

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

**CIV-2015-419-000219
[2015] NZHC 2836**

BETWEEN GENERAL DISTRIBUTORS LIMITED
 Appellant

AND NEW ZEALAND POLICE
 Respondent

Hearing: 19 October 2015

Appearances: Duncan McGill for the Appellant
 Martin Dillon for the Respondent

Judgment: 13 November 2015

JUDGMENT OF MOORE J

This judgment was delivered by me on 13 November 2015 at 4:00pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

Introduction

[1] In August last year Mrs Graham went to her local Countdown supermarket to buy a couple of items.

[2] Once inside the supermarket her attention was drawn to a slightly unkempt man who looked and behaved as if he was drunk. Mrs Graham has some considerable professional experience in the treatment of both mental health, and drug and alcohol dependency. She saw the man purchase what she then believed, and was later confirmed to be, alcohol. Mrs Graham laid a complaint with the Police.

[3] The Police applied to the Alcohol Regulatory and Licensing Authority (“the Authority) for the suspension or cancellation of the Countdown supermarket’s off-licence on the grounds it had sold alcohol to an intoxicated person in breach of the Sale and Supply of Alcohol Act 2012 (“the Act”).¹ The matter came before the Authority which found the allegation proved and made an order suspending Countdown’s off-licence for five days.

[4] Countdown now appeals the Authority’s finding on the grounds there was no sufficient proof that the man in question was intoxicated by alcohol.

Background facts

[5] At around midday on Saturday, 30 August 2014 Mrs Graham went to the Anglesea Street Countdown in Hamilton. As she walked in she saw a male Māori of medium build standing near the wine shelves which are situated to the left of the main doors. He looked to be in his mid-30s. He had dark hair and was slightly unkempt.

[6] What particularly drew this man to Mrs Graham’s attention was that he was staggering and appeared unbalanced on his feet. His mood was ebullient and he was socially gregarious. He tried to engage inappropriately with those around him.

¹ Sale and Supply Alcohol Act 2012, s 248(1).

[7] Mrs Graham watched him closely for a minute or so. She described him looking around the fruit and vegetable section which is next to the alcohol section. She was about seven metres away but gave him a wide berth because she did not want him to engage with her.

[8] Mrs Graham is the Chief Executive Officer and Founder of the Wise Group which provides mental health services nationwide. The Wise Group is a charitable trust which operates 10 subsidiary companies which provide mental health services and other services nationally. The organisation runs the Drug and Alcohol Research Centre for New Zealand employing 1,000 staff. It also operates the “People’s Project” for the homeless in Hamilton and other communities around New Zealand. Additionally, the Wise Group operates a drug and alcohol research group called Matua Raki for the Ministry of Health.

[9] Mrs Graham, herself, has worked extensively in community drug and alcohol anti-dependency services and programmes. She started in the health sector as a student nurse at the age of 17 and since then has been extensively involved in a variety of roles including running the methadone dispensing programme in Auckland. This role required her to be able to quickly assess a person’s mental state and the influence which drugs or alcohol might have on that state. She continues to be involved in front line work, working with the homeless. She has been involved in the mental health sector for some 35 years.

[10] Mrs Graham saw the man picking up wine but assumed he would not be served because it was plain to her that he was drunk. She went down to the other end of the supermarket. But when she returned to the front of the store she saw him at the self service checkout. She used the self server directly to the man’s right. She saw a member of Countdown’s staff standing next to the man helping him with his purchase.

[11] At this point she estimated he was about one metre away. When she was standing next to the man she saw what looked like alcohol amongst his purchases. She could hear him slurring his words. It seemed to her that the man needed the assistant's help because his condition was such that he appeared unable to complete the transaction himself.

[12] So concerned was Mrs Graham with what she saw that she asked the assistant if she could help her. The assistant came over and Mrs Graham said:

“You can't serve that man intoxicated. It's against the law and he's really drunk.”

She added:

“If he goes out and kills someone it will be your fault.”

[13] The young assistant looked flustered and said she did not know what to do. By this time the man was leaving the supermarket. As he did, Mrs Graham saw a Police officer enter the supermarket. She stopped him and explained to him what she had just seen. The Police officer was the Acting Area Commander, Inspector Bensemman.

