

**IN THE DISTRICT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CRN - 06004063912

NEW ZEALAND POLICE

Informant

V

PENELOPE MARY BRIGHT

Defendant

**MEMORANDUM OF SUBMISSIONS OF DEFENDANT
PENELOPE MARY BRIGHT
DATED THE 14th DAY OF AUGUST 2007**

JUDICIAL OFFICER: Judge Hubble

(Self-Represented)
Penelope Mary Bright
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May it please your Honour, the Defendant respectfully submits the following:

1. I am charged with wilful trespass, at a meeting of the Auckland City Council held at the Auckland Town Hall on 23 November 2006, having being denied speaking rights by Mayor Dick Hubbard.
- 1.1 I have prepared submissions addressing, (but not limited to), the key question of whether the Mayor of Auckland, Dick Hubbard's denial of my speaking rights was unlawful, particularly in light of the decision of Judge A S Singh, [**The Police v Penelope Mary Bright** 10 August 2006 District Court Auckland CRN 06004043669], on essentially the same matter.

2. The Law

- 2.1 The purpose of the Local Government Official Information and Meetings Act 1987 ("the LGOIMA") is provided for at section 4:

The purposes of this Act are-

(a) To provide for the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order-

To enable more effective participation by the public in the actions and decisions of local authorities; and

(ii) To promote the accountability of local authority members and officials,-

and thereby to enhance respect for the law and to promote good local government in New Zealand:

(b) To provide for proper access by each person to official information relating to that person:

To protect official information and the deliberations of local authorities to the extent consistent with the public interest and the preservation of personal privacy.

- 2.2 The purpose of the Local Government Act 2002 is provided for at Part 2 section 10.

Local Government Act 2002 084

2: Purpose of local government, and role and powers of local authorities
Subpart 1---Purpose of local government

10 Purpose of local government

The purpose of local government is---

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
 - (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.
-

2.3 The principles relating to local authorities are provided in Part 2, section 14 of the Local Government Act 2002.

2: Purpose of local government, and role and powers of local authorities

14 Principles relating to local authorities

- (1) In performing its role, a local authority must act in accordance with the following principles:
 - (a) a local authority should---
 - (i) conduct its business in an open, transparent, and democratically accountable manner; and
 - (ii) give effect to its identified priorities and desired outcomes in an efficient and effective manner:
 - (b) a local authority should make itself aware of, and should have regard to, the views of all of its communities; and
 - (c) when making a decision, a local authority should take account of---
 - (i) the diversity of the community, and the community's interests, within its district or region; and
 - (ii) the interests of future as well as current communities; and
 - (iii) the likely impact of any decision on each aspect of well-being referred to in section 10:
 - (d) a local authority should provide opportunities for Maori to contribute to its decision-making processes:
 - (h) in taking a sustainable development approach, a local authority should take into account---
 - i) the social, economic, and cultural well-being of people and communities;
and
 - (ii) the need to maintain and enhance the quality of the environment; and the reasonably foreseeable needs of future generations.

(2) If any of these principles, or any aspects of well-being referred to in section 10, are in conflict in any particular case, the local authority should resolve the conflict in accordance with the principle in subsection (1)(a)(i).

2.4 That human rights should be protected by the rule of law is provided for in the Preamble to the Universal Declaration of Human Rights 1948:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

2.5 Our human right to freedom of expression is provided for in Article 19 of the Universal Declaration of Human Rights 1948.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

2.6 Our human right to freedom of expression is provided for in [Section 14](#) of the New Zealand Bill of Rights Act 1990.

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

2.7 The right to freedom of expression, has as recently as 4 May 2007, been upheld by the Supreme Court of New Zealand, in the case of [Brooker v Police SC 40/2005](#) where Chief Justice Elias was joined by Justices Blanchard and Tipping in the matter of in holding that the New Zealand Bill of Rights Act 1990 that guaranteed freedom of expression "*to seek, receive, and impart information and opinions of any kind in any form*" superseded privacy concerns where there clearly was no harassment and annoyance to the public.

[288] The outcome of this appeal will also, I believe, cause some concern that the scope for protest action has been extended beyond that traditionally recognised in permitting persons with a grievance or grudge, and an understandable desire to obtain publicity for their cause, to protest in residential neighbourhoods outside the home of a particular resident and deliberately target that resident. What has been abandoned, in pursuit of an exalted perception of the right to freedom of expression, is the notion that s 4(1)(a) can be applied to promote public order in the sense of decorum and orderliness in public places to the benefit of all citizens. This objective can be achieved without proscribing trivial or inconsequential behaviour. No more is required than that, in a democratic and civil society, citizens exercise their rights responsibly with concern and consideration for their fellow citizens.

2.8 That Council By Laws must not be inconsistent with the Bill of Rights Act 1990 is provided for under Part 8 section 155 of the Local Government Act 2002.

8: Regulatory, enforcement, and coercive powers of local authorities

Procedure for making bylaws

155 Determination whether bylaw is appropriate

(1) A local authority must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.

(2) If a local authority has determined that a bylaw is the most appropriate way of addressing the perceived problem, it must, before making the bylaw, determine whether the proposed bylaw---

(b) gives rise to any implications under the New Zealand Bill of Rights Act 1990.

(3) No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.

2.9 Auckland City Council Standing Orders, the basis upon which Council business is conducted, have as their underpinning legislation the above-mentioned Local Government Act 2002, and Local Government Official Information and Meetings Act 1987.

2.9.1 One of the means by which the public are enabled to more effectively 'participate in the actions and decisions of local authorities'; and 'to promote the accountability of local authority members and officials,- and thereby to enhance respect for the law and to promote good local government in New Zealand' – is to apply to address Council meetings as provided in Auckland City Council Standing Orders, section "2.13 Deputations"

2.13 Deputations

Deputations may be received by the local authority (or any committees thereof) provided an application for admission setting forth the subject has been lodged with the Chief Executive Officer at least seven clear days before the date of the meeting concerned and has been subsequently approved by the Chairperson. The Chairperson may refuse requests for deputations which are repetitious or offensive.

2.13.1 Deputations were heard

Deputations may be received by the local authority (or any committees thereof) provided an application for admission setting forth the subject has been lodged with the Chief Executive Officer at least seven clear days before the date of the meeting concerned and has been subsequently approved by the Chairperson. The Chairperson may refuse requests for deputations which are repetitious or offensive.

2.13.2

Notwithstanding order 2.13.1, where in the opinion of the Chairperson the matter which is the subject of a deputation is one of urgency or major public interest, the Chairperson may determine that the deputation be received by the local authority.

