

TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s29(1A) application for hearing of an industrial dispute

Greg Tredinnick
(T13631 of 2009)

and

The Royal Society for Prevention of Cruelty to Animals (Tasmania) Inc

Industrial dispute - termination of employment - valid reason for termination - procedural fairness not afforded - termination was unfair - irretrievable breakdown in employment relationship - order issued

DEPUTY PRESIDENT TIM ABEY

HOBART, 21 May 2010

REASONS FOR DECISION

[1] On 24 December 2009 Greg Tredinnick, (the applicant), applied to the President, pursuant to s.29(1A) of the *Industrial Relations Act 1984* (the Act) for a hearing before a Commissioner in respect of an industrial dispute with the Royal Society for the Prevention of Cruelty to Animals (Tasmania) Inc. (RSPCA) (the respondent) arising out a dispute in relation to termination of employment.

[2] A hearing commenced in Launceston on 27 January 2010 and continued on 12, 13, 14 and 15 April 2010. On 27 January 2010 Mr C Molnar sought and was granted leave to appear on behalf of the applicant. On the subsequent dates Mr Tredinnick represented himself. Mr M Rinaldi sought and was granted leave to appear on behalf of the employer with Mr L Fernandez.

[3] Mr Tredinnick has held various honorary positions on State and local committees of the RSPCA since 1999. In March 2007 he was appointed Chief Inspector, Acting CEO in June 2008 and from September 2008, CEO of the respondent. This was a full-time position with a salary of \$70000 pa. The contract term was for a period of three years.

[4] By letter dated 4 December 2009 (probably received 7 December 2009) the respondent terminated the employment contract of Mr Tredinnick. The letter stated in part:¹

"This letter is to advise that the Board of RSPCA Tasmania Inc has resolved to terminate your employment in accordance with s5 (a) / (f) of your contract from 5.00p.m. on today's date. You will be paid 12 weeks salary in lieu of notice and this will be credited to your nominated bank account."

¹ Exhibit A3 tab 2.13

[5] The relevant sections of the applicant's contract reads:²

"a) *The contract of employment may be terminated by either party giving to the other three month's notice in writing and the contract shall expire at the end of that period of notice.*

b) *Payment in lieu of the required period of notice may be made by either party if the required notice is not given. The employer may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.*

....

f) *Nothing in this clause affects the employer's right to dismiss the employee without notice for serious misconduct which justifies instant dismissal, the decision on which rests with the Board of Directors."*

[6] Mr Tredinnick asserts that he was terminated unfairly and seeks reinstatement, or if that is found to be impracticable, compensation.

Evidence

[7] During the hearing sworn evidence was taken from the following witnesses:

Greg Tredinnick: the applicant.

Dr Paul Swiatkowski: Veterinarian, elected President of the RSPCA on 13 November 2009.

Angela Ayling: Occupational Health and Safety Consultant, volunteer for the RSPCA for 17years, Honorary Operations Consultant from 9 November 2009, appointed interim CEO (honorary) in December 2009.

Suzanne Cass: Elected as a Director of the RSPCA on 27 September 2009, Acting President from 12 October to 13 November 2009.

Frank Bingham: Senior Animal Welfare Officer with the RSPCA.

[8] All witnesses impressed with their candor and sincerity. As a consequence there is absolutely no reason to call into question the credibility of any witness evidence.

Background

[9] From the evidence and documentation tendered, 2008/09 appeared to be a difficult, perhaps even controversial year, for the RSPCA.

[10] In October 2008 Mr Tredinnick assumed an alias in responding in a duplicitous manner to an email complaint from a named, but unidentified individual (the Atwell incident). Mr Tredinnick, who freely admitted during the hearing that this was a "*stupid mistake,*" apologised to the Executive Committee at the time. The apology was

² Exhibit A3 tab 1.4

apparently accepted. The incident was however recorded on Mr Tredinnick's personnel file.

[11] During the year there were a significant number of Board resignations. In the main the letters of resignation were critical of the RSPCA governance and leadership. The criticisms were largely directed at the then President, and to a lesser extent, Mr Tredinnick as CEO. Financial management, leadership style, and alleged failure to provide information and follow Board directions were recurring themes.

[12] At the 28 June 2009 Board meeting, then Director John Bates tabled a;

*"LIST OF MATTERS FOR THE CHIEF EXECUTIVE OFFICER TO RESPOND TO AS TO WHY HE SHOULD NOT BE SACKED DUE TO HIS GROSS INCOMPETENCE"*³

[13] The minutes of that meeting record that, following some discussion, Mr Bates withdrew the document.

