

**CASE MANAGEMENT CONFERENCE
HAMILTON
8 JUNE 2018 at 10.00 am**

COURT:

Thank you very much for coming.

For the benefit of those who are sitting in the back of the Court can I say that my name is Justice Collins and it is my task to try and manage the 202 claims that have been lodged in various courts under the Marine and Coastal (Takutai Moana) Act.

Because of the logistical challenges in trying to manage 202 claims, I have confined the first round of case management conferences just to the parties. I am aware that there are a large number of interested parties, and I propose to engage with them after the first round of case management conferences has been completed with the parties.

The purpose of a case management conference is to try and assist the parties as best that I can to advancing their claim to a substantive hearing. It may be possible sometimes in a case management conference to resolve a matter that's in dispute, but usually the case management conference is designed to try and advance the hearing.

Although it is not particularly relevant to claims that are being dealt with today, one of my objectives is to try and put in place a timetable for eight cases that have been afforded priority by Parliament when it passed the Act. In tandem with that I need to work out which applicants' cases should be heard in conjunction with those priority cases. More relevant to those who are here today is that I wish to try and ascertain which cases that are not priority cases may also be able to be advanced just as speedily as a priority case.

At this stage, we seem to have cases that fall into four broad categories. First, there are the eight priority cases. Then there are the claims that overlap to varying degrees with those priority cases. Then there is a third group where applicants have taken active steps to engage with the Crown to try and negotiate a resolution. Then there is the fourth group which don't fit comfortably into any of those three categories.

So having given you that overview, I will now invite counsel to introduce themselves and Mr Melvin and Ms McKay for the Attorney-General.

Thank you.

Good morning Ms Sykes again

MS SYKES:

Good morning Sir.

COURT:

And you're for Tainui.

MS SYKES:

Yes, thank you Sir.

COURT:

Good, thank you very much.

Ms Loader

MS LOADER:

Good morning sir.

COURT:

Good morning.

MS LOADER:

Counsel is here on behalf of CIV-2017-419-081 for Terewai Awhitu of Kāwhia on behalf of Ngāti Te Wehi. We are also here on behalf of CIV-2017-419-000082 and that's Marokopa.

COURT:

Thank you very much Ms Loader.

Mr Hirschfeld, good morning to you again

MR HIRSCHFELD:

Good morning sir, may it please your Honour.

COURT:

This is becoming very repetitive for you.

MR HIRSCHFELD:

It's our third one sir. Sir, I appear this morning for CIV ending 526 for Mr Rangi Kemara who is present in court today.

COURT:

Thank you very much Mr Hirschfeld.

MS SYKES:

Sir if I can excuse the court, kei te tū au ki te tautoko i ngā mihi kua mihia inanahi rā. Kei te haere mai māua mai te tari a Annette Sykes i te rā nei, hei māngai mō ngā kaikerēme mō Tainui hapū, o Tainui Waka. Ko Angeline Greensill te tamāhine a Tuaiwa Rickard, te kaitono mō tēnei o ngā whakaaro. Kei kōnei a Angeline me tana kairangahau ki te awhina i te kaupapa.

Sir I apologise I misunderstood your introduction this morning. I appear today for CIV-2017-83. It is a great pleasure that I am appearing for Ms Angeline Greensill borne on behalf of Tainui hapū o Tainui waka, whose claims are located in the Whaingaroa Whale Bay area in Raglan. She's the daughter of Eva Rickard, who was a claimant in the original fisheries litigation and long-term fighter for the rights of her hapū of Whaingaroa.

COURT:

Thank you very much Ms Sykes.

Ms Takitimu?

No appearance.

Ms Piripi

MS PIRIPI:

Tēnā koe e te Kooti.

May it please the Court counsel's name is Ms Piripi. I'm appearing for CIV number ending 202 on behalf of Te Rūnanganui o Ngāti Hikairo and here today with Moka Apiti, the Chairperson.

COURT:

Thank you very much.

Ms Siciliano, again

MS SICILIANO:

Tēnā koe sir

May it please the Court I appear today for Te Rūnanga o Ngāti Mahuta ki te Hauāuru CIV number ending in 575.

COURT:

Right.

Now I understand Mr Bennion is not appearing. He has already filed a memorandum. But I understand that there may be a Mr Glenn Tootill in the Court? Is that correct?

MR TOOTILL:

Tēnā koe e te Kaiwhakawā

May it please the Courts my name is Glenn Tootill currently unrepresented but here in respect of CIV-2017-419-80.

