

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

New Zealand Treasury and New Zealand Overseas Investment Office

Foreign Acquisitions Amendment (Agricultural Land) Bill 2010

12 April 2011

Topic: Judicial reviews

Hansard page: E35, E37

Question:

Senator XENOPHON—If an application is rejected, it could be subject to judicial review. Is that right?

Ms McClure—Yes, that is correct.

Senator XENOPHON—And how often do you get judicial review applications against your decisions?

Ms McClure—Over the last five years we would have had probably three or four.

Senator XENOPHON—So it is pretty rare.

Ms McClure—Yes.

Senator XENOPHON—Could you, on notice, provide details to the secretariat of this committee of some of those rejections and the like?

....

Senator XENOPHON—You have had three or four judicial reviews in the last few years; is that right?

Ms McClure—That is correct.

Senator XENOPHON—What happened: were you upheld or were you knocked off?

Ms McClure—We were upheld in all cases.

Senator XENOPHON—That is not a bad strike rate. Could you give us some details of that? It is not as though you have changed the way you look at things as a result of judicial reviews saying you have done it wrong. In fact, you have been upheld.

Ms McClure—That is correct.

Senator XENOPHON—If you could take on notice to give us some more detail on those decisions, that would be useful.

Answer:

Attached are summaries of the judicial review cases. There are three cases that have been the subject of proceedings since 2005 (all related - initially heard in the High Court, appealed to the Court of Appeal, and then appealed to the Supreme Court). I have also attached summaries of two other proceedings (Talleys Fisheries v Cullen) and (Foodstuffs v Progressive Enterprises), both heard in 2002. I've included details of the costs proceedings for the latter cases as well as they provide additional insight into the context of the proceedings.

Please note that in all cases third parties (in the 2002 cases, competitors) have brought the proceedings. None of the proceedings relate to a decision that has been declined.

Databases > Case Law > BriefCase > 2010 > May > Jeffries v Attorney-General (SCNZ, 26/05/10)



THOMSON REUTERS

Jeffries v Attorney-General **H**

PDFs:

Date: 26 May 2010
 Court: Supreme Court of New Zealand
 Judge: Blanchard J, Tipping J, Wilson J
 File no: SC22/2010
 Media Neutral: [2010] NZSC 59
 Noted: 33 TCL 20/5
 Parties: William Patrick **Jeffries** (*Applicant*)
 The **Attorney-General** (*Respondent*)
 Legal Representatives: D H O'Leary for Applicant
 H S Hancock for Respondent
 DLA Phillips Fox, Wellington for Applicant
 Crown Law Office, Wellington for Respondent

Case Summary - BriefCase

Civil procedure — Appeals — Leave to appeal — Supreme Court

Constitutional law — Official information — Requests for access

Unsuccessful application by J for leave to appeal Court of Appeal ('CA') decision upholding High Court ('HC') judgment dismissing his application for judicial review; J wrote letter to Overseas Investment Commission ('OIC') concerning Mr and Mrs Powell's ('Ps') purchase of property in NZ; Ps applied under Official Information Act 1982 for access to letter; OIC released letter to Ps; J applied to judicial review OIC's decision; J alleged OIC failed to monitor conditions on which Ps had been allowed to purchase property in NZ; J argued OIC erred in permitting access to letter; J submitted OIC breached confidence and effective conduct of public affairs; J argued OIC acted in contravention of s 27 New Zealand Bill of Rights Act 1990

Held, CA clearly correct to reject J's failure to monitor complaint; J's standing to seek judicial review not dealt with by CA; inappropriate for Court to give leave on that issue; J's complaints had been dealt with thoroughly by courts below; J's arguments on appeal untenable; leave refused; application declined

Legislation Cited

Statutes

New Zealand Bill of Rights Act 1990 s 27
 Official Information Act 1982

Citing References - CiteCase

Litigation History

Earlier Litigation History

Jeffries v Attorney-General 26/5/10, SCNZ SC22/2010 **H**

Leave Refused

Jeffries v Attorney-General 26/2/10, CA338/08 **H**

Affirmed

Jeffries v Attorney-General 20/5/08, Ronald Young J, HC Wellington CIV-2006-485-2161 **H**

