

Judicial review in 2020: a feast of tapas

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Government Law – Year in Review

NZ Centre for Public Law



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THE JUDGE OVER YOUR SHOULDER
JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

This paper has been prepared as general advice for client departments and agencies by Crown Counsel in the Crown Law Office. As such it is subject to legal professional privilege. Specific inquiries should be addressed to:

Crown Law Office
P O Box 5012
WELLINGTON
Tel. (04) 721-719
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1 MARCH 2011

The
**JUDGE
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CONTENTS

INTRODUCTION	2	THIRD GENERAL GROUND OF REVIEW	16
THE NATURE OF JUDICIAL REVIEW	2	- UNREASONABLENESS	17
THE GROUNDS OF CHALLENGE	5	- Substantive Unfairness	17
FIRST GENERAL GROUND OF REVIEW	6	Other impacts on judicial review	18
- ILLEGALITY	7	The Treaty of Waitangi	20
Error of law	7	International obligations	21
Error of fact	8	New Zealand Bill Of Rights Act 1990	24
Ultra Vires	8	Remedies	25
Relevant or irrelevant considerations	9	Human Rights Act	
Rigid application of a pre-determined policy	9	THE PROCESS AND OUTCOME OF	26
Acting under dictation	10	JUDICIAL REVIEW	26
Invalid delegation	10	Interim orders	26
Improper purpose	10	Relief	27
SECOND GENERAL GROUND OF REVIEW	11	Process	27
- UNFAIRNESS	12	Discovery	28
Natural Justice	13	Affidavits	28
Bias	14	Getting the process right	29
Legitimate Expectation	15	Consultation	29
Lack of consultation		Preparing the recommendations	

- illegality
- unfairness
- unreasonableness



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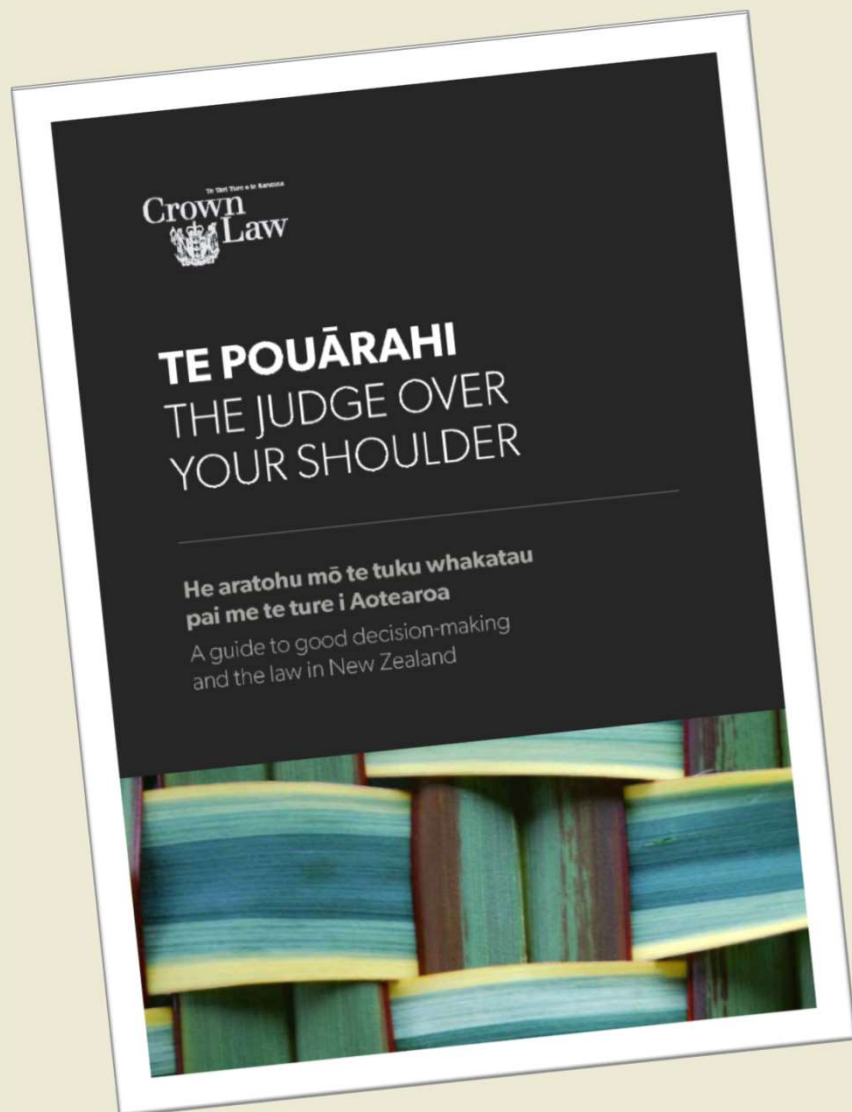
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TE POUĀRAHI
THE JUDGE OVER
YOUR SHOULDER

He aratohu mō te tuku whakatau
pāi me te ture i Aotearoa
A guide to good decision-making
and the law in New Zealand



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- step 1: preparing for the decision
- step 2: getting the process right
- step 3: making a good decision
- step 4: recording and communicating the decision



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STEP 1: PREPARING FOR THE DECISION

Question 1: What is the source of power for the decision?

