Supreme Court of New Zealand
Te Kōti Mana Nui

**21 June 2018**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Rowe v R***

**(SC 86/2017) [2018] NZSC 55**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz**

## Background

Mr Rowe was found by an off-duty police officer taking photographs of three teenage girls in their swimwear on Kaiteriteri beach near Nelson. The zoom lens of Mr Rowe's camera was fully extended. The officer noted that Mr Rowe was crouching down behind a campervan. The police officer approached him and Mr Rowe acknowledged he had been taking photographs without the permission of either the girls or the adults with them. Mr Rowe showed the officer the electronic devices he had been using. Examination of a laptop computer revealed a large number of photographs of young girls including some who like the subjects in this case were wearing swimwear. A forensic analysis of this computer revealed no objectionable material.

Mr Rowe was convicted after a jury trial of doing an indecent act with intent to insult contrary to s 126 of the Crimes Act 1961. The Court of Appeal upheld his conviction. The Court considered the circumstances surrounding Mr Rowe's actions were sufficient for the jury to conclude the act of taking the photographs was indecent having regard to generally accepted community standards. The circumstances identified included the absence of any legitimate reason for taking the photographs and the fact Mr Rowe was much older than the girls.

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

The Supreme Court granted leave on the question of whether Mr Rowe should have been convicted. That required consideration of whether Mr Rowe's act (taking photographs which were not themselves indecent) could constitute an indecent act.

## Judgment

On appeal Mr Rowe argued that photography without more could not amount to an indecent act. Nor could taking photographs of what may ordinarily be seen in public comprise an offence under s 126. It addition, it was submitted that the trial judge had misdirected the jury as to what was required for Mr Rowe to have an intention to insult.

The Crown argued that an "indecent act" required that there was an act accompanied by circumstances that would be seen as indecent by right-thinking members of the community. This would encompass the taking of photographs by Mr Rowe in the present case. Further, the Crown contended that "intent to insult" included the possibility that what was insulted was the complainants' rights to modesty or privacy.

The Supreme Court has unanimously allowed the appeal and quashed the conviction. No order was made for a retrial because there was insufficient evidence that the conduct in question could amount to the offence.

Elias CJ, Glazebrook, O'Regan and Ellen France JJ found that surrounding circumstances such as motive or prurient purpose could not elevate Mr Rowe's acts, which were not intrinsically indecent, to acts which were an offence under s 126. That approach followed from the text and historical origins of the offence which suggested s 126 was primarily directed at exhibitionist conduct, as defined broadly. While not deciding whether taking a photograph could ever amount to an indecent act, the Court found that it could not do so when the photographs themselves were not indecent and in the absence of any exhibitionistic type behaviour on the part of Mr Rowe. Nor was it possible to prove Mr Rowe had the requisite intention to insult where the images he took were not themselves indecent.

William Young J agreed that Mr Rowe's behaviour did not breach s 126. He considered that s 126 is aimed only at exhibitionist conduct – that is conduct intended by a defendant to be seen by someone and to result in that person being insulted or offended. On this basis, the section did not encompass the conduct in question.

Contact person:
Kieron McCarron, Supreme Court Registrar (04) 471 6921