

IN THE SUPREME COURT OF NEW ZEALAND

**SC 97/2009
[2009] NZSC 132**

BETWEEN	FRANCES MOUNTIER Applicant
AND	NEW ZEALAND POLICE Respondent

Court: Elias CJ, McGrath and Wilson JJ

Counsel: M J Knowles for Applicant
J C Pike for Respondent

Judgment: 16 December 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal concerning the powers of a local authority to invoke the Trespass Act 1980. The case relates to a protest within a fenced off area of a public road where construction works were under way. The applicant was convicted of trespass in the District Court. The conviction was set aside by the High Court, which held that provisions in the Local Government Act 1974 that empowered the Council to fence off the site did not give it rights of occupation enabling the Council to invoke the Trespass Act. The Court of Appeal disagreed with the High Court on that point.

[2] There had, however, been limited evidence advanced in the District Court on whether the invocation of the Trespass Act by the police in relation to the protest was reasonable. For that reason the District Court Judge understandably did not

directly address that question. In those circumstances, the Court of Appeal felt unable to determine the issue and it declined to remit it back for further consideration. In those circumstances, the appeal by the Police was dismissed.

[3] The applicant seeks leave to appeal to this Court in order to challenge the Court of Appeal's finding that the Council was an occupier in terms of the Trespass Act.

[4] As the applicant has been acquitted, there is no longer a live issue in relation to the outcome of the case which the appeal would resolve. As well, the facts established at the District Court's hearing do not provide a sufficient foundation for the issue of principle which the applicant wishes to raise in this Court. For these reasons alone, the exceptional course adopted by the Court in *R v Gordon-Smith*¹ is plainly not appropriate.

[5] The application for leave to appeal is accordingly dismissed.

Solicitors:
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¹ [2009] 1 NZLR 721.