[14] Inspector Bensemman had entered the supermarket as the man was leaving. The inspector saw him carrying a plastic bag with what looked like a cask of wine inside. He remembered the man making a “stupid remark” but he did not take much notice of him and it did not occur to him that he was intoxicated.

[15] Inspector Bensemman took Mrs Graham's complaint. He then spoke with the duty manager of the store who said he would review the CCTV and safeguard the footage so that the Police could view it the following Monday.

[16] Surprisingly, Countdown later refused to provide the Police with access to the CCTV footage. In an exchange of correspondence with Countdown's legal advisors it was indicated to the Police that in the absence of a compulsory order requiring Countdown to produce the video it would not be provided.

Decision of the Authority

[17] Judge Weir introduced the Authority's decision by observing that Countdown had put the Police to proof by requiring them to establish the elements of the charge. In doing so it had adduced no evidence in its own defence, a matter which the Judge observed entitled the Authority, at least in relation to the CCTV footage, to draw an adverse inference about Countdown's involvement.

[18] He then summarised Mrs Graham's evidence noting that she was extensively cross-examined during which it was put to her that the symptoms which she had observed were equally consistent with someone suffering an intellectual disability. The Judge recorded Mrs Graham's disagreement and her reasons for disagreeing. The Judge also described how it was put to Mrs Graham that she could not be certain that the man was purchasing alcohol.²

[19] The Judge went onto discuss the evidence of Inspector Bensemman before turning to the standard of proof and the nature of the offence. In relation to the standard of proof the Judge observed it was on the balance of probabilities but to the high end of that standard.³

[20] The Judge then discussed the nature of the offence describing it as a strict liability provision.⁴

[21] In relation to Mrs Graham's evidence the Judge observed that the Authority seldom had before it such accurate evidence from a civilian witness. Additionally, the Judge observed that Mrs Graham was highly experienced in the assessment of people under the influence of alcohol and/or drugs. He noted that her evidence was not seriously challenged.

² Mrs Graham's response to this line of questioning was that she could see that the man had purchased alcohol although she was unable to read the labels. She also noted that the supermarket attendant had confirmed alcohol had been sold immediately after the sale had been completed. On appeal this challenge was not pursued. It was accepted that the customer had purchased alcohol.

³ The Judge made reference to *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1; *Triveni Puri Limited v Commissioner of Police* [2012] NZHC 2913, [2013] NZAR 88.

⁴ The Judge referred to *General Distributors Limited v de'Ath* [2014] NZHC 3378.

[22] The Authority was satisfied that the statutory criteria for intoxication had been made out, namely that the man's appearance was affected and his behaviour, co-ordination and speech were impaired.

[23] The Authority found there had been a breach of s 248(1) of the Act namely that Countdown had sold or supplied alcohol to an intoxicated person. Thus the grounds for the application were found to be established and an order was made that the supermarket's off-licence would be suspended for five days commencing 7:00am on Saturday, 18 July 2015.

The present appeal

[24] Countdown appeals the decision of the Authority and the suspension order on the following grounds:

- (a) the Authority erred in law by failing to apply the requisite standard of proof of intoxication to the evidence for the purposes of s 248(1) of the Act; and
- (b) the Authority reached a conclusion which it could not have reasonably come to on the evidence in that there was insufficient evidence to support a finding that alcohol was sold to an intoxicated person.

[25] Thus the focus of the appeal is narrow. Countdown argues that had the Authority correctly applied the standard of proof there was insufficient evidence available for it to conclude that the customer in question was intoxicated by alcohol.

Approach to appeal

[26] The approach to an appeal against a decision of the Authority was set out in the decision of Kós J in *Triveni Puri Ltd v Commissioner of Police*, where his Honour observed:⁵

“It has been observed by the Courts that there is a limited scope for appeal from the Authority. The Act puts responsibility for enforcement decisions

⁵ *Triveni Puri Ltd v Commissioner of Police*, above n 5, at [19].

largely in the hands of the Authority, reflecting Parliament's view of its central importance to the licensing system. This Court is nevertheless bound to reach its own independent conclusion. It may give such weight as it thinks fit to the opinion of the Authority, but must not regard itself as bound by the Authority's opinions, simply because it is a specialist tribunal. However, the Authority is an experienced body, well able to assess evidence and has the advantage of actually seeing and hearing the witnesses in question and listening to the cross-examination.”