2.10 Maintenance of public order at meetings is provided for under section 24 of Auckland City Council Standing Orders.

24 Maintenance of public order at meetings

2.24.1 This order cites section 50 of the Local Government Official Information and Meetings Act:

Chairperson may require members of the public to leave meeting

(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 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 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.

2.11 The Trespass Act 1980

2 Interpretation

(1) In this Act, unless the context otherwise requires

Occupier, in relation to any place or land, means any person in lawful occupation of that place or land; and includes any employee or other person acting under the authority of any person in lawful occupation of that place or land:

Private land means any land alienated from the Crown in fee simple or for any lesser estate or interest and any land, whether alienated from the Crown or not, of which any person is in actual occupation or in receipt of the rent or profits:

- 2) Where, except by virtue of this subsection, no person is the occupier of any place or land, the owner of that place or land shall, for the purposes of this Act, be deemed to be its occupier.

13) Savings

Nothing in this Act shall derogate from anything that any person is authorised to do by or under any other enactment or [by law], or restrict the provisions of any of the following enactments and instruments

- c) Any enactment or instrument conferring a right of entry on any land.

3. Application of the Law – Background to my request for ‘speaking rights’.

3.1 I am a member of the public, citizen and ratepayer of Auckland City, and duly elected Media Spokesperson for the Water Pressure Group.

3.2 The ‘public watchdog’ role of the Water Pressure Group was acknowledged in [**The Police v Penelope Mary Bright** 10 May 2006 District Court Auckland CRN 05004027264 CRN 05004024060 Oral Judgment of Judge CS Blackie]

[3]I should add that Ms Bright has a particular interest in the affairs of the finance and corporate business committee, she being a spokesperson for an informal organisation that has, for some time, been involved as a public watch dog of the affairs of Metro Water.

3.3 The ‘watchdog’ role of the Water Pressure Group was also acknowledged in [**The Police v Penelope Mary Bright Annie King** 16 November 2006 District Court Auckland CRN 06004047761, 06004047764 Reserved Decision of Judge Nicola Mathers]

[19].... Both Ms Bright and Ms King have a particular interest in matters relating to water in the Auckland area and Ms Bright is a spokesman for the Auckland Water Pressure Group which acts as a watchdog in relation to water matters.

3.4 The Water Pressure Group, was established as a volunteer based community group after the formation of Metrowater in 1997 as a Local Authority Trading Enterprise (LATE), the Local Government equivalent of A ‘State Owned Enterprise’.

Founding Water Pressure Group members were familiar with the ‘commercialise, corporatise, privatise’ model which had seen New Zealanders eventually deprived of over \$20 billion worth of public property which had been owned at central government level and were determined to stop that happening with water services at local government level.

3.5 The Water Pressure Group were also diametrically opposed to the concept and practice of ‘user-charges’ as being the mechanism by which taxes (rates) are reduced for wealthier households and the commercial sector; while poorer families, particularly larger families which needed to use more water are being disproportionately burdened with the cost of water services.

This is in violation of our basic human right to affordable water.

“UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General Comment No. 15 (2002) The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights) 26 November 2002.

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

8. Environmental hygiene, as an aspect of the right to health under article 12(2)(b) of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.

For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes.

10. The right to water contains both freedoms and entitlements.

The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with Articles 11(1) and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good.

27.... Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups.

Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.”

3.6 The Water Pressure Group have been fighting since our inception in 1998, against the secret corporate water privatisation agenda. The 'one big Auckland Water Company' – with Watercare (the Auckland water services regional 'wholesaler') taking over the 'retailing' of water services currently operated by the other Councils/Metrowater and United Water. Then contracting out under a Public-Private-Partnership (PPP) the operation and management of Auckland regional water services to water multinational consortium United Water. Although the public would still 'own' the pipes – the operation and management would be contracted out ('leased') to water multinational United Water – for private profit, as it is already in Papakura.

3.7 Metrowater's new CEO Jim Bentley, worked for Thames Water (private water multinational) for 12 years as a 'strategic consultant', holding senior and international roles.. For his first five months in this country, Jim Bentley was with Watercare, as Programme Manager for the Three Waters Strategy ..” The Three Waters Strategy is just a repackaged rehash of the 'one big Auckland Water Company' that was rejected by the public in the Auckland Regional Water Review back in early 2000, but is still effectively being promoted in the Auckland Regional Governance changes that are being currently railroaded behind the public's back.

3.8 As Media Spokesperson for the Water Pressure Group, I had been heavily involved in helping to organise opposition to Auckland regional governance changes, which had been launched by the ill-fated 'Mayoral Coup' in September 2006.

3.8.1 Police Exhibit “2” Minutes of an Extraordinary Meeting of the Auckland City Council, Monday 18 September 2006

2. FUTURE GOVERNANCE OF AUCKLAND
DEPUTATIONS

(I) MS PENNY BRIGHT

Ms Penny Bright addressed the meeting on the democratic rights of citizens to open, transparent and democratically accountable local government.

His Worship the Mayor moved:

Councillor Northey seconded

That Ms Penny Bright be thanked for her presentation regarding the democratic rights of citizen to open, transparent and democratically accountable local government.

CARRIED

3.8.2 Police Exhibit “3” Minutes of a Meeting of the Auckland City Council
Thursday, 9 November 2006

5. DEPUTATIONS

5.2 AUCKLAND'S REGIONAL GOVERNANCE – MS PENNY BRIGHT

Ms Penny Bright addressed the Council on the matter of changes to Auckland regional governance.

Ms Bright stated:

“The topics are

1. Replies from the CEO's of Auckland, Manukau, North Shore and Waitakere City Councils on the advice they gave their respective Mayors regarding the lawful due process as laid out in the Local Government Act for “reorganisational proposals” as proposed by the above-mentioned Mayors.

2. The failure of the current process for Auckland regional governance for restructuring to follow lawful due process under the Local Government Act 2002 and how it will assist the privatisation of Auckland regional water supplies.

His Worship the Mayor moved:

Councillor Boyle seconded

That Ms Penny Bright be thanked for her submission on the matter of changes to Auckland regional governance.

CARRIED

3.9 The proposed changes to Auckland regional governance were an unfolding process, involving billions of dollars of strategic public assets, happening at the same time as the debate over where to hold the Rugby World Cup, but with hardly any publicity. Each time I had previously spoken about Auckland regional governance changes – I had covered a new development, as these above-mentioned minutes show.

3.10 The ‘debate’ over the Waterfront Stadium, was effectively a ‘sideshow ‘ to the main event, the attempted railroading of changes to the ownership, operation and management of billions of dollars of public assets, particularly water, without following lawful due process under the Local Government Act 2002 – behind the public’s back.

