

## Centre for Media Transition



Hi there

## The Lattouf decision



The Federal Court's decision in the Antoinette Lattouf case is forcing the ABC to examine its hiring and firing practices, but the decision should also prompt it to rethink what it expects of its journalists.

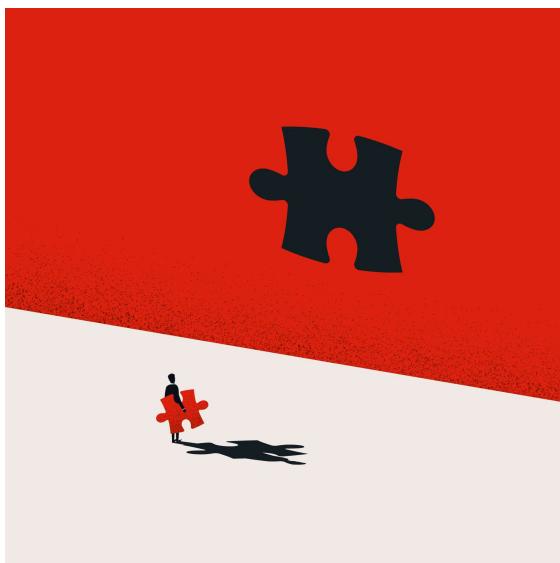
Some of those commenting on the decision have read it down to the narrow circumstances in which an employer terminates an employee; others have called for a fundamental change in how journalism is understood, not just at the ABC. Something in the middle is likely to

follow. It's because of the importance of this decision, at least for the ABC and probably for media more widely, that we dedicate our newsletter this week to this topic.

We're focussing on one core issue: how workplace laws prohibiting an employer from terminating an employee – including a journalist – for their political opinions intersect with the ABC's statutory obligation to ensure impartiality in its journalism. Ultimately, we're interested in what this means for the way the ABC can promulgate impartiality. To help us understand this, we consulted two employment law specialists in the Law Faculty here at UTS and a former investigative journalist and presenter of ABC TV's *Media Watch*.

First, a brief note on the background to the case and the [findings](#).

# The case



Lattouf was hired to present the morning program on ABC 702 Sydney for five days in December 2023. This was two months after the Hamas attacks on Israel and after Israel had commenced its bombing of Gaza. Lattouf was fired after three days, with the ABC arguing a social media post by her showed she disobeyed a direction to not post anything controversial and that the post contravened the ABC's policy on staff use of social media. This was a sham. As Justice Rangiah's decision shows, Lattouf was not given a direction, her post did not

contravene the social media policy, and the ABC did not, in any case, follow established process when taking action against her. In fact, Lattouf lost her casual position at the ABC after the broadcaster received complaints about her and its managers became aware that, prior to her engagement, she had publicly expressed strong views on the war in Gaza. With pressure coming from the complainants, including Jewish lobbyists, the ABC Chair and *The Australian* – and with an apparent failure to establish exactly what Lattouf had been told not to do – an otherwise innocuous post resulted in a reversal of an earlier decision by these managers to see out her employment until the end of the week. The change in approach and the decision to sack her were not justified, and Justice Rangiah found for Lattouf.

All of that – while devastating for those personally involved – would be limited in its broader application *but for* Justice Rangiah's treatment of the ABC's position on impartiality.

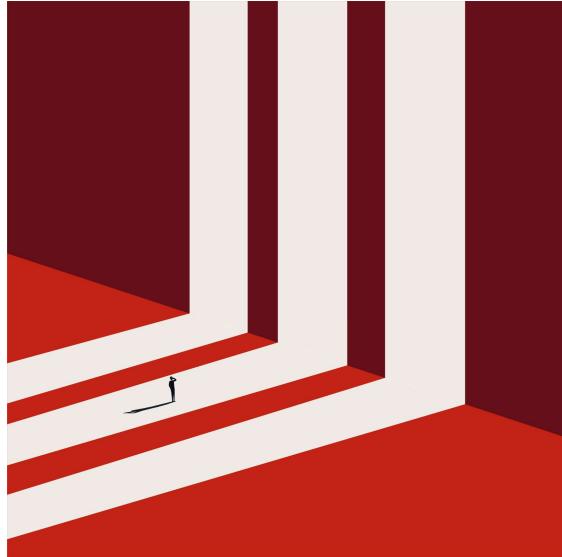
Justice Rangiah noted that the ABC Act places an obligation on its board to ensure that 'the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism' and that the ABC has in place a range of policies and codes to implement this obligation. He found that a 'motivation to maintain the ABC's impartiality and appearance of impartiality' was a factor influencing the conduct of the ABC managers. But he also found that this does not necessarily exclude Lattouf's political opinions from being 'a substantial and operative reason for the termination of her employment'. He found that the ABC's Chris Oliver-Taylor had formed the view that Lattouf's political opinion opposing the Israeli military campaign in Gaza made her unsuitable to work as a presenter at the ABC, and that the ABC had not established that one of its substantial and operative reasons for terminating Lattouf did not include this political opinion. Justice Rangiah noted that the ABC had not sought to argue that an exception applies where a limitation placed on a workplace right – such as the freedom to hold and express political opinions – is an 'inherent requirement' of the job.