Related Proceedings

Jeffries v Attorney-General 19/3/08, Dobson J, HC Wellington CIV-2006-485-2161 **H**

Earlier Proceedings

Jeffries v Privacy Commissioner 16/11/07, CA233/07 **H**

Related Proceedings

Jeffries v Privacy Commissioner 20/10/06, Associate Judge Gendall, HC Wellington CIV-2006-485-860 **H**

Databases > Case Law > BriefCase > 2010 > February > Jeffries v Attorney-General (CA, 26/02/10)



THOMSON REUTERS

Jeffries v Attorney-General **H**

PDFs:

Date: 26 February 2010
 Court: Court of Appeal
 Judge: Hammond J, Chambers J, Baragwanath J
 File no: CA338/08
 Media Neutral: [2010] NZCA 38
 Noted: [2010] BCL 239; 33 TCL 8/5; (2010) 41 VUWLR 703
 Parties: William Patrick Jeffries (Appellant)
 The Attorney-General (Respondent)
 Legal Representatives: W P Jeffries in person
 H S Hancock for Respondent
 Crown Law Office, Wellington for the Respondent

Case Summary - BriefCase

Bill of Rights — Search, arrest, and detention — Right to justice

Civil procedure — Appeals — Determination

Constitutional law — Official information — Requests for access — Review of decisions

Unsuccessful appeal by J against High Court ('HC') decision dismissing his application for judicial review; in 1999 Powells ('Ps'), American citizens, applied for consent under Overseas Investment Act 1973 (OIA 1973) and Overseas Investment Regulations 1995 (OIR) to buy 2000 ha of land known as 'Waitai' on D'Urville Island in Marlborough Sounds; Waitai a farm running around 8900 stock units; Ps needed consent to buy Waitai because they were 'overseas persons' and Waitai was 'part of an island' for which consent was required; Overseas Investment Commission ('OIC') and relevant Ministers approved Ps application; in 2005 former Minister of Crown and barrister J became interested in whether Ps were adhering to obligations under OIC's consent; J previously acted for NZ company in legal dispute with Ps; J concerned OIC was not fulfilling its statutory monitoring obligations under OIA 1973; correspondence about the Ps between J, A-G, and OIC followed; Ps became aware they were subject of high level correspondence; Ps solicitors wrote to Overseas Investment Office ('OIO'), which had replaced OIC; Ps requested, under Official Information Act 1982 (OIA 1982) for all correspondence in OIO's possession concerning them; J objected to release of information; however OIO considered no ground existed to withhold release; J commenced judicial review proceedings; J challenged OIC's inaction in monitoring conditions to which OIC's consent was subject; J challenged OIO's intention to release requested information to Ps; OIO agreed not to release information pending determination of judicial review proceedings; HC heard J's application and dismissed his arguments; J argued (a) Ps breached continued obligations to establish high end international brand, (b) OIO incorrectly applied OIA 1982 when determining whether to release information to Ps' solicitors, and (c) OIO breached J's rights under s 27 New Zealand Bill of Rights Act 1990 (NZBORA), acted unfairly to him, and failed to provide adequate reasons for its decision

Held, HC correct to find all standard condition required was that the land was acquired and transferred within a year of consent date, which Ps fulfilled; OIC consent not necessary to develop high end brand; OIC no longer required to monitor Ps; therefore Ps did not breach any continuing obligations under OIA 1973; OIO made no error of law when it applied OIA 1982; Ps did not breach conditions of their consent and thus did not breach the law; releasing information did not prejudice the maintenance of the law; J feared reprisal from Ps if they discovered what J had written about them; fact J might end up sued by Ps irrelevant under OIA 1982; OIO complied with Ombudsmen's editorial and consulted with J before determining whether to release information to Ps; OIO acted fairly towards J and did not breach his rights under NZBORA; appeal dismissed