As a judicially recognised ‘public watchdog’, and citizen, I wanted to use my lawful democratic right to address Council on these issues, and thus requested speaking rights.

4 APPLICATION OF THE LAW

4.1 The 'due process' I followed in order to address the Auckland City Council meeting of 23 November 2006 was:

4.1.1 I applied in writing (by facsimile), on 22 November 2006.

4.1.2 On 22 November 2006 the reply from Council Services Manager Peter Burden (Police Exhibit "5" stated:

"I have received your request to appear as a deputation at the 23 November 2006 Council meeting, to speak on due process with regard to a stadium decision, Auckland regional governance and the alleged failure to follow lawful due process by some elected members and Council officers.

Your request has been declined.

The Mayor has ruled that there will be no deputations received on the stadium issue, given the timeframe in which the Council must make a decision on its preference and convey that to central government and to other business on the very full agenda for tomorrow night's meeting. Persons wishing to make submissions to the Council on the stadium decision, are able to do so via the Council's website, by telephoning the call centre, or by writing to the Council.

With respect to the matter of regional governance, you have already had two opportunities to address Council meetings regarding this and any further deputation by you in this regard would be repetitious, and will therefore not be permitted.

The matter of the alleged failure of elected representatives and officers to follow due process has been well canvassed by you in previous deputations, and is also considered to be repetitious.

In addition, your request for a deputation was received out of time. As you are aware, the Council's standing orders require applications for a deputation to be made at least seven clear days before the date of a meeting.

4.2 The reasons why the denial of my request for speaking rights was unlawful.

4.2.1 Under Auckland City Council Standing Orders, the only stated grounds for refusing requests for deputations are if they are 'repetitious' or 'offensive'.

2.13.2

Notwithstanding order 2.13.1, where in the opinion of the Chairperson the matter which is the subject of a deputation is one of urgency or major public interest, the Chairperson may determine that the deputation be received by the local authority.

4.2.2 Neither witnesses Dick Hubbard nor Peter Burden, could produce a copy of my original request for speaking rights in order to confirm that my subject matter was 'repetitious'.

4.2.3 The witness Dick Hubbard confirmed under oath that he had not read the decision of Judge A S Singh, [**The Police v Penelope Mary Bright** August 2006 District Court Auckland CRN 06004043669 Judge Singh, which stated:

[22] The initial decline and re-confirmation of decision to decline did not specify when the subject had been earlier discussed for it to be repetitious.

[23] On 27 October 2005, before a decision to decline speaking rights was confirmed, the Chairperson should first have ascertained what exactly was the subject matter of discussion. If, after a preliminary enquiry, the Chairperson was satisfied that it was repetitious and/or offensive, he may well have been entitled to decline the request.

[24] Should the defendant then have proceeded to speak on the issue, the Chairperson may well have had reasonable grounds to believe that the defendant was likely to prejudice the orderly conduct of the meeting.

[25] Evidence of the subject matter being repetitious, and the basis for reasonable grounds to believe that the defendant was likely to prejudice the orderly conduct of the meeting was not adduced in evidence.

[26] This is not to say that the subject in respect of which speaking rights had been requested was not repetitious or offensive.

[27] The onus was on the prosecution to provide evidence of it to support the decision to decline the request, which could then have formed the basis of the reasonable grounds to believe that the defendant's insistence to speak was likely to prejudice the orderly conduct of the meeting.

[28] Although the charge is under the Trespass Act, a guilty finding would generally result in a conviction.

[29] The onus of proving the charge is on the prosecution, and the standard of proof is beyond reasonable doubt.

[30] In view of the lack of evidence on the issue of whether the subject was repetitious and/or offensive and the basis for reasonable grounds to believe, I am left with a reasonable doubt. The benefit of the doubt goes to the defendant.

[31] Accordingly, the charge of trespass is dismissed.

4.2.4 The witness Dick Hubbard, when reminded that I was facing criminal charges which must be proven beyond reasonable doubt – where was the evidence which proved that I had raised this subject matter before - admitted under oath that he had no evidence which could prove that my subject matter was ‘repetitious’.

4.2.5 The above-mentioned reply from Council Services Manager Peter Burden Police Exhibit “5” stated that I wanted to speak about the stadium decision, but no evidence was produced to prove that I had ever previously spoken about the stadium issue. (Because I hadn’t.)

“I have received your request to appear as a deputation at the 23 November 2006 Council meeting, to speak on due process with regard to a stadium decision, Auckland regional governance and the alleged failure to follow lawful due process by some elected members and Council officers.

4.2.6 The Mayor had declined ALL requests to speak on the stadium issue. The above-mentioned reply from Council Services Manager Peter Burden Police Exhibit “5” stated:

The Mayor has ruled that there will be no deputations received on the stadium issue, given the timeframe in which the Council must make a decision on its preference and convey that to central government and to other business on the very full agenda for tomorrow night’s meeting. Persons wishing to make submissions to the Council on the stadium decision, are able to do so via the Council’s website, by telephoning the call centre, or by writing to the Council.

- 4.2.7 Yet the Mayor acknowledged, in his opening remarks to this Council meeting as shown in the DVD footage the significant amount of public interest, and urgency in the stadium issue, given the two week timetable which had been given by the Government for the Auckland City Council and ARC to make a decision on the Waterfront Stadium.
- 4.2.8 The fact that the Council had set up a website specifically to get public feedback on this issue was evidence of the public interest in the stadium issue. It was acknowledged that this was not usual practice to do this.
- 4.2.9 The fact that there were approximately 150 people present at this Council meeting was acknowledged as evidence of the public interest.
- 4.2.10 In the event - there were only two requests for speaking rights at public forum. This was confirmed by Council Services manager Peter Burden. The fact that some members of the public may not be aware of their rights as citizens to participate in the democratic process, by requesting speaking rights at Council meetings surely should not deprive those who do know, and avail themselves of these democratic rights.
- 4.2.11 There was time for these two requests for speaking rights to have been accommodated, (particularly given that the Mayor adjourned the meeting for approximately 30 minutes).
- 4.3 The Auckland Regional Council, effectively a 'sister' body to the Auckland City Council, covered by the same Local Government Act 2002 and Local Government Official Information and Meetings Act 1987, held their meeting on the Waterfront Stadium the next day, 24 November 2006, and their Chairman did allow deputations.
- 4.3.1 The duly authenticated minutes of the ARC meeting held on 24 November 2006, Section A Pg 1 (my EXHIBIT A), showed that ARC Chairman Mike Lee, did allow deputations to speak on the Waterfront Stadium issue, (accommodating the short timeframe for decision-making by limiting the 21 submitters to 3 minutes speaking time each.)