This brings us to the longer-term problem for the ABC: can its rules on impartiality ever really be enforced if they can be overridden by an employee's right to express their political opinions? And this is where we bring in our employment law specialists.

## The law

After the decision came out – and as we tried to build a picture of how the rights of employees fit with the need for impartiality – we spoke to two employment law specialists in the UTS Faculty of Law, Michael Rawling and Joellen Riley Munton. Below is an edited Q&A based on our discussions.

### **So what does the Fair Work Act seek to protect?**



**Michael:** The Act gives employees a remedy for termination of their employment in a range of circumstances. The provision litigated in this case is section 772 which says that an employer must not terminate an employee for certain reasons which include attributes such as race and sexual orientation, along with 'political opinion'.

### **What does 'political opinion' cover?**

**Michael:** That's one of the questions considered here. There's not much case law, at least in the context of the Fair Work Act. Justice Rangiah found that in this case it included Ms Lattouf's opinion on 'the policies or actions of the government of Israel and its armed forces' and it may extend to 'the way media organisations report about such policies or actions'.

### **But aren't there exemptions or exceptions to this protection that might apply in the case of journalists?**

**Michael:** There's an explicit exception built into section 772 that applies where the reason for termination is based on 'the inherent requirements of the particular position concerned'. But the ABC didn't argue that ground here.

**So it seems that what matters is both the reason for the termination and whether the termination is based on a clear breach of an explicit direction. What does that mean for media companies whose output may range across news and current**

**affairs as well as entertainment?**

**Michael:** Well, an employer might say it's terminating an employee based not on the employee's political opinion *per se*, but on some other grounds that could be within the law. For example, a commercial broadcaster might argue that a presenter's statement of their political views led to a loss of advertising revenue and they were terminated on this basis, not because of the political opinion itself. It would also need to follow established processes for terminating an employee, which the ABC did not do in this case.

**We can see how the impact on advertising might form the basis of an argument, but of course that wouldn't apply to the ABC. The ABC Act does, however, impose a duty on its board to ensure that the gathering and presentation by the corporation of news and information is 'accurate and impartial according to the recognised standards of objective journalism'. Could this be used by the ABC?**

**Michael:** The way in which this statutory obligation interacts with the statutory obligation in the FWA is an interesting question. The obligation in the ABC Act could be relevant – more so than an internal policy. Also, even a non-commercial broadcaster might argue, at least in part, that complaints about a presenter expressing their political opinions had an effect on audiences and ratings. And remember that in this case, the ABC didn't attempt to run an argument based on the 'inherent requirements of the job', so that's yet to be tested.

All of this suggests there may be ways in which a media employer, and the ABC in particular, can enforce obligations it places on employees to comply with internal rules about impartiality. And Joellen Riley Munton told us that in reality, the Fair Work Act is not always that protective of workers' rights and freedoms. But the judgement should also prompt us to reflect on whether it's right for the ABC to stick to its established position on impartiality. Many of Lattouf's supporters have talked about the need for workplaces to recognise and embrace diversity of opinion and lived experience. Rita Nasr, writing in [Women's Agenda](#), said of Lattouf, 'It's clear that her experience cannot be separated from her identity as a woman of colour, and that failing to recognise this intersection is not just an oversight, it's a systemic failure'.

