

**CASE MANAGEMENT CONFERENCE
TAURANGA
6 JUNE 2018 at 10.00 am**

COURT:

Thank you all very much for coming. My name is Justice Collins and I have been asked by the Chief High Court Judge to case manage all of the 202 claims that have been lodged in various courts around New Zealand. I am very grateful for the number of people who have come today.

I want to make a few preliminary remarks. This is the fifth first case management conference concerning the claims that have been filed 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 to the parties. I am aware that there are a number of interested parties, and I propose to engage with them after I have gone through the first round of case management conferences with the parties.

Can I say primarily for the benefit of those who are sitting at the rear of the Court that the purpose of a case management conference is to assist the parties in advancing their proceeding to a substantive hearing. It may be possible in rare cases to resolve a dispute at a case management conference, but usually the objective of a case management conference is to facilitate the advancement of the case to a substantive hearing.

One of my 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. Although the focus is at this stage on those priority cases, I would not want it to be thought for one moment that other cases that don't meet the statutory criteria for being priority cases cannot also be advanced with exactly the same speed as a priority case. Some applicants and parties may be able to advance their cases quite rapidly, even though they are not recognised as a priority case under the Act.

At this stage we seem to have cases that fall into four very broad categories. First, there are the eight priority cases. Then there are claims that overlap to varying degrees with those eight

priority cases. Then there is a third group where active steps have already been taken to engage with the Crown to try and negotiate a resolution. Then there is a broad fourth group which don't fit comfortably into any of the three previous categories.

So having given you that overview, I will now invite counsel to announce their appearance and then I propose to follow a sequence in which I will focus first on the priority case which is in this Court and then the cases which overlap with that priority case and then I will come to the other cases.

I am not too sure if the Registrar has provided you with a schedule that is the same schedule as mine. If not, I am sure you will pick it up fairly quickly.

COURT:

Mr Melvin and Ms McKay, good morning

MR MELVIN:

Good morning sir.

COURT:

Mr Erskine

MR ERSKINE:

Good morning sir.

COURT:

Good morning. And you're for, I intend to use file reference numbers ending 238 (Te Whānau a Te Harawaka)

MR ERSKINE:

That's me sir.

COURT:

Ms Kiri Tahana?

MS TAHANA:

Morning sir.

COURT:

Good morning and you're for?

MS TAHANA:

294 (Ngāti Ranginui) and 318 (Te Whānau-ā-Apanui)

COURT:

Thank you very much.

Ms Mason, good morning

MS MASON:

Good morning sir and I'm here for 512, 513 and 514.

COURT:

Thank you very much.

Mr Koning

MR KONING:

Yes sir, 223 (Ngāti Whakahemo).

COURT:

223.

MR KONING:

Thank you.

COURT:

Mr Gear

MR GEAR:

Good morning sir.

COURT:

Good morning.

MR GEAR:

I'm for 244 (Nga Hapū o Ngāi Te Rangi)

COURT:

Thank you very much.

Ms Feint, 767

MS FEINT:

Tēnā koe Judge, otirā koutou mā, yes I'm here for 767 Ngā Hapū O Te Moutere O Mōtītī

COURT:

Thank you very much Ms Feint.

Ms Siciliano for 770?

MS SICILIANO:

Tēnā koe sir

Sorry sir I'm here for Tara Tokanui, number 222.

COURT:

I'm very sorry. Yes you are.

MS SICILIANO:

Sorry and the Mokomoko whānau.

COURT:

And for 355?

MS SICILIANO:

Yes.

COURT:

I have managed to miss Ms Tancock or –

MR MAKGILL:

Mr Makgill sir.

COURT:

Mr Makgill, thank you good morning.

MR MAKGILL:

Good morning sir.

COURT:

And you're for 770.

MR MAKGILL:

Yes sir. I'm also as agent for Mr Bennion's clients sir. I think they're further down the list.

COURT:

Yes they are, that's 250, 253 and 257.

MR MAKGILL:

That's correct sir thank you.

COURT:

Mr Webster

MR WEBSTER:

Yes thank you sir. I'm here for applications 195, 196 and also added this morning 219.

