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### Details of Filing

Document Lodged:	Outline of Submissions
File Number:	NSD2179/2017
File Title:	GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 12/11/2018 4:22:41 PM AEDT

Registrar

### Important Information

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## **Respondents' Outline of Closing Submissions in relation to meaning**

No. NSD2179 of 2017

Federal Court of Australia  
District Registry: New South Wales  
Division: General

### **Geoffrey Roy Rush**

Applicant

**Nationwide News Pty Limited** and another  
Respondents

1. These submissions supplement, and should be read together with, the Respondents' Outline of Opening Submissions dated 12 October 2018 (**Respondents' Opening Submissions**).

### **DEFAMATORY MEANING**

2. The principles concerning defamatory meaning are set out in the Respondents' Opening Submissions.

### **Natural and ordinary meaning**

#### ***The first matter complained of***

3. The Respondents accept that imputation 4(a) would likely have been conveyed to the ordinary reasonable reader.
4. The Respondents submit that the ordinary reasonable reader would not understand the first matter complained of to convey imputation 4(b) ("*The Applicant had engaged in inappropriate behaviour of a sexual nature in the theatre*"). The first matter complained of refers to the Applicant being involved in a "scandal" and to confirmation that the Applicant had engaged in "inappropriate behaviour". Quite plainly these words are broad and capable of describing a wide range of conduct. A scandal can be anything that is so wrong that it causes

outrage. The word is not limited to sexual impropriety. "Inappropriate behaviour" is capable of describing myriad of behaviour including for example bullying, racist conduct or discriminatory conduct. No ordinary reasonable reader would leap to the conclusion that the inappropriate behaviour was sexual. Only a reader avid for scandal or suspicious of mind would understand the first matter complained of to convey such a meaning.

***The second matter complained of***

5. Imputation 7(a) ("*The Applicant is a pervert*") is a tortured meaning. A pervert is a person who, by contemporary standards, is a sexual deviant. As an example, a pervert is a peeping tom, or someone who engages in sexual behaviour that would be regarded as not just offensive, but disgusting as well as bizarre. Sexual harassment, in the ordinary sense of that term, is rightly regarded with disapprobation but it would strain the ordinary everyday use of language to describe it as "perverted"
6. Taking the second matter complained of as a whole and even allowing for loose thinking, there is not the faintest suggestion that the Applicant has engaged in any perversion. The second matter complained of would not reasonably convey this imputation.
7. Imputation 7(b) ("*The Applicant behaved as a sexual predator while working on the Sydney Theatre Company's production of King Lear*") is a strained and forced meaning and not one that the ordinary reasonable reader would take from a fair reading of the second matter complained of as a whole. At its absolute highest the article conveys that a *complaint* was made that the Applicant engaged in inappropriate behaviour towards one person over the course of several months. The nature of the behaviour is not alleged. An allegation that the Applicant is a "predator" connotes that the Applicant preyed on others sexually or exploited them and is a level of meaning beyond any meaning that would be reasonably conveyed.
8. Imputations 7(c) ("*The Applicant engaged in inappropriate behaviour of a sexual nature while working on the Sydney Theatre Company's production of King Lear*") and 7(d) ("*The Applicant, a famous actor, engaged in inappropriate behaviour against another person over several months while working on the Sydney Theatre Company's production of King Lear*") would not be conveyed to the ordinary reasonable reader by a fair reading of the second matter complained of as a

whole. The article refers specifically to a complaint that has been made and contains many denials on behalf of the Applicant.

9. The ordinary reasonable reader would understand from the article as a whole, and in particular the vehement denials by the applicant's lawyer, that a complaint had been made, which was strenuously denied. The ordinary reasonable reader is a fair-minded person. He or she would not derive from this article that the Applicant had actually engaged in the conduct alleged.

***The third matter complained of***

10. Imputation 10(a) ("*The Applicant had committed sexual assault while working on the Sydney Theatre Company's production of King Lear*") is not a meaning that would be understood by the ordinary reasonable reader. The references in the third matter complained of to allegations that the Applicant had inappropriately touched the complainant would not lead the ordinary reasonable reader to conclude that the touching amounted to sexual assault.
11. The Respondents submit that 10(b) ("*The Applicant behaved as a sexual predator while working on the Sydney Theatre Company's production of King Lear*") would not be conveyed to the ordinary reasonable reader for the reasons set out in paragraph 7 above.
12. As to imputations 10(c) ("*The Applicant engaged in inappropriate behaviour of a sexual nature while working on the Sydney Theatre Company's production of King Lear*") and 10(d) ("*The Applicant, an acting legend, had inappropriately touched an actress while working on the Sydney Theatre Company's production of King Lear*"), the third matter complained of comprehensively sets out the powerful and indignant denials by the Applicant himself, and the Applicant's solicitor. The overall effect is to convey to the reader that an allegation has been made, not that the conduct actually occurred. That is the meaning that would be conveyed to the ordinary reasonable reader.
13. Imputation 10(e) ("*The Applicant is a pervert*") would not be conveyed for the reasons set out in paragraphs 5 and 6 above.
14. Imputation 10(f) ("*The Applicant's conduct in inappropriately touching an actress during King Lear was so serious that the Sydney Theatre Company would never work with him again*") would not be conveyed. The imputation begins with the