[14] I hasten to add that apart from the Atwell incident, none of the above complaints and allegations have been properly tested and as such form no part of my consideration of the merits of this case. This brief background has only been included to provide context for the events following the 2009 AGM. The only conclusion that can be drawn is that a number of matters subsequently raised immediately prior to Mr Tredinnick's termination appear to be similar in terms of subject matter to those issues apparently before the Board during 2008/09.

[15] It is also apparent that the lead up to the September 2009 AGM was accompanied by considerable media interest. A report in the *Burnie Advocate* of 22 September is one example.⁴

"Burch keen for CEO spot

By Sean Ford

Whistleblower Nigel Burch has shown interest in becoming RSPCA chief executive. Mr Burch - the Shreddergate whistleblower who played a big part in the downfall of former deputy premier Steve Kons - and prominent animal welfare activist Suzanne Cass are directors elect of the financially troubled animal welfare organisation.

They are working to have president Scott Whitters removed as a director at Sunday's annual meeting in Launceston, with an aim of Ms Cass becoming president.

She said yesterday she did not think chief executive Greg Tredinnick would want to stay on if Mr Whitters lost the presidency.

'If Greg went, we would probably throw it open,' she said.

'I would quite like to see Nigel do it and me do it.'

If they took control they would probably have to 'revisit all positions,' she said.

³ Exhibit A3 tab 1.7

⁴ Exhibit A3 tab 3.3

She claimed the organisation was now paying people to perform duties that used to be done by board members.

Comment was sought from Mr Burch and the RSPCA.

The organisation has had a series of board members resign in recent times, the most recent being John Bates, who quit last week."

[16] The AGM was it would seem a similarly controversial event, occupying some 5 hours in duration. Either at the meeting, or immediately thereafter, the then President and all board members resigned. Ms Cass and Mr Nigel Burch were elected as directors.

Chronology of Events, AGM and Subsequently.

27 September 2009. AGM. President and all directors resign. Ms Cass and Mr Burch elected as directors. Ms Cass immediately begins making a series of requests for information from Mr Tredinnick.

12 October. Board meeting. MS Cass elected Acting President and Mr Burch Vice President. No minutes from this meeting are available.

16 October. Mr Tredinnick and Ms Cass have a lengthy meeting at various locations in the Hobart area. According to Mr Tredinnick, this was the only face to face meeting between them in this period.

23 October. Mr Tredinnick on annual leave.

26 – 30 October. Mr Tredinnick attends RSPCA Australia meeting in Canberra.

2 – 6 November. Mr Tredinnick on annual leave.

9 November. Mr Tredinnick returns to work.

9 November. Ms Cass sends email to Mr Tredinnick advising that the Board had appointed a *"human resources/industrial relations specialist who will be in Launceston on Thursday and Friday to deal with a number of matters, including the one raised with Fair Work Australia."* The email further advised that the board meeting scheduled for 15 November would now be held on 13 November, at a different but unspecified location.

11 November. Ms Ayling advises Mr Tredinnick that she had been appointed Hon. Operations Consultant.

11-13 November. Mr Tredinnick on sick leave.

13 November. Board meeting. Ms Cass steps down as A/President and Dr Swiatkowski elected President. Two new directors appointed. Mr Mike Allan (Hon HR Workplace Relations Consultant) reports on his investigation. Decisions taken to suspend Mr Tredinnick and change locks on his office. Decision made to effect head office redundancies.

13 November. Mr Tredinnick suspended on full pay. The suspension correspondence states:

"The Board has made this decision based on a number of performance issues relating to the management and operations of RSPCA Tasmania Inc."

13 November. Mr Tredinnick's solicitor (Mr Molnar) writes to RSPCA challenging the suspension.

16 November. Mr Molnar again writes to RSPCA seeking reasons for suspension and particulars of any allegations against Mr Tredinnick.

17 November. Dr Swiatkowski responds, advising, *inter alia*, that the Board does not consider it appropriate to discuss performance concerns with anyone other than Mr Tredinnick himself.

18 November. Mr Molnar responds.

18 November. Mr Tredinnick, accompanied by Mr Swanton (ASU), attends a meeting with Dr Swiatkowski, Mr Allan and Mr Burch. A letter is handed to Mr Tredinnick inviting him *"to show cause why your contract of employment with the Society should not be terminated."* (allegations letter) A meeting was proposed for the following morning for Mr Tredinnick to respond. However after discussion it was agreed that this time frame was unreasonably short. There was some discussion regarding matters raised in the letter, together with the possibility of a *deed of release* being prepared for Mr Tredinnick's consideration. Mr Tredinnick was advised that his personal belongings had been packed in a box. The meeting concluded without a firm date being set to reconvene.