(citations omitted)

[27] This approach is accepted by the appellant to be the appropriate one. As the appellant observes, it is a limited scope, but the Court is nonetheless bound to reach its own independent conclusion.

Legal principles

Sale and Supply of Alcohol Act 2012

[28] The Act was passed following the Law Commission’s report, “Alcohol in Our Lives: Curbing the Harm”.⁶

[29] The policy objectives of the Alcohol Reform Bill 2010 were recorded in the report back from the Justice and Electoral Committee as including:⁷

- (a) to reduce the harm caused by alcohol use including crime, disorder, public nuisance, and the negative public health outcomes; and
- (b) support the safe and responsible sale, supply and consumption of alcohol; and
- (c) reducing the harm caused by alcohol use including negative public health outcomes and supporting the safe and responsible sale, supply and consumption of alcohol.

[30] The object of the Act is contained in s 4(1) which provides:

“(1) The object of this Act is that—

⁶ Law Commission “Alcohol in Our Live: Curbing the Harm” (NZLC R 114, 2010).

⁷ Alcohol Reform Bill 2010 (236-2) (Select Committee Report) at 1-2.

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.”

[31] Section 248(1) of the Act makes it an offence for a licensee to sell or supply alcohol to an intoxicated person. Section 248 is materially identical to its predecessor under the previous legislation.⁸ It provides as follows:

“248 **Sale or supply of alcohol to intoxicated people**

- (1) The licensee or a manager of any licensed premises who sells or supplies alcohol to an intoxicated person commits an offence.”

[32] However, unlike its predecessor, the Sale of Liquor Act 1989, the new Act defines intoxication. The definition is:⁹

“**intoxicated** means observably affected by alcohol, other drugs, or other substances (or a combination of 2 or all of those things) to such a degree that 2 or more of the following are evident:

- (a) appearance is affected:
- (b) behaviour is impaired:
- (c) co-ordination is impaired:
- (d) speech is impaired.”

[33] The effect of this definition has gone a considerable way to avoiding the complexities of the definition of intoxication which Woolford J encountered in his helpful analysis of the principles in *de’Ath*.

Standard of proof

[34] It was common ground on this appeal that the Authority correctly stated the standard of proof. The issue is whether it misapplied the test.

⁸ Sale of Liquor Act 1989, s 166.

⁹ Sale of Supply of Alcohol Act 2012, s 5(1).

[35] As McGrath J said in the Supreme Court decision of *Z v Dental Complaints Assessment Committee*:¹⁰

“The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged ... Balance of probability still means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet this standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probability standard.”

[36] Although these proceedings are not criminal the consequences to Countdown of an adverse finding are significant both economically and in terms of its reputation. It thus follows that while the applicable standard of proof is on the balance of probabilities the Judge was correct to describe it as being at the higher end of that standard.

[37] Woolford J in *de’Ath* discussed this principle when he observed that where the consequences of a successful application by the Police could be the suspension of a licence or a general manager’s certificate the standard of proof must be very close to that of a criminal prosecution.¹¹

Appellant’s submissions

[38] Mr McGill, for Countdown, submits that there are three elements requiring proof before a breach of s 248(1) of the Act is proved. These are:

- (a) there was a sale (or supply);
- (b) of alcohol;
- (c) to an intoxicated person.

[39] Mr McGill accepts that the first two ingredients were proved to the required standard. However, he submits that there was insufficient evidence to satisfy the

¹⁰ *Z v Dental Complaints Assessment Committee* above n 3.

¹¹ *de’Ath* above n 4 at [44].

third ingredient. He submits that for a person to be intoxicated under the Act three elements must be present. These are the person must:

- (a) be observably affected;
- (b) by alcohol (or other drugs or substances or a combination of two or all of those things); and
- (c) to such a degree that two or more of the indicia of intoxication set out in s 5 of the Act are evident.

