

Kahawai Challenge Team

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Kahawai Challenge Pursues Application For Leave To The Supreme Court

By August 27th the Olympic Games will be a memory and we will either be basking in the glory of our fine athletes' achievements or dreaming of what could have been. For the Kahawai Challenge team the action continues.

An application has been lodged with the Supreme Court seeking permission to appeal against the recent Court of Appeal's kahawai decision, and legal submissions have now been filed in support with the Supreme Court. Wednesday 27th is the last day for any of the parties involved to file submissions in response to that application. There has been no indication so far of how the fishing corporates will respond.

It will then be up to the Supreme Court to decide whether leave is granted. There is no automatic right to appeal and the Supreme Court's decision is final.

If leave is granted the Supreme Court will specify the grounds for appeal. These tend to be narrow legal questions. The Hesketh Henry legal team are working with Alan Galbraith QC to refine those arguments. The key question in the application for leave to appeal is how the purpose in section 8 of the Fisheries Act 1996 to "*enable people to provide for their social, economic, and cultural well-being*" is to apply to the exercise of the Minister's discretion under section 21 when making decisions to allow for recreational fishing interests in the context of setting the TACC (total allowable commercial catch).

In the March 2007 High Court judgement Justice Harrison found that in allowing for recreational interests the Minister did not correctly apply the purpose of the Act of enabling people "*to provide for their social, economic and cultural well-being*" and that this was a mandatory consideration when allowing for recreational interests in fish stocks. The Court of Appeal rejected the emphasis in the High Court judgement on the peoples' well-being when making decisions under the Fisheries Act.

The Supreme Court application has been pursued because the correct approach to statutory interpretation is a matter of general or public importance that will affect not only kahawai but is also relevant to all other fish stocks of interest to non-commercial fishers.

Why the challenge?

For years non-commercial fishing representatives fielded calls from people nationwide with similar complaints of less fish available inshore and their inability to catch fish of a reasonable size to feed their families.

Clearly hook-and-line fishing could not compete with industrial fishing techniques.

There is certainly no competition when spotter planes can be deployed to hunt down surface schooling fish and then direct purse seiners to those areas to scoop them up.

It was the last straw for many representatives when the Minister announced his management decisions for kahawai in 2004. Instead of acknowledging the adverse impact that years of industrial fishing had taken on both the environment and catch rates, the Minister agreed to a catch limit for all interest groups and then reduced those limits by 15 percent. This proportional reduction caused an uproar amongst amateur fishers. But worse was to come.

In 2005 the Minister reviewed kahawai again and applied another proportional reduction, this time applying a 10 percent cut.

After seeking legal advice the NZ Big Game and Recreational Fishing Councils and option4 agreed to mount a challenge. Judicial review proceedings were lodged with the High Court in August 2005. Bolstering this effort was the unprecedented support of Maori. Our largest iwi joined in and their Chairman, Raniera (Sonny) Tau, signed an affidavit on behalf of 120,000 Ngapuhi.

Rebuilding kahawai numbers and improving catch rates was not the only objective. It was also important to clarify how the Minister ought to make future decisions, particularly in fisheries that are important to non-commercial fishers.

Achievements

This effort would not have been possible without the total commitment of the NZ Big Game Fishing Council and its clubs. Just recently another \$1000 cheque arrived from the Whangamata Ocean Sports Club. Glorious.

You can also contribute. Please post a cheque to the 'Kahawai Challenge Fund', c/o NZ Fishing News, PO Box 12-965 Penrose, or simply dial 0900 KAHAWAI for a quick \$20 donation (or two) or go online to www.kahawai.co.nz.