20 November. Mr Molnar emails RSPCA seeking *"precise facts, dates and times before our client can answer the allegations."* Dr Swiatkowski responds the same day, stating that the request will be forwarded to *"our representative. We will consider our response ASAP."*

3 December. Mr Burch leaves a telephone message asking that Mr Tredinnick be available the following day (4 December.) Mr Tredinnick contacts Mr Burch advising that he is unavailable due to parental responsibilities, but would be available on Tuesday 8 December.

4 December. According to Mr Tredinnick, Ms Ayling telephoned at 4.55pm advising that:⁵

"(i) I was dismissed for serious misconduct:

(ii) a final 12 weeks payment would be made subject to the return of all RSPCA property; and

(iii) the above would be put in writing."

A letter of termination was apparently sent per post that same day.

7 December. A memo sent to all staff advising that Mr Tredinnick's contract of employment had been terminated.

At 6.22pm Ms Ayling forwarded per email a copy of the letter of termination.

⁵ Exhibit A1

The Allegations.

[17] The allegations contained in the letter of 18 November are reproduced below:⁶

"Dear Mr Tredinnick,

YOUR EMPLOYMENT WITH RSPCA Tasmania Inc.

This letter is to provide you with the opportunity to show cause why your contract of employment with the Society should not be terminated. You have been interviewed on 18 November 2009 in the presence of Michael Swanton and Paul Swiatkowski, and you are now being provided with an opportunity to respond to the following performance issues:-

- 1. Consistent obstruction and refusal to comply with Board directions*
- 2. Failure to provide Board Minutes (corrected version of 27/09/2009 and original version from 12/10/2009)*
- 3. Failure to comply with Board direction to reinstate membership of Pat Gillespie*
- 4. Failure to inform the Board of a petition against a Director*
- 5. Demonstrated inability to communicate and relate effectively with the Directors*
- 6. Inappropriate comments to the Examiner newspaper calling government policy 'racist'.*
- 7. Letter sent to the Hobart Mercury contrary to an undertaking given to a Director about submitting such content; in this instance about cat legislation and failing to even mention free cat de-sexing and microchipping at the Hobart shelter.*
- 8. Failed to attend HR meeting (12/11/2009) then Board meeting (13/11/2009)*
- 9. Failure to appoint an Acting CEO whilst on leave, then locking office containing urgent documents*
- 10. Constantly providing unreliable and untruthful information, for example informed the Board verbally and in writing that the CEO was the only employee on an individual contract, also informing the Board that Veterinarian Dr S was employed on a casual basis*
- 11. Demonstrated ongoing refusal to answer calls to RSPCA mobile phone provided*
- 12. Deliberately exposing the RSPCA to legal action by providing, without reference to the Board, a statement dated 09/11/2009 to the Complainant*
- 13. Clear and demonstrated inability to carry out tasks contained in Contract and Job description (such as effective human resources and financial management)*
- 14. Clearly demonstrated poor communication skills in dealing with the current and previous board, staff, as well as members of the community and the media*
- 15. Failure to maintain sustainable and effective use of RSPCA vehicles*

It has been explained to you that your conduct does not meet RSPCA's acceptable standards of conduct.

⁶ Exhibit R1 tab 4

In view of this most recent unsatisfactory conduct and your previous warnings, we consider that there are sufficient grounds to terminate your employment. However, a final decision has not been made.

A meeting has been scheduled for 19 November 2009 at 10.00am. You are directed to attend that meeting. At this meeting, you will be given an opportunity to show cause as to why your employment should not be terminated and to respond to these performance issues raised with you. You are entitled to have a witness in attendance of the meeting.

If you fail to attend the meeting on 19 November 2009, RSPCA will make a final decision regarding your conduct, in your absence. This may include the termination of your employment with RSPCA Tasmania Inc.

....

Yours faithfully

PAUL SWIATKOWSKI
President
RSPCA Tasmania Inc."

[18] Immediately following the 18 November meeting Mr Tredinnick sought better particulars of the allegations in the nature of precise facts, dates and times. It would seem that this request was not acceded to.

[19] Notwithstanding, Mr Tredinnick acknowledged under cross examination that there were sufficient particulars for him to respond to 9 2/3 of the 15 allegations contained in the letter. He said that he chose not to because he was under the impression that a response was required for the totality of the allegations, and further, he was expecting a deed of release to consider.

