Court case may set brutal precedent for all council CEOs

Description

A legal challenge by sacked Warrnambool City Council chief Peter Schneider could have implications for councils around Victoria. Image: ABC

Carol Altmann – The Terrier

If you think the Supreme Court battle between the Warrnambool City Council and dumped CEO Peter Schneider is just a local bunfight, think again.

The potential implications of this case for council's right across Victoria was made clear by the presiding judge today.

The Honourable Justice Michael McDonald said if Mr Schneider loses his legal fight on the grounds argued by the WCC, every council CEO across Victoria was at risk of "figuratively (being) taken out the back and shot".

"If you are successful, then any local government within Victoria would then have the power to terminate a contract for no reason at all," Justice McDonald told counsel for the WCC, Ragu Appudurai.

Justice McDonald said, "looking at the very broad, non-legalistic picture", the outcome of this case had wide-reaching implications for councils far beyond Warrnambool.

One is the "no reason" clause – like that used to dismiss Mr Schneider – left all council CEOs vulnerable to tribalism of councillors.

"A CEO could be caught in the cross-fire of factional warfare between councillors and figuratively get taken out the back and shot," Justice McDonald said.

Justice McDonald said the CEO position was “an extremely important position” and if the WCC was found to be able to sack Mr Schneider without reason or fairness, the impact on good governance would be devastating.

“That would be an extraordinary outcome and extraordinarily destructive for good governance,” he said.

“(It would be) quite an extraordinary outcome …a council can simply employ someone on a contract which permits the council to (dismiss them) for no reason at all.”

The nub of the case is whether Mr Schneider’s individual contract holds more sway than section 94 (c) of the Local Government Act, which guarantees all council workers will be treated fairly.

Mr Appudurai today spent several hours outlining the council’s argument that Mr Schneider is not a regular council employee, but a senior employee on a specific contract.

As such, the council could sack him using the “no reason” clause in this contract and had no obligation to treat him “fairly”.

This lack of fairness included the four ex-councillors not giving Mr Schneider a chance to defend himself on the night of his sacking.

Lawyers for Mr Schneider, however, argue that no individual contract can over-ride the Act, which is the law.

They say that Mr Schneider was sacked unlawfully and so is – technically – still the CEO of the Warrnambool City Council.

This is part of what Justice McDonald will have to determine in his judgment that he hopes to hand down by 28 June.

In the meantime, an interesting question raised by the Justice today was, if Mr Schneider wins his case, what happens to the $200,000 payout he received last year?

Would it need to be repaid?

Not according to Mr Schneider’s lawyer David Grace QC, who argued that because Mr Schneider was sacked illegally, this money (after tax) was the wages he would be entitled to keep from the day he was sacked to the day he is reinstated.

In other words, Mr Schneider is still – technically – the CEO.

The WCC, however, saw this payout as “the price it had to pay” to sack Mr Schneider without reason.

To quote Justice McDonald: “there are plenty of curly questions being thrown up by this case”.

That might be the understatement of the year.

Final submissions will be heard in the Supreme Court tomorrow.

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