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Judge lashes ABC for 'misleading' press release in Heston Russell case

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A Federal Court judge has slammed the ABC communications department over a "misleading" press release issued during a defamation battle between former commando Heston Russell and the public broadcaster, saying the statement was issued to falsely implicate the court in wrongdoing.

While issuing the landmark defamation judgment in favour of Mr Russell on Monday, Justice Michael Lee attacked ABC Communications for issuing the deceptive release after the broadcaster decided to drop its public interest defence rather than hand over documents identifying confidential "ear witness" Josh.

At the time, the ABC issued a press statement that read: "A recent court ruling would have forced the ABC and our journalists to reveal the confidential name of a key source in the defamation matter being brought by former serviceman Heston Russell.

"The ruling in the Federal Court resulted in the ABC having to choose between protecting the identity of its source by upholding a pre-publication commitment

made to the source to not reveal their real name – versus continuing its defence of the defamation proceedings. The ABC had no choice but to uphold its commitment and abandon its defence of proceedings.

“The protection of sources is crucial for public interest journalism, especially when sources fear adverse effects from their real names being revealed. The ABC and other news organisations must take the strongest line possible in supporting and defending journalists and sources who have entered into such an agreement.”

The release quoted ABC news director Justin Stevens, saying: “Commitments made and kept by journalists to sources are central to ensuring journalists retain the ongoing trust of people speaking truth to power; they are a key tenet of journalistic ethics and press freedom in this country. We wanted the opportunity to defend our journalism in court; however, a greater principle is now at stake – our ethical responsibility to honour the promise protecting the name of our source.”

Two days later, once Mr Russell’s legal team identified Josh on their own merit, the ABC reinstated the public interest defence.

In his judgment, Justice Lee said the press release was “misleading” and acknowledged “no responsibility on the ABC’s part for the fact it was ABC Investigations’ own editorial choices” that prevented its journalists being able to protect their confidential source.

“Evidently, the ABC wanted to promote the message the court was forcing its journalists to reveal their sources when, in truth, the ABC had been responsible for its inability to maintain the statutory source privilege,” he said. “Apart from anything else, this ‘death over dishonour’ press release and withdrawal of the defence would have undermined any vindication of Mr Russell in securing judgment (in that the ABC could say... it was the court that prevented the respondents from honourably defending themselves).”

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