[20] During the hearing a great deal of evidence was presented going to the matters contained in the allegations letter, together with additional matters raised consequent upon the investigation following the suspension and subsequent dismissal of Mr Tredinnick.

[21] To analyse each allegation in this decision would seriously delay its publication which is not in anyone's interests. Suffice to say that I have examined all the material and have concluded, on the balance of probabilities, that there is substance in the following matters. In relation to the other allegations, I conclude that that they are either disproved, or in the alternative, are contested and could not be satisfactorily resolved without further investigation.

Failure to produce Board minutes.

[22] Section 3.3 of *Board Policies and Protocols*⁷ requires that draft minutes must be produced within three days of the meeting. Mr Tredinnick did not produce any minutes at all of the meeting held on 12 October 2009.

⁷ Exhibit A3 tab 1.2

Petition concerning Ms Cass.

[23] Subsequent to the suspension of Mr Tredinnick a petition signed by a number of staff was found in Mr Tredinnick's office. The petition was critical of the activities of Ms Cass and suggested she should "*stand down*".⁸ Mr Tredinnick said he discussed this with Mr Burch but not the Board. Arguably this failure to report was contrary to s4(c) of his Position Description which requires that the Board be informed of all "*activities of and risks to the RSPCA...*"

Failure to follow up bequests.

[24] On 28 August 2009 a UK legal firm wrote to the RSPCA seeking information as to the membership status of an individual with both UK and Tasmanian assets who had made a bequest which was unclear as to the beneficiary. On 30 November the firm again wrote noting that there had been no response from Mr Tredinnick and indicating that the bequest was to be paid to the English and Welsh RSPCA.

[25] I am satisfied that Mr Tredinnick failed to follow up the correspondence of 28 August.

Hobart Veterinary Services

[26] In March 2009 Mr Tredinnick engaged a veterinary surgeon (Dr S) to provide veterinary services at the RSPCA Hobart Shelter in Mornington. The arrangement was for approximately 15 hours per week at an agreed hourly rate. Mr Tredinnick undertook to document the arrangement in a written contract but failed to do so.

[27] In October 2009 the Board decided to terminate the arrangement based on alleged advice from Mr Tredinnick that Dr S was engaged on a casual basis. (Note: This contention is strongly contested by Mr Tredinnick). In correspondence dated 23 October 2009 Dr S's legal representative sought significant financial damages based on alleged breach of contract.⁹

[28] On 9 November Mr Tredinnick signed a document presented by Dr S which purported to confirm that Dr S was the successful tenderer to provide veterinary services for the period 1 April 2009 until 30 May 2010.

[29] Whilst I have no doubt Mr Tredinnick felt he was doing the honorable thing, given that he was aware that Dr S had already commenced a legal process for damages, I conclude it was an action contrary to the loyalty the Board could reasonably expect.

The Atwell incident

[30] In October 2008 Mr Tredinnick used *Rob Atwell* as an alias to respond in a misleading fashion to a complainant, and then sought legal advice for defamation at the expense of the RSPCA. Mr Tredinnick had apologised to the Executive Committee for this action, which was apparently accepted. However a note was recorded on his personnel file.

⁸ Exhibit R1 tab 20

⁹ Exhibit R1 tab 16

Failure to act on hazard reports.

[31] Following the suspension of Mr Tredinnick a number of completed *Hazard Report Forms* emanating from the Devonport and Burnie shelters were found in his office. Mr Tredinnick said he was confident that the reports would have been actioned by the OH&S officer. On the evidence of MS Ayling, I am satisfied that no remedial action was taken whilst Mr Tredinnick was employed.

Obstruction and refusal to comply with Board directions.

[32] I suspect that a series of events under this broad heading was at the heart of the actions ultimately taken by the board. The sentiment of the Board is probably well captured in the following evidence from Dr Swiatkowski.

"Right. With the benefit of hindsight, do you think a handover would have been appropriate with myself and the other members of staff that were made redundant? Do you think that would have benefited the society?---From a personal opinion, I can see, at this point, possibly many advantages. But at the particular point in time my judgment may have been different.

Is there a reason for that?---I've, effectively - and I hope you don't take this personally - from the board's point of view it looked like a litany of errors, misjudgements, failures, and it appeared to be over a protracted period of time. And we were certainly aware of issues that had cropped up with the previous board - the Rod Attwell affair, resignations, of which I know Kerry Butler, Mr Butler's wife, has provided effectively to the obstruction, or what appeared to be obstruction from our part, made it look from our point of view as if there was something to hide in the operation of the RSPCA. And at that point, it was just very difficult to overlook it, and that's my personal point of view.¹⁰

...