Legislation Cited

Statutes

Immigration Act 1987 s 7(1)
 New Zealand Bill of Rights Act 1990 s 27, s 27(1), s 27(2)
 Official Information Act 1982 s 6, s 6(c), s 6(2), s 9, s 9(2)(ba), s 9(2)(g)(i)
 Overseas Investment Act 1973 s 14(a), s 14A(1)(a), s 14A(1)(c), s 14A(1)(d), s 14A(2)
 Overseas Investment Act 2005 s 28, s 64
 Privacy Act 1993

Regulations

Overseas Investment Regulations 1995 r 2, r 5(b), r 8(1), r 15

Cases Cited

Referred to

R. v Secretary of State for Foreign and Commonwealth Affairs Ex p. World Development Movement Ltd [1995] 1 All ER 611; [1995] 1 WLR 386
Sommersett (The Negro Case) 20 Howell St Tr 2

Citing References - CiteCase

Litigation History

Later Litigation History

Jeffries v Attorney-General 26/2/10, CA338/08 **H**

Leave Refused by

Jeffries v Attorney-General 26/5/10, SCNZ SC22/2010 **H**

Earlier Litigation History

Jeffries v Attorney-General 26/2/10, CA338/08 **H**

Affirmed

Jeffries v Attorney-General 20/5/08, Ronald Young J, HC Wellington CIV-2006-485-2161 **H**

Related Proceedings

Jeffries v Attorney-General 19/3/08, Dobson J, HC Wellington CIV-2006-485-2161 **H**

Earlier Proceedings

Jeffries v Privacy Commissioner 16/11/07, CA233/07 **H**

Related Proceedings

Jeffries v Privacy Commissioner 20/10/06, Associate Judge Gendall, HC Wellington CIV-2006-485-860 **H**

Databases > Case Law > BriefCase > 2008 > May > Jeffries v Attorney-General (HC, 20/05/08)



THOMSON REUTERS

Jeffries v Attorney-General **H**

PDFs:

Date: 20 May 2008
 Court: High Court, Wellington
 Judge: Ronald Young J
 File no: CIV-2006-485-2161
 Noted: 31 TCL 24/6; [2008] BCL 628
 Parties: William Patrick **Jeffries** (Plaintiff)
 The **Attorney-General** (Defendant)
 Legal Representatives: D O'Leary for Plaintiff
 H Hancock and D McDonald for Defendant
 Duncan Cotterill Lawyers, Wellington, for Plaintiff
 Crown Law Office, Wellington

Case Summary - BriefCase

Administrative law — Judicial review — Evidence

Constitutional law — Official information — Requests for access — Review of decisions

Unsuccessful application by J for judicial review of several Overseas Investment Commission ('OIC') and Overseas Investment Office ('OIO') decisions; OIO successor of OIC; decisions related to approvals granted to American couple ('Ps') to buy land in Marlborough Sounds; J became involved, as counsel, in litigation against Ps; J objected to OIC and OIO decisions for several reasons, namely that decisions (a) failed to take certain relevant matters into account, (b) were unreasonable, (c) made for improper purpose, and (d) made acting under dictation and breached legitimate expectations; OIC and OIO maintained stringent criteria adhered to when processing applications from overseas land investors, namely that purchaser (a) of good character, (b) had business experience and acumen, (c) was financially committed to proposed investment and, (d) made investment to be beneficial to New Zealand, in cases of sensitive land

Held, J had no standing to bring judicial review proceedings; Ps OIC consent and continued monitoring raises no broad policy issues; J did not have sufficient cause to be interested in proceedings and claim was based on opinion that OIC and OIO should have treated case differently; application declined

Legislation Cited

Statutes


New Zealand Bill of Rights Act 1990
 Official Information Act 1982 s 6, s 9, s 9(2)(g)(i)
 Overseas Investment Act 1973 s 9(1), s 9(2), s 14A, s 14A(1)(b), s 14A(1)(d), s 14A(2), s 14B(2) (a), s 14B(2)(d)
 Overseas Investment Act 2005 s 16(1)(e)

