

**CASE MANAGEMENT CONFERENCE
NEW PLYMOUTH
20 JUNE 2018 at 10.00 am**

COURT:

Good morning. Thank you all for coming.

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

Because of the logistical challenges of 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 in 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 matters to the substantive hearing.

One of my tasks is to try and put in place a timetable for eight cases that have been afforded priority by Parliament when it passed the Act and by happy coincidence there are three of those priority cases before me today in this Court. But in addition to trying to advance the eight priority cases, I need to work out which other applicants' cases should be heard in conjunction with those priority cases and there are quite a few here in this Court that fall into that category. Having made reference to the priority cases and the claims that overlap the priority cases I wouldn't want it to be thought for one moment that I am also not interested in advancing as best I possibly can cases that haven't been afforded priority by Parliament. It may be possible that a number of other cases can advance just as quickly, perhaps even quicker than some of the priority cases.

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 a fourth group which doesn'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 Geach for the Crown.

Good morning to you both.

Ms Piripi, you're for three of the priority applicants. You're going to be very busy.

MS PIRIPI:

May it please the Court, counsel's name is Ms Piripi and here on behalf of Te Korowai o Ngāruahine Trust, which is CIV-2017-485-423 which overlaps the three priority and then the three priority that's CIV-2011-485-814, CIV-2011-485-803 and 797 and your Honour I have some representatives here in court today. So we have Bev Gibson, the Chair of Te Korowai along with Daisy Noble, an applicant, John Hooker and Maria Robinson as well as other Ngāruahine representatives.

COURT:

Alright, thank you very much.

MS PIRIPI:

It was also brought to my attention this morning that the other two hapū, being CIV-2017-485-300 and 485-293, we filed –

COURT:

Sorry, 485 did you say?

MS PIRIPI

485-300 that's Caroline Scott and David Moore 293, they are the hapū that are part or that fall under the Te Korowai umbrella. We filed a joint memorandum in April with the support of those two so while we do not formally act they also appear today and it may be that we formally go on the record for those two applications as well.

COURT:

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

It may be best if I focus on what I understand to be the overlapping claimants first and then come to those who don't necessarily overlap. So as I understand it, Mr Irwin you appear for at least one overlapping claimant.

MR IRWIN:

Yes your Honour, e te Kaiwhakawā tēnā rawa atu koe, Irwin here today for four groups. The first is Taranaki iwi which the CIV number is 212 and that has an overlap with one of the priority applications. I'm appearing here also for three other groups, for Ngāti Mutunga which is 215. I should say that today Ms Puna Wano-Bryant is here for Taranaki iwi as well and also we have for Ngāti Mutunga Mr Paul Cumming and Ms Marlene Benson. I've been asked to make an appearance also for two other iwi groups your Honour, Te Ātiawa Taranaki, which has the CIV number at the end 310.

COURT:

Which is also an overlapping group.

MR IRWIN:

No, I don't think it is.

COURT:

According to my spreadsheet it is but then we can come back to that.

MR IRWIN:

Sure. And the other group is Ngāti Tama which has the number 534, which I don't think is overlapping as well. Just to orientate your Honour very briefly. These four iwi groups are side by side one other. From the north Ngāti Tama, the north of New Plymouth, then Ngāti Mutunga, then Te Ātiawa Taranaki and then Taranaki iwi, which sweeps around Taranaki Maunga, this coastline to Ngāruahine. I didn't understand there was an overlap with any of the other groups just within the boundaries.

COURT:

Right, okay. We can double check that.

Ms Inns, good morning to you and you are for 282, is that correct?

MS INNS:

That's correct sir. Te Rūnanga o Ngāti Ruanui.

COURT:

And it is an overlap?

MS INNS:

There's a small overlap with two, possibly three of the Ruahine hapū applications.

COURT:

And Mr Bennion together with Ms Black?

MS BLACK:

Tēnā koe sir.

COURT:

And you're also very busy because I think you are down for five.

MS BLACK:

Correct sir.

COURT:

Of which I think only one is an overlap, that's Ngāti Tū hapū.

MS BLACK:

Also Araukuuku sir, 485-210.

COURT:

And that's an overlap as well.

MS BLACK;

It is sir.

COURT:

And the other ones are other parties that you are representing, you're appearing for others as well?

