

In the High Court of New Zealand
Auckland Registry
I Te Koti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV 2018-404-

Under: Part 30 of the High Court Rules 2016
New Zealand Bill of Rights Act 1990

Between **Axiomatic Media Pty Ltd t/a Axiomatic Events** a corporation having its registered office at 4/5 Executive Drive, Burleigh Waters, Queensland, Australia
First Applicant/Plaintiff

And: **Malcolm Bruce Moncrief-Spittle**,
book seller, of Dunedin,
Second Applicant

And: **David Cumin**, lecturer, of Auckland
Third Applicant

And: **Regional Facilities Auckland Ltd**, a council controlled corporation having its registered office at the Aotea Centre, Level 4, 50 Mayoral Drive, Auckland
First Respondent/Defendant

And: **Auckland Council** a unitary authority established under the Local Government Act 2002, having its office at the Council Building, 135 Albert Street, CBD, Auckland
Second Respondent

And: **Philip Bruce Goff, Mayor of Auckland** having his office at the Council Building, 135 Albert Street, CBD, Auckland
Third Respondent

STATEMENT OF CLAIM

Date: 18 July 2018



Level 5, Wakefield House
90 The Terrace
PO Box 10388
Wellington 6140

Tel +64 4 815 8050
Fax +64 4 815 8039

Solicitor: Stephen Franks
Counsel: Jack Hodder QC
Nikki Pender

(stephen.franks@franksogilvie.co.nz)
(jack.hodder@chambers.co.nz)
(nikki.pender@franksogilvie.co.nz)

The applicants by their solicitor say:

PARTIES

The Applicants

1. The first applicant which is also the plaintiff under the second cause of action (*Axiomatic*) is an Australian based events and promotions corporation specialising in political speaking tours.
2. The second applicant (*Mr Moncrief-Spittle*), is a bookseller living in Dunedin.
3. The third applicant (*Dr Cumin*) is a ratepayer and citizen of Auckland.

The Respondents

4. The first respondent and defendant in the second cause of action (RFA) is a council-controlled organisation, which acts as the second respondent's agent in the provision, management and operation of the Public Venues, which include the Bruce Mason Centre at 1 The Promenade, Takapuna Beach, Auckland.
5. The second respondent (*Auckland Council*) is a unitary authority established under the Local Government (Auckland Council) Act 2009, whose duties and functions include the provision of recreational facilities and other community infrastructure where people in Auckland can meet and, among other things, express and receive opinions and information, including political views (*Public Venues*).
6. To the extent that in the matters pleaded, Auckland Council was principal and the RFA was agent, all references to the RFA are to be taken to include Auckland Council.
7. The third respondent (*Mayor Goff*) is the Mayor of Auckland.

BACKGROUND

Decision to Cancel Licence

8. On or about 15 June 2018, Axiomatic and the RFA entered into a licence agreement (*Licence*), the terms of which included:
 - 8.1 The RFA granted Axiomatic a licence to hold the Event at The Bruce Mason Theatre in the Bruce Mason Centre on Friday 3 August 2018.
 - 8.2 The licence fee was \$5,000 plus GST.
 - 8.3 Axiomatic was required to pay a deposit of \$1,000 by 29 June 2018.
 - 8.4 At least 10 working days before the date of the event (ie by 19 July 2018), Axiomatic was required to provide the third respondent with a health and safety plan outlining any hazards and controls for the event.
 - 8.5 Axiomatic would be responsible for the cost of providing security for the event.
9. Axiomatic paid the deposit on 15 June 2018.
10. On Friday 6 July 2018, the RFA purported to cancel the Licence granted to Axiomatic (*Decision*).
11. There is uncertainty about whether, when making the Decision, the RFA was acting:
 - 11.1 independently; or
 - 11.2 under the dictation or influence of Mayor Goff.

The Speakers

12. Stefan Molyneux and Lauren Southern are public speakers who promote themselves as “Alt Media” commentators and conservative activists (*the Speakers*).
13. The Speakers’ views are readily accessible by people living in New Zealand, including through:

- 13.1 videos, in which the Speakers are seen expressing their views, on YouTube and elsewhere on the Internet;
 - 13.2 articles that are written by the Speakers or which quote the Speakers' views and which are published for free on the Internet.
14. Mr Moncrief-Spittle is aware of the Speakers and their views but has not previously seen the Speakers debate their views in a live forum.

The Event

15. Axiomatic has been engaged to organise and promote a public speaking event for the Speakers in Australia and New Zealand, which is described as "Stefan Molyneux & Lauren Southern Live: An Axiomatic Event" (*Event*).
16. The Event is intended to be interactive with an opportunity for the audience to challenge and debate the Speakers.
17. Axiomatic has licences to hold the Event on five occasions in Australia, including at four publicly-owned venues.
18. Mr Moncrief-Spittle, upon becoming aware of the Event:
- 18.1 purchased a ticket to the Event;
 - 18.2 paid to attend a dinner with the Speakers; and
 - 18.3 paid for the travel costs of attending before the Event was cancelled.

