



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

5 DECEMBER 2022

MEDIA RELEASE

MONCRIEF-SPITTLE & ANOTHER v REGIONAL FACILITIES AUCKLAND LTD & ANOTHER

(SC 57/2021) [2022] NZSC 138

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

In June 2018, an Australian promoter hired the Bruce Mason Centre from Regional Facilities Auckland Ltd (RFAL) for a presentation by two speakers, Stefan Molyneux and Lauren Southern, who have been described as “alt-right” commentators. Details about the event, including the venue were publicised. For similar events involving these two speakers in Australia, details of the venue were not publicised until the day before the event for security reasons.

RFAL received complaints about the event and became aware of planned protests and blockades of the event. Because of concerns about health and safety risks, RFAL cancelled the venue hire contract.

The decision to cancel the contract was challenged by the appellants, Malcolm Moncrief-Spittle and David Cumin. Mr Moncrief-Spittle had bought a ticket for the event and was disappointed by its cancellation. Dr Cumin, an Auckland ratepayer, was concerned about the potential future implications of the cancellation.

The appellants sought judicial review of the decision on two grounds. The first ground was that, for various reasons, RFAL had acted irrationally, perversely and arbitrarily. Secondly, they said that RFAL had failed to act consistently with rights guaranteed under the New Zealand Bill of Rights Act 1990 (the Bill of Rights), including the right to freedom of expression in s 14.

Lower courts

The High Court dismissed the appellants' claim. It held that RFAL's decision to cancel the contract was not amenable to judicial review and that the Bill of Rights did not apply. An appeal to the Court of Appeal was subsequently dismissed. Although the Court of Appeal said the decision was amenable to judicial review and that the Bill of Rights applied, the appeal failed as the cancellation decision was reasonable both in administrative law terms and under the Bill of Rights.

The Supreme Court granted leave to appeal on the question of whether the Court of Appeal was correct to dismiss the appeal against the High Court's substantive decision.

Supreme Court decision

The Supreme Court has unanimously dismissed the appeal.

Dealing first with the Bill of Rights claim, the Court was satisfied that RFAL came within s 3(b) of the Bill of Rights which sets out the circumstances in which the Bill of Rights applies to bodies other than the legislative, executive or judicial branches of Government. In terms of that section, RFAL was performing public functions imposed on it by the relevant legislation. Among other matters, RFAL effectively stood in the shoes of Auckland Council in providing a service that is intended for the social well-being of the community and so there was a governmental aspect to its function. As the Bill of Rights applied, RFAL had an obligation to protect the rights contained in it. Of particular relevance was the s 14 right to freedom of expression, which includes the freedom to receive information.

The Court held that the cancellation of the contract limited the appellants' rights under s 14. RFAL could therefore only lawfully cancel the contract if the Court was satisfied that cancellation was a reasonable limit on freedom of expression in terms of s 5 of the Bill of Rights. The Court noted that the extent of any reasonable limits is a legal question. The test used to decide that question should reflect the nature of the decision-making whilst giving due weight to the importance of the rights. Applying this test, the Supreme Court agreed with the Court of Appeal that cancellation was reasonable given the health and safety issues that arose. In the particular circumstances of this case, cancellation was also almost inevitable once the possibility of not publicising the venue until later on was lost.

In terms of the appellants' other ground of challenge, the Court considered that RFAL's decision to cancel was amenable to judicial review as it had the necessary substantial public interest component identified in earlier authorities. The appellants' claim that the decision was unreasonable as irrational and perverse fell away given the Court's conclusion that the decision to cancel was a reasonable limit on the right to freedom of expression. However, it was necessary to address the argument focussed on problems in RFAL's decision-making process. For instance, the appellants claimed RFAL did not ask the right questions or take reasonable steps to make an informed decision.

The Court agreed with the appellants that RFAL was required to give freedom of expression a heavy weighting and that there are limits on the ability to restrict freedom of expression in order to manage the disruptive activities of third parties. While the Court accepted that the process followed by RFAL was not ideal, it did not lead to an unreasonable result. Moreover,

there was evidence that RFAL did consider freedom of expression. Therefore, the appellants also failed on this ground of appeal.

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