MS BLACK:

Yes sir. Do you have them on the list or would you like me to –

COURT:

If you could just very briefly announce who you are appearing for and if there are any persons present who I can be made aware of.

MS BLACK:

Certainly sir. So 2017-485-209 Mōkau ki Runga, the southern application which overlaps with Mr Irwin's Ngāti Tama application; 216, the northern Mōkau ki Runga application and 254 Te Patutokotoko, down south towards Taranaki sir.

COURT:

So they are no longer self-represented.

MS BLACK:

Not sure that they ever were sir.

COURT:

I'm sorry I'm one out. Thank you very much.

MS BLACK:

Thank you sir. And no applicants here today sir.

COURT:

Thank you very much.

Now Ms Broughton, are you present by any chance?

As I understand it, you are self-represented at least at this stage?

MS BROUGHTON:

At this stage yes your Honour so I'm Anne-Marie Broughton and this is Mary Bennett for Te Kaahui o Rauru.

COURT:

Thank you very much. Please take a seat. If I'm correct in my understanding your claims do not overlap with any of the priority claims.

MS BROUGHTON:

Yes, to our knowledge they don't overlap.

COURT:

Alright. I appreciate that these things can change.

Now is there anyone who I have not identified through counsel or who is self-represented?

Ms Black?

MS BLACK:

Arohamai sir, I'm sorry it's just been brought to my attention that the applicant for Ngāti Tū is present, Hori Manuirirangi.

COURT:

Thank you very much Ms Black.

Now Ms Piripi, you're acting for all three priority claims, so have you been in discussions with other applicants whose claims would be affected by the priority claims?

MS PIRIPI:

There have been some discussions particularly with Ngāti Korowai and the other hapū so if I perhaps give you an update as to the discussions that have occurred. So the preference for the

Ngāruahine hapū is to work collaboratively together and there has been some initial hui held and some initial discussions about how that might work. Unfortunately, there's no consensus at this stage as to what the pathway for them to work collaboratively together looks like and I ask today your Honour if you're consider allowing us to file memoranda. We would like six to eight weeks for there to be some clarity around the pathway. As your Honour may be aware there's also some consideration of engagement with the Crown. So we're seeking today six to eight weeks to formalise the pathway that the parties wish to work together and even if the parties were to proceed down the High Court pathway there's been an indication that while there's been some initial evidence gathering that has taken place to date they would not be ready for hearing until the latter half of 2019.

COURT:

Is that submission made on behalf of all three priority claims?

MS PIRIPI:

All three priority claims as well as Te Korowai.

COURT:

Right. And your preference is to negotiate directly with the Crown if possible?

MS PIRIPI:

Unfortunately there's no consensus yet on that preference so the parties need to have further hui and further discussions around which pathway.

COURT:

Alright, I appreciate that.

MS PIRIPI:

It's a possibility though that the Crown engagement pathway may be utilised.

COURT:

Thank you very much.

Now are there any counsel or parties affected by the three priority claims that would like to make any additional submissions to those that have been made by Ms Piripi?

Mr Irwin?

MR IRWIN:

So for Taranaki iwi sir the area of overlap between Taranaki iwi's rohe and the area that they've claimed in this process and the priority applications is quite small. The entire rohe of Taranaki iwi is quite large, it comes right round the coast and so if the court process is to proceed for the

priority applications the preference of Taranaki iwi would be for its involvement to be just restricted to that area of overlap. It doesn't seek to bring in its entire coastline. I've just checked the memorandum filed by Te Ātiawa, which is the next iwi around the coast and as I understood it the position there was there is no overlap. There would be an overlap if other groups' entire rohe was brought into the equation so if the entirety of the Taranaki iwi rohe was brought into the priority proceeding then that would have the cascading effect of bringing them then as well and so that's the only extent to which there's a potential overlap.

COURT:

Alright, thank you for that. I'm sorry if I added further confusion.

Ms Inns

MS INNS:

Sir, I've had some very preliminary discussions with counsel for the priority claimants and Korowai. The Ngāti Ruanui's preference was to pursue the Crown path and adjournment was sought to allow that to happen. I acknowledge my friend Ms Piripi said about further discussions being required between those Ruahine applicants as to the preferred path forward. Ruahine would certainly – Ruanui my apologies, would certainly support them being given that time. Similarly sir, the nature of our preliminary discussions with those parties is that if the priority applicants do wish to advance reasonably quickly down the court pathway then a second round of engagement between them and those overlapping applicants would make a lot of sense. I don't believe there's any dispute that these areas overlap, it's not that situation and it may well be that some discussions between those parties could resolve how the issues are brought before the court without the need for those other applications to be progressed at the same time. That would be the Ruanui preference sir. But having given Ngāruahine the time they need to make their decisions that then a second round of engagement with overlapping applications might be timetabled to see if there is a pathway there reduces the extent to which others are pulled in so to speak.

