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A structural engineer linked to the Barton Highway bridge collapse that put nine workers in hospital in 2010 is appealing against a Supreme Court decision that could stop him from signing off on his own designs.

Craig Simmons, the director of the Construction Services Branch with the Department of Environment and Sustainable Development and David Middlemass, the ACT construction occupations registrar, had told the court they were "concerned with the standard of engineering services" provided by Jan Ruckschloss in eight projects.

These included the Barton Highway bridge, Empire Apartments in Forrest, Pulse Apartments in Gungahlin, the Soho complex and developments in Lyneham's Fox Place, Hughes' Bisdee Street and Forrest's Canberra Avenue. Fairfax has previously reported on issues at Empire Apartments and Pulse Apartments.

Mr Ruckschloss, a director of the Sellick engineering consultancy at the time the bridge design work was carried out, is no longer linked to the company.

Sellick Consultants staff said he had not worked there for more than a year. Fairfax established Mr Ruckschloss was working for the consultancy, one of Canberra's largest, until at least March 2010.

On March 22, Justice A. J. Sidis of the ACT Supreme Court refused Mr Ruckschloss' request for an injunction to prevent ACT government officials from requiring his engineering work to be checked by an independent engineer before it could be certified. Mr Ruckschloss has appealed.

"I concluded the application for the interim injunction should be refused, unless the plaintiff provided an undertaking that until further order, any engineering designs he prepared for the purpose of projects to be constructed in the ACT would be checked and certified by an engineer approved by the second defendant," Justice Sidis said.



Structural engineer Jan Ruckschloss is appealing a Supreme Court decision that could stop him signing off on his own designs. He has been linked to the Barton Highway bridge collapse. Photo: Lannon Harley

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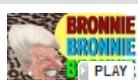
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Mr Ruckschloss' lawyer, Andrew Freer of KJB Law, told Fairfax that Justice Sidis had found there was a *prima facie* argument the ACT government did not have the power to impose the proposed conditions, that there had been no findings of any wrong-doing against Mr Ruckschloss on any of the matters raised by the ACT government and that the concerns expressed by Craig Simmons were "strongly disputed".

"A number of the matters raised by Mr Simmons were not within the responsibility and or control of Mr Ruckschloss," he said. "Mr Ruckschloss has filed an appeal against [the] refusal to grant an interlocutory injunction. It would, therefore, be inappropriate for Mr Ruckschloss to comment further."

Mr Freer said Mr Simmons and Mr Middlemass "have given an undertaking not to make any decision in relation to Mr Ruckschloss until the matter is considered by the Court of Appeal".

The Ruckschloss case is unprecedented, according to Chris Kerin, a Sydney lawyer specialising in building defects who has an extensive practice in the ACT.

"This case arose from a proposal that ACTPLA place a condition on all private building surveyors (certifiers) licensed in the ACT requiring an independent engineer [to] check the engineering work done by Jan Ruckschloss prior to them providing any certification services in relation to any such design or advice," he said.

Mr Ruckschloss argued that the public safety concerns cited by the ACT government did not outweigh "the irreparable damage" he would suffer if his work had to be independently checked and certified.

Justice Sidis did not agree, ruling Mr Simmons and Mr Middlemass had "established serious concerns in respect of defects in the structures, the designs for which were ostensibly provided (by) the plaintiff. In one case persons were injured as a result of structural failure; in others the structures unremedied presented potential risks of injury to the occupants."

She cited a damning report into the Barton Highway bridge collapse that stated: "Which of the design errors initiated the collapse is an interesting academic point, but the complete failure to comply with any recognised design standards in a number of aspects of the design is clearly the primary cause of the collapse."

Reports into the collapse, including one by SMEC released on August 23, 2010, named Sellick Consultants, not Mr Ruckschloss individually, as the "scaffolding subcontractor and designer of part of the temporary works".

"Much of the structural design service of concern was provided by the plaintiff while he was a director of the Sellick engineering consultancy," Justice Sidis said. "It was unclear whether Mr McInnes or Sellick Consultants Pty Ltd had any responsibility in respect of the concerns raised by the defendants."

Justice Sidis stated in her judgment: "In responding to concerns relating to a number of the projects, the plaintiff [Mr Ruckschloss] relied on the advice or opinions of Mr McInnes of Sellick Consultants Pty Ltd".

Sellick Consultants director Don McInnes has not responded to requests for comment.

#### CORRECTION

An earlier version of this report should not have said Sellick Consultants director Don McInnes "provided advice supporting Mr Ruckschloss during the hearing".

The report should have said Justice Sidis stated in her judgment: "In responding to concerns relating to a number of the projects, the plaintiff [Mr Ruckschloss] relied on the advice or opinions of Mr McInnes of Sellick Consultants Pty Ltd".

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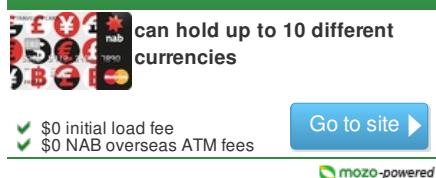


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