

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-Ā-KAHU ROHE**

IN THE MATTER OF an application for recognition orders
under the Marine and Coastal Area
(Takutai Moana) Act 2011

On the papers:

Counsel: T Sinclair for CIV-2011-485-817 (Edwards Whakatōhea),
 CIV-2017-485-264 (Whakatōhea Pākowhai),
 CIV-2017-485-375 (Hiwarau, Turangapikitoi and Ōhiwa of Whakatōhea)
 CIV-2017-485-269 (Ngāti Muriwai)
 CIV-2017-485-278 (Whānau-a-Apanui Hapū)
 T Castle for CIV-2017-485-185 (Ngāi Taiwhakaea Hapū)
 D Stone and C Leuga for CIV-2017-485-238 (Te Whānau a Te Harāwaka)
 T Bennion for CIV-2017-485-253 (Ngāti Patumoana)
 M Mahuika, N Coates and L Underhill-Sem for
 CIV-2017-485-318 (Te Rūnanga o Te Whānau)
 B Lyall for CIV-2017-485-201 (Te Ūpokorehe)
 E Rongo for CIV-2017-485-270 (Ngāi Tai), and CIV-2017-485-272
 (Ririwhenua Hapū)
 A Warren and K Ketu for CIV-2017-485-377 (Te Whakatōhea
 Rangatira Mokomoko)
 T K Williams and C Linstead-Panoho for CIV-2017-485-377
 (Ngāi Tamahaua), and CIV-2017-485-262 (Te Hapū Titoko o Ngāi Tama)
 C Hirschfeld for CIV-2017-404-482 (Ngāti Huarere ki Whangapoua)
 A Sykes and C Houia for CIV-2017-485-299 (Ngāti Ira o Waiōweka Rohe),
 and CIV-2017-485-292 (Ngāti Ruatakenga)
 J Mason for CIV-2017-485-513 (Manu Paora Whānau)

Interested parties:

A Green and M Jones for Thames-Coromandel District Council and
Whakatane District Council
G Melvin and R Budd for Attorney-General

Minute: 18 June 2021

**MINUTE (NO. 10) OF CHURCHMAN J
[Case Management Conferences (CMCs) – Rotorua 2021]**

CIV-2011-485-817 (Edwards Whakatōhea), CIV-2017-485-264 (Whakatōhea Pākowhai), CIV-2017-485-375 (Hiwarau, Turangapikitoi and Ōhiwa of Whakatōhea), CIV-2017-485-269 (Ngāti Muriwai), CIV-2017-485-278 (Whānau-a-Apanui)

[1] Mr Sinclair filed a memorandum confirming that the Whakatōhea Kotahitangi Waka applicants (all of whom participated in the Whakatōhea hearing between August and October 2020) were continuing to engage with other applicants with the view to finding agreement on proposed recognition orders.

[2] The appearance of counsel at the 23 June 2021 CMC in Rotorua is excused. Alternatively should counsel wish to participate by AVL, they should contact the Registrar.

CIV-2017-485-185 (Ngāi Taiwhakaea Hapū)

[3] Mr Castle's memorandum confirmed that this application overlapped with the Edwards Whakatōhea application. Although Mr Castle maintained a watching brief on behalf of this applicant in the Whakatōhea hearing, Ngāi Taiwhakaea did not actively participate.

[4] Mr Castle indicates that this applicant's claim will not be ready for hearing for another 12 months and asks that it be adjourned until March 2022 to ascertain the current position.

[5] The matter is adjourned until the 2022 Rotorua CMC. No later than 30 March 2022, Mr Castle is to provide a memorandum to the Court outlining the progress that has been made towards hearing and indicating what matters need to be addressed. In particular, the Court would wish to know what dialogue there has been between this applicant and other cross-applicants, most particularly Ngāti Awa.

[6] Mr Castle's attendance at the Rotorua CMC on 23 June 2021 is excused.

CIV-2017-485-238 (Te Whānau a Te Harāwaka)

[7] This applicant was involved in the Edwards Whakatōhea hearing and the memorandum filed by Mr Stone confirms that it will attend the scheduled February 2022 hearing in that matter in support of Te Rūnanga o Te Whānau (CIV-2017-485-318).

[8] This matter is adjourned until the 2022 Rotorua CMC and counsel's attendance at the 23 June 2021 CMC is excused.

CIV-2017-485-253 (Ngāti Patumoana)

[9] This applicant is also involved in the Edwards Whakatōhea hearing and the memorandum filed by Mr Bennion confirms that it is actively engaged in the process of drafting proposed joint recognition orders.