Cancellation of the Event

19. On 6 July 2018, Mayor Goff made public statements on Twitter to the effect that he had directed the RFA to cancel the Licence because he considered the Speakers' views to be repugnant.

Particulars

- (a) Mayor Goff's first Tweet read:

[Auckland Council] venues shouldn't be used to stir up ethnic or religious tensions. Views that divide rather than unite are repugnant and I have made my views on this very clear. Lauren Southern and Stefan Molyneux will not be speaking at any Council venues.

(b) Mayor Goff's second Tweet read:

Let me be very clear, the right to free speech does not mean the right to be provided with an [Auckland Council] platform for that speech.

(The Tweets)

20. The Tweets drew attention to and raised the profile of the Speakers.
21. On 6 July 2018, after the Tweets, the RFA purported to cancel the Licence by:
 - 21.1 advising Axiomatic verbally that the Event could not proceed at the Bruce Mason Centre; and
 - 21.2 issuing a public statement to the effect that the Event would no longer be held at the Bruce Mason Centre
22. The RFA's stated reasons for the Decision were security concerns around the health and safety of the presenters, staff and patrons attending the Event.
23. On 6 July 2018, Axiomatic had not yet provided its health and safety plan to the RFA.
24. Axiomatic considers that it has or has access to sufficient resources to manage any risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event, provided the Event is held at a Public Venue.
25. Axiomatic offered such resources to the RFA as a way to manage the RFA's security concerns.
26. The RFA would not discuss management of its security concerns with Axiomatic.
27. On 10 July 2018, Mayor Goff said in an interview with RNZ National's Morning Report that:
 - 27.1 it was his decision to cancel the licence; and
 - 27.2 the reason for cancelling the licence was because he was "*not going to aid and abet people that spout racist nonsense by providing them with a venue*".

28. On 10 July 2018, the RFA wrote to Axiomatic:
 - 28.1 confirming the Decision;
 - 28.2 stating the reason for the Decision to be that it had become aware of information that had led it to the conclusion that there was an unacceptable risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event.
29. Axiomatic has been unable to relocate the Event to another suitable venue in Auckland as:
 - 29.1 the RFA has refused to allow the Event to proceed at another Public Venue;
 - 29.2 the ASB Showgrounds refused to provide a venue because Mayor Goff serves as a vice patron;
 - 29.3 other private venues are either unsuitable or have refused without providing reasons.

FIRST CAUSE OF ACTION: JUDICIAL REVIEW OF DECISION TO CANCEL LICENCE

First Ground of Review: Breach of Natural Justice

30. The first applicant repeats paragraphs 1 to 29 above.
31. The RFA performs a public function when granting licences to use the Public Venues.
32. The RFA is subject to public law obligations, including a duty to adhere to the principles of natural justice and procedural fairness, when granting and cancelling licences to use Public Venues.
33. Axiomatic had a right to be treated in accordance with natural justice and procedural fairness before the RFA made any decision that materially affected its rights under the Licence.
34. The RFA breached Axiomatic's right to natural justice and procedural fairness when it made the Decision, as it did not first:
 - 34.1 wait for Axiomatic to provide a health and safety plan;

- 34.2 provide Axiomatic with the information that led the RFA to conclude that the Event posed a risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event;
- 34.3 ask Axiomatic for information about the resources it could employ to manage any risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event;
- 34.4 take account of Axiomatic's ability to manage any risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event;
- 34.5 take account of the ways that similar venues were managing any risk to the security and safety of the presenters, staff, contractors, and patrons attending the Event; nor
- 34.6 otherwise attempt to manage the security risk without cancelling the Event.

Second Ground of Review: Irrationality/Perversity of Decision

- 35. The first applicant repeats paragraphs 1 to **Error! Reference source not found.** and 31 above.
- 36. The RFA has public law obligations, including the duty to act rationally and not perversely or arbitrarily, when making decisions about the grant of licences to use Public Venues.
- 37. The Decision was irrational, perverse and arbitrary as:
 - 37.1 the RFA claimed to have concluded that the Event posed an unacceptable security risk;
 - 37.2 in forming that conclusion, the RFA failed to have regard to all relevant mitigating information, including:
 - (a) Axiomatic's security resources and ability to manage any risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event, and

- (b) the ways that similar venues were managing any risk to the security and safety of the presenters, staff, contractors, and patrons attending the Event; and

37.3 had the RFA had regard to all relevant mitigating information, it could not rationally have concluded that the Event posed an unacceptable security risk.

