



# SUBMISSIONS OF THE INFORMANT IN RESPONSE TO MEMORANDUM OF SUBMISSIONS FILED BY THE DEFENDANT

MAY IT PLEASE YOUR HONOUR, Counsel for the Police respectfully submits:

## 1 INTRODUCTION

1.1 **PENELOPE MARY BRIGHT** ("the defendant") is charged with trespass pursuant to s3(1) Trespass Act 1980. The charge follows the defendant's "ejection" from an Auckland City Council meeting held at the Auckland Town Hall on the 23<sup>rd</sup> November 2006 which was presided by His Worship the Mayor, Dick Hubbard. The sole issue on the meeting's agenda was the proposed "Waterfront Stadium". The meeting was interrupted by the defendant unfurling a banner which made no reference to the Waterfront Stadium issue but did refer to a "Dick-Tatorship" and "cereal", a clear reference to the Mayor.

1.2 The defendant's main grievance appears to be that she was denied "speaking rights" at this meeting and that is why she unfurled the banner which eventually led to her ejection from the meeting and subsequent arrest by the Police. In her submissions the defendant provides at paragraph 1.1 that:

"...the key question of whether the Mayor Dick Hubbard's denial of my speaking rights was unlawful, particularly in light of the decision of Judge AS Singh [The Police v Penelope Mary Bright 10<sup>th</sup> August 2006 District Court Auckland CRN 06004043669]"

1.3 The purpose of these submissions is to address the relevant law and then to briefly address the relevant points raised by the defendant in her submissions dated 14<sup>th</sup> August 2007. It is submitted that many of the points raised by the defendant are simply not relevant to these proceedings and these submissions will not attempt to address every point raised by the defendant. Although the Police submit that there was no obligation on the Mayor to grant "speaking rights" to the defendant on this occasion, given that her application for a deputation was "out of time", these submissions will also address that point.

## 2 THE LAW

2.1 The purpose of the Local Government Official Information and Meetings Act 1987 ("the Act") as detailed in s4 is accepted by the Police (Refer 2.1 of the defendant's submissions). The correct starting point for this matter however must be s47 of the Act which provides:

**47 Admission of public to meetings of local authorities**

Except as otherwise provided by this Part of this Act, every meeting of a local authority shall be open to the public.

2.2 This section is subject however to s50 of the Act which provides:

**50 Maintenance of order**

(1) The person presiding at any meeting of any local authority may, if that person believes, on reasonable grounds, that the behaviour of any member of the public attending that meeting is likely to prejudice or to continue to prejudice the orderly conduct of that meeting if that member of the public is permitted to remain in that meeting, require that member of the public to leave the meeting.

(2) If any member of the public who is required, pursuant to subsection (1) of this section, to leave a meeting of a local authority—

(a) Refuses or fails to leave the meeting; or

(b) Having left the meeting, attempts to re-enter the meeting without the permission of the person presiding at the meeting,—

any constable, or any officer or employee of the local authority, may, at the request of the person presiding at the meeting, remove or, as the case may require, exclude that member of the public from the meeting.

2.3 Section 3 of the Trespass Act 1980 then provides that:

**3 Trespass after warning to leave**

(1) Every person commits an offence against this Act who trespasses on any place and, **after being warned to leave that place by an occupier of that place, neglects or refuses to do so.** [Emphasis added]

(2) It shall be a defence to a charge under subsection (1) of this section if the defendant proves that it was necessary for him to remain in or on the place concerned for his own protection or the protection of some other person, or because of some emergency involving his property or the property of some other person.

**3 APPLICATION OF LAW TO THE PRESENT CASE**

3.1 With reference to the evidence given by the Mayor Dick Hubbard (“the Mayor”) and s50 of the Act it is clear that:

(a) The witness (the Mayor) presided at the relevant meeting;

(b) The Mayor formed the belief that the behaviour of the defendant was not only likely to prejudice the **orderly conduct of the meeting** but also continue to prejudice the orderly conduct of the meeting;

(c) The Mayor formed this belief on reasonable grounds (including his observations of the past behaviour of the defendant at Auckland City Council Meetings);

(d) The Mayor therefore required the defendant to leave the meeting (and as a matter of common sense the Auckland Town Hall);

(e) The defendant refused or failed to leave; and

(f) The Mayor requested that an officer/employee or Constable remove the defendant.

