MACA CASE MANAGEMENT CONFERENCE
WELLINGTON

10 JUNE 2019 at 10.00 am

COURT:
Tēnā koutou katoa. Ko Justice Churchman ahau.

Thank you for coming to the case management conference (CMC) this morning. For most of you it will be your second CMC. I am conscious that there are some interested parties for whom you may not have been at a CMC before.

Briefly, the purpose of the CMC is to attempt to assist the parties to get these proceedings to a state where they can be set down for hearing. That is the overall objective and what I will try and do is to identify the road blocks that there appear to be in relation to parties moving towards hearing and see if we can't address those and make some progress.

At the end of the various CMCs that are occurring around the country where I will no doubt see some of you again, I will issue a minute as Justice Collins did after last year's CMCs. So, all of those involved in these proceedings, that's all 202 claimants, are aware of what's happening at a national level, to attempt to resolve matters and take things further forward.

What I would like to do is to just move through the list to make sure I understand who is here, and probably more importantly for me, who is not here. So, perhaps Mr Registrar if we're able to call the matters on an individual basis and then we can work out who is here and then proceed to address the issues.

REGISTRAR:
Te Whānau Tima and Te Hapū o Te Mateawa – Mr B Lyall
Te Aitanga o Ngā Uri o Wharekauri, Te Hika o Papauma – Mr C Hirschfeld
Te Hika o Papauma, Ngā Uri o Ngāi Tūmapūhia-ā-Rangi Hapū, Tukōkō and Ngāti Moe, and Muaūpoko Iwi – Mr G Erskine and Mr M Hill
Ngāti Raukawa ki te Tonga, Tupoki Takarangi Trust, and Pāpāuma Marae Trustees – Mr T Hullena
Williams – Ms H Brown

David Morgan Whānau – Mr M McGhie

Rangitāne Tū Mai Rā Trust – Ms A Anderson

Te Atiawa Iwi – Mr S J Fraser

Muaūpoko Iwi, Ngāti Hinewaka, Hunau of Tame Horomona Rehe, Te Patutokotoko – Mr T Bennion

Cletus Maanu Paul – Ms J Mason and Ms J Collinson

Rihari Dargaville – Mr G Sharrock

Ngāti Kahungunu ki Wairarapa Tāmaki-nui-ā-Rua Settlement Trust, Te Awa Tupua and Ngā Hapū o Te Iwi o Whanganui – Mr J Ferguson

Interested parties:

Wellington International Airport Ltd – Ms Barry

Seafood Industry Representatives – Ms K Rouch and Ms A Anderson

Non-attendances:

Ngāti Kere Hapū

Moriori Imi

Ngā Wairiki Ngāti Apa

COURT:
Now, are there interested parties who have not informed the Court who they are here for?

MS ROUCH:
May it please the Court, Ms Rouch for the Seafood Industry Representatives.

COURT:
Thank you. In respect of which matter or matters?

MS ROUCH:
Generally, your Honour.

COURT:
Generally, yes thank you.

MR WARD:
Te Kaiwhakawā, tēnā koe. Ko Ward toku ingoa. Ward and Melvin for Attorney-General.

COURT:
All right, and that's everybody?

The next test is the order in which we address issues and the Crown have filed a memorandum on Friday which I got to see this morning. There are a number of issues in it so unless any of the other parties has a particular preference as to order, I would invite the Crown to speak to their memorandum and I have a few questions because it does seem to me that, as far as many of the applicants are concerned, a number of the issues that raised themselves before Justice Collins 12 months ago, are still impediments to them proceeding with their applications and, in particular mapping, and funding.

So, I give you the opportunity, Mr Ward, if you could speak to your memorandum.

MR WARD:
Thank you sir. I propose simply to take your Honour through the points as they're listed in the memorandum, if that's convenient.

Sir, in relation to mapping, the Crown had some very preliminary initial discussions with some applicants following the CMCs last year. Those discussions haven't been progressed in terms of specific mapping guidelines or the application process. I understand that some of the applicants who may appear at the Rotorua and Tauranga CMCs have been discussing approaches to mapping, and your Honour may hear further about those points at those CMCs.

The Crown's focus has initially been on the National Data Set (NDS) which is being compiled and prepared for general release. And that's a first step to provide applicants, and indeed the public more generally, with a baseline set of data that can be used in mapping processes.

COURT:
Before we leave the general concepts, I see from your memorandum you say the Attorney-General has not been approached by applicants in relation to any detailed proposal and does not consider it appropriate to develop mapping guidelines unilaterally. It may be unrealistic to expect individual applicants to take the lead, as it were, particularly given the issue of resourcing that they've talked about, and it just seems to me it may be sensible for the Crown to be proactive rather than reactive, and I'm not sure whether you were saying to me, if one

of the applicants had approached the Crown, something would've happened. I am looking for solutions and progress.

