



Supreme Court of New Zealand

3 April 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**CAROL MARGARET DOWN v THE QUEEN (SC 48/2011)
[2012] NZSC 21**

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.

The appellant, Ms Down, was convicted of 14 offences under the Resource Management Act 1991, including eight counts of discharging contaminants onto land. Under the Resource Management Act, discharge offences are punishable by imprisonment and persons charged may elect to be tried by jury. These offences can however be dealt with as infringement offences by issuing an infringement notice which imposes a standard fine. In the appellant's case, charges were laid against her, and she was tried and convicted by a jury. She was sentenced to 250 hours of community work.

She appealed unsuccessfully against her convictions to the Court of Appeal, arguing that these discharge offences were infringement offences to which s 21 of the Summary Proceedings Act 1957 applied. Under s 21(1)(a) of that Act the permission of a District Court Judge or Registrar should have been obtained before the charges were laid in the District Court. Because it was not, her convictions could not stand.

The Supreme Court has unanimously dismissed the appeal. The issue was one of statutory interpretation. The Resource Management Act had, in ss 343A – 343D, its own infringement notice procedure, which did not provide for the use of the provisions of the Summary Proceedings Act that the appellant wished to rely on. The Court has held that those responsible for enforcement of the offence provisions concerned may commence summary proceedings, laying charges, under s 343B(a), or proceed by infringement notice to impose an infringement fee under s 343B(b). The course they choose is entirely a matter for their judgment and does not require any form of consent.

The appeal was accordingly dismissed.

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