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HOW FAR DOES FREEDOM OF EXPRESSION GO?

The “Occupy” protests in Dunedin, Wellington and Auckland have recently highlighted rights to protest and the rights of the general public not to be put out by protests.

There have been strident calls from various commentators to forcibly evict the protesters and there have been allegations that the police and respective councils have no backbone because such evictions have not yet occurred.

The police have said that even if Trespass Notices are issued by the local council they might not act on them due to concerns that legal action might be taken by protesters against the police. So what might be the basis for such legal actions? And why should the police be worried?

The New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 (HR Act) provide protection for certain civil and political rights for all people in New Zealand. This includes protesters, even those protesters the majority of people disagree with.

NZBORA provides the rights of freedom of expression (s14), and freedom of peaceful assembly (s16). These rights are subject only to such reasonable limits prescribed by law as can be demonstratively justified in a free and democratic society (s5).

The question is what grounds are there, in a free and democratic society, that are reasonable, and that would allow a coercive arm of the state (police) to forcibly close down a protest on grounds only that the general public are uncomfortable with, or are tired of, the protesters’ presence?

In addition the HR Act provides that a person’s political opinion (or lack thereof)

is a prohibited ground for discrimination against that person (s21), and that it is unlawful for any person to refuse to allow any other person access to, or use of, any place which members of the public are entitled or allowed to enter or use, or to require that person to leave or cease to use that place by reason of any of the prohibited grounds for discrimination (ie that person’s political opinion) (s42).

It is clear that the Octagon, Frank Kitts Park and Aotea Square are public places, members of the public are entitled, or are allowed, to enter or use those places, the protesters have a particular political opinion (they say) and those protesters cannot be required to leave those places on the basis only of their political opinions.

Whether the protesters would have valid claims under NZBORA or the HR Act if forcibly evicted, is a matter for the court. There can be substantial monetary awards made in favour of a person whose rights under either of those acts have been breached, and the police have been on the receiving end of such awards in the past. It is entirely understandable that the police are not going to rush in to evict these protesters without assessing all the options.

The safest course of action for both councils and the police would seem to be to first get court orders to move the protesters on. This takes time, costs money (although probably not as much as if individual awards were made for breaches), but also raises the ire of commentators as well as general members of the public.

At the end of the day, like it or not, people in this country have a right to be free to express their views in public even though the exercise of that right may cause some discomfort to those that don’t agree with them.