

Judge affirms Daily Telegraph's right to say Rush defamation judgment was wrong

The latest instalment in the Geoffrey Rush defamation case upholds publishers' ability to criticise defamation judgments, even after they lose a case.

When Rush won his defamation case against the Daily Telegraph, the Tele published a series of stories making its views on the judgment abundantly clear. Rush applied for an injunction to restrain the Tele from repeating its original defamatory imputations. He argued that the Tele's reporting post-judgment was irrational, defiant and disrespectful, and undermined the vindication of his reputation.

One story included a large image of the Tele's main witness, Eryn Jean Norvill with the following statement "I told the truth. I knew what happened. I was there." The story did include that the judge rejected Ms Norvill's evidence, but was otherwise critical of the decision.

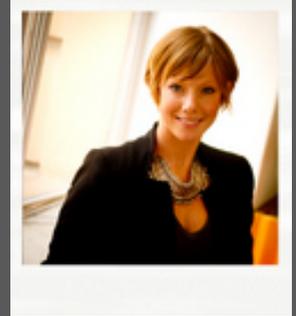
An opinion piece said that Justice Wigley had "completely missed the point". Another said it was wrong to conclude that Mr Rush had not sexually harassed Ms Norvill and that "what appears to seem far-fetched to Justice Wigley rings all too true to the many young women..." After filing its appeal, it published the allegation that Justice Wigley was biased.

Rush also relied on the Tele's vigorous defence of the case and its refusal to provide an undertaking promising not to republish the imputations. Rush said that because of the Tele's behaviour, there was a real risk it would repeat the original defamation and an injunction should be granted to stop that from happening.

The judge rejected this. He didn't accept that the Tele was likely to repeat the defamation. And he said that awarding an injunction might create uncertainty as to the extent to which they could express opinions about the case, which was an unnecessary curtailment of their free speech.

He affirmed the Tele's right to criticise, disagree, and otherwise express opinions about the defamation decision. Doing so, in the context of discussing the liability judgment, does not necessarily repeat the original defamation. And it does not justify granting an injunction.

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