COURT:

Thank you Ms Inns, I'm very grateful to you.

Ms Black

MS BLACK:

Sir, broadly our applicants support the priority applicants.

COURT:

Thank you very much.

Mr Irwin, you've made some submissions in relation to Ngāti Mutunga about the way in which for present purposes claims have been categorised and you make the point that Ngāti Mutunga ought to be heard in tandem with claims that are currently before this Court.

MR IRWIN:

Yes.

COURT:

And, if I can say so, your submission makes a lot of sense. How feasible it's going to be to try and structure all these things is a matter that I obviously need to think through. But is there anything further you wanted to add to your written submissions on that point?

MR IRWIN:

The written submissions should suffice sir. If I can interpolate that the issue is important for the four iwi not just Mutunga. The four iwi wish to work together and by way of example I'm here today for the four. Another example of their collaboration has been the applications that they have made. Unlike other groups around most of the country, they have agreed their overlaps in quite a helpful way so the issue for the Court is not which of the customary groups which are claiming the rights, the issue is beyond that. It goes to the next phase as to whether the tests are met out and so on and so forth. I think there is a lot of force in those four iwi being get together for administrative purposes – if they get together –

COURT:

And it's quite possible that they might be able to be accelerated if the option of Crown engagement doesn't prove so fruitful.

MR IRWIN:

I think so. I think they're in possibly that category yes. Sir by way of example Taranaki iwi Ngāti Mutunga have suggested that they file their evidence in a year's time. I don't know that any other applicant proof is –

COURT:

One or two others are like that but it's not the majority by a long way.

MR IRWIN:

Now, the only other thing I wish to point out aside from the good sense in what I've said and what's in my memorandum is any decision by the Court as to how it's going to organise the groups at the periphery some group is going to have to be in one or other group.

COURT:

That said, these are administrative lines that have been drawn to simply try and assist the management of a massive number of claims and at least from my perspective there is no hard and fast boundary that can't ever be moved and there will need to be some adjustments made around the edges undoubtedly and it's also quite possible that we're going to have to try and move some claims from two current areas in tandem anyway just to avoid some of the difficulties that might occur in the collision zones.

MR IRWIN:

Yes. And the important thing I think for iwi is that if they get to a hearing process in this Court as opposed to in the Crown engagement phase that they get to hearing together. The hearing is at the same time and the same place. On the Crown engagement side of things, the Crown is in engagement with groups just further to the south and the four iwi have gone to the Crown and said we want to come to you again as a collaborative group. They haven't had a definitive answer from the Crown yet to say yes or no but the indication at the moment is the Crown wishes to focus on the groups it's already in engagement with so unless there's a change from the Crown it's not necessarily looking like they're going to have that opportunity.

COURT:

Right.

Ms Black

MS BLACK:

Sir, as I indicated earlier the Mōkau ki Runga southern application falls entirely within the Ngāti Tama application. There is shall we say less hand holding between those two groups, quite a lot of evidence before the Waitangi Tribunal in the rohe Pōtae inquiry about the relationship between those two and the various rights over land and so forth. I understand that this is a matter still under discussion, still very much alive between the two groups.

COURT:

Thank you very much Ms Black.

Ms Broughton

MS BROUGHTON:

Tēnā koe

Your Honour our boundaries go from the Whanganui River to the Pātea River and to your earlier description I would have thought that we would have fitted into the fourth group but we

have a shared area of interest with Ngāti Ruanui. So I'm just sitting here wondering whether now we're not part of that priority grouping but are we likely to get dragged into it on the back of Ngāti Ruanui?

COURT:

Yes, you're what has been rather nicely described as a cascading claim where there is a priority claim, then there's an overlapping claim and you overlap an overlapping claim and you can imagine what it looks like from my perspective trying to get my head around all of this, but I think that's where you fit at the moment and I'm trying to make sure that cascading claims don't get sucked in unless they are very directly involved in a priority claim. That's my intention at this stage. But again, it's really for administrative purposes and I don't want administrative decisions to in any way impact upon people's claims.