COURT:

Excellent. Thank you very much Mr Webster.

MR WEBSTER:

Thank you sir.

COURT:

Mr Hovell

MR HOVELL:

Yes your Honour, here for 793.

COURT:

Thank you very much.

We'll start with you Mr Hovell seeing your client is a priority claimant.

MR HOVELL:

Sir, I have prepared a memorandum for hand up in respect to that. I haven't pre-lodged it so I've just prepared it for today so I'll hand this up and then talk to that.

COURT:

Just before you start, are there any other applicants or claims that I have not called?

MS ZWAAN:

Yes your Honour, counsel's name is Ms Zwaan and I appear for the 201 claim. It did say I was appearing in Wellington but I'm here today.

COURT:

Good to see you Ms Zwaan.

COURT:

Mr Hovell

MR HOVELL:

Yes thank you your Honour.

Sir, as mentioned Ngā Pōtiki is a priority application. It has in that regard taken some lead in terms of co-ordinating some of the case management matters in the proceeding.

COURT:

I noticed that in your earlier memorandum.

MR HOVELL:

Yes. This memorandum that I've provided sir touches on and I've listed the matters there. Paragraph [3] mentions the scope of the Ngā Pōtiki application to be considered. It talks about the concept of this internal process among the overlapping interest groups, it talks about a sub-grouping so that's a sub-grouping within Group H. It just mentions seeks leave for interlocutory matters and proposes a timetable at completion. I'll just go through those your Honour.

COURT:

By all means thank you.

MR HOVELL:

So just on the first point just noting there that the Minister has declined to engage with Ngā Pōtiki on the Coastal and Marine Title applications but has agreed to engage directly with Ngā Pōtiki in relation to protected customary rights orders. That creates a distinction between those two aspects of the application. So the proposal for Ngā Pōtiki is that its High Court application as it relates to the CMT component proceed in the High Court. The other component being the PCR element be adjourned to allow that direct engagement to occur.

The second point is the reference to this internal process. There was a meeting held among overlapping interests in February of this year and from that meeting there was general agreement among the groups to allow for a six-month process to allow those groups to discuss amongst themselves the nature and extent of overlapping interests and following that come back to the Court with an update on that process and seeking directions from that point forward whether that be timetabling or other matters that might come at that time.

COURT:

Do you know how many applicants participated in that internal conference?

MR HOVELL:

I think approximately 13 and I come to that so I talk about Group –

COURT:

I've got a list of 15.

MR HOVELL:

Yes 15. Within that list there's a duplication of one group which is actually the Ngā Pōtiki application and I'm not sure why I've gone down to 13 but I'll come to that. And just at paragraph [9] just noting there that on basis it could be likely that a substantive hearing occurs in the first half of next year.

COURT:

I thought I had to warn you that I'm aiming towards the second half of next year.

MR HOVELL:

Second half, thank you for that indication.

COURT:

That might be more realistic.

MR HOVELL:

So, turning the page at paragraph [10] this now discusses the idea of the sub-group and the memorandum lodged in March identified some boundaries for a sub-grouping and I've looked at the maps that were included to the Memorandum of the Attorney-General dated 25 May and tried to refine that a bit more in terms of the sub-grouping. So I've identified in those paragraphs paragraph [10] that the eastern extent and the western extent, I'm not sure if it's eastern go through that map but that hopefully people can follow with the words there and coordinate that with the map. So within that sub-group at paragraph [11] that lists seven groups who are substantively within that area, that sub-group area. So those are the seven applications which we say should be heard in conjunction with each other. So that's in their full sense. So those are listed at paragraph [11] being the application to Mr Reeder, Ngā Pōtiki, Ngāi Te Hapū Incorporated, Ngā Hapū o Te Moutere o Mōtītī, Te Rūnanga o Ngāti Whakaue ki Maketū, the application by Mr Kahukiwa, application for Mr Ririnui on behalf of Ngāti Whakahemo and Mr Ririnui on behalf of Ngāti He Hapū Tribes. So those are the applications we propose to be heard in conjunction with each other.