MR WARD:
Yes sir. I'm happy to take instructions on those points.

Our understanding from the previous CMCs were that there were a number of discussions, not simply particular applicants acting by themselves but that there were clusters of applicants who were discussing amongst themselves how they wished to progress mapping issues between them. And I appreciate that some of those discussions may take some time but I am, in my submissions sir, the Crown is taking steps to move towards providing data for all applicants for mapping, and certainly I appreciate that if there are issues about mapping where the Crown is in a position to assist, we'll seek instructions to do so sir.

COURT:
Yes, simply from my perspective and I acknowledge that I'm very much a Johnny-come-lately to those of you who have been involved in this process for a much longer period of time, but if we could have a consistent set of maps that's likely to make the Court's approach or task in understanding and interpreting the information a lot easier in the sense that the maps for the far North are set out on the same basis, and in the same manner as the maps for this region, Wellington.

So, I would encourage the Crown really to use its best endeavours because it does seem to me, and a number of the applicants have raised it, to be one of the major reasons that we don't seem to have made a whole lot of progress.

Sorry, I interrupted you when you were telling me about the NDS, it's not a concept that I'm familiar with. Can you explain to me what it involves and how it's going to be of assistance in making some progress?

MR WARD:
The intention sir, is to have an application that can be accessed on the internet that would allow, on a map on a computer screen, to show layers of information. For instance, by selecting a particular layer it will show on that map resource consents in that area. It will show particular sets of historic information that the Crown has compiled or that is publicly

available from a particular publicly available database. So, it's taking data from local government and from a number of other public sources particularly about the third-party use and consenting and permitting in the coastal marine area, and it allows that information to be shown on a map, and through combining layers, various types of information can be shown. And the technical specifications behind that data set mean that data, I'm instructed, can be used in other mapping applications that may be available. So, it provides a kind of baseline of data that applicants would be able to draw on for their own mapping purposes. It provides a baseline of broader information that will be relevant to applicants and to interested parties.

COURT:
Well, I certainly encourage you to proceed, to the extent that you're able to, and try and be proactive if you can. I can't direct the Crown to do particular things, but I can encourage them to try and make as much progress as quickly as possible on that.

MR WARD:
Yes sir, I'm conscious of that encouragement, sir.

Sir, a number of the applicants have sought clarification from the Crown about the status of applications for engagement, for recognition agreements under s 95.

Sir, we indicated at the last round of CMCs that Te Arawhiti, the Crown Māori Relationships Unit, anticipated that it would take 12-18 months for the Crown to identify which groups it was intending to engage with under s 95. That remains the broad timetable. And as we set out in the memorandum, Te Arawhiti is developing a strategy and a work programme. Once that's confirmed by the Minister, it will be communicated to applicants later this year.

We're instructed that Te Arawhiti will be contacting applicants directly with an update about its prioritisation of recognition applications. The priority for the time since the last CMCs are now, has been firstly on the priority applications, the particular applications that have priority under the Act, the existing engagement obligations the Crown has entered into with a number of groups that already in the engagement discussions, and the progression of legislation relating to Ngāti Porou – Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Bill which has now become an Act.

So, those have been the priorities for Te Arawhiti in the past 12 months. There has also been work on the strategy and work programme and that's due to be announced soon sir.

That's the extent of the information that I have about the progress that's been made on applications for engagement.

COURT:
Yes, that is an important matter for the Court, and very much so for the parties because there are many of the parties here today who would prefer, it seems to me from the memoranda they've filed, to engage with the Crown directly rather than to progress these proceedings. And of course, if they're not able to functionally do that and commence the process, they may end up being dragged into proceedings which they would otherwise not wish to have to participate in. In terms of managing these 202 cases, we really need to try and slim them down to the ones that really have to be dealt with, where the parties prefer a litigated outcome to an engagement outcome.

So, again, it's frustrating for the Court, as it must be for the parties, and probably to you, that we're not making a lot more progress.

MR WARD:
I think sir, his Honour Justice Collins had indicated to the parties at the last CMCs that, in the time since then and now, there was a scope, an expectation, that applicants would be working on developing their case and their research. It's not a case sir, of applicants simply standing still and waiting for…

COURT:
No, and it's not complete wasted effort for applicants is that much of the basic ground work that they'll put into preparing evidence for a hearing is likely to be useful to them in relation to an engagement claim.

MR WARD:
Yes sir. Having said that, I am conscious of the signals that are given in the applicants' memoranda and we're taking that point up with Te Arawhiti, sir.

COURT:
Thank you.

