

In the Supreme Court of New Zealand

SC 40 /2008

between

New Zealand Big Game Fishing Council Inc

First Appellant

and

New Zealand Recreational Fishing Council Inc

Second Appellant

and

Sanford Limited, Sealord Group Limited and Pelegic & Tuna New Zealand Limited

First Respondents

and

Minister of Fisheries

Second Respondent

and

The Chief Executive of the Ministry of Fisheries

Third Respondent

Application for Leave to Appeal

Dated: 3 September 2008



Appellant's Solicitors
11th Floor
41 Shortland Street
Private Bag 92093
DX CP 24017
AUCKLAND
Tel +64 9 375 8700
Fax +64 9 375 8771

Solicitor
Senior Counsel

Stuart Ryan
Alan Galbraith QC

09 375 8778
09 309 1769

stuart.ryan@heskethhenry.co.nz
argalbraith@shortlandchambers.co.nz

Application for Leave to Appeal

1. New Zealand Recreational Fishing Council Inc, the second named appellant in the proceeding identified above, gives notice that it applies for leave of the Supreme Court to appeal to the Court against the decision of the Court of Appeal of New Zealand, dated 11 June 2008 (CA163/07, [2008] NZCA 160).
2. The aforesaid decision of the Court of Appeal was preceded by the decision of the Honourable Justice Harrison in the High Court (Auckland Registry) by decision dated 21 March 2007 in CIV-2005-404-4495.
3. The specific grounds of the proposed appeal are:
 - 3.1 The Court erred in law by rejecting the analysis of Harrison J as to the statutory interpretation of the relationship between sections 8 and 21 in relation to the TACC decisions (paragraphs [50] to [69]) and the related findings as to the relationship between the TAC and TACC decisions (paragraphs [45] to [50]). In particular, the Court erred:
 - a. In rejecting the analysis of Harrison J that the TAC and TACC decisions can be characterised as sustainability and utilisation decisions respectively (paragraphs [45] – [48]).
 - b. By holding (paragraph [54]) that the stated purpose in section 8 of the Fisheries Act 1996 was essentially "a statement on Government policy ...", and a "guide" (paragraph [59]) rather than applying and giving effect to the purpose when assessing recreational interests.
 - c. By finding that the consideration of people's social, cultural and economic wellbeing requires a balance of competing interests (paragraph [61]).
 - d. By interpreting the purpose and meaning of sections 8 and 21 to take a "global approach to purpose" and to "bear in mind and conform with the purposes of the legislation" (paragraphs [58] – [61]).
 - e. By finding (in comparison with section 13(3)) that the lack of express reference to social, economic and cultural factors was

relevant to the approach to statutory interpretation of section 21 (paragraphs [64] – [65]).

- f. By finding that the Minister was not bound to consider peoples social, economic and cultural wellbeing as contained in section 8 when allowing for recreational interests in each stock (paragraph [67]).
 - g. By finding that the common law public right of fishing still extended to commercial fishers (paragraph [68]) whereas commercial fishing rights under the quota management scheme are a creature of statute.
 - h. By failing to find that the reference to enabling people to provide for their social, economic and cultural wellbeing in the context of utilisation by recreational interests (paragraph [81]) includes enabling sufficient abundance to allow for recreational interests to catch fish.
4. The Supreme Court should grant leave to appeal on the grounds that:
- a. The precise role occupied by section 8 in the scheme of the Fisheries Act 1996 has not been the subject of detailed consideration in earlier decisions of the Court (as noted by the Court of Appeal (paragraph [53])).
 - b. Section 21 of the Fisheries 1996 is short in detail as the extent to which and how recreational fishing interests are to be allowed for. The relationship between the stated purpose in section 8 and section 21, and the correct approach to statutory interpretation is a matter of general or public importance.
 - c. The issues are of significant interest to a substantial section of the public. Recreational fishing is a legal right open to be enjoyed by all New Zealanders.
 - d. The relationship between recreational and commercial fishing interests when making decisions under section 21 of the Fisheries Act 1996 is also a matter of general commercial significance insofar as the correct approach to statutory interpretation between sections 8 and 21 relates to the rights and interests of commercial fishers.

5. The judgment sought from the Supreme Court is:
- a. The setting aside of the parts of the decision of the Court of Appeal which are subject to this appeal.
 - b. Directions that the second and third respondents apply the law as declared in (a) above when next setting the total allowable catch, total allowable commercial catch and allowing for recreational interests in kahawai.

Dated at Auckland this 3rd day of September **2008**



.....

S J Ryan

Solicitor for the Appellant

To: The Registrar of the Court of Appeal

And to: The First Appellant by their Solicitors

And to: The First Respondent by their Solicitors

And to: The Second and Third Respondents, by their Solicitors

This document is filed by **Stuart James Ryan**, Solicitor for the abovenamed respondents, of the firm of Hesketh Henry. The address for service of the abovenamed respondents is at the offices of Hesketh Henry, Lawyers, Level 11, 41 Shortland Street, Auckland 1.

Documents for service on the abovenamed respondents may be left at that address for service or may be:

- a. Posted to the solicitor at Hesketh Henry, Private Bag 92093, Auckland; or
- b. Left for the solicitor at a document exchange for direction to document exchange box no. CP 24017, Auckland; or
- c. Transmitted to the solicitor by facsimile to (09) 365 5278.