From the western extent, we have some applications which are partially overlapping with the sub-group and those are three applications listed there being Ngāi Te Rangi Settlement Trust, Ngā Hapu o Ngāti Ranginui Settlement Trust and Te Tāwharau o Ngāti Pūkenga. And then from the eastern extent, we have three applications partially overlapping there as well being Te Rūnanga o Ngāti Awa, Ngāti Mākino Heritage Trust and Ngāti Pīkiao and R Parkinson for Te Uri o Te Hapū. So the proposal for those partially overlapping applications your Honour is that they be heard to the extent that the overlap with the sub-group so they wouldn't be heard

in terms of a full extent of those applications. So we've got seven groups within the sub-group who would be heard in the full sense and then we've got groups that overlap with that sub-group and part of the reason for that is, if you do go on to have those applications heard in full that may engage other parties that overlap with those applications.

COURT:

Yes, referred to by the Crown as the cascading effect.

MR HOVELL:

That's right and that's what I've referred to in the memorandum. So that covers the sub-group your Honour.

The next point in the memorandum at paragraphs [15] and [16] is just seeking leave to seek interlocutory matters at later stages of the process or whether there may be a need for a preliminary hearing on points. We don't know at this stage and there may be matters that come up through the internal process itself as well.

The last point there your Honour is timetable and hearing. Referencing the six month process I've actually included a date in sub-paragraph (b) there of 2 November to report back to the Court. So that truncates a little bit to about just over four months. So that allows those discussions to occur and the parties to report back to the Court at that point.

So that's the directions I'm seeking your Honour. That covers the matters that have been addressed in the case management memorandum today.

COURT:

I'm very grateful to you Mr Hovell. Approximately how many witnesses do you anticipate your client will be relying upon at the substantive hearing.

MR HOVELL:

It's going to be a combination of expert witnesses and traditional type evidence and the expert witness bracket could be up to three and then traditional witnesses uncertain at this point but I could say in the order of three to five.

COURT:

And so from your clients' perspective, how much time do you think it would take to present your clients' case?

MR HOVELL:

So there's work that has started and will continue to occur over the six month period. I think full evidence

COURT:

I'm just trying to get a rough idea.

MR HOVELL:

Full evidence preparation or completion by end of the year.

COURT:

I'm just trying to get a bit of an appreciation of how much court time is ultimately going to be required so with that number of witnesses do you think what about a week for your clients' case?

MR HOVELL:

Could be up to a week yes.

COURT:

Good. Thank you very much Mr Hovell.

MR HOVELL:

Thank you sir.

COURT:

So what I propose to do is just go through the other cases, call on the other applicants whose cases overlap with Ngā Pōtiki and then ask each counsel to comment on the proposal that's been put forward by Mr Hovell and without following any particular order, Mr Makgill.

MR MAKGILL:

Thank you sir. I've got two memoranda to be circulated that I wish to hand up.

Part of my memorandum that addresses the point you're talking about, sorry my learned colleague, Mr Hovell was talking about are at paragraph [9]. My client is in general agreement with the proposal proceed to have the overlapping claims heard in full. I do detect a slight problem with my colleague's proposed approach which is that protected customary rights claims are adjourned. Obviously there's going to be quite a lot of overlap between the evidence that is adduced in respect of customary title and the evidence that is adduced in terms of protected customary rights and all the applicants are limited in funding in terms of their ability to bring cases to Court and I'm just concerned that if we adjourn the protected customary rights application because it overlaps with Mr Hovell's application that we're going to have hearings

that are artificially separated in terms of the presentation of evidence. So that would be my observation in response to that and my concern.

COURT:

What is your proposed solution?

MR MAKGILL:

Well there's two options. We can proceed with adjournment of Ngā Pōtiki's PCR claim but hear the rest and that is going to invariably overlap with his own claim to some extent. Or, we can adjourn both the CMT and the PCR applications until such time or for an agreed timeframe within which Ngā Pōtiki can undertake its negotiations. I think those are the two fairest approaches.

Thank you sir.

COURT:

Thank you very much Mr Makgill.