Yes. And that also that your decision to terminate my contract and suspend me was a judgment based on hearsay and assumption, in the most part?---A lot of varying factors. I guess mostly based on what, in effect, created the flashpoint, where we were trying to obtain documents. I think it was alluded to yesterday that we did have discussions – that you seemed to understand what documents we wanted. You were given extra time to provide documents which was, in effect, lease arrangements, personnel files, and those sort of relative documents. You appeared to take it upon yourself to – well, the way I saw it – sandwich a two-page document related to the collective employment agreement between a whole bunch of loose documents, which I found at some point. I guess at that point I believed you had very clear direction as to what to provide, and you gave an indication to me, or I believed you did, that you were going to provide those documents. But when it came to the crunch, the ones that we requested weren't there. And that, ultimately, created a flashpoint where, in my opinion, it looked like there was something to hide, or something that wasn't going to come to the board. The documents eventually had to be forcibly obtained. That created other issues at head office. So it - - -

¹⁰ Transcript p179

*THE DEPUTY PRESIDENT: Just a moment. Just a moment please, Doctor. Okay. Yes, continue please?---So in effect we felt like we were hindered in – well, the board was hindered in preventing – sorry, in performance of its duties by the CEO, who appeared to be directing the board, rather than the board directing the CEO. And it was a hard thing to reconcile. I noticed yesterday, you seemed not to accept that you were given direction to – I could be misreading this - but you believed that you weren't given proper direction to provide those documents in a reasonable amount of time. But I will maintain that you did know that you had to provide the documents, and I don't have any doubt about that in my own mind. So the question the board asked was, "Why?" Why was the CEO apparently preventing the board from performing its duty? And from our point of view it looked liked there was something to hide. There were already a number of issues in terms of co-operation. The Dr S issue had already started, but hadn't concluded. And, in effect, to prevent our perceived obstruction, you were eventually suspended."*¹¹

[33] Shortly after the AGM Ms Cass asked Mr Tredinnick to provide a range of documents described in the evidence of Ms Cass as follows:¹²

- *"The full membership list*
- *Full information about current staff, including their duties, position descriptions, performance appraisals and salaries*
- *Provide full information about the ratifying of the 2006 version of the RSPCA Tasmania inc. Constitution*
- *Provide full details of vehicles and the arrangements in relation to those vehicles*
- *Details about his recent RSPCA funded trip to Sydney*
- *Details about the solicitor who prepared the 2006 version of the Constitution*
- *A copy of the resignation letter of Scot Whitters."*

[34] What followed could aptly be described as an email war. Ms Cass said:¹³

"In total there would have been at least 10 such requests, verbal, written, and by email. In the light of Mr Tredinnick's obstruction and non-compliance, I was forced to become more directive in subsequent emails."

[35] Some documentation and information was provided but much was not. In particular Mr Tredinnick made it clear that he was most reluctant to provide information relating to individual staff members. Mr Tredinnick's evidence was:¹⁴

"So what I'm putting to you is that you on a number of occasions put obligations as you perceived them to other people, including staff, ahead of your obligation to the board by whom you were employed. Do you agree with that?---If I ever felt it was a breach of governance principles I wouldn't have gone against that. To my knowledge the new board – they certainly didn't show any knowledge of corporate governance principles, and that was a huge concern for me.

¹¹ Transcript p188

¹² Exhibit R1 tab 22

¹³ Supra

¹⁴ Transcript p73

Okay. So - - ?---But in saying that I did try and – I had several discussions with Mr Burch about it and I had discussions with Ms Cass.

*About this whole conflict between what obligations to the board and - - ?---About releasing the private information.
I see, sorry?---Releasing the membership letters.*

Right?---Things like that.

And then you'd say that ultimately you sent an email back saying that, "If I got a ratified board direction - - ?---Yes.

- - - I would comply with it"?---Yes."

[36] And later, in relation to the staff petition:¹⁵

"Yes. You didn't identify that there were two petitions signed by nine people?---No. I was reluctant to do that. The staff were reluctant to have their name shown to the board, for fear of reprisals.

Yes. So this is another situation in which you put your obligations - as you felt them - to the staff, above your obligations to the board?---I put my obligations to the RSPCA.

And you regarded - - - ?---I regard staff as part of the RSPCA.

In a well-meaning way, you regarded your obligations to the staff as more important to fulfilling your obligation to the RSPCA, than your obligations to the board?---In this instance, I wanted to protect the staff as much as possible

And that's notwithstanding that you're employed by the board, and you have to report to the board, according to your contract?---That's correct.