[10] The request to attend the 23 June 2021 CMC in Rotorua by AVL is granted. Counsel is to liaise directly with the Registrar to facilitate that.

CIV-2017-485-318 (Te Rūnanga o Te Whānau)

[11] The memorandum from Ms Coates confirms that the applicant continues to engage with the Crown directly and is also actively engaging with overlapping claimants in respect of boundary areas. There are also current negotiations with the Crown to settle historical Treaty of Waitangi claims.

[12] The applicant seeks to adjourn the High Court application sine die to pursue direct negotiation. The Court is reluctant to adjourn proceedings such as this sine die as it loses oversight of progress.

[13] This matter is adjourned for 12 months to be called at the 2022 Rotorua CMC. Counsel's attendance at the 23 June 2021 CMC is excused. Alternatively, if counsel wishes to attend by AVL, that should be arranged directly with the Registrar.

CIV-2017-485-201 (Te Ūpokorehe), CIV-2017-485-270 (Ngāi Tai), CIV-2017-485-272 (Ririwhenua Hapū), and CIV-2017-485-377 (Te Whakatōhea Rangatira Mokomoko)

[14] Counsel in the above four matters have filed a joint memorandum. All applicants are involved in the Edwards Whakatōhea hearing and counsel are engaging in respect of the process of preparing draft orders.

[15] The joint memorandum raises concerns about funding arrangements in relation to Stage 2 of the Whakatōhea proceedings and indicates that there is a real possibility that the lack of resourcing will prevent the applicants meeting the current deadline.

[16] The memorandum also notes that Te Arawhiti is yet to complete payment of reimbursements for the hearing held last year. Given the findings of the Waitangi Tribunal in relation to Stage 1 of its report on the Marine and Coastal Area (Takutai Moana) Act 2011, these comments are disturbing. Mr Melvin/Ms Budd are requested to liaise with Te Arawhiti to ascertain the reason for the funding difficulties described in the joint memorandum and to be in a position to report to the Court on these matters at the 23 June 2021 CMC.

[17] The joint memorandum asks that VMR facilities be made available for counsel and parties that are unable to travel to Rotorua for the 23 June 2021 CMC.

[18] The Rotorua Court has an AVL facility available for participation by counsel on 23 June 2021. Counsel should liaise with the Registrar as to how to access that facility.

CIV-2017-485-377 (Ngāi Tamahaua), and CIV-2017-485-262 (Te Hapū Titoko o Ngāi Tama)

[19] This applicant is also involved in the second stage of the Edwards Whakatōhea hearing in February 2022. Counsel raise the same concern as to funding arrangements in relation to the Stage 2 process as other counsel. As set out above, this matter will be addressed with counsel for the Attorney-General at the 23 June 2021 CMC.

[20] The applicants seek clarification as to whether separate PCR orders are to be made. That matter can be the subject of submissions at the 23 June 2021 CMC.

[21] The application to appear at the 23 June 2021 CMC by AVL is granted. Counsel are to liaise with the Registrar.

CIV-2017-485-299 (Ngāti Ira o Waiōweka Rohe), and CIV-2017-485-292 (Ngāti Ruatakenga)

[22] A joint memorandum was filed on behalf of both of these applicants who are involved in Stage 2 of the Edwards Whakatōhea hearing. The memorandum again raises the same concerns in relation to funding. It is said that these concerns will impact on the timetabling, preparation and filing of evidence. These matters are again drawn to the attention of counsel for the Attorney-General.

[23] The memorandum requests that VMR facilities be made available for counsel and parties unable to attend the 23 June 2021 CMC. Counsel who wish to attend by AVL should make the appropriate arrangement with the Registrar.

CIV-2017-485-513 (Manu Paora Whānau)

[24] Ms Mason has filed two memoranda in respect of this application, the first dated 1 June 2021 and the second 10 June 2021. The first memorandum referred to what was described as “an absence of funding”. By minute of 3 June 2021, the Court required further information in relation to the fundings specifically asking for the following information:

- (a) the date of the relevant funding application or applications;
- (b) the work in respect of which the funding application was made;
- (c) whether the funding application has been responded to; and
- (d) what payments have been made, what requests for payment have been declined and the reason for that.

[25] Ms Mason’s memorandum of 10 June 2021 addressed some of these issues.

[26] The most concerning of the comments in the memorandum is the admission that for the past two years Ms Mason has not submitted any invoices to Te Arawhiti for payment in respect of this matter and a number of other matters where she is acting as counsel. She is complaining of “an absence of funding” in all of these matters.