Mr Gear

MR GEAR:

Thank you sir. I've considered my learned friends' submissions this morning. I think in terms of my clients' position the way that he's broken down it into sub-groups is helpful from our perspective because our application reaches up around the Aldermen Islands and also further north so in terms of his application this hearing now is in relation to that overlap area is acceptable to us so we agree with that.

In terms of the issue that Mr Makgill has just raised, I agree that it could result in duplication if we just adjourn the PCR matters and come back to that at a later date. It is a matter of timing. If we could get an indication from Mr Hovell as to how things are progressing with direct negotiations with the Crown I think that could be helpful to us to plan for.

COURT:

I also will be asking the Crown for that indication as well.

MR GEAR:

Thank you sir.

COURT:

Thank you Mr Gear.

MS TAHANA:

Thank you your Honour. In terms of our clients' application they support generally the position of Mr Hovell. Their application only partially overlaps so we would support hearing of the overlapping areas only to avoid the cascading effect and in relation to the PCR issue we support the submissions of our learned friend that it would be preferable to adjourn the whole matter and we are generally supportive of the internal process.

COURT:

Thank you very much Ms Tahana.

MS TAHANA:

Thank you.

COURT:

Ms Feint

MS FEINT:

Thank you sir.

My clients support the sub-group that's been proposed by Mr Hovell. I think that's the only grouping that makes sense because as he said it to you expand it to include all of Tauranga Moana in groups and Hauraki to the west and Te Arawa to the east. So we support that. Because my clients' application would be heard in full in the course of this hearing, we would strongly prefer to have the PCRs heard at the same time and that could be a discrete part of the hearing because it will only concern the hapū, the whakapapa to Mōtītī Island by their nature of the Act discrete in area and location. The only aspect of Mr Hovell's process that I am not in complete agreement is the proposal that we set a timetable once we come back to the Court in November. I think that's going to inevitably cause further delay. It seems to me that we could timetable evidence now and have that timetable far enough out from 2 November. That's when we know whether there are any agreements as to the extent of overlapping areas or where boundaries might lie. We can then tailor the evidence from that point. But if we have a timetable to say getting the evidence filed early next year to be followed by the Crown's two or three months later then we'll all be ready to go by the second half of next year and of course reply evidence would need to be timetabled as well. I'm just concerned that if we –

COURT:

If it assists you Ms Feint, that's generally what I have in my mind anyway.

MS FEINT:

Well that's good sir, we're on the same page then.

Thank you.

COURT:

Mr Webster

MR WEBSTER:

Thank you sir. I have two groups that overlap with the Ngā Pōtiki application. The first one is Ngāti He. Their immediate neighbours they have no issue with the proposal of the internal process. In fact they've been participating in it and they also agree with the sub-group, the ability to have their application heard in full subject to of course that issue around the parking of the protected customary rights component and I agree with my friend as to the options in relation to how to deal with that, otherwise we will end up with a duplication.

In terms of the other client I represent, that's Te Rūnanga o Ngāti Awa and the issue here sir is that we have different sizes of groupings before you and there are those iwi bodies who of course represent a number of hapū who have interest in these localities but there is a certain part of their claim is going to be presenting an iwi wide view of their origins and their interests and then each hapū sort of levers off that broader story and so that there will be inevitably some duplication. Unfortunately, I don't have any elegant solutions to that but it probably does mean that for the likes of Ngāti Awa and Ngāi Te Rangi there will be probably some duplication in terms of presenting the same evidence at the different hearings and inquiries into these matters but until I've got a bright solution for you sir I'll just note that for the moment.

Thank you sir.

COURT:

Thank you Mr Webster.

Mr Koning

MR KONING:

Thank you sir. Ngāti Whakahemo support the directions sought by Ngā Pōtiki.

COURT:

Thank you very much.

Now I think I have covered everyone who's got an overlapping claim. If I have missed anyone or not got anyone please let me know.

MR HOVELL:

Your Honour the only other point to note is that there are some overlapping claims who aren't present today.

COURT:

Yes, you're absolutely right. I count five.