[40] Mr McGill submits that there must be some evidence that the customer had ingested alcohol, drugs or other substances. He says that simply relying on the “signs of intoxication” as set out in s 5 of the Act as proof that a person is intoxicated is insufficient to satisfy the test in a strict liability offence. He points out that a person exhibiting two or more of these features may actually be affected by something other than alcohol or drugs; for example a disease or a disability. It is in recognition of this potential that Mr McGill submits the Act specifically requires that anyone exhibiting these symptoms must be “observably affected by alcohol”.

[41] He submits that there is no evidence of the cause of the customer’s state as observed by Mrs Graham. Thus the Police failed to prove the customer was affected by alcohol and thus failed to prove the customer was intoxicated.

[42] Mr McGill submits that the correct approach, on the authority of *de’Ath*, is that the Authority must make an objective factual assessment or determination of intoxication from the pool of evidence available. More is required than one individual subjective assessment.

[43] Mr McGill submits that the Authority’s approach is inconsistent with its own decisions. In that regard he refers to *Clement v Jat Trading Limited*¹² where the Authority noted the reference in s 5 of the Act to “observably affected by alcohol” necessarily requires the licence or its staff to observe two or more signs of

¹² *Clement v Jat Trading Limited* [2014] NZARLA PH 744-745.

intoxication. In the present case the only observable sign at the time the customer was served was the slurring of his words.

[44] More significantly, Mr McGill submits that although Mrs Graham's observations may be consistent with alcohol intoxication the symptoms were also consistent with other causes. He submits there was no evidence that the customer had ingested alcohol or drugs. There was no evidence of any other indicia, such as the smell of alcohol on his breath, blood shot eyes, observations of him consuming alcohol before, during or after the sale or a subsequent evidential breath or blood test which would have not only proved he was intoxicated by alcohol but also would have shown the level of his intoxication.

[45] Mr McGill also takes exception to the Authority effectively treating Mrs Graham as an expert and its comments that she had not been "seriously challenged". In relation to the last point Mr McGill refers to his cross-examination of Mrs Graham which was stopped by the Judge when he attempted to explore with Mrs Graham alternative explanations for what she took as signs of alcoholic intoxication.

[46] Mr McGill finally submits that in relying on Mrs Graham's evidence the Authority misapplied the test in s 5 of the Act which requires it to make an objective assessment based on the pool of evidence before it. He submits that for there to be an offence under the Act the definition of intoxicated requires the licensee or staff member to have sold alcohol to someone who was observably affected by alcohol, other drugs or other substances to such a degree that two or more of the features listed in s 5 of the Act are evident. He submits that the only observable feature was the slurring of words the cause of which may have been attributable to something other than alcohol intoxication. He noted that Mrs Graham never looked closely enough to observe the customer's eyes or to smell alcohol on his breath.

Discussion

[47] Countdown accepts that it sold alcohol to the customer in question. The only issue is whether the customer was intoxicated by alcohol or other drugs at the time.

The definition of intoxication requires the person to be “observably affected by alcohol ... to such a degree that two or more of the symptoms are evident”.

[48] In her evidence Mrs Graham referred to at least three of the s 5 criteria. She made reference to the customer’s motor co-ordination describing them as “just [not] there”. She also noted that the customer’s behaviour was significantly affected. She described him as very happy and trying to engage, inappropriately, with strangers. It was this conduct which led her to take evasive steps to avoid making contact with the customer. When she approached the customer near the checkout counter and was only about one metre away from the customer she noticed he was slurring his speech and “looked drunk”. It is also significant that this was not a passing or fleeting encounter. Mrs Graham’s attention was drawn to the man because of his behaviour, particularly his lack of co-ordination and his ebullient affect. Her professional ability to quickly assess a person’s presentation led her to believe the customer was probably intoxicated by alcohol.

[49] In cross-examination Mrs Graham was tested on whether it was possible the customer may have been affected by something other than alcohol or drugs such as a mental disability. Mrs Graham responded that people with mental disabilities do not usually exhibit motor co-ordination deficits. She described it as highly unusual for someone with a mental disability to suffer motor co-ordination impairment. She noted that while a neurological disorder, such as Parkinson’s disease, would produce motor impairment it would also present challenges in the person’s ability to engage.