## Impartiality

So is impartiality, as it has been understood at the ABC, losing its relevance? We asked Jonathan Holmes, a former investigative reporter at the ABC and past host of *Media Watch*, what he thought about the role of impartiality. [Here's what he said.](#)



Let's start with s 8 of the Australian Broadcasting Corporation Act 1983. One of the foremost duties of the ABC Board of Directors, says the Act, is to:

*ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognized standards of objective journalism.*

Even back in 1983, there was no such thing as 'the recognised standards of objective journalism', if that means standards broadly accepted by all news organisations and most professional journalists.

'Objective journalism' was an American ideal, championed by Walter Lippmann and others in the 1920s. In the UK, the Guardian's great editor C.P. Scott famously opined in 1921 that 'comment is free, but facts are sacred'.

But most of Fleet Street, especially at its tabloid end, never accepted that comment should be kept separate from news. Rupert Murdoch always believed that newspapers should 'stand for something', and that what they stood for should determine the stories they published, and how they were told. His Australian newspapers have never aspired to 'impartiality'.

In recent decades, the ideal of 'objective' journalism, and still more, of 'impartiality', have been topics of fierce dispute. In the 2000s, Jay Rosen of New York University ridiculed the legacy media's 'view from nowhere'.

In a famous debate in 2013, former editor-in-chief of The New York Times Bill Keller championed traditional objective journalism against The Intercept's feisty Glenn Greenwald.

In 2020, Wesley Lowery, a black Pulitzer prize winner, decried 'objectivity' as practised in legacy media as a euphemism for a white male perspective that had ignored or played down the grievances that fuelled the Black Lives Matter movement.

His former editor at the Washington Post, Marty Baron, has defended objective journalism, properly defined and practised, and Lowery has responded.

They are significant debates, and well worth reading. What they all agree on is that good journalism is defined first and foremost by a respect for the facts, for accuracy, and for truth.

Personally, I agree with Greenwald and Lowery: it is possible to be both partisan and objective, if you're scrupulous enough.

Here's an example: on 13 December 2023, two months after the event, Crikey published a careful, sober report questioning whether a group of pro-Palestinian protesters outside the Sydney Opera House on 9 October had chanted 'Gas the Jews', as was widely reported by the global media at the time.

Those initial reports were based on videos sub-titled and circulated by the Australian Jewish Association, whose partisanship with regard to the Gaza conflict was clear.

The Crikey report was written by Cam Wilson, an associate editor at Crikey, and Antoinette Lattouf, a freelance journalist and broadcaster of Christian Lebanese heritage who has made no secret of her fierce opposition to Israel's behaviour in Gaza.

The accuracy of Crikey's report was later confirmed by the NSW Police, who announced that their own experts believed the youths were chanting 'Where's the Jews?' Antisemitic, certainly, but not a call for a second holocaust. That was why the police had not proceeded with charges under New South Wales's hate crime laws.

Probably Lattouf herself would not claim to be impartial about the Gaza conflict. She would certainly claim that her Crikey article was carefully and objectively accurate. And I'd agree with her.

But the ABC is legally obliged to be seen to be both objective AND impartial. When Lattouf began presenting ABC Radio Sydney's Mornings program just days later, there was an immediate and (in the words of Justice Rangiah) 'orchestrated campaign by pro-Israel lobbyists to have Ms Lattouf taken off air'.

One of the grounds for complaint was that Lattouf had co-authored the Crikey article – which demonstrated, said the emails, that Lattouf was inherently biased.

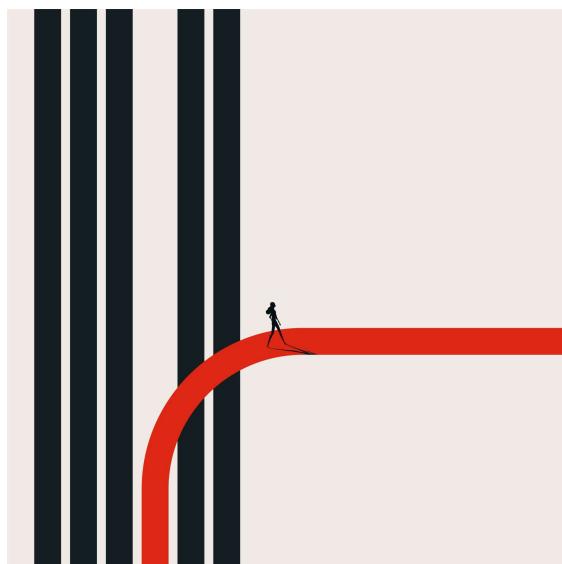
Amazingly, the ABC managers who hired her were completely ignorant of her journalistic activities since the 7 October Hamas attack, which had included a series of intemperate posts on social media attacking the Israeli government. Had they known, they would not have hired her at that time. The result, said the judge, was 'a state of panic'.

