

TOM TE WEEHI

On November 14 1991 after a long illness, one of recent history's most successful fighters for Maori rights died.

Tamati Paku (Tom) Te Weehi was a 58 year old shearer when he died. A quiet, determined socialist, he was deeply committed to the betterment of Maori people regardless of their iwi (tribal) affiliations.

He will be remembered for the massive contribution he made to Maori fishing rights when on January 19 1984, he went to North Canterbury's Motunau Beach to get some paua for a family feed. While there, he was stopped by two fisheries officers, who inspected his catch and decided Mr. Te Weehi was in breach of the Fisheries Act, 1983 because some of the paua he had collected were undersized.

The case duly came before the District Court at Rangiora, where Mr. Te Weehi argued that he was exercising a traditional property right to take fish in the area. The Court rejected this defence, and he was convicted and fined.

But while the fisheries officers might have thought that was the end of the matter, for Tom Te Weehi, it was just the beginning.

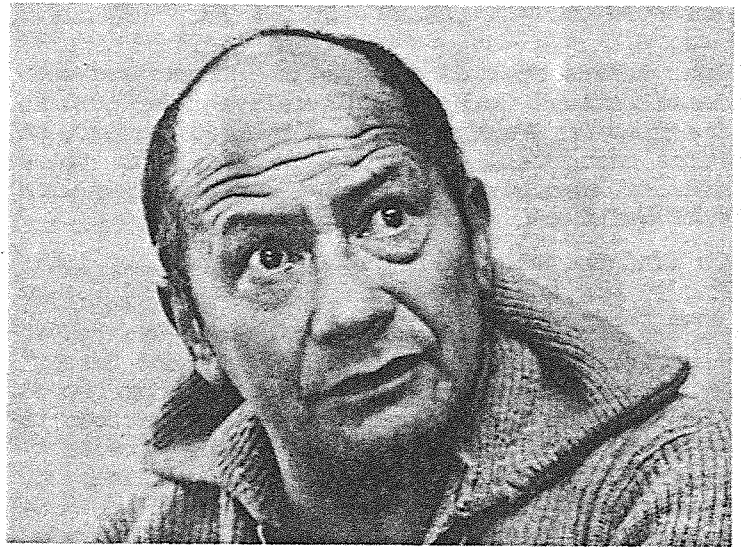
A friend put him on to Christchurch lawyer Mike Knowles, who had been waiting for just such a case to come along in order to test the position of traditional Maori property rights in Court, in the light of what he describes as some "powerful" legal arguments which had just then been published overseas by Dr. Paul McKew, tutor of Sydney Sussex College at Cambridge University.

Dr. McKew had undertaken a detailed study of traditional property rights, including fishing rights, and the application of British Common Law to those rights in lands and territories all over the world which had been acquired by the British Crown during the course of English colonial history.

Dr. McKew's detailed study found that property rights which had existed before the arrival of the British, and which were not specifically disallowed by the Crown, had to be respected.

Mr. Te Weehi and Mr. Knowles contended in the High Court that a customary right for Ngai Tahu to take shellfish at Motunau Beach had existed before the 1840 signing of the Treaty of Waitangi, and had not been extinguished since.

In support of their claim, evidence was heard from Mr. Billy Te Awaroa Nepia and Mr. William Joseph Karetai. Mr. Nepia was senior lecturer in Maori at the University of Canterbury, and Mr. Karetai, a leader and spokesperson for Ngai Tahu, was also a member of the NZ Maori Council, a member of its special committee on fisheries and a member of the Southern Regional Fisheries



Committee Management Board. Both men have since died.

Their evidence told of a customary right for particular Maori to collect limited quantities of shellfish from stretches of beach over which their tribe, or a consenting tribe, exercised manawhenua (tribal control). They said that sometimes, as with Mr. Te Weehi, the tribe exercising manawhenua would give permission to a member of another tribe to take shellfish, but such permission would never be granted to tribal enemies. There had been many battles between some tribes over access to fishing grounds and coastlines in the past.

Mr. Te Weehi was born of Ngati Porou descent in Ruatoria. Ngati Porou and Ngai Tahu have close tribal affiliations due to the fact that Tahu Potiki, from whom Ngai Tahu take their name, was the younger brother of Porourangi, from whom Ngati Porou take theirs.

Tom Te Weehi had lived in Waikari, north Canterbury, within the rohe (tribal boundaries) of Ngai Tahu for thirteen years at the time the paua were taken, and had the permission of local kaumatua (elder) Rakihia Tau to take the shellfish.