COURT:

Thank you very much.

Now, can I start with you please Ms Sykes. How many claims overlap with those that you are acting for on behalf of Tainui?

MS SYKES:

Sir, if I could you refer you to a table I could actually file after this conference. We've actually prepared a table, that's CIV ending 538, CIV ending 512, CIV ending 209, CIV ending 216, CIV ending 202, CIV ending 207, CIV ending 84 and CIV ending 80. Most of those claims are represented here today except for the most significant one for propositions I wish to put to the Court with respect to may be us fitting into the fourth group of why we believe a priority is required. That group of course is the Tainui Te Whakakitenga O Waikato Incorporated who are actually a subsidiary of the Tainui Group Holdings who are part of the settlement of the Tainui Settlement and one of our concerns is they fit into category three. But they are getting a priority from the Office of Treaty Settlements for an independent parallel process of negotiation for outstanding claims from the Tainui-Waikato Settlement, which encroach on our territories and our concern is that they are funded significantly, both independently from their funds but funds from OTS and we come as the poor relations I think together with a number of other of the hapū here. The Maniapoto claims have not settled. Ms Greensill's not part of the Maniapoto claims or the Waikato claims. Hers is an independent claim for a group of hapū who have a heritage beyond just the Waikato tribes and it's an important assertion of their independence that Whāingaroa has been within the mantle of those hapū and they are being

referred by OTS as cross-claims to the Waikato claim. We think that's an inappropriate designation. We say that the Waikato are encroaching on their mana motuhake in their customary territory. They are not prioritised in negotiations because we are awaiting a report from the Waitangi Tribunal, I'm not too sure if your Honour's heard but the late Judge Ambler passed away suddenly so there had been an interruption in the completion of that report, which makes it very difficult for us to try and promote a negotiation strategy for groups like ourselves. So we come to this forum essentially unfunded, unsettled, awaiting a Tribunal Report with cross-claims encroaching on our territories and prioritised cross-claims being funded. The resourcing issue is not as acute for this group as that which I represented yesterday but it is still acute. For 14 months, they have had no money, they have been in a process of application, we got an email at 4 o'clock last night so my friend from the Crown must have done some work to ensure that we get some funding but it has been a long and drawn out process. Notwithstanding that, we believe it's at a critical stage at this moment that this matter gets set down for a priority approach for this region for those applicants and cross-claimants interested parties that your Honour has intimated you will meet at a later time.

Sir, I could move to my second point. We have the privilege amongst the claimants of having a very skilled mapper whose name is Mr Moka Apiti and he is represented here independently by counsel from Kensington Swan. Now you heard me yesterday complaining about resourcing but mapping is such a critical thing it seems my client who's a geographer, a lecturer in the geography department says we should have one person doing it for all of us. We input into that map and we make sure we're all happy before it can be the subject of further scrutiny by judicial comment in a proceeding. I don't want my friends from the Crown's view to it but we would like Moka Apiti to be engaged either by the Court or by the Crown or by some funding source to do a mapping for these groups. It just makes sense to us because you must have seen a plethora of maps with different nuances that are being – my friend Mr Hirschfeld tried to give me a lesson on cartography yesterday but it just went over my head but I'm in agreement and my client is that we need one mapping approach and Mr Moka Apiti, who's in the court is an expert that understands the locale and the nuance customary relationships and would be able to do that exercise we think proficiently for the purposes of a base document in any litigation.

In terms of the third matter sir, which is resourcing. I still think after your next round there needs to be a priority judicial conference that looks at resourcing properly. The principle of

the equality of arms is one that underpins our justice system and there's an inequality of arms. I know to many of my friends sitting here unrepresented are only in that position because they can't afford to keep paying for lawyers to attend at these hearings on their behalf. When we don't have any funding it's unfair for applicants to carry the burden of their claims for their whānau and hapū, which is what's happening sir and I can't stress that enough. People are paying two or three thousand dollars out of their own pockets, which is one-fifth of their disposable income as pensioners. We just can't do this sir. It's inappropriate. The Crown knows that but they're not making any progress. My friend didn't actually tell us yesterday how many people have actually got funding. I'd like to know that question because of the 202 claims he says a lot haven't applied but I know several that have applied. They have still not been funded and I'd like to know some idea from the Crown when these things are going to be resolved and that's why I'm proposing judicial oversight of that.

COURT:

Thank you very much Ms Sykes.

MS SYKES:

Thank you sir.