MR WARD:
There are a number of specific points that have been raised by various applicants about their own particular funding applications. I don't propose to take your Honour through those.

COURT:
No. I've read your table there and that sets out what's happened, and I assume if any of the applicants want to disagree with the position you've set out there, they will tell me. So, I don't need you to go through that.

MR WARD:
Yes sir, and I would say that Mr Melvin and I, are more than happy to speak to our friends after the CMC, about particular points that we can helpfully raise with our client to progress those matters.

COURT:
Yes, well that's an invitation I'm sure they'll take you up on.

MR WARD:
Your Honour, I received this morning a memorandum from my friend, Ms Mason, in relation to Mr Paul's application. That raises a number of points that I suspect she will address you on.

In relation to the national applications, there's a proposal now to amend Mr Paul's application. That's a matter on which I will need to take instructions, sir. It's a surprising step in a number of respects. It may be a matter that we'll seek to file a separate memorandum on.

COURT:
Yes, it is a matter of concern to the Court and obviously getting a memorandum, as I did, at 10.05 this morning, is not going to help the Court to come prepared to address these issues. But, are you appearing at the various other CMCs?

MR WARD:
Yes sir. I'm appearing at New Plymouth, Whangarei and Auckland. Mr Melvin will be appearing at the others.

COURT:
Well, it may well be instead of trying to deal with that matter today, we look to have it more fully traversed at one of those other CMCs. But it is an issue that has to be addressed and grappled with, and one way or another, resolved.

MR WARD:
Yes sir, thank you. Similarly, there's an issue in relation to the application that's been made for interlocutory hearing about the role of the Attorney-General in these proceedings.

We've clarified in a previous memorandum, that the Attorney-General proposes to keep his position under review and to assess the particular role and approach that the Attorney will take in relation to each application, when we've had an opportunity to see the evidence for that application.

In my submission, it seems premature to have an interlocutory hearing that would inevitably be somewhat abstract. The more efficient, in my submission, point would be for the Attorney to consider a particular role to be taken in relation to each application, as that application proceeds.

COURT:
Well, to some extent, there are some generic issues across all applications. I mean, it's a matter of principle, yes, it's always difficult, or often difficult, to come to a conclusion on the law without understanding the relevant facts. But, it does seem to me that the issues that have been raised haven't been allayed in full by the issue of your last memorandum on this, and there are still applicants who are inviting the Court or requesting the Court to resolve this.

Thinking out loud, my concern is that a worst case scenario for the Court would be that it doesn't formally resolve this in terms of a hearing and issuing a judgment, and then there are applications for judicial review, perhaps after a number of cases have been heard, and ultimately this Court or the Court of Appeal or Supreme Court comes to a conclusion which means that those hearings are effectively wasted in the sense that one or more of those Courts says, the Attorney-General attempted to have roles that were incompatible, one with the other, and that invalidates the hearing.

For me, trying to manage this list and get things efficiently to a conclusion, that would be a disaster.

MR WARD:
Certainly sir. I wonder though whether, in terms of progressing particular hearings, the Court would be more assisted if an assessment of the role of the Attorney, in relation to particular applications, when the applications reach the point where the broader participation of all the parties, the involvement and the developments of various factors and various parties and various pieces of evidence can be assessed.

So, our submission is that an interlocutory hearing at this stage, is less likely to be helpful to the Court and to the parties.

COURT:
It may be, given we've now got some hearing time firmly allocated, it may well be that the Crown needs to apply its mind to thinking through these issues and again, in relation to those hearings that we know are going to go ahead, those we know have been allocated firm hearing time. Obviously, that's next year rather than this year. But, it seems to me, given that a number of the applicants are still unhappy or unsatisfied with the position the Crown's articulated, we probably do need at least before the first of those hearings to have resolved the issue, at least in relation to that hearing.

MR WARD:
And finally sir, just on that point, my friend's proposed timetable for any interlocutory hearing seemed, in my quick read of it, to suggest that the Crown would have a shorter time to prepare its submissions. And my learned friend, minor point, that I presume that if there was a interlocutory hearing…

COURT:
Is this something arising out of Ms Mason's submission?

MR WARD:
Yes sir.

So, I simply submit that if there is a timetable set for an interlocutory hearing that the Crown would ask that it has the same amount of time as the applicants for any staggered submission of memoranda.

COURT:
Well, I won't be making any ruling on that particular question today. I'll need time to reflect on the memorandum, what you've said to me and what Ms Mason will no doubt say to me in due course.

MR WARD:
Thank you sir.

There was a point raised about confidentiality orders in some of the applications, this is [17] of the Attorney-General's memorandum. We appreciate that it may be an issue that the Court will have to address at some point in the future, as applications progress, but it's a matter to be addressed at the time that evidence is ready to be filed and the terms of the confidentiality order can be discussed. And I presume there would be discussions amongst counsel before the issue was raised directly with the Court.