[50] I do not accept Mr McGill’s criticism that Mrs Graham was a lay witness and the Authority was wrong to treat her evidence as if she was an expert. I am satisfied that Mrs Graham was properly qualified as an expert not only in assessing those affected by alcohol or drugs but also mental or neurological impairment. Her experience in the mental health field is extensive.

[51] Section 24 of the Evidence Act 2006 permits a witness to state an opinion in evidence if that opinion is necessary to enable the witness to communicate, or the fact finder to understand, what the witness saw, heard or otherwise perceived. Furthermore, s 25(1) permits an opinion by an expert to be given if the fact finder is

likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that it is of consequence to the determination of the proceeding. Thus, although Mrs Graham was a witness of fact in that she gave evidence of her observations, her opinion the customer was most probably intoxicated by alcohol was also admissible given her experience and the relevance of her opinion to the central question in the hearing. Her evidence was plainly of substantial help to the Authority.

[52] It is unfortunate that the Judge interrupted Mr McGill's cross-examination of Mrs Graham on the issue of possible alternative neurological or psychiatric causes of the symptoms. Despite this, I am not satisfied that any injustice material or prejudice arose. A reading of the cross-examination reveals that despite Mr McGill's insistence, Mrs Graham was adamant in her rejection an alternative neurological or psychiatric cause might possibly have explained the symptoms she observed. Mrs Graham steadfastly rejected the proposition despite being pressed. Even after the Judge intervened, Mrs Graham made the observation about Parkinson's disease and the rarity of those with mental illnesses also suffering from motor function impairment. In these circumstances there is no reason to believe she would have deviated from her insistence that the symptoms she observed in the customer were as a consequence of alcohol intoxication rather than any other cause.

[53] The next question to consider is whether the three statutory indicia of intoxication described by Mrs Graham were sufficient for the Authority to find the allegation proved.

[54] While Mr McGill may be correct that the only observable sign of intoxication at the checkout counter was the customer slurring his words I do not accept his submission that the Authority erred in finding that the customer was intoxicated by alcohol by reference to two other criteria which were not proved to be observable at the point of sale.

[55] To limit proof to two or more signs of intoxication evident at the point (and moment) of sale cannot be the correct approach to proof under s 248. Enforcement of the provision must be both realistic and practical. The object of the Act is to minimise the excessive consumption of alcohol. Section 248 is one means by which that object may be achieved. The introduction into the Act of the four observable indicia of intoxication was no doubt designed to remove the complexity, clumsiness and uncertainty of the previous means by which intoxication was determined.

[56] The cases make it plain that the assessment of a whether a person is intoxicated at the time of sale may be drawn from a variety of sources and assessments made at different times including both before and after the actual sale. This evidence constitutes the “pool of evidence” available to the Authority.

[57] Furthermore, it is well established the factual assessment is an objective one.¹³ That the pool of evidence in the present case was drawn, almost exclusively, from the observations of Mrs Graham does not necessarily diminish its worth. I do not overlook the evidence of Inspector Bensemman who saw the customer after the sale had been completed. He described the “stupid remark” as an inappropriate and unusual communication which was out of context although he could not remember the words used or any other feature of the man’s appearance or demeanour. I do not accept this evidence detracts from Mrs Graham’s given the entirely different contexts in which the witness’ observations were made. Mrs Graham’s attention was drawn to the customer because of his behaviour, his proximity to the alcohol section and Mrs Graham’s background in drug and alcohol abuse interventions. As a result, Mrs Graham paid particular attention to the customer and observed his conduct over a reasonably sustained period. This is in contrast to Inspector Bensemman who, en route to purchase his lunch, passed the customer without taking much notice of him despite the remark.

[58] Neither am I persuaded that further evidence of the sort Mr McGill submits is required was necessary. While evidence of blood shot eyes and the smell of alcohol on the customer’s breath would obviously add to the pool of evidence tending to

¹³ *de’Ath* above n 4 at [37] and [38].

support the inference of alcoholic intoxication, its absence cannot be necessarily fatal. The same applies to evidential breath testing or blood testing.

[59] However, to require evidence of this sort to be present before an allegation under s 241(1) may be proved is both impractical and unrealistic. Putting to one side the lack of compulsive powers to require the administration of such tests, the enforcement of the provisions of the Act must reflect the practical reality of the diverse circumstances which are encountered when alcohol is sold or supplied.