Cases Cited

Considered

Environmental Defence Society Inc v South Pacific Aluminium Ltd (No 3) [1981] 1 NZLR 216 (CA) **C**
Finnigan v New Zealand Rugby Football Union Inc [1985] 2 NZLR 159 (CA) **H**
Society for the Protection of Auckland City & Waterfront Inc v Auckland City Council [2001] NZRMA 209 (HC) **C**
Wall v Livingstone and Roborgh [1982] 1 NZLR 734; (1982) 1 NZFLR 417 (CA) **H** [Yellow]


Referred to

Te Heu Heu & Tuwharetoa Maori Trust Board v Attorney-General [1999] 1 NZLR 98; [1998] NZAR 337 (HC) 


Citing References - CiteCase

Litigation History


Later Litigation History

Jeffries v Attorney-General 20/5/08, Ronald Young J, HC Wellington CIV-2006-485-2161 


Related Proceedings

Jeffries v Attorney-General 20/10/08, CA150/08 


Leave Granted by

Jeffries v Attorney-General 4/2/09, SCNZ SC84/2008 


Affirmed by

Jeffries v Attorney-General 16/7/09, SCNZ SC84/2008 


Affirmed by

Jeffries v Attorney-General 26/2/10, CA338/08 


Leave Refused by

Jeffries v Attorney-General 26/5/10, SCNZ SC22/2010 


Earlier Litigation History

Jeffries v Attorney-General 20/5/08, Ronald Young J, HC Wellington CIV-2006-485-2161 


Related Proceedings

Jeffries v Attorney-General 19/3/08, Dobson J, HC Wellington CIV-2006-485-2161 

Earlier Proceedings


Jeffries v Privacy Commissioner 16/11/07, CA233/07 

Related Proceedings


Jeffries v Privacy Commissioner 20/10/06, Associate Judge Gendall, HC Wellington CIV-2006-485-860 

Cases Citing

Applied by

Canterbury Regional Council v Attorney-General 25/3/09, Dobson J, HC Wellington CIV-2008-485-2652 

Referred to by

Jeffries v Privacy Commissioner 3/12/09, CA339/08 

Databases > Case Law > BriefCase > 2002 > January > Talleys Fisheries Ltd v Cullen (HC, 31/01/02)



THOMSON REUTERS

Talleys Fisheries Ltd v Cullen

PDFs:

Date: 31 January 2002
 Court: High Court, Wellington
 Judge: Ronald Young J
 File no: CP287/00
 Noted: 25 TCL 9/4; NZCLD, 5th Series, 4670; [2002] BCL 292; [2003] NZ Law Review 119; [2009] NZLJ 352; [2010] NZ Law Review 99
 Parties: **Talleys Fisheries** Ltd (*Plaintiff*)
 Michael John **Cullen** and Peter Colin Hodgson (*First Defendants*)
 Overseas Investment Commission (*Second Defendant*)
 Ministry of **Fisheries** (*Third Defendant*)
 Marhua (NZ) Incorporated Ltd (*Fourth Defendant*)

Case Summary - BriefCase

*Administrative law — Judicial review**Primary industries — **Fisheries** — Licences and quota — Allocation*

Unsuccessful claim by TFL; a fishing quota was registered in the name of Ceebay Holdings Ltd ('CHL'); CHL's shareholders were Marhua (NZ) Incorporated Ltd ('MIL') and Amaltal Corporation Ltd ('ACL'); MIL was wholly owned by Marhua Corporation of Japan; and ACL was owned equally by TFL and Amalgamated Corporation Ltd; TFL brought a claim challenging decisions made by the Overseas Investment Commission and C variously granting CHL and MIL to hold and lease fishing quota; it contended that these decisions were ultra vires and should be quashed; and that the permissions in principle were not authorised by **Fisheries** Act 1996 FA since the decision failed to have regard to and apply the 'NZ-isation' policy of FA

Held, TFL's submissions are inadequate; TFL could have legitimately complained if a perceived disadvantage to it had influenced C's decision; the quota was validly granted to CHL and through a valid application process; accordingly TFL's various grounds for review are rejected; claim is dismissed

