Attorney-General v Beggs [2002] NZCA 204; (2002) 7 HRNZ 95; [2002] NZAR 917 (21 August 2002)

Last Updated: 15 December 2011

IN THE COURT OF APPEAL OF NEW ZEALAND CA112/02

	BETWEEN	THE **ATTORNEY-GENERAL** Applicant
	AND	THE SPEAKER OF THE HOUSE OF REPRESENTATIVES Applicant
	AND	MICHAEL J **BEGGS** AND OTHERS Respondents

Hearing:	15 August 2002
Coram:	Gault P Keith J Blanchard J Tipping J Anderson J
Appearances:	J C Pike and A Butler for the applicants/defendants T Ellis and A Shaw for the respondents/plaintiffs
Judgment:	21 August 2002

JUDGMENT OF THE COURT DELIVERED BY KEITH J

[1] On 25 September 1997, 75 people, mostly students, were arrested in Parliament grounds for breach of the Trespass Act 1980. They had marched to Parliament to protest against proposed educational reforms. Assembled behind barriers erected in anticipation of their arrival, they protested loudly and peacefully, demanding that the Minister of Education address them from the steps of Parliament. When this did not occur one of their leaders advised the students to take "one small peaceful step forward" for every minute the Minister did not appear. After the protesters had been in Parliament grounds for about 60 minutes a member of the staff of the Speaker of the House of Representatives, who had been delegated the task of overseeing protests in the grounds, considered it was appropriate for the protest to end because he had concerns about the potential for disorder. He decided the protesters should be told they were required to leave Parliament grounds, and warned that if they did not do so they would be treated as trespassers.

The police and a member of the protesting group were asked to convey that message to the group, and that was done on five occasions. When large numbers of the group did not disperse the police made the arrests.

[2] In June 1998 the District Court held a four day hearing involving 20 of the defendants selected on a representative basis. It was accepted that the result of the hearing would have a considerable bearing on how the charges involving the other 55 defendants would be disposed of. The District Court Judge determined that the charges of trespass as laid against all defendants be dismissed. He gave these reasons:

In the circumstances of this student protest, it is clear that the Speaker, through his delegate, was not justified in using the Trespass Act to arrest students who formed part of this political protest, as –

(a) The student protestors had not been individually advised that their implied licence to be on Parliament grounds in the exercise of their right to political protest had been revoked.

(b) Even if it was accepted that there was in fact a valid revocation of the protestors' implied licence, the protestors could still not be arrested for trespass as they had not been individually warned that they were trespassing, as is specifically required by s5 of the Trespass Act.

It is clear that the Police would not be able to prove to the required standard, that the protestors were in fact trespassing on Parliament grounds, which is an essential pre-requisite to the arrest of any trespasser pursuant to s3 of the Trespass Act.

[3] The police appealed to the High Court under s107 of the Summary Proceedings Act 1957 by way of case stated. On 16 June 1999, a full High Court answered the questions of law put to it largely favourably to the students, and ordered that the prosecutions be permanently stayed : *Police v* ***Beggs*** [1999] 3 NZLR 615. The Court held in particular that the Speaker, as occupier, in exercising powers or rights given by the Trespass Act, did so in the Speaker's public function. The power or right to warn under the Act may limit the right of assembly in s16 of the New Zealand Bill of Rights Act 1990. That power or right can be given a meaning consistent with the s16 right by application of the standard of reasonableness, in terms of s5 of the Bill of Rights. Under s6 of the Bill the Court must prefer a meaning consistent with the rights and freedoms in the Bill. The Court spelled out some of the limits on the Speaker's powers and rights as the occupier of Parliament grounds.

[4] Mr Pike, for the Speaker and the **Attorney-General** in the proceeding before this Court, referred us to the Speaker's Ruling given in the House of Representatives on 27 July 1999, following the High Court judgment. We set out the first paragraph of the ruling:

Mr SPEAKER: Recently, in proceedings in the High Court, the Speaker's ability as the occupant of Parliament grounds to exercise the powers set out in the Trespass Act was examined. I should say at once that I accept the High Court judgment without reservation and I do not believe that, in practice, it entails any significant change to the way in which those powers have been exercised. However, it is right that I should restate the procedures that will be followed in respect of demonstrations in Parliament grounds, given that they were last set out by Speaker Harrison in 1977, well before the passage of the New Zealand Bill of Rights Act 1990. The Speaker's powers must be exercised consistently with that Act.

