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# Thanks to Ridd, our freedoms are safer

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Although the High Court has dismissed Peter Ridd's appeal against the termination of his appointment by James Cook University, its unanimous decision is an important step forward in the defence of intellectual freedom.

By finding that provisions in university codes of conduct that seek to prohibit robust, aggressive and potentially acrimonious debate are inconsistent with that freedom, the court has helped lift a threat hanging over academics who challenge their colleagues' research.

The finding is all the more significant given the "replicability crisis" that has shaken one area of science after the other, with mounting evidence that a material share of the results published even in highly respected journals cannot be replicated and may have been deliberately falsified.

Denouncing that kind of malpractice will always be contentious; the court's decision protects those who call it out from being pursued – as Ridd was – for acting "uncollegiately" and for damaging the reputation of the institution that employs them. It therefore makes it more likely that shoddy research will be exposed, reducing the harm it wreaks.

With the implications of that finding likely to reverberate for decades, the court's judgment vindicates Ridd's battle, as well as the efforts made on his behalf by the Institute of Public

Affairs and an army of individual supporters.

It also casts considerable doubt on the approach JCU adopted, not least by highlighting its failure to comply with the Higher Education Support Act, which requires every higher education provider to implement "a policy that upholds free intellectual inquiry in relation to teaching, learning and research".

To say that is not to ignore the disappointment Ridd and many others feel at the appeal's dismissal. It is, however, only fair to note that the court was – as its judgment emphasises – tightly constrained by the manner in which Ridd framed the proceedings. From the outset, Ridd conceded that he had repeatedly engaged in serious breaches of the university's code of conduct; having made that admission, which successive courts have regarded as inexplicable, neither the High Court nor the trial and appeal courts before it could assess whether serious misconduct had actually occurred.

Rather, the only issue each court faced was whether the impugned conduct amounted to an exercise of intellectual freedom. If it did, it would be permissible under JCU's enterprise agreement, which specifically provides that nothing in the code of conduct is "intended to detract from intellectual freedom"; but if it did not, the code's disciplinary provisions would apply, justifying the sanctions JCU imposed.

In grappling with that issue, the High Court has proven its worth, decisively rejecting the approach adopted by the majority in the Federal Court appeal.

Having reviewed a few instances in which Australian universities sought to specify what intellectual freedom and academic freedom entail, that majority had determined that "there is no common understanding" about those principles' content, "nor any unanimity as to where the bounds of any such freedoms should be set".

It consequently refused to define the concepts, instead dismissing them as "vague and imprecise".

Yet it felt entitled to conclude – despite having no obvious basis, other than perhaps "the vibe

of the thing", for so doing – that while "some of the elements of Professor Ridd's conduct fall within the scope of the acknowledged right", others could not "be characterised as an exercise of intellectual freedom".

In contrast, the High Court has sought to carefully explain what it means by intellectual freedom and to specify its purpose, nature and limits.

Defining intellectual freedom in terms of the right to investigate, report on and debate the matters falling within an area of specialist knowledge, it stresses the scope each of those elements creates for controversies that can, at times, become polemics.

Those polemics, the court recognises, may prove seriously disruptive; they are, however, the price we pay for the bare-knuckled pursuit of scientific progress. To chill the combat because it endangers collegiality is to sacrifice truth to comfort.

In clearly articulating that principle, which all university administrators will now have to take into account, the court has, seemingly without realising it, echoed the American Association of University Professors, whose 1915 Declaration of Principles famously gave the term academic freedom its modern meaning.

While the association subsequently fleshed out the protections academic freedom requires, its 1970 review of the 1915 principles broke new ground by introducing collegiality as a factor that could legitimately be considered in employment, tenure and termination decisions.

But far from enhancing free inquiry, that decision undermined it; in revoking it in 1999, the association highlighted the threat that "the invocation of 'collegiality' " had posed to academic freedom, noting that the term had "not infrequently" been used to "exclude persons on the basis of their difference from a perceived norm" – with Ridd's case exemplifying the dangers the association had in mind.

The High Court was therefore entirely correct in concluding that Ridd's criticisms of his colleagues, stinging as they no doubt were, fell squarely within the protected right to intellectual freedom.

However, it did not believe the same could be said about his decision to breach the confidentiality provisions of JCU's disciplinary process. Rather, it found that JCU had a legitimate interest in preserving its deliberations' confidentiality, including because of the confidentiality assurances given to complainants.

To that extent, Ridd's breaches of confidentiality did not benefit from the intellectual freedom provisions of the enterprise agreement, and since Ridd had conceded that they amounted to serious misconduct under the code, the court felt it had no option but to find that the university was entitled to apply the disciplinary sanctions that the code envisaged.

It is, however, questionable whether the issue of the breaches of confidentiality can be so neatly severed from the exercise of intellectual freedom.

After all, as the dissenting judge in the Federal Court appeal noted, the confidentiality provisions JCU imposed on Ridd were disproportionate to the point of being Kafkaesque, amounting to a punishment in themselves for Ridd's exercise of his rights and potentially constraining his ability to rebut the charges he faced.

Inevitably, the scope to inflict such burdens on the target of complaints will deter the untrammelled exercise of intellectual freedom. As a result, the government, in following up on former chief justice Robert French's review of academic freedom, should ensure that the processes set down in university codes of conduct do not stymie the free inquiry that the court's unanimous decision better defines and protects.

For now, however, this much is clear: Ridd can hold his head high. Thanks to his efforts, our freedoms are safer today than they were a week ago.

Win or lose, that is surely well worth celebrating.