And that's the same as your refusal to provide salary details to the board, that we've already spoken about?---Individual salary details, yes."

[37] This conflict goes to the traditional role of Boards and CEOs in not for profit organisations. It is reasonable to conclude that, in organisations which are running smoothly in line with reasonable expectations, the Board is responsible for broad strategic direction and the CEO for operational matters, including HR management. Support for this model can be found in the following:

"Board Policies and Protocols¹⁶

The Board is principally appointed to:

- i. set the strategic plan for the Society;*
- ii. Appoint the Society's Chief Executive Officer*
- iii. Oversee the plans for the acquisition and organisation of resources, towards the obtaining of the Society's strategic plan; and*

¹⁵ Transcript p 96

¹⁶ Exhibit A3 tab 1.2

iv. *Review at reasonable intervals, the Society's progress towards obtaining its strategic plan.*

1.1 *Board Responsibilities*

...

C. *Operational Management*

The Board is responsible for:

- *The appointment of the Chief Executive Officer and the ongoing evaluation of the Chief Executive Officer against prescribed Key Performance Indicators;*
- *Ensuring that the Chief Executive Officer is appropriately resourced to carry out the operations of RSPCA Tasmania Inc and the strategies of the Board;*
- *Delegating authority and accountability to the Chief Executive Officer and other staff to provide an efficient framework for the ongoing operations of RSPCA Tasmania Inc; and*
- *Establish/approve policies on how operations of the Society will be conducted.*

While the Board sets the strategic direction and policy framework it does not have a direct input into the day to day management of the business of the Society. (my emphasis)

...

1.3 *Chief Executive Officer*

The Board is the employer of the CEO and the Chairman and President the direct line manager. The Board has full responsibility as an employer which includes the provision of full support, encouragement and wisdom to assist him or her in undertaking established responsibilities.

The Board should ensure that their instructions and expectations of the CEO clearly defined and that the CEO is provided with the resources necessary to meet this expectation."

Position Description of CEO¹⁷

"...

2) *Operational Management*

- a) *Manage the effective and efficient day-to-day operations of the RSPCA in accordance with the strategy, business plans and policies of the Board, in compliance with all relevant legislation, and in the spirit of honesty, integrity and fairness.*
- b) *Ensure the RSPCA's organisational units are functioning effectively. These include all business units, as well as*

¹⁷ Exhibit A3 tab 1.1

management systems such as financial management, human resource management, information systems management, risk management, communications, asset management and reporting.

- c) Make personnel appointments or engage outside agencies as appropriate to enable the strategic direction of the RSPCA to progress (consistent with budgetary approval and delegated authority of the Board)*
- d) Manage compliances to all occupational health and safety requirements within the RSPCA*
- e) Enter into contracts on behalf of the RSPCA within the prescribed limits and reporting requirements as delegated by the Board*
- f) Maintain RSPCA records, files, documents and archives*
- g) Maintain confidentiality of sensitive information*
- h) Liaise with RSPCA Australia, other federated RSPCAs and any other organisations to ensure ongoing operational improvement and Best Practice” (my emphases)*

[38] Rule 14 of the Society states:¹⁸

“The Board shall have control of the affairs, property and funds of the Society. It shall have in its control all appointments and dismissals of members of the Staff, it shall fix their salaries and conditions of employment and generally shall be entrusted with the duty of taking such action as it may deem expedient to promote and carry out the objects of the Society. It shall have the power to appoint such veterinary surgeons and solicitors as it may think desirable. The Board shall have power to give directions or make regulations from time to time for the conduct of elections and the carrying on of the business affairs of the Society insofar as these matters are not covered by any of the Rules of the Society.”

[39] At one level there might appear to be a tension between the above *Rule* and the *Board Policies and Protocols/CEO Position Description*. However, properly applied, this apparent conflict is quite easily accommodated. Simply put, the ultimate responsibility rests with the Board, but in a well managed organisation most day to day operational responsibilities are delegated to the CEO. It follows that the CEO's first loyalty must be to the Board.

[40] I conclude that based on the well established governance model referred to above, Mr Tredinnick was, initially at least, entitled to rely on the delegated responsibilities inherent in the *Policies* and *PD* documents.

[41] It is now clear from the evidence that the Board perceived the Society to be in crisis and concluded that decisive action was required. Whether this position was properly communicated to the CEO is another matter entirely, and something that I address later in this decision under the heading of *Was the Termination Fair?*

¹⁸ Exhibit A3 tab1.3

[42] I conclude that the Board was entitled under its scheme of Governance to adopt a position of crisis management and effectively override the normal delineation between Board and CEO responsibilities. This of course is not something that should be done lightly, as at best such action marginalises the CEO and may even amount to a vote of no confidence.

