Glenharrow Holdings Ltd v A-G 2/10/02, Chisholm J, HC Wellington CP242/00

Partially successful application for judicial review and declaratory orders - Minister of Energy granted GHL a mining licence for serpentine, bowenite, talc and quartz within specific area of Crown land on West Coast of South Island - licence for a 10 year period - GHL wished to extend licence period to statutory maximum 42 years - previous judgment made declarations that term of licence is a condition of the licence and GHL has a priority right to have granted to it a mining licence in respect of currently licensed land - GHL made fresh applications to Minister of Energy for variation and issue of new licence requesting that as licence was near end of its term that variation application be processed first - Crown Minerals believed application for issue of new licence should be processed first - GHL issued proceedings for declarations and orders - TroNT joined as second defendants because all pounamu, including serpentine and bowenite within licensed area, vested in TRoNT by Ngai Tahu (Pounamu Vesting) Act 1997.

Held, the licence term specified in the body of the licence qualifies as a "condition" in terms of the variation provision s 103D Mining Act 1971 - therefore GHL's right to pursue its variation application has been preserved by s 107(1) Crown Minerals Act 1991 and s 4(1) Ngai Tahu (Pounamu Vesting) Act 1997 - Minister of Energy does not have power to grant a new licence to GHL because this cannot be reconciled with the scheme of Crown Minerals Act 1991 and Ngai Tahu (Pounamu Vesting) Act 1997 - assuming description of licensed area does not match boundary pegs it would be open for Minister of Energy to conclude problem arose due to "clerical error" and according to s 103D(2) Mining Act 1971 could vary licence to correct this - the consent of the Minister of Conservation to a variation of the works programme means it is difficult to see how Minister of Energy could legitimately refuse to vary the condition once a formal application is made - because GHL's licence qualifies as an "existing privilege" and the vesting of pounamu in TRoNT does not affect GHL's existing privilege, TroNT does not have power to veto the variation application - TroNT does have right to object once variation application is notified - Ministers must have positive regard to policy of Mining Act 1971 when considering variation application - follows that if Treaty of Waitangi principles are inconsistent with Mining Act 1971 the Mining Act 1971 must prevail - applying the transitional provisions of Ngai Tahu (Pounamu Vesting) Act 1997 Ministers have to approach matter on basis the ownership of pounamu remained with Crown - there is no obligation to consult TroNT but it would be lawful for Ministers to do so - orders and declarations made accordingly