Legislation Cited*Statutes*

Declaratory Judgments Act 1908

Fisheries Act 1983 s 28U, s 28U(1)(c), s 28Z, s 28Z(3), s 28Z(9)**Fisheries** Act 1996 s 56, s 56(1), s 57, s 57(3), s 57(4), s 57(4)(b)(i), s 57(4)(b)(ii), s 57(4)(b)(iii), s 57(6), s 58, s 333A, s 333A(1)

Judicature Amendment Act 1972

Overseas Investment Act 1973 s 9(2), s 16(1)

Cases Cited*Considered**Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374; [1984] 3 All ER 935; [1984] 1 WLR 1174 (HL) *Southern Ocean Trawlers Ltd v Director-General of Agriculture and **Fisheries*** [1993] 2 NZLR 53 (CA) *Wellington City Council v Woolworths New Zealand Ltd* [1996] 2 NZLR 537; [1996] NZAR 348 (CA) [Yellow]

Referred to

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] 2 All ER 680; 112 JP 55; [1948] 1 KB 223 (CA) ^H [Yellow]

Gurusinghe v Preliminary Proceedings Committee of The Medical Council of New Zealand [1989] 1 NZLR 139 (HC) ^C

Padfield v Minister of Agriculture, Fisheries & Food [1968] AC 997; [1968] 1 All ER 694; (1968) 112 SJ 171 (HL)

R v Atkins [2000] 2 NZLR 46; (2000) 17 CRNZ 581 (CA) ^H

R v Borough of Newham, ex parte Bibi (2001) 33 HLR 84; [2002] 1 WLR 237 (CA)

R v Devon County Council; ex p Baker [1995] 1 All ER 73; 91 LGR (Eng) 479 (CA)

R v North & East Devon Health Authority; Ex parte Coughlan [2000] 3 All ER 850; [2001] QB 213; [2000] 2 WLR 622 (QBD)

R v Secretary of State for Education and Employment, ex parte Begbie [2000] 1 WLR 1115 (CA)

R v Secretary of State for Home Department; Khan, Ex p [1984] 1 WLR 1337 (CA)

R v Secretary of State for the Home Department, ex parte Malhi [1990] 2 All ER 357; [1990] Imm AR 275; [1991] 1 QB 194 (CA)

Citing References - CiteCase

Cases Citing

Approved by

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd 13/11/02, Heath J, HC Auckland M680-SW02; M943-SD02; M929/SW02 ^H [Red]

Considered by

Air New Zealand Ltd v Wellington International Airport Ltd [2009] NZAR 138; [2009] NZCCLR 15 (HC) ^H

Referred to by

Challis t/a Blenheim Visitor Information Centre v Destination Marlborough Trust Board Inc 19/6/02, Neazor J, HC Blenheim CP1/02 ^H

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd 14/6/02, Heath J, HC Auckland M680-SW02 ^H

GXL Royalties Ltd v Minister of Energy [2009] NZAR 478 (HC) ^H

Napier Public Health Action Group Inc v Minister of Conservation [2007] 3 NZLR 559 (HC) ^C

Pub Charity v Attorney-General 25/5/04, Miller J, HC Wellington CIV2003-485-1106 ^H

Sanders v Hepatitis C Support Group (NZ) Inc 15/10/10, Keane J, HC Auckland CIV-2010-404-3560 ^H

Watson v Attorney-General 11/11/02, France J, HC Wellington CP100/02 ^H

Databases > Case Law > BriefCase > 2002 > November > Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd (HC, 13/11/02)



THOMSON REUTERS

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd ¹ [Red]

Alt cit Foodstuffs (South Island) Ltd v Progressive Enterprises Ltd

Alt cit Foodstuffs (Wellington) Ltd v Progressive Enterprises Ltd

PDFs:

Date: 13 November 2002
Court: High Court, Auckland
Judge: Heath J
File no: M680-SW02
M943-SD02
M929/SW02

