

# Oral evidence in New Zealand

## *Takamore Trustees v Kapiti Coast District Council* (2003) 3 NZLR 496

Young J, 4 April 2003

### Issue

This was an appeal to the High Court of New Zealand from a decision of the Environment Court regarding approval for the construction of a link road. As most of the case is not relevant to Australia, only the issue in relation to the treatment of oral history is summarised below.

### Background

The Environment Court of New Zealand had upheld a decision by Hearing Commissioners appointed by the Kapiti Coast District Council to grant an application for a 'notice of requirement' for a designation for the link road. The decision was appealed on a number of grounds by the Takamore Trustees and the Waikanae Christian Holiday Camp.

The Takamore Trustees represent local iwi (traditional owners) who did not want the road built through an area at Takamore identified as waahi tapu (a sacred site). They said the area contained taonga (treasures) and included koiwi (human bones). Ground 3 of the appeal was characterised as a failure by the Environment Court to give reasons for its conclusion that it was not satisfied on the balance of probabilities that there were koiwi buried in swamps at Takamore—at [42] and [52].

The Environment Court rejected oral evidence going to the existence of taonga and koiwi in the Takamore wetlands for a number of reasons. Among these, it was of the view that the evidence was 'cryptic and assertive, bereft of any back-up history or tradition'. The court expressed surprise at the 'sparseness' of the evidence. It had heard evidence from three witnesses accepted as 'koumatua', said to hold the collective oral tradition of the iwi—at [53] and [62] to [66].

### On appeal

Justice Young observed that 'it is difficult to see, given that the court was concerned with an oral history which pre-dates European presence, how more specificity is reasonably possible'. Even though the evidence was 'cryptic', this was not a reason for rejecting it — at [67].

Young J went on to say that:

The (Environment) Court complains about a lack of 'backup history' or 'tradition'. Again, it is difficult to understand what this means. Those ... entrusted with the oral history of the area have given their evidence. Unless they were exposed as incredible or unreliable witnesses, or there was other credible or reliable evidence which contradicted what they had to say, accepted by the Court, how could the Court reject their evidence. The Court

complained it was bereft of 'evidence' and had 'assertion' only of the presence of koiwi. The evidence was given by koumatua based on the oral history of the tribe. What more could be done from their perspective. The fact no European was present with pen and paper to record such burials could hardly be grounds for rejecting the evidence—at [68].

### **Decision**

Young J was of the view that no 'rational' reason was given by for rejecting 'the clear evidence of the koumatua of the presence of koiwi in the swamps of Takamore and thus potentially in the area of the proposed road'. Therefore, his Honour held that the Environment Court 'wrongly concluded there was no evidence of the presence of koiwi in the Takamore swamp area'—at [69] and [79].