

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2016-485-770
CIV-2017-404-524
CIV-2017-485-398
CIV-2017-485-513
CIV-2017-485-514
CIV-2017-485-515**

IN THE MATTER OF the Marine and Coastal Area
 (Takutai Moana) Act 2011

IN THE MATTER OF an application for an order
 recognising Customary Marine Title
 and Protected Customary Rights by
 Elvis Shayne Reti, for and on behalf
 of himself and the Reti Whānau

On the papers:

Counsel: J Mason for Applicants

Minute: 27 May 2021

MINUTE OF CHURCHMAN J

Background

[1] The Court holds an annual round of case management conferences (CMCs) in respect of all applications before the Court for recognition orders under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). The purpose of the CMCs is to ensure that all applications are proceeding toward hearing in an orderly fashion and to address such impediments as the applicants may have encountered which adversely affect the progress of their application.

[2] Counsel are required to file an updated memorandum advising on progress and identifying areas where the assistance of the Court is required. Such memoranda are required to be filed in sufficient time so that the issues raised can be considered by the

Court and by other cross-applicants or interested parties who may potentially be affected by the content of the memoranda.

[3] Timely filing of the memoranda is important so that the Court can determine whether physical attendance of counsel at any particular CMC is required, or whether orders can be made on the papers and the appearance of counsel dispensed with and the relevant CMC vacated.

[4] This year's ten scheduled CMCs commence in Wellington on Tuesday 8 June and conclude in Auckland on Wednesday 30 June. The CMCs are scheduled to take place from locations as disparate as Dunedin and Whangarei with the Court being required to travel almost constantly over a period of some three weeks.

The directions

[5] By minute of 12 May 2021, the Court directed all applicants to file a brief memorandum detailing progress made since the last CMC and outlining any orders or directions the applicant group seeks. Such a direction would not have come as any surprise to counsel as they are requested before every CMC annual round. The memoranda were required to be filed and served by 5pm on 21 May 2021. The overwhelming majority of applicants have had no difficulty complying with that direction.

[6] By memorandum dated 26 May 2021 (after the time for compliance with the direction had already expired), Ms Mason, who is counsel for five applicants and two interested parties¹, has requested an extension of time for the filing of memoranda in relation to all seven matters where she is counsel. The extension sought is until Friday 4 June 2021. With Monday 7 June 2021 being a public holiday, this is the last working day prior to the commencement of the CMCs.

[7] The reasons given for the failure to comply with the direction in the 12 May minute, and the request for the extension, are that counsel needs to discuss and seek

¹ While interested parties are entitled to appear at CMCs, they are not required to file memoranda in advance.

instructions in relation to the decision in *Re Edwards (Te Whakatōhea No. 2)* issued on 7 May 2021. It is also submitted that:

The COVID-19 dangers have led to great uncertainties and have restricted contact amongst the claimant and IP groups and their constituents, which has resulted in a lack of progress overall in the last year.

[8] The issues raised by counsel are common to all of the 200 or so applicant groups and do not appear to have affected their ability to comply with the Court's direction. No other applicant group has sought an extension of time for the filing of their memoranda.

Analysis

[9] It is not obvious why the need of counsel to discuss with applicants the decision in *Re Edwards (Te Whakatōhea No. 2)* should impede the ability to file a brief memorandum detailing progress made since the last CMC and outlying orders or directions sought. Neither is it clear how uncertainties about "COVID-19 dangers" could impact on counsel's ability to comply with a timetable direction in a way that is different to the ability of all other counsel to comply with that direction.

[10] By requesting an extension for filing the simple memoranda directed until the last working day before the CMC round is commenced, the Court's ability to consider the contents of the memoranda and make appropriate directions such as the making of directions on the papers in relation to the need to dispense with appearance or vacate CMCs entirely, is significantly impaired. It also places the Registry under unnecessary pressure at a time when literally hundreds of memoranda have to be reviewed, processed and consequential directions made.

[11] Counsel is directed to file and serve the memoranda requested in the minute of 12 May no later than **noon, Tuesday 1 June 2021**. Counsel is also reminded that, if variation of a timetable direction is sought, the proper course is to apply for such variation prior to the expiry of the relevant time.

Churchman J