

JUSTICE

Campus rape case ruling a blow to Bettina Arndt's 'kangaroo court' crusade

A judgment that had the men's rights activist crowing has just been overturned on appeal.

MICHAEL BRADLEY

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BETTINA ARNDT WITH A POLICE ESCORT AT THE UNIVERSITY OF NSW (IMAGE: INSTAGRAM)

The following story contains descriptions of sexual assault.

Y and Z were medical students, well into their degrees at the University of Queensland. In April 2018, they were both on clinical placement at a rural town, staying in student accommodation. According to Z, on the night in question Y sexually assaulted her three times, digitally penetrating her anus and vagina without her consent and in fact against her explicit objections.

Z's complaint to the university came some time later, resulting in Y being called before the university's disciplinary board to answer charges that he had "sexually assaulted [Z]"

by subjecting her to unsolicited acts of physical intimacy” in breach of its student misconduct policy.

Y never faced that disciplinary hearing. Instead he went to the Queensland Supreme Court seeking an injunction to prevent the university from dealing with the allegations. In a judgment handed down in November 2019, Justice Ann Lyons ruled in Y’s favour, finding that the university had no ability to deal with disciplinary matters involving allegations of actual criminal sexual offences. As Y had not been charged with a crime, he would never face any consequences for his alleged wrongdoing.

The decision turned heavily on a technical interpretation of the university’s disciplinary policies, however it had wide-reaching implications for all institutions that maintain the right to investigate and punish misconduct by people within their domains — be they students at universities, members of professional associations or clubs, or athletes playing in professional sporting competitions. The area of intersection between these disciplinary environments and the criminal justice system is a frequently contested space.

Certainly the case was latched on to by men’s rights activists as a major victory. Their champion Bettina Arndt has been proclaiming ever since that the Supreme Court had declared what she calls the universities’ “kangaroo courts” to be illegal, a big boost to her ongoing campaign to prove that the statistically very high incidence of rape and sexual assaults on university campuses is a fiction cooked up by feminists.



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However, the Queensland Court of Appeal has now overturned Lyons, restoring the law to where it had generally been understood to always be. It was a 3-0 appeal decision, so not much room for argument there.

The key issue, putting aside the legal technicalities, is this: is it acceptable for a private disciplinary process to make decisions which may severely affect the interests of a person accused of serious misconduct which also might be criminal, without offering all the protections that the criminal justice system affords to the accused?

The differences are many. In a process such as that conducted by the university's disciplinary board there is no right to silence, no right to legal representation, and not necessarily a right to cross-examine the complainant.

The appeal court expressed reservations about whether Y could have been given adequate procedural fairness in the disciplinary process that the university intended to run against him. However, that didn't mean it had no power to even try. The original decision preventing it from doing so was ruled to have been wrong.

The correct principle, which the High Court has upheld, is relatively simple. Only a criminal court, with all its bells and whistles, can determine criminal guilt.

However, actions that may constitute a crime may also fall short of standards of behaviour that other institutions in other contexts consider to be acceptable. Those institutions can empower themselves to investigate allegations of such misconduct and make determinations as to whether, as a matter of fact, what is alleged did occur.

If so satisfied, they can impose sanctions as their rules permit, for example, expelling a student. Their power to do all this is contractual: if you enrol at a university, you submit to its conduct rules.

All such processes are subject to the legal principles of procedural fairness, which the courts can and will enforce. If the process is unfair, or the result unsound, the courts will declare it void.

In a sense, these processes do resemble kangaroo courts. Because of their nature, and particularly because proof is required only on the civil standard (balance of probabilities) rather than the criminal, the risk of perverse outcomes is higher than in a criminal court. However, that does not make them illegitimate and certainly not illegal.

In the end, although he lost the court case, Y won the game. The appeal court concluded that the university could no longer pursue disciplinary action against him because, while the legal battle had been playing out, he had graduated. He's now working as a doctor.

Arndt hasn't gotten around yet to correcting her assertions about the state of the law in light of the appeal decision, but no doubt she will.

If you or someone you know is impacted by sexual assault or violence, call 1800RESPECT on 1800 737 732 or visit 1800RESPECT.org.au

ABOUT THE AUTHOR



[Michael Bradley](#)

CRIKEY COLUMNIST [@MARQUELAWYERS](#)

Michael Bradley is a freelance writer and managing partner at Sydney firm Marque Lawyers, which was created in 2008 with the singular ambition of completely changing the way law is practised.