

## Academic freedom on trial as sacked professor asks High Court to decide

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August 2, 2020

Academic freedom is one of the unshakeable pillars of a university. Professors and their colleagues must be protected in their ability to challenge norms, question orthodoxies and even attack sacred cows in pursuit of truth and knowledge. But to what extent?

According to some observers, academic freedom is now on trial, and heading for a final judgment.

Sacked James Cook University professor Peter Ridd has his eye on the political battle, not just the legal one.

Professor Peter Ridd, a long-serving head of the physics department at Queensland's James Cook University and a critic of the scientific consensus on climate change, was sacked in 2018 over 17 breaches of the university's code of conduct.

Ridd never contested these breaches in court. Instead, he argued he was exercising his right to disagree with his colleagues on matters of scholarship – a right protected by his workplace agreement. The university contended Ridd was not dismissed for his views, but rather, for serial misconduct in the way he went about making his views known.

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The professor won his case in the Federal Court, only for the decision to be overturned when JCU appealed. Last week he announced he would seek special leave to appeal to the High Court, which will choose whether to hear the appeal.

Ridd's case has fascinated parts of the media and the governing federal Coalition, sewing together threads of climate change recalcitrance, the apparent stifling of free speech and the culture wars surrounding Australian universities.

It has also made strange bedfellows of certain stakeholders, with the National Tertiary Education Union finding itself in the same corner as libertarian think tank the Institute of Public Affairs.

"The Peter Ridd issue highlights the lengths to which university managements will go in terms of trampling on the rights of their staff if they think their institution's reputation or prestige is in question," says Michael McNally, the union's Queensland secretary.

The professor is a long-standing critic of the scientific consensus on climate change, especially its effect on Queensland's Great Barrier Reef. He was among an international group of scientists who put their names to a 2009 advertisement – funded by the Cato Institute, a libertarian think tank – disputing the level of scientific agreement on global warming and arguing "the case for alarm regarding climate change is grossly overstated".

Ridd has authored papers and articles that assert the reef is healthy and coral bleaching has been wildly exaggerated by climate alarmists. "I don't think the reef is in any particular trouble at all," he told an IPA podcast. "In fact, I think it's probably one of the best protected ecosystems in the whole world, and virtually pristine."

But it was Ridd's comments about his colleagues and employer, JCU, that landed him in trouble at work. In 2015 he contacted a journalist and argued that reports by the government's Great Barrier Reef Marine Park Authority and the ARC Centre of Excellence for Coral Reef Studies – which is based at JCU – were unreliable.

The organisations should "check their facts before they spin their story", Ridd wrote, adding: "[My] guess is that they will both wiggle and squirm [if asked about the issue] because they actually know that these pictures are likely to be telling a misleading story – and they will smell a trap".

The university decided this amounted to misconduct and censured Ridd for the first time in April 2016, and directed him to make his public comments in a collegiate manner.

Ridd stirred the pot again during an August 2017 appearance on Sky News in which he argued "we can no longer trust" the ARC Centre for Excellence or the Australian Institute of Marine Studies, in part because their staff were "not very objective about the science they do" and were "emotionally attached" to the reef.

At various stages, Ridd was also ordered not to discuss the ongoing disciplinary proceedings with anyone – directives he ignored by engaging with preferred media outlets such as News Corp's *The Australian* newspaper.

By April 2018, the university had made a total of 17 misconduct findings against its professor. One breach involved an email Ridd sent to a student about a colleague delivering a keynote speech at a conference. "You wonder why he is there," Ridd wrote. "It is not like he has any clue about the weather. He will give the normal doom science about the GBR." He also complained of universities being "Orwellian in nature".

Ridd was also reprimanded for emailing a student a link to a newspaper article about his plight using the subject line: "For your amusement." The university deemed this a breach of its order to "not make any comment or engage in any conduct that directly or indirectly trivialises, satirises or parodies the university taking disciplinary action against you". The court judgment referred to this as a "No Satire Direction".

The final finding against Ridd was that he had failed to disclose the IPA had paid for various travel expenses and was helping him with legal costs.

He was sacked on May 2, 2018. He added that grievance to his existing case against JCU's censures, lodged the previous year. Ridd prevailed in April 2019, when Federal Circuit Court judge Salvatore Vasta ruled the termination unlawful and awarded \$1.2 million in compensation. Vasta's judgment was that Ridd's workplace agreement – which explicitly protects academic freedom (provided it did not harass, vilify, bully or intimidate others) – takes precedence over the code of conduct.

[If that name sounds familiar, it's because Vasta is a controversial judge. He has been subject to a number of complaints, including concerns voiced by the Law Council of Australia. Several of his rulings have been overturned on appeal, in addition to this one. Last year Vasta was stood down from an administrative role within the court and ordered to undergo "mentoring".]

Controversial Federal Circuit Court judge Salvatore Vasta found in Ridd's favour, but the decision was overturned.