MS BROUGHTON:

So you know in terms of Te Kaahui o Rauru, we have got a foot in both camps in terms of the High Court application and direct engagement and so we're unsure at this stage which way we'll proceed down and we're very much at the you know really early stages, we don't have legal counsel, we don't have a project manager, we haven't started our research so we're pretty much just about ground zero.

COURT:

Yes, but you're thinking about it and that's the most important thing.

MS BROUGHTON:

Looking for direction your Honour.

COURT:

Okay, thank you very much Ms Broughton.

Now are there any other submissions that counsel or any other person would like to make before I call upon the Crown?

MS INNS:

Sir, just one other point. Putting the priority applications aside as I said my clients' preference was for the application to be adjourned sine die.

COURT:

Yes. I think I've made it fairly clear that I'm not attracted to sine die but to generous finite dates.

MS INNS:

I understand that sir and having had the opportunity to reflect on that reasonably clear direction that I heard from you earlier in the round because there is the issue of funding and my Ngāti Ruanui clients have commenced the arduous exercise of making a funding application but have not got there yet. To the extent that a timetable was to be set to progress these claims I wonder if consideration could be given to having that triggered by completing the funding exercise so that the acquisition of funding would be the trigger to start a timeframe for the filing of evidence and so on.

COURT:

Now you will be in a better position than me to comment on how long you anticipate the funding decision would take. It's completely outside of my territory.

MS INNS:

To be honest sir I'm not sure that I'm in a much better position. The Ministry of Justice has recently issued new policy guidelines on their funding process and as best I'm aware we're all still trying to work out what that's changed and whether it's changed. To to be perfectly frank I've heard experiences of parties who managed to make themselves fit in the box and get their funding ticked off reasonably quickly, others who are still trying hard to build spreadsheets that meet the requirements as it were and still others that don't fit in the box who are having a difficult time. So I'm sorry I don't think I can assist greatly on what that timeframe is but it obviously is a key point. I make the suggestion only because I can foresee the situation that even with a long lead time, say a year to file evidence, that your Honour might be receiving memoranda in eight months' time saying, "look we've only just received funding" and that there might be a mechanism for avoiding that outcome so I'll just leave that with you sir.

COURT:

Thank you very much Ms Inns.

Mr Irwin

MR IRWIN:

There is just one issue that I wished to address. I addressed it at the case management conference in Wellington for a different client. It's the issue that the Crown has raised in its memoranda concerning the extent to which it has complied with the Act particularly in respect of the descriptions of the protected customary rights. I heard through the grapevine your Honour that at a different case management conference that I did not attend that there was some

discussion, an exploration into how that issue might be addressed and I wasn't there so I don't know where your Honour took that. Is that an issue still?

COURT:

The message that I tried to signal Mr Irwin was that I didn't want to engage in that particular issue at this stage. That seems to me to be something that we can grapple with if it's still an issue further down the track. At this stage, I'm really trying to get the big picture in my head and set some perimeters and try and get matters moving as best they possibly can be moved. I regard those issues, important though they are, as being at the next layer of consideration.

MR IRWIN:

I think your Honour's respectfully very wise in that regard. I wished to draw attention to early litigation that gave rise to the Act, the Ngāti Apa litigation. We're all aware of the Court of Appeal case, the Ngāti Apa decision and in that case the Chief Justice was quite critical of the procedural process that the case had got to, issues had arisen in the Māori Land Court on appeal in a preliminary decision of the Māori Land Court saying it had the jurisdiction, that was appealed to the Māori Appellate Court. That stated a number of questions of law to the High Court and then the High Court's answers on those questions was appealed to the Court of Appeal and the Chief Justice was quite critical of the questions being stated because the case had got nowhere towards the facts and in fact the Chief Justice and the rest of the Court said they would only answer one of the eight questions and declined to answer the others on appeal after that reason and I think the point I wished to stress is that the facts will be really important in this regard. In terms of the description of the protected customary rights I think we need to wait until we see evidence and at that point that might be a good point for all applicant groups to reassess their applications, provide particulars which is what the Crown has justifiably sought and at that point reassess where the proceedings are at.