Third Ground for Review: Failure to Act Consistently with Rights Guaranteed under the Bill of Rights Act

- 38. The applicants repeat paragraphs 1 to 29 and 31 above.
- 39. The RFA has a duty to ensure that its decisions in relation to the granting of licences are consistent with the rights guaranteed under the New Zealand Bill of Rights Act 1990 (*NZBORA*), including sections 13, 14, 16 and 17.
- 40. Mr Moncrief-Spittle represents the interests of people who had an interest in attending the Event to observe the Speakers express their views dynamically, through the critical filter of a public forum. That class of persons includes those people who:
 - 40.1 share some or all of the Speakers' views;
 - 40.2 have become curious about the Speakers' views as a consequence of publicity generated by Mayor Goff's Tweets and other public statements; and
 - 40.3 disagree with the Speakers' views but want the opportunity to challenge and debate them.
- 41. Dr Cumin represents the interests of the ratepayers and citizens of Auckland who are anxious to protect their freedoms to hold and develop opinions, to access events, to peacefully assemble and to associate at the Public Venues.
- 42. All the applicants have such rights and freedoms under the NZBORA:
 - 42.1 Axiomatic Events has the right to freedom of expression as affirmed under s 14 of the NZBORA, including the right to promote free speech.

42.2 Mr Moncrief-Spittle and Dr Cumin and the classes they represent have the right to:

- (a) freedom of thought, as affirmed under s 13 of the NZBORA, which includes the freedom to adopt and to hold opinions without interference;
- (b) freedom of expression, as affirmed under s 4 of the NZBORA, which includes the freedom to seek, receive and impart information and opinions of any kind in any form;
- (c) freedom of peaceful assembly, as affirmed under s 16 of the NZBORA;
- (d) freedom of association, as affirmed under s 17 of the NZBORA.

43. The Decision:

43.1 restricted the right of Axiomatic to promote free speech;

43.2 restricted the rights of Mr Moncrief-Spittle and the class he represents to:

- (a) adopt and hold opinions without interference;
- (b) hear and observe the Speakers express their views dynamically, through the critical filter of a public forum;
- (c) peacefully assemble at a secure publicly-controlled venue; and
- (d) freely associate with others attending the Event;

43.3 threatens the freedom of Dr Cumin and the class he represents to access events, peacefully assemble and associate at Public Venues.

44. The Decision:

44.1 was not a proportionate response to any risk to the security and safety of the presenters, RFA staff, contractors, and patrons attending the Event;

44.2 unreasonably restricted the applicants' rights under the NZBORA.

Fourth Ground of Review: Unlawful Involvement/Direction of Mayor Goff

45. The first, second and third applicants repeat paragraphs 1 to **Error! Reference source not found.** and 38 to 44 above.
46. It is probable that:
- 46.1 The Decision was dictated by Mayor Goff; and
- 46.2 The primary reason for the Decision was because Mayor Goff considered certain views he attributed to the Speakers to be repugnant and outside the bounds of acceptable political opinion.

Particulars

- (a) Mayor Goff publicly claimed responsibility for the Decision, including in the Tweet and during his interview with RNZ Morning Report;
- (b) The RFA purported to use security as an excuse to cancel the Event without exploring ways to manage the risks.
47. The RFA is wholly owned and controlled by the Auckland Council.
48. The RFA is responsible for granting licences to use the Public Venues.
49. The RFA is not entitled to act unlawfully, including by contravening the Human Rights Act 1993.
50. The Mayor of Auckland does not have any lawful power or function to grant licences to use the Public Venues.
51. The Mayor of Auckland is a politician and does not have any lawful power or function to be the arbiter of acceptable political opinion.
52. If Mayor Goff ordered or directed the RFA to cancel the Licence, this was a direction or encouragement to RFA to contravene sections 42 and 44 of the Human Rights Act 1993, and an improper and invalid exercise or purported exercise of the powers and functions conferred on the Mayor of Auckland.
53. To the extent that the Decision was ordered or dictated by Mayor Goff, the Decision was consequently ultra vires and illegal.

54. To the extent that the Decision was influenced by Mayor Goff's opinion about the Speakers' views, the Decision was:
- 54.1 unlawful by reason of sections 21, 42, 44, 65 and/or 68 of the Human Rights Act 1993;
 - 54.2 based on irrelevant considerations and invalid; and/or
 - 54.3 unlawful as a contravention of the applicants' rights under the NZBORA.

Relief Sought

55. On the basis of any or all of the grounds for review pleaded above, the applicants seek:
- 55.1 an order declaring that the first respondent has no valid basis for exercising termination rights under the Licence;
 - 55.2 an order setting aside the Decision;
 - 55.3 a declaration that the Licence granted by the first respondent to the first applicant to hold an event at the Bruce Mason Theatre on 3 August 2018 remains in force and legally binding;
 - 55.4 an order restraining the first, second and/or third respondents from terminating or purporting to terminate, or encouraging the termination of, the Licence;
 - 55.5 an order directing that the first respondent perform its obligations under the Licence in relation to the venue specified in the Licence agreement or any other of its venues agreed to by the first applicant/plaintiff;
 - 55.6 an order declaring that if the first respondent has accepted an alternative booking for the venue on 3 August 2018, the Licence takes precedence;
 - 55.7 an order as to costs.