MR HOVELL:

And I understand some of them may be in the Rotorua conference tomorrow.

COURT:

Yes, that makes matters even more complicated. I'm doing my very best to juggle everything.

MR MAKGILL:

Sir, I should have made it plain that I was speaking for Mr Bennion's clients when I –

COURT:

Yes, I appreciate that. Thank you very much.

Ms Mason

MS MASON:

Sir, the claim of the applicant Mr Paul is over all of New Zealand. It hasn't been listed here and there are some –

COURT:

Yes but I'm aware of it.

MS MASON:

Yes and I just wanted to make that point and to say that there are a number of issues which are different to the individual applicants' issues which could be covered later once you've heard perhaps all of the –

COURT:

Well there are two aspects of it that I understand you raise Ms Mason. One is that you, along with some other counsel, raised an issue concerning the status of the Attorney-General.

MS MASON:

Yes sir that is one but there was an earlier memoranda raising an issue around the difficulties which arise out of the ambiguity with which the test has been set out.

COURT:

By Parliament.

MS MASON:

Yes and seeking a judicial conference and that's not to say that the preparations which some of the applicants or the preferred priority applications their timetabling shouldn't be interfered with, perhaps something to go alongside that. But sir I could address that later unless you wanted me to do so now.

COURT:

Well I'm correct then in identifying those being the two what you might call pre-trial issues that are of most concern to you Ms Mason?

MS MASON:

Yes sir.

COURT:

Other counsel in other hearings have raised issues about the status of the Attorney-General and I am going to reflect on whether or not we do need to have a pre-trial hearing to sort that out so that the Attorney-General's position is properly understood. As to the issue about potential ambiguity in the definition in the Act I am very interested in understanding that issue. My only reservation is I wonder how helpful it will be to understand that issue in the absence of some evidence. It seems to me that whereas with the status of the Attorney-General is a pure question of law, whereas definitional issues are best informed usually by understanding the evidence and I'm a long way off understanding the evidence.

MS MASON:

Yes sir, those points are appreciated and one of the options is perhaps over the country looking at an application that is so well in advance in terms of evidence that is there. Sir there are some practical issues that arise. If one takes a conservative approach to the test then the thinking is that there will be small discrete areas over New Zealand that customary marine title would apply to. However, if one took the approach that public use for instance didn't negate or reduce customary marine title then that would lead to evidence showing that they just had to have

owned it at 1840 and the only instances of extinguishment would be where there's blue water title or reclamations and then perhaps where there have been Resource Management Act leases but everywhere else would be open to a declaration of customary marine title. Sir the reason that I raise this is that my clients have asked about the extinguishment of their title in the meantime so all of these applications have been made under the Resource Management Act to place structures or to build jetties or to do a whole range of things and if that would mean extinguishment of any customary marine title they might have, they would be most severely prejudiced and some sort of indication earlier rather than waiting for 10 or 20 years would be helpful in this regard for Resource Management Act type applications.

COURT:

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

What I propose to do now is just call on other counsel who have not been called upon yet because their clients' claim is not an overlapping claim with Ngā Pōtiki and I want to get an understanding as to where their clients are sitting in terms of preparation for a substantive hearing.

Ms Mason, everything you've said in relation to Mr Paul's application, does that also apply to the other two cases that you're appearing on this morning?

MS MASON:

Yes sir. One of the issues that have been identified earlier with these cases was that funding had not been approved but it has now but yes sir those three go together in terms of some more definition around the test.

COURT:

Ms Siciliano

MS SICILIANO:

Thank you sir. With regards to the Ngāti Tara Tokanui application, which is in Groups E, F and H sir you're right that's an overlapping claim but I would support Mr Hovell's suggestions in so far as if the scope of the priority claims was to be extended this claim would be included as a cascading claim and in that regard I support the proposal to avoid the Trust being drawn in to those priority claims.

Sir, with regards to the application by Te Whānau o Mokomoko I appreciate that the Edwards priority application is probably being dealt with tomorrow. I had signalled an indication my intention to appear here today I just wondered whether you would like me to speak briefly about that today.

