

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC CIV 8/04**

BETWEEN	TE RUNANGA O MURIWHENUA INCORPORATED Applicant
AND	TREATY OF WAITANGI FISHERIES COMMISSION First Respondent
AND	THE ATTORNEY-GENERAL OF NEW ZEALAND Second Respondent
AND	THE MINISTER OF FISHERIES Third Respondent
AND	TE KOTAHITANGA O TE ARAWA FISHERIES TRUST BOARD Fourth Respondent
AND	TE RUNANGA O NGAI TAHU Fifth Respondent

Coram: Gault J  
Blanchard J

Counsel: M Taylor for Applicant  
C R Carruthers QC, J P Ferguson and T B Johnson for First  
Respondent  
V L Hardy and D N Soper for Second and Third Respondents  
C F Finlayson for Fifth Respondent

Judgment: 23 September 2004

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**JUDGMENT OF THE COURT**

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[1] Te Runanga o Muriwhenua seeks leave to appeal against the Court of Appeal's decision delivered on 30 June 2004 dismissing an appeal from the High Court (McGechan J) which had dismissed an application for judicial review.

[2] Written submissions have been received, on the basis of which we are satisfied that the proposed appeal does not meet the requirements for leave in s13 of the Supreme Court Act 2003.

[3] As relevant to the present application, the judicial review proceeding challenged the adequacy of consultation by the Treaty of Waitangi Fisheries Commission undertaken in connection with preparation of its report to the Minister of Fisheries of 9 May 2003 entitled *He Kawai Amokura*. It was also alleged that, as a result of the inadequacy in consultation, the report failed to recommend correction in the final process of allocation of Maori fisheries assets of what are said to have been substantial inequities in tender and lease rounds of quota undertaken by the Commission from 1990 onwards. The report was therefore alleged to be unreasonable in administrative law terms.

[4] Since the decision of the Court of Appeal and the filing of the leave application, Parliament has enacted legislation, the Maori Fisheries Act 2004, which gives effect, with some amendments, to the Commission's report. Despite the apparent futility of the proposed appeal in such circumstances, the applicant nevertheless pursues its application "so that the Court's answer can be recorded for the guidance of future governments, and also as a significant matter of historical record".

[5] We pass over the "futility" point and the contention by the second and third respondents that the applicant is now impermissibly seeking to attack the legislation by a collateral means. We do so because it is very clear that, contrary to the submission of counsel for the applicant, no matter of general or public importance is being raised, in terms of s13(2).

[6] The Treaty of Waitangi was the basis for the fisheries settlement and was accordingly in the background to the quota allocations and thus to the proceeding.

But the applicant and the other plaintiffs (none of whom now seeks to take the matter further) did not ground their case on any alleged breach of the Treaty. There is no significant issue relating to the Treaty. Subsection (3) of s13 is not engaged.

[7] The administrative law issues involve no general question of law. Rather, they invite an examination only of certain factual matters. Was the consultation in fact inadequate? Was the conclusion reached in the report unreasonable in the particular circumstances? Those circumstances will not be repeated. The issues are so fact specific that the Court's views would be unlikely to provide guidance in a future case.

[8] Furthermore, now that Parliament has enacted legislation to settle the allocations, these matters cannot be said to be of ongoing public importance. In this connection we note the Commission's advice that the applicant is not a mandated representative of any iwi and that no iwi to whom allocations will occur has extant any proceeding objecting to the Commission's final allocation model.

[9] The application for leave to appeal is dismissed. If any question of costs arises, it can be the subject of memoranda to the Court.

Solicitors:  
Woodwood Law Offices, Lower Hutt for Applicant  
Kahui Legal, Wellington for First Respondent  
Crown Law Office, for Second and Third Respondents  
Bell Gully, Wellington for Fifth Respondent