Noted: [2003] BCL 9; NZCLD, 5th Series, 5205; 26 TCL 4/5; [2002] NZLJ 443

Parties: FOODSTUFFS (AUCKLAND) LTD (*Plaintiff*)
PROGRESSIVE ENTERPRISES LTD ORS (*Defendants*)
FOODSTUFFS (WELLINGTON) CO OPERATIVE LTD (*Plaintiff*)
PROGRESSIVE ENTERPRISES LTD ANOR (*Defendants*)

Legal Representatives: Mr J A Farmer QC (Fax: 093587091) and Mr G MacDonald (Fax: 093032311) for Plaintiffs

Mr J E Hodder for Overseas Investment Commission
Mr J Beaglehole for Attorney-General (on behalf of Ministers of Finance and Lands)
Mr M Dunning for Progressive Enterprises Ltd, Foodland Associated Ltd and Denstree Corporation Ltd
No appearance by or on behalf of Dairy Farm Ltd
Phillips Fox, PO Box 160, Auckland
Russell McVeagh, PO Box 8, Auckland
Simpson Grierson, Private Bag 92518, Auckland
Chapman Tripp, PO Box 993, Wellington
The Crown Law Office, PO Box 5012, Wellington
Gillespie Young Watson, PO Box 30940, Lower Hutt
Anderson Lloyd Caudwell, Private Bag 1959, Dunedin

Case Summary - BriefCase

Civil procedure — Costs — Assessment — Discontinued proceedings

Company law — Corporate finance — Shares

Successful claim for costs for discontinued proceedings; FS applied for judicial review of OIC decision to allow purchase of shares in their company by PE; FS and PE came to commercial settlement, however, outstanding allegations against OIC were not withdrawn; FS acknowledged liability for costs on discontinuance of proceedings, but did not accept quantum claimed by OIC; OIC submitted indemnity costs should be awarded, or alternatively costs should be awarded with appropriate increases to reflect circumstances of proceedings; OIC claimed FS made allegations of bad faith tantamount to fraud without adequate evidential substance; AG sought indemnity costs with appropriate increases to reflect circumstances of proceedings on grounds allegations against responsible Ministers were devoid of merit; FS argued indemnity costs were inappropriate as proceedings were brought to challenge decision wrongly made

Held, Court exercises discretion under r 46 High Court Rules taking into account plaintiff who discontinues proceedings ordinarily must pay costs; it was improper to continue proceedings after completion of inspection process; it is inappropriate for public body to be required to meet costs of this magnitude when public law remedies have been invoked in an endeavour to gain commercial advantage; it is inappropriate to identify costs as indemnity costs, instead correct approach is to assess global amount for costs and disbursements having regard to knowledge of proceedings; OIC is awarded costs in amount of \$75,000; responsible Ministers are awarded costs in amount of \$45,000; application granted

Legislation Cited

Statutes

Judicature Amendment Act 1972 s 8
Overseas Investment Act 1973

Regulations

High Court Rules R 46, R 46(1)(a), R 47, R 47(f), R 48, R 48C, R 48C(3)(c), R 48C(3)(d), R 48C(4), R 48C(4)(a), R 48C(4)(f)

Cases Cited

Approved

Air New Zealand Ltd v Overseas Investment Commission [1986] 2 NZLR 470; (1986) 1 PRNZ 17 (HC) [Yellow]
Talleys Fisheries Ltd v Cullen 31/1/02, Ronald Young J, HC Wellington CP287/00

Considered

Nomoi Holdings Ltd v Elders Pastoral Holdings Ltd (2001) 15 PRNZ 155 (HC) [Yellow]
North Shore City Council v Local Government Commission (1995) 9 PRNZ 182 (HC)
Roussel Uclaf Australia Pty Ltd v Pharmaceutical Management Agency Ltd [1997] 1 NZLR 650; [1997] NZAR 322; (1997) 10 PRNZ 405 (CA)
Talleys Fisheries Ltd v Cullen 7/6/02, Ronald Young J, HC Wellington CP287/00

Referred to

Colgate-Palmolive Co v Cussons Pty Ltd 118 ALR 248; 46 FCR 225; 28 IPR 561 (FC)
Regency Financial Services Ltd v ANZ Banking Group (New Zealand) Ltd 18/9/02, Heath J, HC Auckland CP145-IM02

