

**MACA CASE MANAGEMENT CONFERENCE
NELSON
31 MAY 2018 at 10.00 am**

COURT:

Thank you all for coming.

I just want to make a few preliminary comments primarily for the benefit of the people who are at the back of the courtroom.

This is a case management conference concerning the 202 claims that have been filed under the Marine and Coastal (Takutai Moana) Act.

Because of the logistical challenges in trying to manage 202 claims, I have confined this first round of case management conferences to the parties. I am aware that there are a number of interested parties, and I propose to engage with them after we have gone through the first process of conducting case management conferences with the parties who have actually commenced proceedings.

The purpose of a case management conference is to assist the parties in advancing their proceeding to a substantive hearing. In some rare situations, it may be possible to resolve a dispute in a case management conference but the primary objective of these case management conferences is to facilitate the advancement of the case to a substantive hearing.

One of my overall objectives is to put in place a timetable for eight cases that have been afforded priority by Parliament when it passed the Act. But in tandem with that I also need to work out which applicants' cases should be heard in conjunction with those priority cases. I am very much aware that all of the priority cases just happen to be in the North Island and so are probably not of great interest to the people south of Cook Strait. But having said that, the initial emphasis is on those priority cases, nothing that I have said should be construed as suggesting in any way that other cases that cannot be advanced.

So at this stage we seem to have cases falling into four categories. There are the eight priority cases. Then there are claims that overlap to varying degrees with those priority cases. Then

there are cases where active steps have been taken to engage with the Crown to try and negotiate a resolution and then there are other cases that don't fit very comfortably into those three categories.

So, having given you that overview, I will now just call upon counsel to announce their appearance and who they are acting for. I understand that Mr Castle is not able to be present but Mr Bradley may be present for Te Rūnanga a Rangitāne o Kaituna, is that correct? Are you Mr Bradley?

MR BRADLEY:

I'm Mr Bradley sir yes.

COURT:

I'll call upon you a little later if that's okay Mr Bradley.

MR BRADLEY:

Thank you sir.

COURT:

Ms Inns, good morning.

MS INNS:

Yes sir.

COURT:

Ms Wadworth, good morning

MS WADWORTH

Yes sir, good morning.

COURT:

Ms Black

MS BLACK:

Good morning sir.

COURT:

Mr Ward and Mr Melvin, good morning

Ms Inns, can I start with you. It's convenient to do so because yesterday in Dunedin I heard from two applicants whose claim is impacted by your clients' application and in particular, I heard from Mr Fife, who candidly acknowledged that your clients' application completely

encompasses the application that he's filed on behalf of his whānau and of course at this stage there is also an overlap with aspects of the Ngāi Tahu claim.

Have you commenced negotiations with Mr Fife to see if there is some way in which there can be resolution about the conflicting claims filed by Mr Fife and your clients?

MS INNS:

I understand sir there has been some informal and preliminary discussions between Mr Colin Topi and my clients, who are also members of the same whanau in some cases. I think it would be fair to say they hadn't gone very far, that there is a sort of uncertainty as to Crown engagement versus Court routes and timing but I think there is a will to do that, yes sir.

COURT:

And is it your clients' intention to try and pursue engagement with the Crown?

MS INNS:

Sir my instructions are that at least was their preference. I'm not sure that the information in the Attorney-General memo that indicates decisions on engagement may not take place for 12 to 18 months. I'm not sure that that is information that they've had an opportunity to properly discuss and consider yet. That may impact their choices but at this stage yes their preference is Crown engagement.

COURT:

The process of Crown engagement and the process of bringing a claim to Court is probably going to involve exactly the same steps at least in terms of the preparation of evidence. So it is probably going to be best for parties who have not yet received the commitment or engagement from the Crown to also be getting on with getting their evidence so that if they have to resort to the Court process then they haven't lost too much time and the work that they do for that if they do get Crown engagement won't be wasted.

MS INNS:

That would be right sir. As your Honour may have heard yesterday and it was certainly heard here further around the country the funding routes are another barrier to that or at least a delay and that's something that my clients are working through at the moment.

COURT:

I did hear about that yesterday and it is a matter that obviously I'm concerned about. What I can do about it is a completely different matter. But Mr Fife made it very clear that these were quite important issues for his whānau and I suspect it's going to be the same for a lot of others. You wouldn't have any objection to me putting in place a broad timeframe that would probably be giving your clients about a year to get their evidence prepared and then seeing how far

you've got with Crown engagement and deciding whether or not you may need to push on to a Court case or pursue the negotiation route?

MS INNS:

Sir we had initially applied for an adjournment to allow for the Crown engagement process to take place but I think that a generous timetable like that would certainly serve the same purpose and it's recognised sir that there is a need to at least attempt to resolve the position vis-à-vis the other application so I think a decent timeframe to allow for that would be very practical thank you sir.

COURT:

Thank you very much Ms Inns.

Ms Wadworth

You may or may not be aware that there was an application for an adjournment by Ngāti Koata.

MS WADWORTH:

Yes sir.

COURT:

You're aware of that one?

MS WADWORTH:

Yes sir.

COURT:

And Mr Irwin, who was acting for Ngāti Koata in Wellington on Monday, said that they were actively engaged in negotiations and trying to pursue that line very firmly. But he also quite candidly said that when he sought an adjournment that there were applications that had varying degrees of overlap with Ngāti Koata and one of them is Rangitāne o Wairau, for whom you are acting. Have you had discussions with Mr Irwin about the application on his behalf of his client?