COURT:

Yes please. You won't be in Rotorua tomorrow.

MS SICILIANO:

No sir I won't. I am however of course happy to file a memorandum following that.

COURT:

Yes by all means.

MS SICILIANO:

Sir with regards to Te Whānau o Mokomoko application it does wholly overlap with the Edwards priority application sir and we therefore of course would support an approach of hearing the applications fully alongside the Edwards application. Sir, in terms of timetabling for that hearing and this may be subject to what is proposed tomorrow but an indication of hearing time possibly one to three days and if we were to prepare evidence along the same timeframe as the Edwards application sir, we probably are looking at the end of this year.

COURT:

For having your evidence completed.

MS SICILIANO:

Yes sir. Thank you sir.

COURT:

Thank you very much Ms Siciliano.

Ms Zwaan

MS ZWAAN:

Yes your Honour. Now the Te Ūpokorehe claim fall into Group I and don't overlap with the Edwards claim that Ms Siciliano just talked about. We won't be appearing in Rotorua tomorrow to deal with that and we will also file a memorandum following that conference. I'd just like to indicate at this point the Te Ūpokorehe claimants do not currently have funding from the Crown so we haven't been able to commission any research yet so we will be a little way off. We do partially overlap with Edwards but not entirely and we would support hearing the partial overlap and not the full overlap obviously due to that cascading issue but we haven't had any conversations with the counsel of Ms Edwards as they have recently changed.

COURT:

Yes I think I only got notice of that last week.

MS ZWAAN:

Yes, so that's a recent change. We haven't had any internal conversations with them about what kind of timetabling we're looking at and we would appreciate leave to file a memorandum following this conversation tomorrow about whatever timetabling.

COURT:

Yes, by all means.

MS ZWAAN:

We'd like to indicate that it's unlikely we will have evidence together by the end of this year as there are a number of reasons why we haven't been able to engage any research yet. Also the clients have not had any historical tribunal hearings so we can't rely on any of that evidence and –

COURT:

So you're starting from scratch.

MS ZWAAN:

We're starting from scratch. So this will take a little while and to find appropriate people to engage as well.

COURT:

Thank you very much Ms Zwaan.

I should have perhaps mentioned that a transcript of all of the case management conferences is being prepared and they will be released. The last week of case management conferences is in two weeks' time and so it will be after that that the case management conference transcripts will be made available to all counsel and part through them to their parties.

Now, is there anyone that I have not yet got?

MS SICILIANO:

Sorry sir. One further point with Te Whānau o Mokomoko in regards to funding and a deficiency in the application which was noted in our memorandum. Not needing for it to be dealt with today sir but to avoid further memoranda I thought I would note that the whānau did not advertise the application and therefore we're seeking the Court's direction as to whether

this can be remedied in some way as obviously this is a requirement under the Act. Sir I am happy to leave that there for your consideration.

COURT:

You've flagged it. Whether I can give you an answer or not in the immediate future is something that I can't comment on at this stage.

MS SICILIANO:

Thank you sir.

COURT:

Mr Webster

MR WEBSTER:

Yes, thank you sir. This is in relation to application 195 by Jennifer Rolleston in relation to the Ihakara Tangitū Reserve. This is a discrete application that the applicants are still considering their options and it may well be that they engage with the Crown and they may fall into category three. We are looking to see whether or not the Crown's willing to negotiate because of it is a discrete application. Failing that though I think it is one of those applications that may well be ready to be heard in short order because it is so discrete and the number of witnesses I would have thought wouldn't go beyond three to five around in that range.

COURT:

Aren't there overlapping applications?

MR WEBSTER:

There are two that I can recall, one by the Ngā Hapū o Ngāti Ranginui Settlement Trust, which of course they're members of so we'll be having discussions with them. The other application I think that overlaps is the Ngāi Te Rangi Settlement Trust. So it's the intention of my clients to go and talk to their whanaunga about how that might proceed so it's just probably a smaller scale internal process that's proposed by my friend Mr Hovell but I think at this stage they're still trying to work out what the best way forward is for that application.

