

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

AP 19/97

IN THE MATTER of an Appeal from the
determination of the
District Court at
Wanganui

BETWEEN TARANAKI FISH & GAME
COUNCIL

Appellant

A N D KIRK McRITCHIE

Respondent

Hearing: 10 November 1997

Counsel: G. Palmer for appellant
M.A. Solomon for respondent

Judgment: 10 November 1997

JUDGMENT OF DOOGUE J

This is an appeal by way of case stated on questions of law under the provisions of the Summary Proceedings Act 1957. The appeal is from a decision of the District Court at Wanganui dated 27 February 1997. That relates to Maori fishing rights. It has attracted substantial public interest.

The case stated was not filed in the High Court at Wanganui until 9 September 1997. On 12 September 1997 by consent I moved the hearing of the appeal to Wellington so that it could be heard by a Full Court. Both counsel are from Wellington. On 18 September 1997 I made directions in respect of the hearing of the appeal. The Registrar at Wellington on 14 October 1997 wrote to the solicitors for the parties advising that a fixture had been made for the week

commencing Monday, 8 December 1997 and that they would be advised on the Wednesday prior to that week of the actual date of hearing. That date is suitable to counsel for the appellant although he does have commitments at the end of the week in question. Counsel for the respondent filed a memorandum that he was unavailable during the remainder of 1997 and in the early part of 1998 and was not available to take a fixture until March of 1998. There is no suggestion that he is in any superior court during the period until then. Because of that memorandum, I required it to be treated as an application for an adjournment and to be heard in court, which is happening here today.

Counsel for the respondent repeats and extends what was in the memorandum in support of an application for the adjournment. He refers to other obligations entered into by him in the expectation that the fixture would be in 1998. He refers to the fact that the respondent may be prejudiced if other counsel had to be instructed at this late stage.

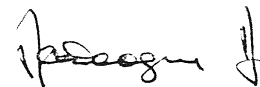
As has been stated in other cases, it is necessary for the Court to ensure justice between the parties when there is an application for an adjournment, although in this case the Court must also take into account that it is an appeal by way of case stated under the Summary Proceedings Act and does involve public interest as well as the interests of the parties. Nevertheless, it is a balancing exercise where the Court must ensure overall fairness.

Counsel for the respondent has pointed to no matter which would prevent other counsel being appointed to handle the case other than that there is inadequate time to do so. However, counsel for the respondent has been aware since mid October 1997 of the hearing date. The issue is one of law, not one of fact. It is not a case where counsel's knowledge of the facts or the events in issue is of importance. The questions are of law. Counsel for the appellant is not counsel who appeared in the court below. The appeal raises questions of importance not only for the immediate parties but for others. It has been assigned to a Full Court, which is not readily convened given the other

outstanding work within this circuit. I do not regard the adjournment sought as reasonable, given that there are still some four weeks before the hearing date. The appeal is already eight months old. If the matter was adjourned in the way suggested by counsel for the respondent, the decision would be more than a year old before the appeal was heard. That would be quite wrong. There is no suggestion that junior counsel for the respondent in the court below is not available to appear with other counsel of the respondent's choice. For all I am aware, counsel for the respondent may be able to rearrange his schedule for the other matter for which he is already committed.

I would note that this case illustrates all too well that delays in disposing of cases are often the responsibility of the lawyers involved rather than this Court. Over five months was taken to get the appeal into this Court. A Full Court fixture was made for a date within three months of that. Counsel now seeks to delay the hearing for another three months or more. There is no certainty a Full Court could be convened at that time to hear it.

In the circumstances I have no alternative but to refuse the application for an adjournment. The application is dismissed.



Solicitors for appellant:
Chen & Palmer, Wellington

Solicitors for respondent:
Maori Legal Services Inc., Wellington