Mr. Justice Williamson was asked on the basis of the evidence to find that Mr. Te Weehi was exercising a "customary Maori right" to take paua from the beach, and that therefore the provisions of the Fisheries Act, which restricts the size and type of shellfish to be taken, did not apply to him.

Curiously enough, the prosecution seems to have been completely unprepared for this argument. They chose not to present any arguments against the existence of such a customary right, seeming to rely instead on the Courts hitherto perfect record of ignoring anything remotely favouring Maori rights.

QUIET FIGHTER

This perfect record stemmed in modern times from a landmark case known as Te Heu Heu vs. Aotea District Board, which was decided in 1944. In this case, Te Heu Heu cited rights under the Treaty of Waitangi, but the Court ruled that the Treaty could not bind any Court.

This precedent has been faithfully followed ever since. The difference in Tom Te Weehi's case was that he did not rely on the Treaty, but asserted a customary right that stood outside of the Parliamentary law. According to Dr. McKew's studies, that right had to be respected in a Court of Law under British Common Law, which still forms a large part of New Zealand's lawmaking and interpreting process.

The result was an historic decision in favour of Tom Te Weehi.

"The evidence in my view is sufficiently clear, undisputed and precise to establish a customary right of the nature contended by Mr. Te Weehi" said Justice Williamson.

He held that Mr. Te Weehi was exercising a customary Maori fishing right within the meaning of Section 88 of the Fisheries Act, and it followed that the other provisions of the Act, including the regulations under which he had been charged, did not affect his right to take paua. Accordingly, Mr. Te Weehi had not committed any offence under those regulations, and his conviction was quashed.

The immediate reaction was one of near hysteria on the part of fisheries officers, editorial writers and government functionaries.

"Unpleasant consequences of the recent High Court decision on Maori fishing rights are beginning to emerge" frowned a Press editorial two weeks later. "The racial application of the law is prompting racist reactions in the community."

"What about the Maori's traditional right to take wood pigeons?" queried the acting chief fisheries officer of the Ministry of Agriculture and Fisheries. Grave fears were held for the survival of northern Wairoa's toheroa beds, reported to be under siege from hordes of Maori wielding shovels and spades, claiming a traditional Maori right to take toheroa.

Today, these fears have faded. But Tom Te Weehi and his High Court victory have left a more profound mark on the country than anyone at the time seems to have imagined.

Shortly after the Te Weehi decision, the government (following the prescriptions of the Business Roundtable), attempted to split up the nation's fishing resource into segments which it could then sell off to the highest bidder. These

market segments were called Individual Transferable Quotas (ITQ's) and represented a newly-created property right in fisheries.

In effect, they removed the ownership of NZ's fishing resources from the Crown, and handed them over to fishing companies like Fletcher Challenge. In the process, the Crown 'forgot' to make any provision for Maori fishing rights - rights which were supposed to have been protected forever under the Treaty of Waitangi.

Ngai Tahu and the Muriwhenua tribes of the far north saw red at the loss of these rights and applied for a Court injunction to prevent the sale of the new ITQ's.

In Court, the tribes cited the Te Weehi decision and the injunction was granted. The Court directed the Crown to negotiate with Maori fishing interests before it made any further progress with the sale of ITQ's.

The rest is history. The Maori negotiators, claiming 100% of the fisheries resource, generously offered to share it 50/50 with the Crown in the spirit of 'partnership'. The government however, was unable to stomach the thought of an equal partnership with Maoridom, and countered with an offer to hand over 10% of the resource to Maori control, with strings attached.

Despite the loud objections of the majority of the Maori negotiators, this 10% solution was eventually rammed through Parliament in the new Maori Fisheries Act. Although far short of what Maori are actually entitled to, ten percent of the nation's fishing quota had been won back for Maoridom. That is a lot of fish! And all as a result of Tom Te Weehi's case. Seldom has a trip to the beach for some paua resulted in so rich a haul.

The lasting result of the Te Weehi decision, according to Mike Knowles, is the fact that Maori fishing rights have now been established, and the Crown will have to take account of them from now on. No longer will the Crown be able to plough ahead, making decisions off its own bat concerning the fishing resources of the nation. Maori will now have to be consulted, and the Crown's rights will have to be proved, not just assumed.

The battle over fishing rights is far from over. Both the Crown and Maori fishing interests are manoeuvring for a greater share of the ITQ's, but present day Maori and their descendants for generations to come owe a great debt of thanks to the quietly determined ex-shearer from Waikari, whose hunger for paua was matched by a thirst for justice.

Tom Te Weehi is survived by his wife Wendy and his six children.