

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

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

**CIV-2017-485-185
CIV-2017-485-299
CIV-2017-485-262
CIV-2017-485-377
CIV-2017-485-253
CIV-2017-485-292
CIV-2017-485-355
CIV-2017-485-201
CIV-2017-485-196
CIV-2017-485-270
CIV-2017-485-272**

UNDER the Marine and Coastal Area
(Takutai Moana) Act 2011

IN THE MATTER applications for recognition orders for
Customary Marine Title and Protected
Customary Rights

Counsel: T Castle for Ngāi Taiwhakaea (CIV-2017-485-185)
A Sykes for Ngāti Ira o Waiōweka (CIV-2017-485-299)
C Linstead-Panoho for Ngāi Tamahaua (CIV-2017-485-262) and
Te Hapū Titoko o Ngāi Tamahaua (CIV-2017-485-377)
T Bennion for Ngāti Patumoana (CIV-2017-485-253)
K Feint QC for Ngāti Ruatakenga (CIV-2017-485-292)
K Ketu for Te Uri o Whakatōhea Rangatira Mokomoko
(CIV-2017-485-355)
B Lyall for Te Ūpokorehe Treaty Claims Trust
(CIV-2017-485-201)
H K Irwin-Easthope for Te Rūnanga o Ngāti Awa
(CIV-2017-485-196)
E Rongo for Ngāi Tai (CIV-2017-485-270) and Ririwhenua Hapū
(CIV-2017-485-272) A J
A J Sinclair for Whakatōhea Kotahitanga Waka
(CIV-2011-485-817)
J Pou for Whakatōhea Māori Trust Board (CIV-2017-485-292)

Interested Parties:

R Roff, R Budd and S Gwynn for Attorney-General
R Boyte for Bay of Plenty Regional Council
T Reweti for Ōpōtiki District Council
M Jones for Whakātane District Council
B Scott for Seafood Industry Representatives

Minute: 21 March 2022

MINUTE (NO. 4) OF CHURCHMAN J
(Re Edwards (Whakatōhea) – Stage Two – Access to documents)

[1] By way of email to the Registrar on 1 March 2022, counsel for Ngāti Pāhauwera in proceedings under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act), sought access to a wide range of documentation filed in relation to the Stage Two Whakatōhea (Edwards) hearing.

[2] The reason advanced by counsel in support of the application was that Ngāti Pāhauwera were preparing for its own Stage Two hearing and that access to the documentation sought would have assisted in preparing for that hearing.

[3] The email from counsel noted that Ngāti Pāhauwera would accept the imposition of conditions on release of this documentation.

[4] Access for material like this is governed by the Senior Courts (Access to Court Documents) Rules 2017.

[5] Rule 11 permits any person to ask for access to documents by way of letter, email, or other written request to the Registrar.

[6] Such request is required to give reasons for asking to access the documentation and must set out the purpose for which access is sought and set out any conditions of the right of access that the person would be prepared to meet.

[7] Rule 11(5) provides that a party wishing to object to such a request must give written notice of the objection to the Registrar setting out the grounds on which the party objects. Such notice is to be given before 3pm on the third working day after the day on which the request is received.

[8] Rule 11(7) provides that a Judge may grant a request for access under this rule in whole or in part either without conditions, or subject to any conditions that the Judge thinks appropriate, or refuse the request.

[9] The Registrar referred the request to counsel on 15 March 2022. Fourteen responses were received. Of those who responded, all but one had no object to the application.

[10] By email of 18 March 2022, counsel for Te Ūpokorehe, Mr Lyall, consented to release of submissions and draft orders but did not wish to have their evidence or the notes of evidence released. No grounds upon which the opposition was based were provided.

[11] A subsequent email on 18 March indicated that Te Ūpokorehe withdrew their objection to the notes of evidence being released.

Analysis

[12] The enactment of the Senior Courts (Access to Court Documents) Rules represented an important step in the process of ensuring that justice was done in public and that the public should therefore, subject to the privacy rights of participants to litigation, should be able to see documents that have been filed in a proceeding.

[13] The reason advanced by counsel for Ngāti Pāhauwera that access to these documents will assist it to ensure the efficient completion of Stage Two of their own proceedings under the Act, is a valid one.

[14] Given the nature of the purpose for which these documents are sought, it is appropriate that access to the documents be qualified with the limitation that documents should be distributed only to counsel for Ngāti Pāhauwera and solely for the purpose of assisting them in the preparation of their own Stage Two proceedings.

[15] In relation to Te Ūpokorehe objection, although no reasons were provided as to why Te Ūpokorehe did not wish to have their evidence provided, the Court can infer

that it relates to privacy issues. Accordingly, the Te Ūpokorehe evidence is not to be disclosed.

[16] Should counsel for Ngāti Pāhauwera wish to pursue the application so as to obtain access to Te Ūpokorehe evidence, they should provide the Registrar with details as to why they want that evidence. If Te Ūpokorehe still wish to oppose that request, then they will need to file documentation explaining the reasons for their opposition and I will then deal with the matter on the papers.

Outcome

[17] Application for access to documentation is granted in the terms requested other than in respect of Te Ūpokorehe evidence. The order is subject to the condition that the documentation is to be provided to counsel only for the purposes of assisting counsel for Ngāti Pāhauwera in the preparation of their case for the Stage Two hearing, and not to be further distributed.

Churchman J