



## Supreme Court of New Zealand

6 May 2011

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**VALERIE MORSE v THE POLICE**  
**(SC 10/2010)**  
**[2011] NZSC 45**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Valerie Morse was convicted in the District Court of behaving in an offensive manner in a public place, after setting fire to the New Zealand flag at the Anzac Day dawn service in Wellington in 2007. She was fined \$500.

In entering the conviction, the District Court Judge interpreted “offensive behaviour” under s 4(1)(a) of the Summary Offences Act 1981 to mean behaviour capable of wounding feelings or arousing real anger, resentment, disgust or outrage in the mind of a reasonable person of the kind actually subjected to it in the circumstances. He considered that a tendency to disrupt public order was not required to constitute behaviour that was offensive within the meaning of s 4(1)(a). Although Ms Morse’s behaviour was expression protected by s 14 of the New Zealand Bill of Rights Act 1990, the Judge concluded it was offensive behaviour in the context of the Anzac Day dawn observance.

Appeals to the High Court and Court of Appeal were dismissed. Both Courts agreed that “offensive” behaviour under s 4(1)(a) had the meaning given to it by the District Court Judge and agreed (in the Court of Appeal by majority) with his application of that provision and the conviction of Ms Morse.

On further appeal, the Supreme Court has found that the lower Courts mistook the meaning of s 4(1)(a). The Court has held, unanimously, that offensive behaviour within the meaning of s 4(1)(a) must be behaviour which gives rise to a disturbance of public order. Although agreed that disturbance of public order is a necessary element of offensive behaviour under s 4(1)(a), the Judges differed as to the meaning of “offensive” behaviour. The majority (with the Chief Justice dissenting and Justice Anderson not entirely concurring on this point) considered that offensive behaviour must be capable of wounding feelings or arousing real anger, resentment, disgust or outrage, objectively assessed, provided that it is to an extent which impacts on public order and is more than those subjected to it should have to tolerate.

Because unanimously of the view that the trial in the District Court proceeded on a wrong basis in law through failure to assess impact on public order, the Supreme Court has set aside the conviction.

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