



Summary of Judgment

Chief Municipal Inspector – Local Government v Anab Mohamud [2021] VSC 787

29 November 2021

On 29 November 2021 the Supreme Court delivered its decision in the matter of Chief Municipal Inspector - Local Government v Mohamud. The defendant in this matter is a Councillor for the City of Yarra.

The matter concerned the jurisdiction of the Victorian Civil and Administrative Tribunal (VCAT) to hear an application to stand down the Councillor pursuant to s229 of the *Local Government Act 2020 (Vic)* (“LGA”), on the basis that the Councillor had been charged with serious criminal offences, until those charges are finally determined.

The plaintiff, the Chief Municipal Inspector – Local Government, had brought an application under s229 of the LGA to stand down the Councillor at VCAT. The Councillor challenged the jurisdiction of VCAT to hear the application to stand her down based on an interpretation of the powers of VCAT to hear the application in the circumstances.

The LGA is relatively new legislation and s229 has not been judicially considered. As such, a novel question of law was identified and the matter was referred from VCAT to the Supreme Court pursuant to s96 of the *Victorian Civil and Administrative Tribunal Act 1998 (Vic)*.

The Councillor argued that VCAT did not have jurisdiction because on a plain reading of s229 of the LGA certain preconditions set out in s224 must be fulfilled. It was not disputed that those preconditions had not been fulfilled. These preconditions all related to separate processes of inquiry or investigations of a Councillor for misconduct which might lead the Minister to intervene and request the standing down of a Councillor by a Governor’s Order-in-Council.

The Chief Municipal Inspector argued that the power to make an application to VCAT to stand down a Councillor where a Councillor was charged with a serious offence was a long standing power and was one which was not intended to be constrained by the other processes in respect of misconduct which are referred to in s224.

The Chief Municipal Inspector relied on the ‘golden rule’ of statutory construction which allows the court to modify the literal meaning of legislation, where applying the literal meaning would lead to an absurd or inconsistent result, when the overall purpose of the legislation is considered. The plaintiff argued that applying s229 as written would lead to such a result.

The Court agreed with the plaintiff, that s229 contains an error and that it is appropriate to import words into the statute to give effect to the legislative intent. The Court also found that this interpretation did not infringe the Councillor's right to participate in public life nor her right to the presumption of innocence under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The preconditions in s224 lay out a series of processes for standing down a Councillor in circumstances where the work of Council may be inhibited. A key aspect of this provision is a link between the alleged misconduct and the Councillor's role on a Council. In contrast, s229 concerns standing down a Councillor charged with certain serious criminal offences. It appears inconsistent with the overall purpose of the LGA that a charge of a serious criminal offence must be linked to the Councillor's work as a Councillor. This is in the context of the LGA's purpose, which includes to "ensure the peace, order and good government of each municipal district".

As such, the Court determined that the legislation as drafted contains an error, and that VCAT has jurisdiction to determine the application to stand down the defendant in this matter. The matter will now return to VCAT to determine the merits of the application to stand down the defendant under s229 of the LGA.

NOTE: This summary is necessarily incomplete. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.