MOVED

Council Chairman, Councillor M E Lee

SECONDED

Councillor C Rose

That the following Standing Order 3.19.6 be suspended for the duration of the meeting.

“Unless the meeting determines otherwise in any particular case, a limit of 10 minutes is placed on a speaker making a presentation, or 5 minutes each if there are 2 members of the deputation addressing the meeting”.

CARRIED

Committee Secretary: 24 November 2006

The Chairman ruled that each speaker would be allowed 3 minutes to speak and asked speakers to adhere to this time limit, as the Council were expected to make a decision by 12 Noon.

4.3.2 The duly authenticated minutes of the ARC meeting held on 24 November 2006, Section A Pg 6, (my EXHIBIT A), confirms that I, Penny Bright, was one of those 21 speakers who made a verbal submission.

4.3.3 ARC Chair Mike Lee, upheld the democratic rights of the public to address the ARC on the Waterfront Stadium issue, for which there was just as much ‘public interest’ and arguably even more ‘urgency’ – given that the ARC had until 12 noon, that day to make their decision.

4.3.4 There was no ‘disorder’, no meeting adjournment, no arrest, when the democratic rights of the public to address the ARC were respected by their Chairman, Mike Lee.

4.4 The minutes of the Auckland City Council meeting of 23 November 2006, as shown in the DVD evidence when projected for everyone to read upon the wall behind the Mayor, were not accurate and I interjected to point this out.

4.4.1 The minutes stated:

5  **DEPUTATIONS**

There were no deputations

4.4.2 According to the Transcript of DVD: Council Meeting 23 November 2006 Police EXHIBIT____ the Mayor stated:

00:06:57 Mayor Deputations, there are no deputations tonight

4.4.3 This was not accurate. My request for a deputation had been declined. This was proven by the evidence in (Police Exhibit “5” 22 November 2006 the reply from Council Services Manager Peter Burden :

I have received your request to appear as a deputation at the 23 November 2006 Council meeting, to speak on due process with regard to a stadium decision, Auckland regional governance and the alleged failure to follow lawful due process by some elected members and Council officers.

Your request has been declined.

4.4.4 Similarly, Lisa Prager’s request for a deputation had been declined as proven by the evidence in my EXHIBIT B (a copy of the email from Council Services Manager Peter Burden to Lisa Prager dated 22 November 2006, stating:

Your request for a deputation to tomorrow nights Council meeting regarding due process relating to the financing of the stadium of the stadium on the Auckland waterfront has been declined.

4.4.5 But under Auckland City Council Standing Orders, Police EXHIBIT “4” [cl.28, Schedule 7, LGA] Pg 28, the minutes supposed to be prima facie evidence of proceedings.

2.11 Minutes of proceedings

2.11.1 Minutes to be evidence of proceedings

”(1) The council must keep minutes of its proceedings.

(3) Minutes of proceedings duly entered and authenticated as prescribed by the council are prima facie evidence of those proceedings.

4.4.6 I gave evidence that I had interjected to draw attention to the fact that the minutes were inaccurate, by stating that I had been denied speaking rights. According to the Transcript of DVD: Council Meeting 23 November 2006 Police EXHIBIT ____

00:06:57 Unknown ...they...(indistinct)...deny...ind...Rights ...ind...
Dick...ind

4.4.7 Nobody, including both the Mayor and Council Services Manager who both knew full well that requests for deputations had been declined, attempted to correct these minutes, which should have more accurately stated that 'All requests for deputations were declined'.

4.4.8 Had the minutes been accurate, I would not have made that 'interjection.'

4.5 I then stood up and silently held up a banner, (produced and displayed in Court) which stated:

Mayor Hubbard's DICKtatorship is a CEREAL matter – don't buy it!

4.5.1 The Transcript of DVD: Council Meeting 23 November 2006 Police EXHIBIT___ stated:

00:07:09		Camera to BRIGHT standing with banner
00:0 :12	Mayor	... I now ask Counsellor NORTHY to speak but before I ask Counsellor NORTHY to speak I do ask that that banner be taken down that, I do regard that as interference and Penny Bright can I ask you please to take that banner down
	Bright	You denied me speaking rights mayor
	Mayor	Im sorry...
	Bright	you've acted unlawfully
	Mayor	Penny Bright I regard that as interference in the meeting I ask you from the chair that you take that banner down if you do not take that banner down I exercise my rights under standing orders to have you removed from the meeting

4.5.2 Before the Mayor engaged me in conversation about the banner, the DVD evidence showed I was simply silently holding the banner.

4.5.3 The only member of Council who could directly see was the Mayor – other Councillors either had their backs to me or were side on to me, as confirmed by DVD evidence.

- 4.5.4 No evidence was produced to show that my silently holding this banner 'interfered' with the conduct of the meeting, in any way other than the Mayor taking offence to it.
- 4.5.5 I gave evidence that this was the fifth occasion which Mayor Dick Hubbard had denied me speaking rights and had had me arrested. That in my opinion, my reference to his 'DICKtatorship', thus had some justification, especially given that Judge Singh in his above-mentioned decision, had ruled that the Mayor had acted unlawfully in denying me speaking rights and dismissed that first trespass charge. The Police had subsequently dropped three other charges 'triggered' by the Mayor because presumably because they would have lost for the same reasons, had they gone to court.
- 4.5.6 Auckland City Council Group Manager for Democracy Services Christine Watson displayed her rather dismal lack of knowledge and understanding of Auckland City Council Standing Orders, by claiming that they prohibited the holding of banners at Council meetings, but, when asked to produce evidence which would confirm that – was unable to do so. (Because Standing Orders say no such thing.)
- 4.5.7 Mayor Dick Hubbard, although stating under oath under cross-examination that he had sworn an oath to the public to 'uphold the law', admitted that he was not familiar with the Bill of Rights Act 1990.
- 4.5.8 The Transcript of DVD: Council Meeting 23 November 2006 Police EXHIBIT ____ stated

00:07:12 Mayor I give you a second

UKF1 indistinct

Mayor warning I give you a second warning ms BRIGHT

I ask you to take that banner down

UKF1 where...ind...Democracy

Bright Its five nil to me Mayor Auckland City Council versus

Penny Bright

Mayor Penny Bright

Bright you've acted unlawfully

Mayor under st... under standing orders...

