the balance of probabilities, substantially true, then that constitutes a defence. However, the onus of proof lay with the respondent, Nationwide News and Moran, not with the applicant, Geoffrey Rush to establish the truth.

To support its case, Nationwide News approached Eryn Jean Norvill to act as its primary witness. While she initially refused to participate in the case, she eventually agreed, likely under significant pressure given the importance of her evidence to the Murdoch media's case. As Justice Wigney emphasised, Norvill "was not a party to the proceeding, had no vested interest in it, and had essentially been dragged in to the spotlight by the actions of Nationwide and Mr Moran."

In the event, Norvill submitted herself to two days of examination and cross-examination on the witness stand.

In their articles and poster, the respondents made a total of eight imputations against Rush. These were primarily the result of Norvill's allegations of inappropriate behaviour by Rush toward her during rehearsals and performances of *King Lear*. They included making groping actions with his hands over her body as she lay, as Cordelia, "dead" on the stage; making comments to her containing sexual innuendo; touching her back lightly; tracing his finger above her right breast, and making lewd gestures towards her with his hands and face.

Justice Wigney declared that, on the balance of probabilities, none of these was proven to be true.

Moreover, only one witness, co-actor Mark Winter, gave evidence during the trial to corroborate any of Norvill's testimony, and his evidence contradicted what Norvill herself had alleged. As for the rest of the cast and crew, whom Norvill testified would have seen Rush's "inappropriate behaviour," none supported her version of events. They constituted, in the words of Rush's barrister, Sue Chrysanthou, "a sea of absent witnesses." The only witnesses who did testify were Neil Armfield, the play's highly experienced director, and seasoned actors Robyn Nevin and Helen Buday, all of whom testified that they had seen none of the events described by Norvill.

Toward the conclusion of his remarks, Justice Wigney delivered a damning indictment of Nationwide News and Mr Moran. Referring to the allegations in the *Daily Telegraph*, he declared, "This was, in all the circumstances, a recklessly irresponsible piece of sensationalist journalism of the worst kind. The very worst kind."

Following the hearing, Rush made a brief statement to the assembled media outside the court.

"I am pleased to acknowledge the decisions made this afternoon by the Federal Court of Australia," he said. "There are no winners in this case—it has been extremely distressing for everyone involved.

"I want to thank my wife, Jane, and our children for their support during this harrowing time. I have no further comment."

Following Rush, Eryn Jean Norvill told the media: "I stand by everything I said at trial. I told the truth, I know what happened, I was there.

"I never wanted these issues dealt with by a court. This case has caused hurt for everyone. There are no winners, only losers. And I would've been content to receive a simple apology and a promise to do better."

In the course of his 200-page judgment, Justice Wigney made a thorough examination of the issue of lying, which had clearly emerged in the proceedings.

He wrote: "... the issue concerning Ms Norvill's credibility as a witness, and the reliability of her evidence, is not simply a matter of determining whether or not she has told lies, or has a motive to lie. An otherwise honest witness may give unreliable evidence for all manner of reasons. The witness's memory of the event may be poor or defective. The witness's memory of an event may become distorted or polluted over time because of other intervening events or circumstances. The witness might, in such circumstances, convince himself or herself that something occurred, and genuinely believe that it did, even though it did not.

"In all the circumstances I do not think that it is possible to reduce the factual issues and inconsistent evidence in this case to the simple question of whether or not Ms Norvill is a liar, or has told lies. The issue is not as black and white as that. Life is not that simple.

"Moreover, as has already been noted, many of the disputed allegations do not simply involve Ms Norvill's word against Mr Rush's word. Many of the allegations were, on Ms Norvill's version of events, witnessed by others, including Mr Armfield, Ms Nevin and Ms Buday. Yet, as will be seen, her version of events was not supported by, and in most respects was disputed by, those witnesses."

Wigney also noted that, in the course of her evidence on the witness stand, Norvill had a tendency to "embellish" and "exaggerate" her claims. It appears that she came under the influence of the subjective and damaging methodology of #MeToo, in which virtually any accusation against a man of "inappropriate behaviour" is immediately accepted as grounds for major and ongoing attacks, potentially leading to the loss of a job, a relationship, a marriage and even a life. And there is now ample evidence to demonstrate that the beneficiaries of this process, in terms of jobs, status and financial remuneration, are #MeToo's affluent upper middle class representatives and devotees.

Justice Wigney's judgment has served to deliver a powerful blow against the anti-democratic methods and activities of the #MeToo movement, including its rejection of due process and of the presumption of innocence.

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