Now, a number of the claimants whose CIV numbers were identified by Ms Sykes are present now and I'd like any counsel who's representing a claimant whose claim overlaps with that of Tainui to now advise me if they take any issue with the overlap proposition from Ms Sykes or any other submission that they wish to make?

Any overlaps?

MS LOADER:

On behalf of our Ngāti Te Wehi claim applicants, this claim does overlap with those mentioned by Ms Sykes. Counsel supports the propositions made by Ms Sykes with regard to the matter particularly in regard to the resourcing issue. Resourcing issues are also being faced by our clients and we have also experienced the same. With regard to the hearing of the claims in terms of that overlap our clients are ready to go as they have also been involved with the Waitangi proceeding and are awaiting the Waitangi Tribunal Report. However, all evidential matters have already been addressed as part of that so we'd be ready to proceed as an overlapping claim alongside.

COURT:

Thank you very much Ms Loader.

Any other overlapping claimant who wishes to make any submission? If not, I will move onto those which don't overlap.

MR TOOTILL:

Sir, just to support the comment. Whilst I appreciate I'm not currently represented part of the reason is due to the resourcing issue which Ms Sykes has raised. I just wanted to support her kōrero on that sir.

COURT:

Thank you very much Mr Tootill.

MR HIRSCHFELD:

Sir I may have misheard you. It's about overlaps on 526.

COURT:

Yes.

MR HIRSCHFELD:

I have a list of 10 sir if I could put them to your Honour briefly: 534, 209, 309, 419, 538, 575, 80, 82, 202 and 207. That's a list of 10 sir.

COURT:

Thank you Mr Hirschfeld.

MR HIRSCHFELD:

Sir on the mapping, strongly support my learned friend Ms Sykes. It became clear in preparing maps that maps are an issue and I agree with my learned friend's observation that there's a lot of nuances here that need to be captured in the mapping so it's vitally important. I strongly support her suggestion of Mr Moka Apiti being considered. If that is a way forward sir and looking at this he is of high reputation and has outstanding skills in map making of longstanding.

COURT:

Thank you very much Mr Hirschfeld.

Ms Siciliano

MS SICILIANO:

Sir with regard to Mr Apiti's involvement whilst I don't wish to commit to Mr Apiti to anything and I'm aware he's in the courtroom today, I don't have instructions on the matter sir but I envisage that my client would have no objection to that and would support the concept of one mapper. That's 575.

COURT:

Now are you an overlapping claim or are others overlapping you?

MS SICILIANO:

I believe I –

COURT:

– I’ve been trying to keep track of everything and I’m not sure where your client fits.

MS SICILIANO:

Sir I’m not sure if you have the maps in front of you. We do overlap with a number. I’m not sure that we overlap with Ms Greensill’s application but in terms of the numbers that Mr Hirschfeld has just listed we are included there.

COURT:

Yes I appreciated that. I was just trying to get an understanding as to whether or not there are others that you overlap with or others that overlap with you.

MS SICILIANO:

Yes sir there are number sorry and I don’t have them. I am not so prepared to have that list with me but there are a number there sir yes.

COURT:

That overlap with you.

MS SICILIANO:

Yes sir.

COURT:

Okay.

MS SICILIANO:

And sorry sir just for the Court’s benefit, our clients do not have resourcing issues at present so just be clear they have been resourced by Crown funding avenues.

COURT:

Thank you very much Ms Siciliano.

MS PIRIPI:

Thank you your Honour. Unfortunately, I also don’t have instructions from Mr Apiti’s as to his involvement in the mapping but I am sure that is something that I can ask him and come back to the Court on. In terms of overlapping there are a number of overlapping claims in relation to our application although not the application by Ms Angeline Greensill. But in terms

of the points raised by my learned friend in some respects our clients' application is in a similar type situation in terms of the overlap with the waka te Tainui application your Honour but I don't have instructions as to the appetite for moving into a priority type application.

COURT:

Is that because you're engaged in negotiations directly with the Crown?

MS PIRIPI:

No your Honour, not actively engaged. But I do have instructions that the preparation our client would be looking at is in the latter half of 2019 in terms of being prepared.

COURT:

Thank you very very much. I'm very grateful to you.

Are there any other applicants who I have not heard from either represented or not represented who wish to make any submissions? If not, I'll call upon Mr Melvin.

Thank you Mr Melvin, and I'd be grateful if you could address specifically the proposal from Ms Sykes supported by some others of a recognised and acceptable expert being appointed to try and undertake the very delicate task of mapping in this region.