MS WADWORTH:

No, we haven't sir.

COURT:

What would be your position if there were to be an adjournment of that application and other applications that overlap to the extent that they overlap?

MS WADWORTH:

We would consent to that adjournment and we would also seek a similar adjournment in relation to our proceedings so that we may also pursue engagement with the Crown.

COURT:

But as I've said to Ms Inns the same evidential process will need to be gone through for the Court process as well as for the engagement with the Crown and so if there were to be a generous timetable put in place for you to accumulate your client's evidence and then for a further case management conference early next year, would that be something that you would be agreeable to?

MS WADWORTH:

Yes that would be sir.

COURT:

Mr Irwin was seeking an adjournment for two years and I haven't yet granted that adjournment but I just wanted to hear from the parties whose applications are affected by that and it may be that Mr Irwin does get a two-year adjournment and other people who are impacted to some degree upon his client's application might get a one year adjournment. In the meantime, everyone would be working towards either negotiation or Court process.

Thank you very much Ms Wadworth.

Ms Black

MS BLACK:

Sir.

COURT:

I don't think any of your clients' cases overlap with any of those are affected by the application by Mr Irwin, is that correct?

MS BLACK:

A couple of days before Mr Irwin filed his memo we filed an amended map for the Arapaoa Island application. There is a small wedge of overlap at the northern extent. I understand that discussions are in train around that.

COURT:

So you would be affected to a small degree by an adjournment.

MS BLACK:

Correct sir.

COURT:

Is it also your clients' intention to try and engage with the Crown?

MS BLACK:

If possible, but obviously we're in a similar position to Ms Inns sir.

COURT:

Everyone else.

MS BLACK:

Yes.

COURT:

And you're going to have to get your evidence together whichever way you go.

MS BLACK:

Correct sir.

COURT:

That's very helpful. Thank you very much Ms Black.

MS BLACK:

Thank you sir.

COURT:

Mr Bradley, would you like to come forward and if you just come right all the way forward and use the microphone at that back desk. I understand neither Mr Castle or Mr Stallard is available today.

MR BRADLEY:

That's correct.

COURT:

Now your client's case almost mirrors that of Ms Wadworth's clients' case to the extent that you are affected by the application for the adjournment. I suspect you probably also want to get engagement with the Crown?

MR BRADLEY:

No sir.

COURT:

You don't.

MR BRADLEY:

No.

COURT:

You're quite happy to proceed with the Court process.

MR BRADLEY:

We're quite happy to just go with the Court.

COURT:

With the Court process.

MR BRADLEY:

Yes.

COURT:

I will put in place a timetable then to give you sufficient time to accumulate the evidence that you'll be needing to advance your claim, but at the same time to the extent that there is an overlap with the other claims there may need to be consideration given as to how we manage that overlap issue.

MR BRADLEY:

That's correct.

COURT:

And are you having discussions with the other entities who are affected?

MR BRADLEY:

We tried but to no avail.

COURT:

So you just want to box on with the Court process.

MR BRADLEY:

We want to box on ready to go.

COURT:

That's very helpful, thank you very much Mr Bradley.

Are there any other comments or submissions that anyone wishes to make before I call on Mr Ward?

Mr Ward, thank you.

MR WARD:

May it please the Court, sir just a couple of points arising from the submissions of my learned friends.

In relation to the adjournments that are sought and that may be provided, in the Crown's submission the first step after that adjournment or possibly even at an earlier stage that evidence collection, the next step after an adjournment should be a pleadings step. My concern sir is that people are potentially going to do a whole lot of work on evidence without a pleadings process that actually clarifies the issues that are between the parties and that a significant amount of evidence may be compiled without the Attorney having the opportunity to review particular pleading points, particular definitions of rights that people may be able to put forward that might alter the Crown's position in relation to an application.

COURT:

Yes I've been reflecting on that potential concern and it's a delicate issue because evidence might affect the state of the pleading and the pleading then has to be amended to reflect evidence which wasn't anticipated from the applicant's perspective.

MR WARD:

Yes sir. It will undoubtedly be an iterative process to some extent. These are applications for rights that the applicants say exist now and are based on activities that have existed since 1840. Sir, in my submission pleading the material facts explaining the physical manifestation of kaitiakitanga or rangatiratanga, those things ought to be able to be done now because they are the activities that people aren't doing now on the applicants' case and pleading those key material facts does not require a historian to review archivable material. It doesn't require counsel to go to the steps of deposing an affidavit. But there is a step that applicants in my submission ought to be able to do in a way that will clarify issues for the Court and clarify any issues that would then be the subject of a commissioning brief to an expert and in my submission, it would be a useful timetabling process for that to be built in to any minutes that your Honour issues rather than the Crown taking a much broader 202 applications for further and better particulars I think. As your Honour suggested a degree of practicality about allowing time for reflection and in my submission, there ought to be a pleadings' point well in advance of anyone filing evidence. Your Honour that's the only key point, we've made submissions on Ngāti Koata as you know.

COURT:

Thank you very much Mr Ward.

Are there any other submissions that any counsel or Mr Bradley wish to make in response? If not, it is now for me to thank you all for coming. Next week I'm in Gisborne, Tauranga, Rotorua and Hamilton and then two weeks after that I'm in New Plymouth, Whangārei and

Auckland. After I've gone through that process I will be issuing a minute that covers all of the conferences that I've had and deals with each of the individual cases that I've had to consider.

Thank you all very very much.