Citing References - CiteCase

Litigation History

Earlier Litigation History

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd 13/11/02, Heath J, HC Auckland M680-SW02; M943-SD02; M929/SW02 [Red]

Earlier Proceedings

Progressive Enterprises Ltd v Foodstuffs (Auckland) Ltd [2004] 1 NZLR 145; (2002) 10 TCLR 356; (2002) 7 NZBLC 103,692 (NZPCC) [Yellow]

Reversed

Foodstuffs (Auckland) Ltd v Commerce Commission [2002] 1 NZLR 353; (2001) 10 TCLR 93; (2001) 9 NZCLC 262,720 (CA) [Red]

Reversed

Foodstuffs (Auckland) Ltd v Commerce Commission (2001) 10 TCLR 74; (2001) 9 NZCLC 262,678 (HC) [Red]

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd 13/6/02, Heath J, HC Auckland M680-SW02

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd 14/6/02, Heath J, HC Auckland M680-SW02 **H**

Related Proceedings

Foodstuffs (Auckland) Ltd v Commerce Commission [2002] 1 NZLR 353; (2001) 10 TCLR 93; (2001) 9 NZCLC 262,720 (CA) **H** [Red]

Progressive Enterprises Ltd v Foodstuffs (Auckland) Ltd [2004] 1 NZLR 145; (2002) 10 TCLR 356; (2002) 7 NZBLC 103,692 (NZPCC) **H** [Yellow]

Cases Citing

Disapproved by

Glaister v Amalgamated Dairies Ltd (No 2) (2003) 16 PRNZ 536 (HC) **H**

Considered by

Glaister v Amalgamated Dairies Ltd [2004] 2 NZLR 606; (2004) 16 PRNZ 1047 (CA) **H**

Referred to by

Baxter v RMC Group PLC 9/9/03, O'Regan J, HC Auckland CP262/01 **H**

Ladstone Holdings Ltd v Leonora Holdings Ltd 19/8/04, Potter J, HC Auckland CP308/SD00 **H**

Wellington International Airport Ltd v Commerce Commission (2003) 16 PRNZ 530 (HC) **H** [Yellow]

Databases > Case Law > BriefCase > 2002 > June > Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd (HC, 14/06/02)



THOMSON REUTERS

Foodstuffs (Auckland) Ltd v Progressive Enterprises Ltd

PDFs:

Date: 14 June 2002
Court: High Court, Auckland
Judge: Heath J
File no: M680-SW02
Noted: 25 TCL 29/7; [2002] BCL 718; NZCLD, 5th Series, 4910; [2002] CSLB 110
Parties: **FOODSTUFFS** (AUCKLAND) LIMITED (*Plaintiff*)
Progressive Enterprises Limited (*Defendant*)
Foodland Association Limited (*Defendant*)
Denstree Corporation Limited (*Fourth Defendant*)
Dairy Farm Limited (*Fourth Defendant*)
The Overseas Investment Commission (*sixth Defendant*)
The Attorney General (*Seventh Defendant*)

Legal Representatives: J A Farmer QC & G S A MacDonald for Plaintiff
L L Stevens QC, M Dunning & N Flanagan for First Defendant
J R Fardell and R J Latton for Second Defendant
M S Cole for Third Defendant
No appearance by or on behalf of Fourth Defendant
J E Hodder for Fifth Defendant
T A Simmonds for Sixth Defendant
G S A MacDonald, Phillips Fox, Auckland
M Dunning and N Flanagan and R J Latton, Russell McVeagh, Auckland
M S Cole, Simpson Grierson, Auckland
J E Hodder, Chapman Tripp, Wellington
T Simmonds, Meredith Connell, Auckland
c.c. J A Farmer QC, Auckland
c.c. L L Stevens QC, Auckland
J R Fardell QC, Auckland

Case Summary - BriefCase

Civil procedure — Application — Review

Commercial law — Competition (see Trade practices - Competition)