[43] Subject to what follows I conclude that there is substance in the allegation that Mr Tredinnick consistently obstructed and refused to comply with Board directions. I also tentatively observe that Mr Tredinnick, through his actions, gave the impression of being difficult to contact, although there is insufficient evidence to be conclusive on this point.

Findings

Was There a Valid reason for Termination?

[44] The first question to be determined is whether this was a summary termination for *serious misconduct* or a termination based on the capacity and/or performance of Mr Tredinnick.

[45] According to the evidence Ms Ayling verbally advised Mr Tredinnick on 4 December that he was dismissed for "*serious misconduct*." The letter of termination¹⁹ refers to both sections 5(a) and (f) of the Contract of Employment.

[46] Section 5(a) refers to the giving of three months notice by either party.

[47] Section 5(f) refers to the right to dismiss without notice in the case of serious misconduct.

[48] Section 5(b) provides for payment in lieu if the required notice is not given. It is this section that the respondent ultimately relied upon, although not specifically stated.

[49] Mr Rinaldi submitted that as notice was given in the form of payment in lieu, this did not amount to a summary dismissal with the attendant onus to prove serious misconduct. In the absence of a competing legal argument I decline to rule on this contention. I would observe however that section 5(b) provides that a payment is to be made "*if the required notice is not given*." It is therefore strongly arguable that the payment of an amount of money does not in itself remove the summary nature of the termination. Be that as it may, I am of the view that an employer is required to justify the reasons stated for the termination, however they are expressed.

[50] In practical terms the rationale for the board's decision to terminate was a combination of issues falling under the headings of *conduct* and *capacity/performance*.

[51] Under the category of *serious misconduct*, the only matter which could remotely fit was the *Atwell incident*. I accept that this was a serious error of judgment which may at the time have amounted to serious misconduct. However the Executive Committee accepted Mr Tredinnick's apology, and recorded a note on his personnel file. It is not open to now revisit this under the banner of serious misconduct such as to justify termination. I do however accept that the incident remains part of the mix capable of being considered in conjunction with other performance and/or conduct matters.

[52] I conclude that the respondent has failed to prove the existence of serious misconduct on Mr Tredinnick's part.

¹⁹ Exhibit R1 tab 3

[53] In relation to capacity and performance Mr Rinaldi submitted that only one allegation had to be proven to constitute a valid reason for dismissal. Whilst this is true in theory, it naturally follows that the allegation when proven must be of sufficient moment to justify termination.

[54] Many of the allegations against Mr Tredinnick, whether proven or not, could be described as minor, or perhaps even trivial.

[55] Of the proven allegations referred to above, none in my view, when taken in isolation, would be sufficiently serious to amount to a valid reason for termination.

[56] Having said that, the role of a CEO in a significant *not for profit* organisation such as the RSPCA is a demanding one, requiring a broad skill set coupled with a need for sound judgment. Mr Tredinnick acknowledged that one of those key requirements (financial management), was not one of his strengths.

[57] It may well be that that Mr Tredinnick's skills and experience would be better suited to an alternative role, but that is not a judgment for the Commission to make. It is also possible that Mr Tredinnick was not given the opportunity to overcome any perceived shortcomings, a matter I address in the next section.

[58] I conclude that the combination of Mr Tredinnick's acknowledged shortcoming in financial management, together with the totality of the proven allegations referred to above, amount to a valid reason for termination based on capacity and performance.

Was the termination Unfair?

[59] The operating environment for the RSPCA in the period immediately prior and subsequent to the September AGM was difficult to say the least. I highlight the following.

- Extensive media coverage in which office and facility closures, with attendant redundancies, was widely canvassed.
- A public announcement prior to the AGM that Mr Burch was interested in the CEO position.
- Repeated requests, and then demands for information without proper explanation as to why it was required.
- The appointments of Mr Allan and Ms Ayling as Hon. HR and Operations Consultants.
- The "*hands on*" management approach of Ms Cass. Eg Filling of vacant reception position; the use of RSPCA vehicles; use of enrichment toys for dogs in the shelters.
- The unusually vague manner in which Ms Cass communicated with Mr Tredinnick concerning the timing, location and agenda for the November Board meeting, together with the role of Mr Allan.

[60] All this took place over a two month period during which, according to Mr Tredinnick, there was only one face to face meeting with Ms Cass.

