

**In the High Court of New Zealand  
Auckland Registry**

**CIV2005-404-4495**

**Under Part I of the Judicature Amendment Act 1972**

**In the matter of an application for review**

between

**The New Zealand Recreational Fishing Council Inc, and New Zealand Big  
Game Fishing Council Inc**

Plaintiffs

and

**Minister of Fisheries**

First Defendant

and

**The Chief Executive of the Ministry of Fisheries**

Second Defendant

and

**Sanford Limited, Sealord Group Limited, and Pelagic & Tuna New Zealand  
Limited**

Third Defendant

**Memorandum of Counsel for the Plaintiffs in Support of Application for  
Adjournment of Hearing**

**Dated: 23 May 2006**

**Next Event Date: Hearing commencing 6 June 2006**

**Before: Heath J**



Plaintiffs Solicitors  
11<sup>th</sup> 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  
Lyn Stevens QC

09 375 8778  
09 366 0777

stuart.ryan@heskethhenry.co.nz  
lynstevens@llschambers.co.nz

**May it please the Court:****Application for Adjournment**

1. As foreshadowed in the Memorandum of Counsel for the Plaintiffs dated 15 May 2006, problems have arisen with the timetable to the extent that the plaintiff parties consider that they are prejudiced by the delays.
2. By paragraph (f) of the timetable (Minute No 2 of Heath J dated 13 December 2005) the Crown's evidence was due to be filed and served on or before 28 March 2006. The timetable programmed replies by the plaintiffs to the evidence of the Crown parties and replies to the evidence of the third defendants.
3. As at today's date, the parties have received one affidavit from a Crown witness, with further evidence expected from five witnesses including the Minister, but not yet received or finalised. The plaintiffs are in difficulty insofar as the compressed timeframe makes it improbable that the Crown's evidence will be considered by the plaintiffs and their advisors, and replied to, in conjunction with replies to the counterclaim by the third defendants.
4. As indicated in the memoranda filed with the Court last week, the problems in the timetable are not of the plaintiffs' making, and have arisen from:
  - A larger than expected volume of discovery by the Crown to the third defendants counterclaim;
  - Resulting delays to the third defendants provision of affidavit evidence, and
  - Consequential delay to the affidavit evidence by the Crown parties.
5. A further factor affecting the plaintiff is that senior counsel, Mr Stevens QC has an unavoidable personal commitment, which results in senior counsel being unavailable for the allocated week of 6 June.
6. As a result of these factors the plaintiff applies for an adjournment of the allocated fixture. The consent/ non opposition by the parties is endorsed on this memorandum, as indicated below.

7. A factor in the prioritisation of a fresh hearing date is policy development occurring in respect of a "Shared Fisheries Review", initiated by the first and second defendants. Public consultation on the fisheries review commences in August 2006, closing December 2006. The outcome of these proceedings is expected to be relevant to this policy development

#### **Amended Timetable Directions**

8. The timetable requires amendment. The parties are agreed that if the Court is minded to allow the adjournment then the timetable should be amended to provide:
  - a. Affidavits from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in opposition to the Plaintiff's claim and the 3<sup>rd</sup> Defendants' counterclaim shall be filed and served on or before 6 June 2006;
  - b. Affidavits from the Plaintiff in reply in respect of its claim, and in opposition to the counterclaim shall be filed and served on or before 30 June 2006;
  - c. The 3<sup>rd</sup> Defendants shall file and serve reply affidavits on their counterclaim on or before 17 July 2006;
  - d. The proceedings shall be set down for a four day hearing as soon as hearing time is available after 1 August 2006;
  - e. A bundle of all pleadings and affidavits shall be filed and served by 1 August 2006.
  - f. A bundle of common authorities to be referred to at the hearing shall be filed and served not less than 1 week prior to the hearing [to be allocated]. Mr Scott will coordinate this process, and as provided in (e) above.

- g. The directions as to cross-examination of witnesses as contained in paragraph 6 of the Court's minute dated 13 December 2006 continue to apply.

**Endorsement of parties**

- 9. The first and second defendants [oppose/ consent/ do not oppose] the adjournment of the hearing, and to the amended timetable directions on the terms proposed.
- 10. The third defendants consent to the adjournment of the hearing, and to the amended timetable directions on the terms proposed.

**DATED** this            day of May 2006

.....  
**L L Stevens QC/ S J Ryan**  
Counsel for Plaintiffs

.....  
**P A McCarthy**  
Solicitor for First and Second Defendants

.....  
**B A Scott / G T Carter**  
Counsel for Third Defendants