[60] A finding that someone is intoxicated by alcohol may be drawn from a wide range of non-exhaustive factors. These necessarily include the s 5 indicia such as the way the person appears and how their behaviour, co-ordination and speech may be impaired. It may also include other non-statutory indicators such as the smell of alcohol or an evidential breath or blood test. It is open for the Authority to infer that the evidence of intoxication is a result of alcohol or another drug, particularly when there is good reason to dismiss any competing theory.

[61] In the present case Mrs Graham's observations, while arguably satisfying each of the s 5 indicia, described a man who exhibited a substantial proportion of the classical and well-recognised signs of alcohol intoxication. His speech was slurred, he was unsteady on his feet, he was garrulous and euphoric and his conduct was inappropriate given the environment.

[62] While it is perhaps possible that what Mrs Graham observed was, in fact, a psychiatric or neurological presentation I am not satisfied that this is a reasonable possibility having regard to all of the circumstances.

[63] Furthermore, Mrs Graham's expertise cannot be ignored. Her experience in drug and alcohol dependency placed her in a unique position to not only describe what she saw but also give the opinion she did.

[64] I am satisfied that there was ample evidence available on which the Authority could come to the decision it did and I am satisfied it was correct when it concluded

the allegation had been proved on the balance of probabilities, albeit to a high standard.

[65] I note the Authority drew an adverse inference from the refusal of Countdown to make the CCTV footage available to the Police. From that refusal the Authority inferred that the CCTV footage did exist and may well have been of significant assistance in assessing Mrs Graham's evidence. Furthermore, the Authority noted that if the sales assistants were of the view that the customer was not intoxicated they could have given evidence to that effect. This evidence would have added to the available pool tending to contradict Mrs Graham's evidence.

[66] While not expressly referring to authority it would appear the Judge was referring to the principle that a Judge sitting alone may draw negative inferences from a defendant's failure to give "the explanations which he might naturally be expected to give if he were innocent". This was the principle discussed by the Court of Appeal in *Trompert v Police*.¹⁴ While there has been some subsequent judicial discussion as to whether this principle has been abolished by the passing of the New Zealand Bill of Rights Act 1990 ("NZBORA"),¹⁵ the Court of Appeal's 1994 decision in *R v Drain* has determined otherwise.¹⁶

[67] More recently the principle has been discussed in two decisions of this Court.¹⁷ Both cases appear to acknowledge that *Trompert* remains good law although care must be taken to ensure that the facts before the Court are appropriate and amenable to the application of *Trompert* (i.e. the failure of a defendant to give by his own evidence or that of others an explanation which he might naturally be expected to be given if they were innocent).

[68] Unlike the circumstances in the two High Court cases cited above, the present case is one where an explanation might naturally be expected to have been given if Countdown or its staff had reason to believe the customer was not intoxicated. Mrs Graham unequivocally expressed her concerns to the sales assistant before the

¹⁴ *Trompert v Police* [1985] 1 NZLR 357 (CA) at [358].

¹⁵ In particular s 25(d) of NZBORA which guarantees a defendant's right to silence.

¹⁶ *R v Drain* CA242/94, 11 October 1994.

¹⁷ *Yoganathan v Police* [2014] NZHC 3335; *Brown v Police* HC Tauranga CRI-2006-470-26, 20 March 2007.

sale was made. Notwithstanding her strongly worded warning the sale proceeded. In these circumstances it might reasonably be expected that if Countdown or its staff were of the view the customer was not intoxicated they could have called that evidence or produced the CCTV footage. They did neither and, instead, challenged the Police's evidence through cross-examination as is their right.

[69] I am satisfied that the Authority was entitled to draw an adverse inference in these circumstances although, having regard to the strength of the balance of the evidence, it was unnecessary to do so. The allegation was amply capable of proof in reliance on Mrs Graham's evidence alone.

Result

[70] The appeal is dismissed.

Costs

[71] The Police are entitled to costs which I fix on a 2B basis with disbursements as fixed by the Registrar.

Moore J

Solicitors:
Duncan Cotterill, Auckland
Crown Solicitor, Hamilton