JCU appealed the Ridd decision. Last month the Federal Court upheld the appeal in a two-to-one majority and dismissed Ridd's claim (the dissenting judge thought the case should be re-heard).

The majority judgment effectively found the workplace agreement did not ride roughshod over the university's code of conduct. While Ridd enjoyed academic freedom, it was not "untrammelled"; he was bound to comply with the code of conduct as much as was reasonable while exercising his right to robustly debate the science.

"It's a question of what are the limits, if any, and what are the protections, if any, for academics when they're exercising academic freedom," says Mitchell Downes, one of Ridd's lawyers. Ridd's team argued academic freedom was a "shield", providing immunity from other obligations. JCU argued there was more to it; it was about "what you say *and* how you say it". That carried the day.

For its part, JCU has maintained there is a clear distinction between Ridd's academic freedom and his conduct. "We defend Peter's right to make statements in his area of academic expertise and would continue to do that until we are blue in the face," deputy vice-chancellor Iain Gordon told *Guardian Australia* in 2018.

"The issue has never been about Peter's right to make statements. It's about how he has continually broken a code of conduct that we would expect all our staff to stick to, to create a safe, respectful and professional workplace."

If the High Court agrees to hear Ridd's appeal, it will set up a showdown between two esteemed legal minds: Melbourne-based workplace relations specialist Stuart Wood, QC, who is acting for Ridd; and Bret Walker, SC, who successfully represented Cardinal George Pell in his recent High Court appeal, representing the university.

Predicting what cases the High Court will elect to hear is a mug's game, but some legal observers reckon Ridd has a fighting chance. The dissenting judgment of Judge Darryl Rangiāh, who wanted the Federal Court to re-hear the case, would help. "If nothing else it shows this is a case on which reasonable minds can differ," says Jeremy Gans, a law professor at the University of Melbourne.

In the meantime, Ridd has lost his job but gained a new career as a pin-up for climate change sceptics. He appears on Sky News and in *The Australian*, and the IPA has dedicated significant resources to his cause. The think tank certainly believes much is at stake in the "historic" case.

"It will be the first time that the High Court has been asked to adjudicate on the meaning of intellectual freedom," says IPA policy director Gideon Rozner. "The fundamental issues of free speech at Australian universities, the future of academic debate and freedom of speech on climate change are all on the line."

Members of the Morrison government are closely watching the case. In a party room meeting last July, Education Minister Dan Tehan reportedly raised concerns about JCU's then-pending appeal, while backbenchers James Paterson, Craig Kelly, George Christensen and Warren Entsch all spoke about the issue.

The MPs wanted to know whether the government could contribute financially to Ridd's case. Attorney-General Christian Porter explained there is a fund that exists for "extraordinary and novel cases", but Ridd has not asked to access it, and is not expected to for his High Court appeal.

It is an expensive campaign. Ridd says his legal expenses have eclipsed \$1.1 million, comprising \$300,000 of his money and \$800,000 from donations. But in just two days last week, Ridd raised nearly \$400,000 for the final hurdle.

Ridd's GoFundMe page lays out his belief that the consequences of his case will be felt regardless of the outcome. "I don't take the decision to appeal lightly," he says. "The financial and emotional costs are high and legal action is fraught with uncertainties. There are, however, too many important principles at stake to walk away at this stage.

"Even if we lose in the High Court, it will demonstrate beyond doubt that the work contracts at universities have the effect of crushing free speech. I have little doubt the Education Minister [Mr Tehan] will have something to say about that once the legal action is over. So even if we lose the High Court challenge, we still win the ultimate political battle."

There is certainly a political battle to be had. Ridd's case has triggered a debate, if not a reckoning, about academic freedom. McNally, the union secretary, compares it to the suspension of La Trobe University's Roz Ward, who became a national fixation over the Safe Schools program.

"She was targeted by her university and we had to defend her," he says. "The principal of academic freedom is one where you have to actually challenge orthodoxies and you have to ruffle feathers."

Melbourne University law professor Adrienne Stone says universities need different rules from corporate workplaces.

Adrienne Stone, a law professor at the University of Melbourne with a research interest in free expression, says Ridd's case has brought attention to how corporate norms of behaviour have infected universities.

"My view is that universities are not ordinary workplaces, and the relationship between an academic and their employer is not like other relationships that you would have with, say, a corporate employer," Stone says.

"Academic freedom exists to ensure we have the kind of environment that enables us to pursue knowledge for the public benefit. I don't think you should be allowed to vilify someone or bully someone or harass someone. But I don't think this general standard of having to be civil and collegiate is appropriate in the university context."

Stone says JCU's demand that Ridd not trivialise the disciplinary proceedings against him proves bureaucratic culture is out of control in universities. "Can you believe that a university in the 21st century is issuing a 'No Satire Direction' to an academic? I think it's just nuts," she says.

"Universities have lost sight of the really core things about the enterprise of being a university. Maybe [Ridd] at some point overstepped the line. But the line should be drawn in a different place to where it usually is."