

IN THE SUPREME COURT OF NEW ZEALAND

**SC 53/2006
[2006] NZSC 73**

BETWEEN JAMES CHARLES MORRIS PARLANE
Appellant

AND WAIPA DISTRICT COUNCIL
Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: Appellant in Person
C T Gudsell for Respondent

Judgment: 19 September 2006

JUDGMENT FOR THE COURT

The application for leave to appeal is dismissed with costs of \$1,000 to the respondent.

REASONS

[1] The proposed appeal concerns the validity of a bylaw made by the respondent Council prohibiting the lighting of open-air fires. There are certain exceptions, one of them being for such fires “contained within an incinerator constructed and maintained to New Zealand Standard (NZS) 5202”. It appears that before the bylaw was promulgated that standard had been withdrawn by Standards New Zealand. The District Court Judge found that this circumstance did not make the bylaw invalid. The High Court took a different view but upheld Mr Parlane’s convictions for breach of the bylaw on a different ground after severing the part of the bylaw which referred to the standard.

[2] The Court of Appeal did not find it necessary to consider the question of severance. Like the District Court it held that the bylaw was not rendered invalid merely because it was framed by reference to a withdrawn standard. It recorded that there was no challenge to the bylaw in the present proceeding on the ground of unreasonableness.

[3] The Court of Appeal's conclusion that in principle the local authority was not under any legislative restriction preventing the use of any standard which had been issued by Standards New Zealand and then withdrawn is so plainly correct that the proposed appeal to this Court has no chance of success. Like the Court of Appeal, we express no view on whether the use of the particular standard may have resulted in a bylaw which is unreasonable or is invalid for any other reason.

Solicitors:
James Parlane, Te Awamutu for Appellant
Gallie Miles, Te Awamutu for Respondent