



## Supreme Court of New Zealand

19 December 2008

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**Aylwin v New Zealand Police  
SC 33/2008 [2008] NZSC 113**

### **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 [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Mr Aylwin was charged under the Land Transport Act 1998 with failing to accompany an enforcement officer when required to do so and with driving with excess breath alcohol. On Mr Aylwin's appeal to this Court, the issue was whether those offences require the prosecution to prove compliance with the relevant breath screening and evidential breath test provisions in the Transport (Breath Tests) Notice (No 2) 1989.

The Supreme Court has unanimously dismissed the appeal. In relation to a charge of refusing to accompany, the Court has held that, in the absence of relevant cross-examination, the fact a breath screening test was lawfully conducted, and that the proportion of alcohol appeared to the officer to exceed the relevant limit, can be established by statements to that effect. In relation to a charge of excess breath alcohol, the prosecution need only establish the fact and results of a breath screening test and evidential breath test, and advice of the right to a blood test.

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