Overview of Section 45

There are a number of different issues at play within this claim. This paper deals with them all separately

1. **Notification to owners**

   The original hearings of 1999 and 2000 were held over a number of months because there were a number of claims dealing with overlapping issues. Part way through the hearing, Judge Isaacs recused himself because he is a descendant of the original owners. When he did so, he ordered that a meeting be held with the beneficiaries of the Trusts to discuss the applications in front of the Court. This meeting was to be advertised in a number of newspapers, and was to be held by 31 August 1999. This meeting did not occur. The hearing went ahead regardless in November 1999.

   The reason this is an issue relates to the idea of natural justice. People that have an interest in a case need to be made aware that the hearing is taking place, and what it relates too, otherwise it can appear that Justice is being done behind closed doors. Therefore, because the meeting did not go ahead, the interested parties (beneficiaries) did not have adequate notice of the hearing or what it related too.

2. **Intention of the 1971 Act**

   As you are probably aware the Crown had been attempting for a number of years to purchase lake Waikaremoana from the owners, and they repeatedly refused to sell. In 1969 a compromise was made that they could lease the lake from the owners. This was the reasoning behind the Lake Waikaremoana Act 1971. The purpose of the Act as to formalize the lease and allow the Trust Boards to distribute the rent money to the owners and their descendants.

   It appears to me that the owners at no point intended to transfer the complete title of the lake over to the two trust boards, as this would be inconsistent with them continually refusing to sell the lake to the Crown. If they always refused to sell it to the Crown, why would they then be OK to transfer it to a Trust Board?

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3. Trust Board Membership

Currently the Trust Board has a membership that is wider than that of the descendants of the original owners. The rental money from the Lake lease is combined with the general assets of the Trusts, which means that people that are not beneficial owners of the lake get the benefit of the rental money.

This does not align with the preamble of the Lake Waikaremoana Act 1971 which said that the rent was meant to be distributed "for the benefit of the owners of Lake Waikaremoana and their descendants". If Parliament had intended for the rental money to be distributed to a wider group of people, then there would be no need for this in the preamble.

4. Meaning of the word "owners"

The Judgment of 18 March 2000, said that the word owners was not used to indicate a continuing relationship but for convenience and clarity." I disagree with this, as in legislation words are used for very specific reasons. The word owner was used to distinguish between the owners (and their descendants) and the other beneficiaries in the Trust Boards. If parliament was intending for the title to be transferred fully to the Trusts, the Act could have just used the word beneficiaries.

There is also a difference between legal title and beneficial title. In order to transfer a beneficial interest, you have to specifically state that is what you are doing. The Act does not do that, therefore it can be presumed that they did not intend to transfer beneficial ownership.

5. What we are seeking from the Court

We are asking the Court to recommend that the 18 February 2000 decision by cancelled, and that the legal title of the lake bed be vested back to the descendants of the original owners.