In her three on-air shifts, Lattouf never mentioned Gaza. She was removed because she posted an Instagram post about Gaza, which the ABC claimed – wrongly, the court found – to have been in breach of a managerial 'directive'.

The case may have made it harder for the ABC to insist that its reporters and presenters avoid voicing political opinions on their private social media platforms.

But it also gives us food for thought. 'Impartiality' is in the eye of the beholder. Factual accuracy, objectively measured, is the essence of good journalism.

# What now?



Bringing together our two threads, we can now say that the ABC still has a legal lever or two it can pull if it wants to stick by its well-established position on impartiality, but there's also an argument that impartiality is a construct that might need to be reassessed.

The ABC has its legislative obligations under the ABC Act, of course, but the Act does refer to accuracy and impartiality 'according to the recognized standards of objective journalism', showing that standards are not immutable.

Indeed, the suite of ABC policies and guidance notes shows that the broadcaster has already recognised different dimensions of impartiality and the desirability of embracing diversity. But we might want to consider the ABC's position that such standards apply to news and current affairs content wherever it's found, not just in dedicated news and current affairs programs (we [wrote about this](#) at the start of last year). Lattouf herself has made the point that the 702 Sydney morning program in the week before Christmas was pointedly light in tone, with no coverage relating to the Middle East. She explains this in a new [podcast interview](#) with Jan Fran where she speaks at length about her experience.

Impartiality of both the content and the journalist is still needed for news programs and the national broadcaster's TV and radio current affairs programs. But maybe it's less important for other programs such as the one Lattouf was contracted to present. Changes in the practice of journalism and community expectations could mean the ABC should be less strict in its approach in non-news and current affairs programming. That said, these programs still need to be able to respond to breaking events and if those events concern the Middle East, for example, will audiences be happy hearing about them from someone with very strong views that have been publicly expressed?

The ABC's guidance notes that apply to news and current affairs envisage different viewpoints bearing on a reporter's output. They also emphasise the primacy of accuracy, independence from external interests, and the necessity to not advocate for a particular outcome on a contentious issue. These objectives, according to the guidelines, separate impartial journalism from activism – but this distinction is disputed, with some saying that it closes off recognition of lived experience and carries the implication that someone who has expressed an opinion on a matter cannot produce objective, factually based journalism. While the ABC Act itself does not impose any requirement on journalists not to have opinions, sustained advocacy creates a problem for a journalist: at some point, some people – not all – might still need to make a decision on whether to be a journalist or an advocate. It's a decision that former ABC journalist and now WA Greens MP, Sophie McNeill, made.

Justice Rangiah may have inadvertently enlivened a conversation between those who have staunchly upheld a traditional approach to impartiality and a new wave of journalists who want journalism done differently. It's a conversation we need to have in good faith.

*Antoinette Lattouf was a member of the CMT Advisory Board from December 2018 to November 2019*



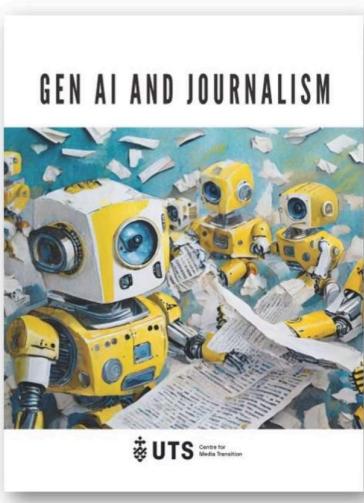
**Derek Wilding and Monica Attard**  
CMT Co-Directors

We hope you have enjoyed reading this edition of the *Centre for Media Transition newsletter* | The Lattouf decision, the ABC and impartiality - *Issue 11/2025* | **ISSN 2981-989X**

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