3.2 It is submitted thereafter that as the defendant remained at the meeting (although it had to be adjourned to allow for the defendant to be removed) she was then trespassing and the **occupier or the occupier's agent** (by delegation from the CEO) could require the defendant to leave under the Trespass Act. As she refused to leave she has committed an act of trespass pursuant to s3(1) Trespass Act 1980.

3.3 In relation to the "occupier" of the premises the witness Peter David Burden gave evidence that he is "authorised by David Rankin the Chief Executive Officer of the Auckland City Council to act on his behalf and have conferred authority to act on behalf of the Auckland City Council, the owner occupier of the Civic Administration Buildings situated at 1 Greys Avenue, Auckland City." This is completely contrary to the defendant's submission that no evidence was adduced that this witness did indeed have a delegated authority to act on behalf of the occupier.

3.4 In relation to being advised/warned that she was "trespassing" (see 4.116 Defendant's submissions where it is stated that that there is no evidence that she was warned for trespass) it is clear from the documentation titled "PROCESS FOR REMOVING PERSON FROM MEETING UNDER SECTION 50 OF THE LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987 AND THEN TRESPASS ACT" that the witness Peter Burden read to the defendant the following passages:

"If you do not leave the building after our requests you will be trespassing as you have been asked to leave the premises. I will need to contact the police to have you removed for trespass if you continue to stay...

...(PENNY BRIGHT) you leave me with no option but to conduct the police to arrange to have you removed from the building for trespass."

#### 4 DEPUTATIONS

4.1 Although the defendant accepted under cross examination that her request for a deputation was made out of time ("at least seven clear days" 2.13.1 Auckland City Council Standing Orders) she nevertheless maintains that her denial of "speaking rights" was unlawful in that the Mayor could have determined that the "subject of the deputation was one of urgency or major public interest" and granted the request regardless.

4.2 2.13.2 of the Standing Orders provides that "the Chairperson **may** determine that the deputation be received..." on the abovementioned grounds. The Mayor gave evidence of his reasons for not granting the request for a deputation which was out of time. The words "**may**" in the standing orders place no particular onus on the

Chairperson to grant such deputations out of time and indeed that particular wording emphasises that such a decision is clearly at the discretion of the Chairperson. That the Chairperson has chosen not to exercise that discretion does not make his refusal "unlawful". As such the submission that the refusal to grant the defendant speaking rights, the reason for her initial outburst ("You denied me speaking rights...") was unlawful is completely without basis as there was no obligation on the Mayor to grant such rights.

## **5 RESPONSE TO DEFENDANT'S SUBMISSIONS**

5.1 The fact that the defendant was allowed speaking rights at the ARC meeting on the same topic on the 23<sup>rd</sup> November 2006 is irrelevant to the present proceedings (Refer 4.3 defendant's submissions).

5.2 The decision of His Honour Judge Singh in *The Police v Penelope Mary Bright* (District Court Auckland, 10<sup>th</sup> August 2006) can be distinguished in that in that case the Chairperson had rejected the defendant's request for a deputation on the grounds that subject matter was essentially repetitious. There was no issue in that case with the request being filed out of time, as in the present case.

5.3 That the Mayor had not read the decision of His Honour Judge Singh (detailed above) is irrelevant to these proceedings.

## **6 CONCLUSION**

6.1 It is respectfully submitted that the Court can be satisfied beyond reasonable doubt that the elements of the charge of trespass pursuant to s3(1) Trespass Act 1980 have been proven by the prosecution.

**DATED** at Auckland this 6<sup>th</sup> day of September 2007

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N R Webby  
Counsel for the Police