Question 2: What are the limits on your decision-making?

Question 3: Who has legal authority to make the decision?

Question 4: Are there any government policies or guidelines that apply to this decision?

Question 5: Are there human rights implications of the decision?

Question 6: Are there Māori-Crown implications of the decision?

Question 7: Are there any relevant international obligations?

- source of power
- limits
- who's authority
- policies and guidelines
- human rights
- Māori-Crown implications
- international obligations



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STEP 2: GETTING THE PROCESS RIGHT

Question 8: Are there statutory processes to follow?

Question 9: What does the duty of fairness require?

Question 10: Who needs to be heard?

Question 11: Will the decision-maker be seen to have an open mind?

Question 12: What has been promised already?

Question 13: Will privacy rights/personal information be managed properly?

Question 14: How quickly should the decision be made?

- statutory process
- duty of fairness
- hearing rights
- open mind
- prior promise
- personal information / privacy
- speed

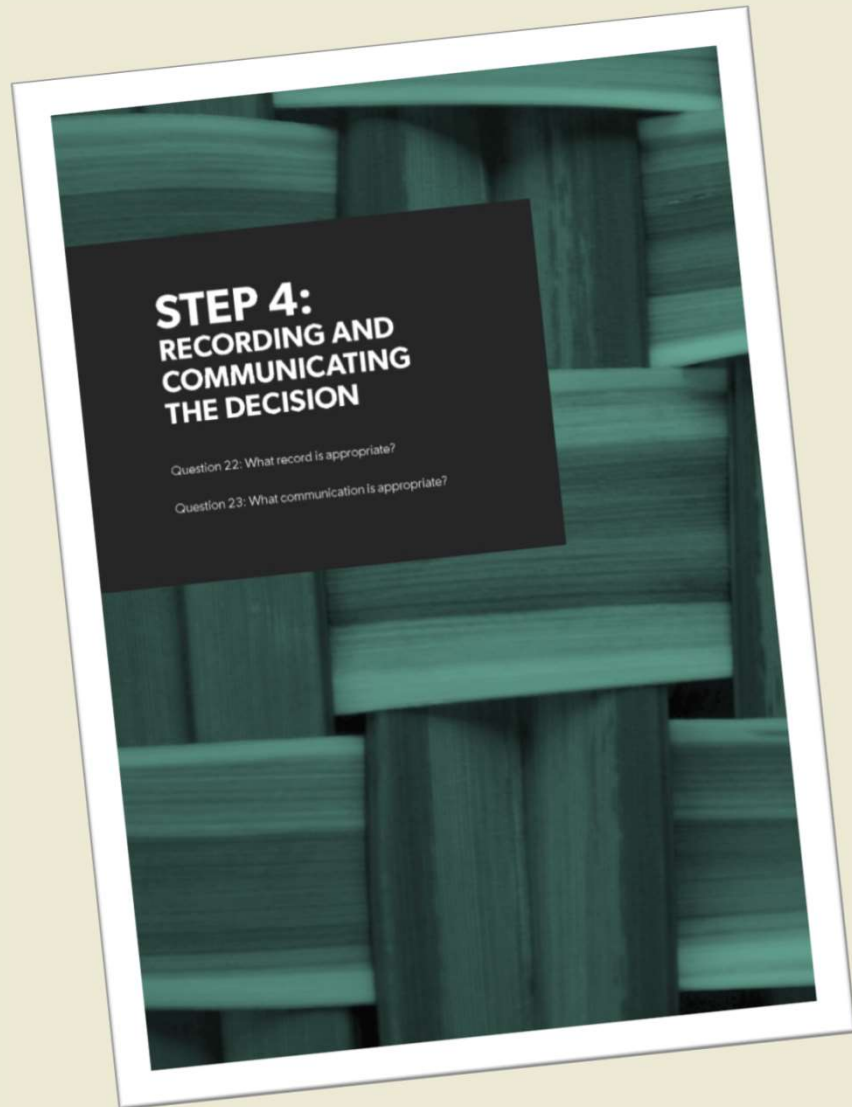


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- relevant and irrelevant factors
- weight
- factors that “might attract judicial criticism”
- proper purpose
- legal position
- proportionality
- evidence





- record
- communication





- judicial review:
 - constitutional background
 - description
- other forms of public supervision