MR MELVIN:

Yes sir. Certainly from counsel's point of view the suggestion has some merit. I can't commit the Crown to it. I would need to take instructions but certainly I can see some merit. My understanding from Ms Sykes' proposal was that this be conducted on a national basis.

COURT:

I thought it was more localised.

MS SYKES:

It should apply to all regions but once your Honour's determined where the applications been for each application there should be a map in my respectful –

COURT:

We'll perhaps take it one step at a time, which is what I'm learning to do in this particular exercise is that perhaps if Mr Apiti were able to be engaged by the Crown on behalf of all applicants for the claims that are in the Tainui region, well in this greater region, then that might be a step forward.

MR MELVIN:

Yes. My initial thoughts sir are that it would make sense to do it on a regional or stage basis according to which matters are moving forward.

COURT:

Yes.

MR MELVIN:

Timing will be a factor in that application –

COURT:

It's something that has to be done at some stage though and if there is a possibility of one person who's acceptable to all claimants in a particular region undertaking that exercise then that's likely to save everyone a lot of heartache further down the trail.

MR MELVIN:

Yes sir and the virtue of getting some consistency in the way it is presented has a great deal of appeal. On the timing issue sir my thought was that - I'm not sure about this region but certainly in some regions there are discussions between applicants taking place which might result in some changes to applicational areas so the mapping would make more sense in my submissions sir to occur once that initial opportunity for discussions has taken place and any changes coming out of that being identified.

I'm familiar with Mr Apiti's skills as a mapper. He was involved in the Rohe Pōtae inquiry before the Waitangi Tribunal and I certainly recognise his expertise in that area. But I'll take instructions sir.

COURT:

Thank you Mr Melvin.

Is there anything you'd like to say about the funding issue?

MR MELVIN:

My friend's submission that it is a matter that requires judicial oversight by the High Court in my submission is problematic. Again it's matter I'd need to take further instructions on but funding issues are going to be a focus of the Waitangi Tribunal inquiry. It's initiated an inquiry into the 2011 Act itself but also the administrative support that the Crown has put in place for the support of the way that Act operates. So funding is very clearly going to be a primary focus in that inquiry and the approach the Tribunal may well proceed urgently or give that issue priority above other issues. So it's going to receive focus there sir and in my preliminary submission that is where the appropriate consideration should occur of whether the Crown's support for applicants is adequate or not. As I submitted yesterday sir funding is available for

all High Court applicants. It's a matter of applicants meeting policy guidelines, so submitting correct information, full information necessary for an application to be considered, funding – I'm not sure that I mentioned this yesterday but funding is not full funding. It's a contribution, but a significant contribution sir, it's designed to be around 80 per cent of an applicant's costs but not all costs. All applicants will have to partly fund the costs they incur and that's a fundamental element of policy that the Crown settled.

COURT:

Thank you very much Mr Melvin.

Is there any submissions in response?

Ms Sykes

MS SYKES:

Sir I don't want to belabour the point but s 27 of the Bill of Rights Act in my view gives the Court jurisdiction to oversee not the policy the practice of participation. I apprehend an issue with respect to the prioritisation will be readiness to proceed. I of course am unable to proceed if we're not funded.

COURT:

Yes.

MS SYKES:

And so, I do not agree with my friend's submission. I think the policy's a separate issue and that matter can stand before the Waitangi Tribunal as a policy we allege is inconsistent with the principles of the Treaty. I am talking about standard administration of law. It's not unusual in the High Court. In criminal cases for example, where there are difficulties with legal services or there's change of counsel where the Court does take an intervention role to ensure the principles of s 27 of the Bill of Rights' upheld. It's that provision that I would be relying on for the intervention at a judicial conference.

COURT:

Thank you very much Ms Sykes.

The week after next, I conclude the first round of case management conferences and I'm in New Plymouth, Whangārei and Auckland and after that I will be issuing what would be a fairly lengthy minute covering all of the case management conferences that I've been conducting around New Zealand over the last two weeks. That will set out steps forward and in the case

of the Edwards matter from Rotorua yesterday that case management conference has been adjourned to 26 October 2018. There will be notice to that effect going out to parties in the next day or so if it hasn't already gone out. For some cases, I'm going to be able to put in place a timetable, for others it will be a general direction as to how to get things moving, bearing in mind some of the issues that I know are facing a number of applicants about the logistics of trying to present their claims in a constructive way and I hope to be able to engage with you all over the course of the next 12 months.

So thank you very very much for your appearance here today and your attendance. I'm very grateful to you all for having come and I will now depart.