COURT:

Mr Erskine

MR ERSKINE:

Yes sir. Along with a couple of my friends my concern largely is with the Edwards application and I also do not intend appearing in Rotorua tomorrow. Our clients' application doesn't

overlap with the Edwards application. However, it does overlap with applications which overlap with the Edwards application.

COURT:

So you're a cascading applicant.

MR ERSKINE:

There's only two, the two national ones or what could be described as national, which is Messrs Paul and Dargaville and there is one other which I understand is a very minor overlap which is 377.

COURT:

And that's in Rotorua, it's not before me at the moment?

MR ERSKINE:

Not that I understand. So there's no problem I suppose in dealing with the application provided that it's restricted to that sort of –

COURT:

Those cases that do overlap –

MR ERSKINE:

Yes.

COURT:

– without encompassing cases that overlap the overlappers.

MR ERSKINE:

Yes, that's right.

COURT:

It's easy to say it.

Now, is there anyone who I have not engaged with? Any party that I have not engaged with? Anyone who's not represented by counsel and who would like to say anything?

MR MAKGILL:

Sorry sir back to me for a moment. Just realised with regard to my one of my agency instructions –

COURT:

From Mr Bennion?

MR MAKGILL:

From Mr Bennion, yes that Ngāti Patumoana Whakatōhea is a Group I claim. It overlaps with Edwards and Mr Bennion takes the same view that I do that where applications overlap with a priority claim they're meant to be heard in full. So that applies to H and I.

COURT:

Thank you very much for that Mr Makgill.

Mr Melvin

MR MELVIN:

Thank you sir. Dealing first with the memorandum my friend Mr Hovell has filed this morning. The Attorney-General certainly supports the internal efforts being undertaken to resolve matters and has no objection to the adjournment sought. The proposal for a Ngā Pōtiki sub-group appears to make very good sense and although we haven't had an opportunity to study the particular applications listed there, at first blush it looks appropriate and sensible subject to any matters that we identify when we go back to Wellington and have a look more closely at it, fully support that sub-grouping.

In terms of the timetabling proposal –

COURT:

You heard what I said to Ms Feint that my provisional intention is to try and put in place a timetable that would lead towards a possible hearing in the second half of next year.

MR MELVIN:

Yes, and in general terms the Attorney-General would endorse that. It will need to be reviewed of course. I just repeat the submission that the Attorney-General has made in previous case management conferences sir and that is that in his view there needs to be a step in the timetabling process where pleadings are clarified.

COURT:

Yes I understand that yes.

MR MELVIN:

That probably deals with most matters that have been raised this morning.

COURT:

Ms Mason has raised two what I might call two pre-trial issues. She's not alone in raising issues about the standing of the Attorney-General and whether the Attorney-General should be a party or simply an interested party. It may be that the Crown needs to give some thought to

that and to ascertain whether or not that issue should be resolved reasonably promptly obviously and then there is the issue relating to uncertainties about a key definition in the Act and I have to say that from my part I am still just trying to work through how to best address that. My intuitive reaction is that I'd like to do it with the benefit of evidence to get a better understanding as to how the issue might play out in practice. Have you any provisional thoughts on that?

MR MELVIN:

Yes, this is a matter the Attorney's addressed in written submissions sir in the memorandum of 27 April and the view is that the matters can't be determined in the abstract and they do need to be heard in the context of an application with relevant evidence. I'm happy to address the Court in more detail on that if it would assist in due course.

COURT:

Thank you very much Mr Melvin.

MR MELVIN:

Probably just one final matter sir and that's the public notice issue that my friend raised in relation to the Mokomoko matter. The Attorney's position would be that public notice ought to be given. If it wasn't through an oversight then that can and should be remedied simply by proceeding to give public notice.

COURT:

Well that might be your answer.

MS SICILIANO:

Thank you sir.

COURT:

Get on with it.

MS SICILIANO:

Happy to do so sir.

COURT:

Yes and if nobody takes any issue then you might be okay.

Now, are there any other submissions that any counsel wish to make in response to the Attorney-General's submissions, or submissions on behalf of the Attorney-General?