[5] The Speaker went on to stress that it was an important aspect of our democratic society that people should be able to assemble peaceably in order to express their opinions, in the case of demonstrations of a political nature particularly in Parliament grounds. He set out the procedures which should be followed and the conditions that must be complied with (1999 Hansard 18473-474, 27 July 1999).

[6] Consistently with the Speaker's ruling, the Crown did not at that time seek to challenge the High Court decision by way of appeal.

[7] In 2000, 41 of those who had been arrested brought proceedings in the High Court against the **Attorney-General** sued in respect of the Police, the Speaker and a senior police officer.

[8] The only cause of action pleaded against the Speaker is also brought against the **Attorney-General.** It alleges that causing the plaintiffs to be arrested was illegal as a breach of the plaintiffs' rights under ss14, 16 and 17 of the Bill of Rights, constituted arbitrary arrests and detentions in breach of s22 and constituted torts of assault, false imprisonment, malicious arrest and malicious detention. Each plaintiff seeks a declaration to that effect and compensation of $10,000. They also seek exemplary compensation.

[9] In March this year, the High Court, on the application of counsel for the defendants with the consent of plaintiffs' counsel, ordered that the following question of law be referred to this Court under Rule 419 of the High Court Rules:

Is the authority of the Speaker of the House of Representatives, as occupier of the grounds of Parliament, to warn persons pursuant to s3 of the Trespass Act 1980, to leave those grounds, subject to any applicable right under the New Zealand Bill of Rights Act 1990 being exercised by those persons or any of them, as it was decided that the Speaker's authority was so limited in *Police v* ***Beggs*** [1999] 3 NZLR 615?

[10] The defendants' proposed answer to the question was stated as follows in their written submissions:

7.1 BORA applies to acts of the Speaker (to the extent that such acts have legal effects) by virtue of s3(a) BORA.

7.2 The fact that the Speaker may be bound by BORA does not ipso facto render all such acts justiciable. The acts of the Speaker as occupier are not justiciable.

[11] When the application came before this Court and was discussed with counsel, it became clear that for two reasons it should be dismissed.

[12] The first related to the position of the particular parties, particularly the 41 plaintiffs. They are seeking compensation against the Crown for breaches of the Bill of Rights under *Baigent's Case (Simpson v* ***Attorney-General)*** [1994] 3 NZLR 667. Through the present application, the Crown was now seeking to revisit the very same issue which was resolved against it by the Full Court on the case stated to that Court at the Crown's request. The Crown in this respect should be in exactly the same position as any other litigant (as indeed s27(3) of the Bill of Rights makes plain). It could have appealed against the judgment of the Full Court. It did not. We do understand of course the points that the Speaker was not a formal party to the earlier proceedings and that they were criminal, not civil. But the substantive issue is the same and the civil cause of action brought against the Speaker is also brought against the Police.

[13] The second, distinct reason related to the important substantive issues of a constitutional kind raised by the question and the wider context. Those issues ran beyond the arguments which counsel had prepared for the hearing. There are for instance the questions of what licence, entitlement or authority, if any, there is to enter and remain in Parliament grounds. What is the consequence of the grounds being held for "Parliamentary Buildings purposes" (in 1997) and "Parliamentary purposes" (now)? The answer to those questions might be informed by the Bill of Rights even before the examination of the issues should reach the Trespass Act. That Act, it was stressed, requires first that there be a trespass. It then provides means, through the criminal law, of helping enforce the occupier's rights. It does not *itself*create the basic right to exclude others.

[14] The Court was not comfortable with the prospect of the present respondents/plaintiffs being drawn into such a large set of issues, given the result of the earlier proceedings. That is not to say of course that the issues presented by the question might not be appropriately brought back to the Court in other proceedings.

[15] The application is accordingly dismissed. The respondents/plaintiffs are entitled to costs of $5,000 plus reasonable disbursements to be fixed by the Registrar in the absence of agreement.

Solicitors:
Crown Law Office, Wellington for the applicants/defendants
N B Dunning, Wellington for the respondents/plaintiffs