words "*the Applicant's conduct in inappropriately touching an actress...*". It is that meaning that is not conveyed. At its highest, what the article speaks about relevantly (page 1-7) is the seriousness of the allegations being the reason for not working with the Applicant in the future. That is quite different from this imputation.

15. As to imputation 10(g) ("*The Applicant had falsely denied that the Sydney Theatre Company had told him the identity of the person who had made a complaint against him*"), the reader would understand from the whole of the third matter complained of that whether or not the Applicant was told the identity of the complainant is an allegation rather than established fact. There are 2 relevant passages where it is said that the Applicant was informed: on page 1-5, and page 1-7. The allegation is from unidentified "sources". Against that, the Applicant, in a strongly worded denial, says that the Sydney Theatre Company "*refused to illuminate me with the details*" (page 1-6, 7). That appears twice on page 1-6, and continues on page 1-7.

### **Innuendo**

16. In relation to each matter complained of the Applicant pleads an alternative case whereby he pleads a set of meanings by way of innuendo.
17. The Court is only required to consider whether innuendo meanings would have been conveyed in relation to imputation 5(a) (pleaded only as innuendo), or any meanings the Court is not satisfied were conveyed by the matters complained of in their natural and ordinary meaning.
18. The Applicant alleges that the above imputations were understood by readers of the matters complained of who had knowledge of the following extrinsic facts:
  - (a) The Applicant is a famous Australian Hollywood actor.
  - (b) In the weeks preceding the publication of the matters complained of, a number of famous actors and movie and television executives, including in Hollywood, had been portrayed in the media and on social media as sexual predators who had committed acts of sexual assault and/or sexual harassment.
  - (c) In the weeks preceding the publication of the first matter complained of, famous Hollywood film producer Harvey Weinstein had been portrayed as a

sexual predator who had committed acts of sexual assault and/or sexual harassment.

(d) In the weeks preceding the publication of the first matter complained of, famous Hollywood actor Kevin Spacey had been portrayed as a sexual predator who had committed acts of sexual assault and/or sexual harassment.

(e) In the days preceding the publication of the first matter complained of, Australian television personality Don Burke was portrayed by the media as being a sexual predator.

19. The Applicant pleads that each of the above facts were notorious.

20. The Applicant's case in this regard is, with respect, misconceived. If a fact is "notorious" such that it has become part of a general body of assumed general knowledge, the ordinary reasonable reader, who has knowledge of worldly affairs, is taken to know it (see *Fox v Boulter* [2013] EWHC 1435 at [16]). In this sense, the Applicant's alternative case is no different to his primary case.

21. If the case is put in this way no evidence is admissible to prove what is alleged to be a matter of notoriety or general knowledge.

22. If however the Applicant's case is that the extrinsic facts were known to some people but were not so well known as to have become part of the general body of information known to the ordinary reasonable reader he is required to call evidence as to that effect. The knowledge of a particular class of persons cannot be established simply by tendering a large bunch of newspaper articles without any evidence that any person read that collection of articles and gleaned certain knowledge from them.

23. Even if the Court is satisfied that the extrinsic facts were notorious it does not follow that meanings alleged were conveyed to persons who had knowledge of them.

24. The first matter complained of refers only to "inappropriate behaviour". There is nothing in the first matter complained of to reasonably connect or link it to the extrinsic facts. The meanings alleged could only be arrived at as a result of the reader's own beliefs and prejudices and not as a result of anything published in

the matters complained of: see *Mirror Newspapers v Harison* (1982) 149 CLR 293 at 301.

25. In addition, the facts themselves refer to acts of “sexual harassment”. The ordinary reasonable reader, armed with knowledge of the extrinsic facts would not leap to a conclusion of sexual assault or that the Applicant was a sexual predator.

**Tom Blackburn SC**                      **and**                      **Lyndelle Barnett**

Counsel for the Respondents

Dated: 8 November 2018