Ms Mason

MS MASON:

Sir, just continuing from the earlier submissions and this issue of more definition for the test, a timetabled judicial conference itself if the matters in issue were as set out in the memorandum about the test evidence could actually be called on that particular matter. One of the biggest problems that's been experienced is that there's a lack of funding and if you look at the spectrum of possibilities that the Court could eventually decide on in terms of what the test should be or how it should be interpreted the evidence that people are having to collect it's extremely expensive. There are many many parties doing the same thing and to the other thing and I know that it doesn't seem to be that way here but some of the groups that have overlapping claims and are competing are doing so in not the most pleasant manner so it's causing a bit of grief within the claimant community and there's a rush for the limited funds that are there and there are the sorts of negative engagements amongst claimant groups that one tends to see in the Treaty Settlement phase. So in relation to the way that the fisheries matter was dealt with was it was seen in two parts. The one part was about "is there a Māori right to this resource and what does that look like?" which was a matter that was resolved before the Court and then the other part of it was once it was decided what that interest looked like it was then allocated out and it was done within a Māori entity, the Fisheries Commission, which seemed more fitting than having these matters come before the Court which I'm certain has many other things that it needs to timetable and not these issues where there are specialist people and jurisdictions to deal with and so sir the cumulative effect of all of those matters has led to the instructions that I have received from my clients to put this matter before the Court. In saying that sir, yes evidence is required but perhaps I could speak some more with my clients and perhaps even engage with the Attorney, because it relates to the role that the Crown or the Attorney-General hasn't in these proceedings and try to work out some way of doing that because it is in the public interest really that these matters get settled in some other way than what is appearing to be going on at the moment.

COURT:

You will fully appreciate that my role is to do what Parliament has directed in the Act. If there are alternative means of resolving these very challenging issues, then I for my part will not stand in the way of anyone attempting to reach settlement. That would clearly be in everyone's best interests. But unfortunately, at the moment it's either negotiate or come to Court.

MS MASON:

Yes sir.

COURT:

I don't see any other mechanism available at the moment.

COURT:

Sir well I'll consult with my claimants and perhaps have a discussion with Crown counsel and perhaps an attendance at the Whangārei or the Auckland GCs ?? have some more sophisticated idea about how perhaps to move that forward in a way that is consistent with the Act and have some evidence before you sir.

COURT:

Ms Mason I'm very grateful to you. Thank you very much. If you are contemplating attending another judicial settlement case management conference it might be better to aim for the Auckland one because I think Whangārei has from memory about 55 applicants. That's going to be a massive day whereas Auckland isn't quite so cluttered believe it or not.

MS MASON:

Yes sir, and I have to say that would suit my 10-year old daughter whose birthday is on the day before and who said to me rather quizzically, "have you told the Judge that it's my birthday" so sir I can with hand on heart tell her that I have.

COURT:

Ms Feint

MS FEINT:

In relation to the issue that Ms Mason raised about possibly having a pre-trial hearing to determine the statutory test I think that's a matter on which certainly my clients would seek to be heard and my instincts mirrors yours that I think it is something that needs to be heard in the context of evidence because I suspect that customary law will vary from iwi to iwi and from place to place so that for instance in the Bay of Plenty it was a very heavily populated area and there was an intersection and interweaving of rights whereas in the remote area like the East Coast say exclusivity may well mean a different thing. So my clients I am not sure that they would support there being a pre-trial determination of those issues but if it there was to be one then they would seek to be heard and to call evidence in relation to their particular tikanga.

COURT:

Thank you very much Ms Feint.

MR ERSKINE:

Sir, without having instructions on the matter I agree with Ms Feint, my learned friend's comments and full reservations.

COURT:

Thank you very much Mr Erskine.

MR ERSKINE:

I'd just like to endorse the comments that my learned colleague Ms Feint made as well.

COURT:

Is there any other comment or anything that anyone would like to make? If not, I will adjourn to Rotorua tomorrow where I may see some of you and simply I would like to thank you all for coming to Court and for the preparation that you have put into this so far and look forward to seeing you again.