Bright ...indistinct..Three District Court Judges...ind

Mayor under standing orders I ask you for the last time to desist or I will adjourn the meeting and ask officers to remove you from the floor

Bright This is railroading and undemocratic and does not follow the provisions of the Local Government Act or the Local Government ...Ind

Mayor Penny BRIGHT I formally request you to desist from these interruptions tonight and allow the council the council to continue in a lawful manner

UKF2 hear hear

UKF1 hear hear

Bright ...ind...standing orders..ind

00:08:14 Mayor Penny Bright since you refuse to allow us to continue this meeting or the orderly conduct of this meeting I rule you as disorderly as set out in section 50 of the Local Government Official Information and Meetings Act 1987 and standing orders 2.24.1 of which you will be provided a copy by officers and I now require you to leave the premises immediatly...Counsellors I am unfortuntly adjurn this meeting for 15 mins....

4.5.9 The first and second warnings given by the Mayor were for me to put down the banner, which he claimed constituted 'interference' in the meeting, although no evidence was adduced to support how holding a banner 'interfered' with the meeting.

4.5.10 I gave evidence, as did my witness Annie King, and it was shown on the DVD evidence, that I had folded up the banner and sat down, before the Mayor adjourned the meeting, so I had in fact, taken the warning and complied with his request.

4.5.11 The Mayor effectively disrupted his own meeting by adjourning it after I had taken his warning and complied with his request to put my banner down.

4.5.12 [The warning given by the Mayor was clearly a warning under section 50 of the Local Government Meetings and Information Act 1987.](#)

4.6 As the Mayor is 'Chair' of meetings of Auckland City Council, members of the public have a right to expect that his rulings are 'fair' and consistent.

- 4.6.1 The Transcript of DVD: Council Meeting 23 November 2006
Police EXHIBIT _____(quoted in 4.5.8), and the DVD evidence shows that I was not the only person who made comments which could have, by the Mayor's definition, been described as 'interruptions'.
- 4.6.2 However, the Mayor gave no specific warnings to any other person.
- 4.6.3 Under oath, he described me as the 'ringleader', although no evidence was adduced that showed these persons when they made their comments, were acting under my instructions.
- 4.7 While the meeting was adjourned – there was no meeting taking place.
- 4.7.1 My actions at that time that the meeting was adjourned were effectively no different to any of the other 150 people sitting in this room of the Town Hall, at which members of the public had a statutory right to be present.
- 4.7.2 At this time, while no meeting was taking place, like others, I sat in my seat and talked to those persons sitting next to me. As the DVD evidence clearly showed, there was nothing 'disorderly' about my conduct.
- 4.8 The Town Hall, the place where democracy is supposed to be practiced in Auckland City, is a public place, from which the public cannot be excluded without lawful good reason.
- 4.8.1 No evidence was adduced confirming that the Town Hall is, in effect, the private property of Auckland City Council staff, or elected representatives.
- 4.8.2 No evidence was adduced confirming that Auckland City Council staff have the lawful right to claim to be 'the 'occupier', for the purposes of the Trespass Act 1980.
- 4.8.3 The Town Hall is the place where citizens have a statutory right to be present. [It was at the time open to, and in use by the public.](#)
It was a public place.

4.8.4 To have a citizen removed from the Town Hall – the place where democracy is practised in Auckland City, is an action which should not be taken lightly, or without lawful good reason.

4.9 Auckland City Council staff relied on a written procedure, Police EXHIBIT “1” “Process for Removing Persons from the Meeting under Section 50 of the Local Government Official Information and Meetings Act 1987 then Trespass Act”, instructing me to ‘leave the premises’ which was not based on law or statute.

Should a member of the public cause continual interruption at a meeting the Chairman will say:

{Name of person) will you stop interrupting this meeting and allow it to proceed in an orderly manner.

(Name of person) since you refuse to allow us to continue with the orderly conduct of the meeting I rule you as disorderly (as set out in Section 50 of the Local Government Official Information and Meetings Act 1987 and Standing Order 2.24.1 of which you will be provided a copy by officers) and I now require you to leave the premises immediately.

Councillors I will adjourn the meeting in the interim for 15 minutes

4.9.1 Section 50 of the Local Government Official Information and Meetings Act 1987, states that a person who is deemed to be ‘disorderly’, may be removed from ‘the meeting’ - NOT ‘the premises’.

(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 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.

4.9.10 Under cross-examination, the Group Manager for Democracy Services, Christine Watson, admitted that she had not realised that this Council 'procedure' had not been based accurately on the quoted statute.

4.9.11 Under cross-examination, the Group Manager for Democracy Services, Christine Watson, admitted that this 'procedure' had been drawn up by Council officers who were not trained lawyers.

4.9.12 Under cross-examination, the Group Manager for Democracy Services, Christine Watson, admitted that the Council officers who had drawn up this procedure, had not sworn an oath to the public to uphold the law, yet they were giving advice to elected representatives who had so sworn.

4.9.2 In the event, the Mayor did not follow this 'procedure'.

I was not warned for 'interruptions' – I was warned to put down my banner which I had been silently holding.

I was warned for 'interference', which is covered neither by this Council 'procedure' (which had no basis in statute), nor the statute itself, the Local Government Official Information and Meetings Act 1987, which refers to Section 50 (1)

.. 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 ..

4.9.3 Again, no evidence was adduced which proved that my silently holding a banner prejudiced the 'orderly conduct' of the meeting, apart from the fact that the Mayor chose to take offence to it.

The Mayor could have ignored the banner. He chose not to.

In the event, I took the warning and put the banner away before he chose to adjourn the meeting.

4.10 I was arrested by Police for trespass, at a time when no meeting was taking place, because the Mayor had himself adjourned it.

4.10.1 My behaviour was not prejudicing the 'orderly conduct' of the meeting, because at that time there simply was no meeting.

- 4.10.2 At the time of my arrest, my behaviour was essentially no different to that of any other of the 150 people sitting in the room.
- 4.10.3 My behaviour, confirmed under oath by arresting Police Officer Constable Perese, and supported by the DVD evidence, was not violent or abusive, and I presented no threat to person or property by sitting in a chair, at a Council meeting in the Town Hall at which I, as a member of the public, had a statutory right to be present.
- 4.10.4 I gave evidence that I had asked the arresting Police Officer what I was disrupting given that there was no longer a meeting taking place.
- 4.11 I was asked to leave, but I was not warned to leave by ‘the occupier’, as is required under the Trespass Act 1980.

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.

5) Delivery of warning

A warning under section [3](#) or section [4](#) of this Act shall be given to the individual person concerned either orally, or by notice in writing delivered to him or sent to him by post in a registered letter at his usual place of abode in New Zealand.

- 4.11.1 Council Services Manager Peter Burden admitted under oath that he could not remember warning me for trespass.
- 4.11.2 Arresting Police Officer Constable Perese admitted under oath that he could not remember Council Services Manager Peter Burden warning me for trespass.
- 4.11.3 It is an element of the charge, of which strict proof is required, for the prosecution to prove that the warning to leave was given by an occupier.”

