



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

18 FEBRUARY 2022

CASE SYNOPSIS

MONCRIEF-SPITTLE v REGIONAL FACILITIES AUCKLAND LTD

(SC 57/2021)

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. This synopsis does not include the full reasons for the judgment of the Court of Appeal. A direct link to that judgment is included at the end of this synopsis.

Background

The appellants, Mr Moncrief-Spittle and Mr Cumin, seek judicial review of Regional Facilities Auckland Limited's (RFAL) decision to cancel an event at one of their local event centres.

RFAL is a council-controlled organisation tasked with managing various regional facilities and event centres within the territory of Auckland Council. In 2018, an Australian promoter booked the Bruce Mason Centre, managed by RFAL, for an event featuring two Australian keynote speakers. RFAL and the promoter entered into a venue hire agreement. After the event was publicised, and ticket sales commenced, RFAL received various complaints from the public regarding views held by the keynote speakers which had been controversial overseas. In addition to the complaints, a local activist group announced they intended to blockade entry to the venue if the event proceeded. RFAL management decided to cancel the event under the venue hire agreement referring to health and safety concerns they had in relation to the potential protestors.

Mr Moncrief-Spittle, a ticketholder of the event, and Mr Cumin, an Auckland ratepayer, sought judicial review of RFAL's cancellation decision in the Auckland High Court. They consider RFAL's decision was premature and inconsistent with rights protected by the New Zealand Bill of Rights Act 1990, particularly the right to freedom of expression and freedom of association.

Procedural history

In 2019, the High Court dismissed the appellants' request for judicial review of the cancellation decision. The High Court considered RFAL's decision was not subject to judicial review



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because RFAL was not exercising a public power. The appellants' appealed against that decision to the Court of Appeal.

In 2021, the Court of Appeal dismissed the appellants' appeal. Whilst the Court of Appeal disagreed with the High Court and determined the decision was reviewable it declined the appeal on the basis that the decision was lawful.

This appeal

The appellants' applied for leave to appeal to the Supreme Court against the Court of Appeal's decision. They argue that its judgment in favour of RFAL should be reversed.

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

Among other issues, the appeal asks the Supreme Court to consider:

- under what circumstances will a decision of a council-controlled organisation be subject to judicial review;
- what influence can the role of potential protestors have on a decision-maker's determination to cancel an event under a contract; and
- was the cancellation decision a reasonable limit on the appellants' rights to freedom of expression and association.

Due to the impacts of COVID-19 on staffing levels, the Supreme Court building will be closed for public access. To access the hearing via a live stream, please contact supremecourt@justice.govt.nz

Contact person:

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Court of Appeal decision: [\[2021\] NZCA 142](#) (30 April 2021)

Supreme Court leave decision: [\[2021\] NZSC 94](#) (5 August 2021)