[27] The matter is also concerning in the light of information provided by Ms Mason to the Court in a memorandum filed on 17 August 2020. The purpose of that memorandum was to explain this applicant’s abrupt decision not to participate in the Edwards Whakatōhea decision. That memorandum had stated:

Te Arawhiti have not funded the applicant’s legal costs for the last two years, as they have not agreed with his wish to have his Tikanga issues heard and determined by the Māori Appellate Court.

[28] It now appears that the true reason for Ms Mason not receiving any payments from Te Arawhiti is that, for the past two years, she has not submitted any invoices.

[29] In [5] of Ms Mason’s memorandum of 10 June 2021, she refers to matters which had been already addressed by the Court in its minute of 29 October 2020.¹ She says:

Mr Paul was an applicant who was in favour of a referral of his tikanga issues to the Māori Appellate Court (the Tikanga Referral). Another applicant Mrs Collier, had applied for the Tikanga Referral, and was supported by various other applicants who counsel acts for, including Mr Paul, those supporters of the Tikanga Referral did not file Tikanga Referral applications themselves, as they wanted to await the outcome of the Collier application first. The work undertaken to advance the Tikanga Referral was substantial.

[30] At [6] of the memorandum said:

Te Arawhiti has refused to fund any work in relation to the Tikanga Referral so this Firm’s invoices for that work remain unpaid. Counsel has already advised the Court that the Waitangi Tribunal has found that Te Arawhiti’s refusal to fund that work is a breach of Te Tiriti o Waitangi/The Treaty of Waitangi (“Te Tiriti/The Treaty”).

[31] In its minute of 29 October 2020, the Court addressed the claims made by Ms Mason on behalf of Mr Paul that he had somehow been involved in the Collier “test case” application as a party, or that he had filed any application of his own to have issues determined by the Māori Appellate Court. Both such claims were unfounded.

¹ Minute of Churchman J, CIV-2011-485-817 and CIV-2017-485-513, 29 October 2020, at [11]-[14].

[32] In her memorandum of 10 June 2021, Ms Mason implies that substantial legal work was undertaken on behalf of Mr Paul in relation to “Tikanga Referral”. She claims that Te Arawhiti has failed to pay such invoices. It is hardly surprising that Te Arawhiti would have refused to pay an invoice submitted on behalf of Mr Paul for any matter related to “Tikanga Referral”. As the Court noted in its minute of 29 October 2020, he has never made such an application. In the absence of an application by him, there is nothing that would justify Ms Mason rendering a bill to Te Arawhiti on his behalf.

[33] Ms Mason has not, as requested, provided any information about the reasons for Te Arawhiti’s asserted failure to pay bills in respect of these proceedings. That information would be the key to establishing whether or not Te Arawhiti has acted reasonably. At the CMC on 23 June 2021, the Court expects Ms Mason to provide the information specifically requested in [5] of the Court’s minute of 3 June 2021 and repeated in [24] of this minute.

[34] The claim in [6] of Ms Mason’s memorandum of 10 June 2021 that:

...the Waitangi Tribunal has found that Te Arawhiti’s refusal to fund [the Tikanga Referral] work is a breach of Te Tiriti o Waitangi ...

is a significant misrepresentation of the Waitangi Tribunal’s Wai 2660, 2020 Stage 1 Report.

[35] There is no mention in that report of Mr Paul’s application in these proceedings at all. In relation to the *Collier* test case, the Tribunal found that there was a potential for the Crown to have a conflict of interest with Te Arawhiti being the body administering funding under the Act while also being the Crown agency primarily responsible for dealing with applications under the Marine and Coastal Area (Takutai Moana) Act 2011.

[36] The Tribunal accepted that denying funding for the test case application brought by Ms Collier on the basis that it did not “advance” the applicant’s claim was inappropriate. That ruling had nothing to do with these proceedings. Mr Paul has never made such an application.

[37] Counsel's request to dispense with attendance at the 23 June 2021 CMC is declined. If counsel wishes to attend by AVL she should promptly contact the Registrar to make the appropriate arrangements.

CIV-2017-404-482 (Ngāti Huarere ki Whangapoua)

[38] In the minute of Collins J of 18 July 2018,² this case was allocated to the Rotorua Registry. However, given that it relates to an area at the northern end of the Coromandel Peninsula, it would appear to be more appropriately dealt with in the Tauranga Registry.

[39] Mr Hirschfeld in fact filed a memorandum providing an update on matters and seeking to be excused from the CMC to be held at Tauranga on 16 June 2021.

[40] Accordingly, this application is transferred from the Rotorua High Court list to the Tauranga High Court Marine and Coastal Area (Takutai Moana) Act list to be called at the 2022 round of CMCs.

Churchman J

² Minute of Collins J re CIV-2017-485-218 and other matters, 18 July 2018, at [90(8)].