4.11.4 If a person comes on to an occupier's land with authority, the occupier must have revoked the authority and warned the person to leave before a "trespass" can be said to be committed:

4.11.5 There are three elements to the offence created by s 3(1) of the Act. Each element must of course be proved beyond reasonable doubt by the prosecutor before a conviction can be entered. First, it must be proved that the person charged was trespassing on the relevant place; secondly, that the person charged was warned to leave that place by an occupier; and thirdly that he or she neglected or refused to do so.

4.11.6 There is no evidence that I was warned for trespass, which is a criminal charge, which must be proven beyond reasonable doubt.

4.12 In the event, no evidence was adduced which proved that Council Services Manager Peter Burden did in fact, have the 'delegated authority' from Auckland City Council CEO David Rankin to act as 'occupier' for the purposes of the Trespass Act 1980, in order to give such a 'warning'.

4.12.1 Even if such evidence of delegated authority had been produced, which it was not, does not mean that such a delegated authority was itself lawfully obtained.
(Just because the Auckland City Council CEO states something, or writes something - doesn't make it lawful).

4.13 The Town Hall, at the time of my arrest was a public place. No evidence was adduced to confirm that Auckland City Council staff, elected representatives (particularly the Mayor), or the Police, have the lawful right to trespass members of the public, particularly ratepayers, from the Town Hall, as a public place.

4.13.1 No evidence was adduced to confirm that the Town Hall was not a public place.

4.13.2 No evidence was adduced to confirm that as a resident and ratepayer I had no lawful right to be on this public property, namely the Town Hall, which my rates, along with those of other citizens and ratepayers, helped to maintain.

4.13.3 No evidence was adduced to confirm that as a ratepayer, I was not an 'owner' of the Town Hall.

4.13.4 No evidence was adduced to confirm that Auckland City Council staff were the lawful 'owners' and 'occupiers' of the Town Hall, whilst members of the public, particularly ratepayers such as myself – were not.

The Trespass Act 1980 states:

2 Interpretation

(1) In this Act, unless the context otherwise requires

Occupier, in relation to any place or land, means any person in lawful occupation of that place or land; and includes any employee or other person acting under the authority of any person in lawful occupation of that place or land:

Private land means any land alienated from the Crown in fee simple or for any lesser estate or interest and any land, whether alienated from the Crown or not, of which any person is in actual occupation or in receipt of the rent or profits:

2) Where, except by virtue of this subsection, no person is the occupier of any place or land, the owner of that place or land shall, for the purposes of this Act, be deemed to be its occupier.

13) Savings

Nothing in this Act shall derogate from anything that any person is authorised to do by or under any other enactment or [by law], or restrict the provisions of any of the following enactments and instruments

c) Any enactment or instrument conferring a right of entry on any land.

4.14 No evidence was adduced confirming that Auckland City Council staff, or elected representatives, particularly the Mayor, have the lawful right to use the Trespass Act 1980 to 'trump', the lawful right of entry that the public have to the public part of a Council meeting which is being held in the Town Hall – where democracy' is supposed to be practiced and upheld in Auckland City.

4.15 Judge C S Blackie in the Auckland District Court, on 10 May 2006, made a landmark ruling upholding the democratic rights of the public to ‘open, transparent and democratically accountable’ local government, and that ‘...any member of the public is entitled to be present at a local authority meeting’

[The Police v Penelope Mary Bright 10 May 2006 District Court Auckland CRN 05004027264 CRN 05004024060 Oral Judgment of Judge CS Blackie]

“ 13] I turn now to deal with the legal issues which, in my view, apply to a prosecution of this nature. I invited counsel this morning to provide to the Court any authorities which might be relevant to consideration of these issues but regretfully there doesn't seem to be any authorities in existence or if there are, counsel have been unable to locate them. I was informed that to some extent this was the nature of a test case. Essentially what is involved here is a consideration of ss 47 – 50 of the Local Government Official Information and Meetings Act 1987. Both counsel for the prosecution and Ms Bright in submissions that she provided to the Court herself, make reference to the early provisions of that Act.

Fundamentally, they are to ensure and promote public interest in matters of local government particularly in the way that local government performs its roles.

[14] The public is encouraged to be present at meetings of local government officials such as local councils or committees to ensure that the business is conducted in open, transparent and what is described as a democratically accountable manner.

I make general reference here to s 2 of the Local Government Act 2002. But specifically in relation to the Local Government Information Act, I make reference to s 47, which states that, except as otherwise provided by this part of the Act; every meeting of a local authority shall be open to the public. So, in a case such as this, the Court has to embark upon its considerations from the standpoint that any member of the public is entitled to be present at a local authority meeting. In my view a meeting of the finance and corporate business committee is a meeting of a local authority.

4.15 I **did not** leave the Town Hall because I believed that I had not done **anything** wrong; I had **not** acted unlawfully; I had a lawful right to be there; and my rights as a citizen to ‘open, transparent and democratically accountable’ local government had been upheld by three District Court Judges.

4.15.1 **I believed my arrest to be unlawful.**

4.15.2 Because I know it is lawful to resist an unlawful arrest, two Police Officers had to carry me out of the Town Hall, because I would not walk out willingly.

4.15.3 However, as shown by DVD evidence, I did not struggle – my resistance was passive.

4.15 Under Section 50 of the Local Government Official Information and Meetings Act 1987, removal of members of the public, deemed 'disorderly', is not, in fact an arrestable offence.

(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 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.

4.16.1 I gave evidence that in the past I had been removed from Auckland City Council meetings on five occasions by security guards under Therefore, to say, '*you leave me no option but to contact the police to arrange to have you removed from the building for trespass*' was not true, in fact or law.

4.16.2 Under cross-examination, the Group Manager for Democracy Services, Christine Watson, admitted that this 'procedure' had been drawn up by Council officers who were not trained lawyers.

4.16.3 Under cross-examination, the Group Manager for Democracy Services, Christine Watson, admitted that the Council officers who had drawn up this procedure, had not sworn an oath to the public to uphold the law, yet they were giving advice to elected representatives who had so sworn.

4.16.4 Under Section 50 of the Local Government Official Information and Meetings Act 1987, Police officers could have removed me, without arresting me.

- 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 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.

4.17 Under Section 50 of the Local Government Official Information and Meetings Act 1987, there is no direct linkage to the Trespass Act 1980.

They are two quite separate pieces of legislation, with different purposes.

From my understanding of the Trespass Act 1980, as a lay litigant, it's primary function appears to be to protect the rights of owners of private property from those persons who have no lawful right to be there.