Unsuccessful application by F for interim orders under s 8 of the Judicature Amendment Act 1972 ('the Act'); orders were to prohibit first and second defendants, 'P' and 'FA', from taking any action to acquire shares in Woolworths (New Zealand) Ltd ('Woolworths') from third and fourth defendants, 'DC' and 'DF'; this was pending further order of the Court and determination of F's application for judicial review; May 2001 P applied for clearance from Commerce Commission ('the Commission') to acquire Woolworths; July 2001 clearance granted by the Commission under the test for application relevant before amendments were made to the Commerce Act 1986 ('CA'); the decision to give clearance was found invalid on appeal; in the meantime the Government introduced an Act which validated the 11 clearances affected by the appeal; acknowledged it was not the intention of CA's amendments to apply the new test to applications filed before the amendments came into force; P and FA therefore successful on appeal; May 2002 FA lodged application with OIC outlining the proposed investment to be undertaken; OIC granted the application; F was oblivious to steps taken by FA to seek appropriate consent under the Overseas Investment Act 1973 ('OIA'); it wanted to be heard before any final decision but was told a final decision on consent had already been made; F sought judicial review of the decision under the OIA; F contended the Minister's decision under the OIA was unlawful and therefore review necessary under s 8 of the Act.

Databases > Case Law > BriefCase > 2002 > June > Talleys Fisheries Ltd v Cullen (HC, 07/06/02)



THOMSON REUTERS

Talleys Fisheries Ltd v Cullen

PDFs:

Date: 7 June 2002
 Court: High Court, Wellington
 Judge: Ronald Young J
 File no: CP287/00
 Noted: 25 TCL 28/6; [2002] NZLJ 443
 Parties: **TALLEYS FISHERIES LIMITED** (*Plaintiff*)
 MICHAEL JOHN **CULLEN** AND PETER COLIN HODGSON (*First Defendants*)
 THE OVERSEAS INVESTMENT COMMISSION (*Second Defendant*)
 THE MINISTRY OF **FISHERIES** (*Third Defendant*)
 MARUHA (NZ) INCORPORATED LIMITED (*Fourth Defendant*)

Legal Representatives: J E Hodder, G P Malone, D R Kalderimis for Plaintiff
 R J Ellis, K C Millard for First and Third Defendants
 G Palmer and B Hale for Second Defendant
 J Miles QC and Z Kennedy for Fourth Defendant
 Fletcher Vautier Moore, Wellington, for Plaintiff
 Crown Law, Wellington, for First and Third Defendant
 Chen Palmer & Partners, Wellington, for Second Defendant
 Buddle Findlay, Wellington, for Fourth Defendant

Case Summary - BriefCase

*Civil procedure — Costs — Amount**Maori affairs — **Fisheries** — Quotas*

Judgment as to costs in relation to a unsuccessful application by T for judicial review of the decisions made by the Overseas Investment Commission ('OIC') and the Ministry of **Fisheries** ('MoF') in granting Maruha Incorporated Ltd ('MIL') to hold fishing quota; T submitted that in public interest litigation costs should not be so punitive as to discourage litigation; T further submitted that MIL should not be entitled to costs because it joined the proceedings of its own volition and used the proceedings to assist it in subsequent litigation; T also submitted that the MIL's costs on discovery were improper and should not be awarded; C submitted that T's claim was commercially motivated and that costs should be approached on this basis; OIC and MIL submitted that costs should be awarded beyond scale 3C.

Held, the litigation was not in the category of public interest; the joinder of MIL was proper and fair and MIL should be awarded costs; C and MoF are entitled to the whole of their costs; OIC is entitled to an increase in scale costs; MIL had a lesser direct burden than the other defendants and costs should reflect this position; orders accordingly

Legislation Cited*Statutes*

Declaratory Judgments Act 1908
Fisheries Act 1983
Fisheries Act 1996
Fisheries Amendment Act 1999
 Judicature Amendment Act 1972
 Overseas Investment Act 1973

Regulations

High Court Rules R 48C

Cases Cited

Referred to

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