COURT:

Well I've certainly signalled in other case management conferences that I would be very reluctant to get into trying to determine issues pre-trial in the absence of facts. The only question that has been raised which might be amenable to a discrete pre-trial hearing concerns the exact status of the Attorney-General in these proceedings because I think that's a question of law and it's not dependent on the facts. But for my part, I'm going to be very reluctant to try and reach definitive answers on matters that could change once the facts are known.

MR IRWIN:

Thank you your Honour.

COURT:

Ms Black

MS BLACK:

Thank you sir. A couple of general points just picking up from what yourself have said and Mr Irwin as well. In respect of the role of the Attorney-General we do broadly agree with Mr Makgill's submissions at the case management conference. We think it would be helpful if the Attorney-General were to set out its view on precisely what the public interest is that he's representing. I'm not sure if I am perhaps taking this a bit far, under the circumstances sir you'll let me know, in terms of particularisation applications it's a matter of fact that the holders of the tikanga knowledge are not necessarily the same people carrying out tikanga activities and in fact the applicants themselves may not be the holders of the tikanga knowledge. The Crown's funding provides for an historian and a researcher to putting these strands together so I suggest that as a matter of practical application the applicants ought to be able to rely on a completed historical report before particularising.

COURT:

Yes. I know what you're saying Ms Black.

Thank you very much.

Mr Melvin

MR MELVIN:

Thank you sir.

In relation to the application for an adjournment for the Ngāruahine claims and perhaps the broader Te Korowai o Ngāruahine group of claimants there's no objection sir to an adjournment of those matters so that discussions can take place and indeed the Attorney-General would support such an adjournment for that reason. Also, no objection to the request for an adjournment for Te Rūnanga o Ngāti Ruanui Trust, which overlaps with the Ngāruahine applications. That deals with that sir.

In terms of my friend Mr Irwin's submission regarding the boundary, the northern boundary for Region O, the Attorney-General sir will abide the Court's decision on that. There's no particular magic in the boundaries. They were just what occurred to be at the time based on information available presented in the applications a sensible drawing point. But they are

simply administrative and should not interfere with the substantive prosecution of those claims. That's the Attorney-General's position there sir.

My friend Ms Inns referred to the making of a funding application for her client. I can just indicate that there's an official here today from the Office of Treaty Settlements, Mr Haami Jones, he's seated in the back of the Court. It may be that Ms Inns could have a productive conversation with him.

COURT:

Thank you and I'm grateful that Mr Jones has come so that he can here the recurring theme about issues associated with funding and if there is any way that those issues can be advanced through discussion today that would be wonderful.

MR MELVIN:

And indeed, if there's anyone else or any other counsel or any other applicant who wishes to have a discussion I'm sure Mr Haami Jones will be – he's indicating agreement that he's available to have a discussion.

That probably addresses matters sir although perhaps just picking up on the final observations with my friend Mr Irwin regarding pre-trial issues. Just to reiterate that the Attorney-General's position is that pre-trial issues aren't in the absence of evidence really isn't an appropriate course.

COURT:

You don't put into that category though the questions that have been raised about the status of the Attorney-General in the litigation. That's not a question of fact is it, that's really a question of law.

MR MELVIN:

Yes, I think that's correct sir and if it's perceived that there's a need to clarify and explore that the role of the Attorney-General –

COURT:

We might have to deal with it.

MR MELVIN:

And even oppose that of course sir. We do reiterate our view though that sir that there should be an early stage in the process for pleadings to be fully particularised.

COURT:

I can understand your concern. The reality is that this is an evolving process for many of the applicants. They're finding out things themselves which have been buried in the annals of time or just haven't been known of and so I think we all have to acknowledge those practical realities as well.

MR MELVIN:

Yes, although the rights claims sir are rights that are in existence today so –

COURT:

That is true, but there is quite a lot that's discovered around the edges as time goes on.

MR MELVIN:

Thank you sir.

COURT:

Thank you very much Mr Melvin.

Are there any submissions that any counsel or you Ms Broughton would like to make in response? No? In which case I will simply adjourn and thank you all again very much for coming. It's been a profitable morning and what will happen next is that next week I go to Whangārei and then to Auckland and then after that I'm proposing to issue what at this stage is going to be one very large minute trying to cover every claim. That's my intention at this stage. I might end up having to issue 10 separate minutes but I won't be issuing any minute for anyone until I've heard all of the first round of applications.