In contrast, the underpinning principles of the Local Government Official Information and Meetings Act 1987, are quite the opposite – to encourage the arguably the 'owners' (ie: members of the public) on to this particular piece of public property, namely the Town Hall, in order to participate in local democracy.

The purpose of the Local Government Official Information and Meetings Act 1987 ("the LGOIMA") is provided for at section 4:

The purposes of this Act are-

(b) To provide for the availability to the public of official information held by local authorities, and to promote the open and public transaction of business at meetings of local authorities, in order-

To enable more effective participation by the public in the actions and decisions of local authorities; and

(ii) To promote the accountability of local authority members and officials,- and thereby to enhance respect for the law and to promote good local government in New Zealand:

5. MY TREATMENT AT AUCKLAND CENTRAL POLICE STATION.

5.1 I gave evidence, supported by my witness Annie King, that I was locked up for five hours at Auckland Central Police Station after my arrest.

5.2 I gave evidence that I was returned to my Police cell for another three hours because I wouldn't sign a bail bond (at 9pm) that stated that I was not to go back to the Town Hall.

As I believed that this bail bond violated my democratic rights as a citizen, I refused to sign it, despite being told that if I didn't sign it I would be kept in the Police cells overnight and go straight to Court the next morning in order to argue these bail conditions in front of a Judge. Because I was booked to make a deputation to the ARC that same morning, (24 November 2006), I found that quite stressful. Eventually the offending bail condition was crossed out on the bail form and I was released from Police custody after midnight.

6 AUCKLAND CITY COUNCIL CHANGED STANDING ORDERS THAT SAME NIGHT – 23 NOVEMBER 2006 – BEHIND THE PUBLIC'S BACK, UNDER 'CONFIDENTIAL', IN ORDER TO LEGITIMISE ACTIONS WHICH HAD BEEN FOUND PREVIOUSLY TO BE UNLAWFUL.

6.1 Police EXHIBIT___ "Open Agenda Council Thursday 23 November 2006" Pg 6,
17. EXCLUSION OF THE PUBLIC: LOCAL GOVERNMENT OFFICIAL INFORMATION AND MEETINGS ACT 1987

1. That the public be excluded from the following part(s) of the proceeding of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act

C3.	Standing Orders – Deputations/Public Forum	Good Reason to withhold exists under section 7	Section 48(1)(a)
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C3.	To maintain legal professional privilege.	[Section 7(2)(g)]	
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6.2 Minutes of the Auckland City Council meeting of 23 November 2006, showing the changes that were made to Auckland City Council Standing Orders regarding 'Deputations/Public Forum', to which I referred to in my cross-examination of Police witness, Council Services Manager Peter Burden.

8. **URBAN STRATEGY AND GOVERNANCE COMMITTEE REPORT NO. 03/2006**

Deputy Mayor moved:

Councillor Walsh seconded

That the recommendations contained in the report of the Urban Strategy and Governance Committee No: 03/2006 be adopted ie:

ii. Standing Orders - Deputations/Public Forum

That the Council's standing orders be amended so that standing order 2.13 reads as follows:

2. **13 Deputations/Public Forum**

Deputations may be received by the Council (or any of its committees or community boards) or public forum held before a committee or community board (except the Planning Fixtures Committee) provided in the case of deputations that a written application setting out the subject matter and names of speaking members of the deputation has been lodged with the Chief Executive at least three days before the date of the meeting concerned (unless waived under standing order 2.13.2) and has been subsequently approved by the Chairperson. The Chairperson may in his or her discretion refuse a deputation/public forum on any reasonable grounds including, but not limited to: insufficient time to hear the deputation/public forum at the meeting; the deputation/public forum would more suitably be heard at another meeting of council or before a committee or a different committee; the subject matter of the deputation/public forum is offensive or repetitious or vexatious or is considered likely to be so; the subject matter is insufficiently relevant to the business of council (or a committee); the previous disorderly or inappropriate behaviour of members of the deputation/public forum at council or committee meetings.

CARRIED

- 6.3 Although three different District Court Judges had upheld the public's right to 'open, transparent and democratically accountable' local government, this resolution, to restrict the democratic rights of the public to address meetings of Council, Council Committees or Community Boards, was passed that same night, 23 November 2006, with the public excluded.
- 6.4 Members of the public were not consulted on this significant change to our democratic rights to public participation as enshrined in the above-mentioned Local Government Official Information and Meetings Act 1987, and Local Government Act 2002.
- 6.5 Up until this change, the only grounds stated for which the Chair could refuse requests for deputations, were if they were '*repetitious or offensive*'.

2.13 Deputations

Deputations may be received by the local authority (or any committees thereof) provided an application for admission setting forth the subject has been lodged with the Chief Executive Officer at least seven clear days before the date of the meeting concerned and has been subsequently approved by the Chairperson. The Chairperson may refuse requests for deputations which are repetitious or offensive.

- 6.6 I believe that the changes made on 23 November 2006 are *ultra vires* to the legislation which underpins Auckland City Council Standing Orders.
- 6.7 Under oath, Auckland Area Commander, Inspector Rob Abbott (summonsed by subpoena as my witness), gave evidence that he had held meetings, and had telephone discussions with some Auckland City Council staff members, in order to acquaint them better with their obligations under the relevant legislation and in light of the new 'thresholds' that had been set by the decisions of District Court Judges Blackie, Singh and Mathers.
- 6.6.1 However, Inspector Abbott confirmed that his discussions were not with elected representatives (who actually chair Council or Council Committee meetings), but Council staff. (Apart from a telephone discussion with Councillor Richard Northey.)
- 6.6.2 I raised with Inspector Rob Abbott the fact admitted by Mayor Dick Hubbard that he had not read the decision of Judge Singh, (where the Mayor had been found to have acted unlawfully in denying me speaking rights in a similar case). Inspector Rob Abbott stated that he was not aware that was the case, and agreed that Mayor Dick Hubbard probably should have read that decision.
- 6.6.3 The outcome of decisions by three District Court Judges, and the intervention of the Auckland Area Police Commander, appear to have effected no improvement at all, in the democratic practices of the majority of Auckland City Council elected representatives, or the staff who advise them. In fact, these above-mentioned changes made to Standing Orders prove Auckland City Council has become even less democratic.

- 6.6.4 It is my considered opinion, having now been arrested fifteen times in defence of these democratic rights to which as citizens we are supposed to be lawfully entitled, that Auckland City Council staff and elected representatives at the highest levels of our civic administration apparently believe that they are simply above the law, and can just 'make it up'.
- 6.6.5 To date, I have not yet lost in Court on these matters, but I continue to get arrested for the same reasons that three other District Court Judges have previously thrown out.