[61] Against this background it would not be surprising if Mr Tredinnick felt threatened. It also in my view provides some explanation (but not necessarily excuse) for the behavior of Mr Tredinnick, particularly his lack of cooperation with Board directions.

[62] With the benefit of hindsight a far preferable course was also, in my view, available.

[63] Despite the unfortunate media coverage, there is some evidence that both Ms Cass and Mr Tredinnick initially wanted to make the ongoing relationship work. With this in mind there should have been a face to face meeting of Ms Cass and Mr Tredinnick as soon as possible after the AGM. This would have provided the opportunity to outline the Board's concerns and agenda for change, together with the proposed strategies to achieve these objectives, and seek input from Mr Tredinnick. Once this was done Mr Tredinnick should have been asked bluntly whether he was with or against the Board direction. His answer would have determined the process from that point.

[64] This did not occur and the resultant email war escalated a difficult position to one that was terminal.

[65] I now turn to the matter of procedural fairness.

[66] There is considerable evidence which supports a conclusion that the decision to terminate had been taken at the 13 November Board meeting. I refer to the minutes of the meeting, the decision to change the locks on Mr Tredinnick's office and the packing of his personal belongings in a box.

[67] Notwithstanding, the meeting of 18 November had many of the hallmarks of procedural fairness. Mr Tredinnick was accompanied by a representative, the allegations were articulated in writing and he was allowed time to respond. It is important to note that no date was set for either a response or a further meeting.

[68] Mr Tredinnick, through his solicitor, sought better particulars of the allegations. This request was not unreasonable, although it must be acknowledged that the majority of the allegations were presented with sufficient clarity to enable a response. It would seem that the particulars requested were not provided.

[69] It is not clear to the Commission what if anything transpired between 18 November and 4 December. The evidence of Dr Swiatkowski is revealing:²⁰

"So that the document produced from the meeting of 18 November are your reason for taking the obvious decision to terminate Greg?---No. Concerns arising from that meeting, where Greg was given the opportunity to respond or – I understand that's in dispute from your side – but from our point of view, Greg was given a genuine and reasonable opportunity to respond to many concerns regarding his performance, and based on advice of omission or otherwise, chose not to. We waited fairly patiently for over two weeks to get a reasonable response. Finally, in all honesty, our patience waned. During that time, a lot of other issues were cropping up as well, that haven't even been presented here as evidence."

[70] Whilst this frustration is readily understood, Mr Tredinnick should have been given an ultimatum before the termination was effected. The ultimatum should have been along the lines that a failure to respond by a nominated date would result in termination.

²⁰ Transcript p 213

[71] In summary:

- The requested particulars had not been provided
- No date had been set for a response
- There was no ultimatum as referred to above.

[72] Accordingly I conclude that Mr Tredinnick was not afforded procedural fairness.

[73] This finding, together with the challenging operating environment referred to above, leads me to conclude that on balance, the termination was unfair. I so find.

[74] A final observation. It must be understood that the directors of the RSPCA are unpaid individuals who give their time freely in the interests of animal welfare. The new Board with some justification concluded that the Society was in a position of crisis and determined that decisive action was required. Whilst some mistakes were made I would not for one moment question the sincerity, motivation or integrity of the individuals involved. I make a similar observation of Mr Tredinnick. I do not believe that he knowingly did anything which would damage the Society.

Remedy

[75] I have no hesitation in concluding that the employment relationship has irretrievably broken down. Mr Tredinnick conceded as much although he made it clear that the breakdown was not of his making.²¹

[76] Had the course of action suggested above been followed I consider a period of three months would have been realistic to determine whether or not the employment relationship would have had an enduring quality. I have also taken into account Mr Tredinnick's relatively short period in the CEO role. Accordingly I determine that the amount of compensation should be the equivalent of thirteen weeks salary.

Order

I hereby Order, pursuant to s.31 of the *Industrial Relations Act 1984*, in full and final settlement of the matter referred to in T13631 of 2009 that the Royal Society for the Prevention of Cruelty to Animals (Tasmania) Inc. pay to Greg Tredinnick the sum of \$17,500 by close of business on 11 June 2010.

Tim Abey
Deputy President

²¹ Transcript P159

Appearances:

Mr C Molnar representing Greg Tredinnick on 27 January 2010

Greg Tredinnick representing himself on 12-15 April 2010

Mr M Rinaldi with Mr L Fernandez representing the Royal Society for the Prevention of Cruelty to Animals (Tasmania) Inc.

Date and place of hearing:

2010

January 27

April 12

April 13

April 14

April 15

Launceston