7 CLOSING SUBMISSIONS

- 7.1 This is my summary of this case before you, Your Honour.
- I was warned to put down a banner which I had silently held to protest against being (again), unlawfully denied speaking rights by Auckland City Council Mayor Dick Hubbard on the 'Waterfront Stadium', a matter of significant public interest and urgency.
- I took the warning and put the banner away before the Mayor adjourned the meeting. I was arrested for trespass, for sitting peacefully in a chair at a meeting room in the Town Hall, a public place, at a time when there was no longer a meeting.
- After spending five hours locked up in a cell at Auckland Central Police Station, the next morning, along with twenty others, I addressed the Auckland Regional Council (ARC), on the same issue.
- The Chair of the ARC, Mike Lee, respected and encouraged public participation in the democratic process of Local Government.
- As Chair of Auckland City Council, Mayor Dick Hubbard did not.
- 7.2 I look to you, Your Honour, to uphold our lawful democratic rights as citizens, and make it clear to the Mayor of Auckland, Dick Hubbard, that he is not above the law.
- As the Mayor is Auckland City Council's 'civic leader', I believe the public have a right to expect leadership by example in the following of the law he swore an oath to the public to uphold, for which he has statutory duties to uphold, and receives public monies to so do.

Upon election, Mayor Dick Hubbard publicly swore to uphold the following declaration:

"I, AB, declare that I will faithfully and impartially, and according to the best of my skill and judgement, execute and perform, in the best interests of Auckland City, the powers, authorities, and duties vested in, or imposed upon me as [mayor or member] of the Auckland City Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act."

Members of the public have a right to expect, therefore, that as Mayor, he will be familiar with the underpinning legislation upon which his statutory duties are based and act according to the law.

That as Mayor, he will uphold and respect the democratic rights of citizens, as will the Auckland City Council Officers who so 'advise' him.

- 7.3 I look to you, Your Honour, to keep faith with the public, who seek justice in our Courts, and ensure that all citizens, including the Mayor are equally held accountable before the law, in accordance with your New Zealand Judicial Oath:

"I, [Full Name of Judge] swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law, in the office of [Queen's Judge]; and I will do right to all manner of people after the laws and usages of New Zealand without fear or favour, affection or ill will. So help me God."

[S18 Oaths and Declarations Act 1957]

- 7.4 Your Honour, as a community and human rights activist, and judicially recognised 'public watchdog' I have learned some simple facts.
If you don't know your rights – you don't have any.
If you don't defend the rights that you are supposed to have – you lose them.

- 7.5 I consider myself to be an extremely responsible citizen, and have taken defence of the principles of 'open, transparent and democratically accountable local government to the point of arrest, now fifteen times.
I put it to you, Your Honour, that there are not many citizens who defend their convictions to the point of conviction.

After now FIFTEEN arrests – I'm getting really sick of this.

Where is the justice in continually being arrested; treated like a criminal, locked in Police cells; forced again to go back to Police cells because I refuse to sign bail bonds that violate my democratic rights as a citizen? I have my 'day in Court' – I win, then get arrested again for the same reasons that have previously been thrown out of Court.

Despite the efforts of the Auckland Area Commander of Police to better acquaint Auckland City Council staff with their obligations under the legislation, and in light of the 'new thresholds' set by District Court Judges Blackie, Singh and Mathers, Mayor Dick Hubbard, admitted under oath that he hadn't even read the decision of Judge Singh.

The Group Manager of 'Democracy Services', Christine Watson, stated she had read Judge Singh's decision, but she is not the person who chairs the meetings of Auckland City Council, who had not.

7.6 To add insult to injury, Auckland City Council Mayor, Councillors and staff chose not to learn from the decisions of Judges Blackie, Singh and Mathers which raised the threshold of democratic practice, in defence of the public's right to 'open, transparent and democratically accountable' local government.

Behind the public's back, in 'confidential', they 'changed the rules' - changed Auckland City Council Standing Orders regarding 'deputations' to make them less democratic, seemingly in order to legitimise their actions which had previously been found in Court, to have be unlawful.

7.7 The role of the Police must also be called into question.

It is their job to uphold the law, before which we are all supposed to be equal, according to their Police Oath:

37. Oath to be taken---- (1) Every member of the Police shall take the following oath before a Justice or a commissioned officer of Police:

“ I, A.B., do swear that I will and truly serve our Sovereign Lady the Queen in the Police, without favour or affection, malice or ill-will, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved; that I will prevent to the best of my power all offences against the peace; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to the law. So help me God.”

'MIGHT' is not supposed to be right.

To date, I have won five cases in Court, and the Police have dropped five cases.

Yet, the Police continue to enforce actions of the Mayor, (and other Councillors) which have already found to have been unlawful.

7.8 Your Honour, when will this stop?

What can you do to help make this stop?

What will it take to make the Mayor, Councillors and Auckland City Council staff get the message that THEY ARE NOT ABOVE THE LAW, and THEY CANNOT KEEP JUST 'MAKING IT UP', and that equally, the Police must stop BACKING THEM UP?

7.9 Your Honour, as a lay litigant, I seek your assistance in ensuring that our lawful democratic rights to 'open, transparent and democratically accountable' local government, as enshrined in the Local Government Act 2002, Local Government Official Information and Meetings Act 1987, are upheld and protected in a manner that cannot be ignored.

7.9.1 Can you make a specific Court Order, which if the Mayor breaches, he will then be found in contempt of court?

7.9.2 Can you make a ruling that effectively strikes out as *ultra vires* the changes made to Auckland City Council Standing Orders regarding 'Deputations/Public Forum'?

7.9.3 Can you make an Order (or the like) for restitution or compensation for the violation of my rights as a citizen, and my five hours incarceration in the cells at Auckland Central Police Station?

Please note, Your Honour, that although I have been arrested now on FIFTEEN occasions, this is the first time that I have made a request to any Judge for any form of compensation.

The reason why I am doing this is because maybe it is what is required to make the Mayor and Auckland City Council staff sit up and take notice – if there are financial repercussions to their actions. Sadly - nothing else to date has worked.

7.9.4 Can you make an Order (or the like), requesting that the Police no longer uphold actions of the Mayor, Councillors or Council staff that have proven to be unlawful. That the Police take whatever steps are necessary to ensure that discussions are had with the Mayor (and other elected representatives who 'chair' Council or Council Committee meetings, and the staff who are supposed to advise them, to ensure that they are fully aware of their lawful obligations under the legislation and in light of the District Court Judgments which have set new thresholds – because at present this is clearly not the case.

“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

(Preamble - Universal Declaration of Human Rights 1948)

May justice be done, and be seen to be done and the rule of law prevail.

Penny Bright