Unless your Honour has any questions, those are the points that I wish to make.

COURT:
No, and you've highlighted the matters that I wanted to hear from you on. Thank you.

It may well be that we come back to you towards the end of the CMC this morning, depending on what issues other counsel raise but thank you that's helpful, Mr Ward.

MR WARD:
Thank you sir.

COURT:
So, if we could address now CIV-2017-485-273.

MR LYALL:
Tēnā koe sir. Lyall for the applicant in this matter.

I filed a memorandum of counsel dated 16 May, which you hopefully have before you. I don't think I'll take up too much of your time here today.

This is a fairly discrete application on behalf of one hapū and one whānau group. Preparation is well underway. We have a historian identified who can begin work this year. So, on the current indications for timetabling, if that hearing were to be set down for the latter part of 2021 or 2022, then we would be ready to proceed on that basis.

COURT:
Yes, there will be a degree of overlap between this application and other applications, won't there?

MR LYALL:
Yes, I've been having some fairly preliminary discussions. It appears there's six applications that overlap, inclusive of this one, and it may be a matter of us doing a bit more work, as counsel and applicants, to iron out any difficulties in getting to a fixture. I'm not sure of the ramifications that some of those other applications might have in terms of the cascading of applications, as I think it's been referred to, but for this application it would just be those other five other applications by the looks of things. And that's reliant on the Crown's very helpful map that was filed on 2 June 2017 which sets out all of the applications and their boundaries. I would note that has been helpful and were the Crown to have another go at that sort of approach, that would certainly be welcomed.

COURT:
There isn't anything that you want from the Court by way of direction or even encouragement that will assist you?

MR LYALL:
Not presently sir. I welcome the indication from the Crown that they're open to discussing funding. This matter has had the upper funding limit granted as noted in the Crown's memorandum. I think there's been some administrative issues on the Crown side but hopefully we will have finished working through those and I don't see that causing any delays if we were working towards that – 2021/22 kind of timeframe.

COURT:
Yes, well, you've heard Mr Ward's invitation to come and talk to him about those practical matters and I encourage you to take that up.

MR LYALL:
Yes, and I'll certainly take him up on that.

If it would be of assistance, I can either list off those overlapping claims/applications, or I can perhaps file a memorandum to clarify that.

COURT:
If you could file a memorandum. It's a, as you might imagine, a significant task for me to try integrate all the information I'm getting and really to understand how things fit together in terms of overlapping claims.

MR LYALL:
I'd be happy to do so.

COURT:
Good, thank you.

If we could move now to CIV-2017-404-479.

MR HIRSCHFELD:
Yes, Hirschfeld sir.

How can I assist your Honour.

COURT:
I've read the memorandum that has been filed. What I really need to know is what you're asking the Court to do to assist you to get to where you want to go?

MR HIRSCHFELD:
Your Honour, matters are well advanced in terms of the historical research. A substantial phase of it is to occur mid-year, next month, to bring into August, which would bring to a close by the end of this year. I foresee the gathering of that aspect of the evidence and then in the report form.

What I'm really indicating to your Honour is that there is forward momentum in this so far as preparation for the matter to be heard eventually at the trial is concerned. And I would expect this matter could go to a hearing in 2021.

COURT:
So, are you asking to be adjourned until the CMC next year which will probably be about the same time, late May/early June?

MR HIRSCHFELD:
Having reported now to your Honour, if that is convenient to the Court, yes.

COURT:
Yes, well that's likely to be the next round of major CMCs. There will be some other more specific ones but if that's suitable, that's what's likely to happen.

MR HIRSCHFELD:
Your Honour, I understand. Yes sir.

COURT:
Thank you Mr Hirschfeld.

Now CIV-2017-404-481.

MR HIRSCHFELD:
Again, I appear sir.

Same situation sir. Things are well advanced for the applicant. It's really in the Court's hands but I can advise that substantial progress has been made, indeed the applicant is here today, and an adjournment as proposed by your Honour for the last matter is sought.

COURT:
Thank you Mr Hirschfeld.

Now the next ones are yours, Mr Erskine – CIV-2017-485-226, 267, 160, 232.

MR ERSKINE:
That looks correct sir.

First, I'll try to be brief. I filed two memoranda. The first one had three issues and I'll just touch on them as briefly as possible. The first was confidentiality orders. And I agree with the point made by the Attorney-General in respect of that such orders could not be made in a vacuum. So, it's something to be addressed when the time is right – perhaps when evidence has been filed.

The second matter is, I set out perhaps an approach to the hearing of applications, having overlapping applications and I'll come to that later.

The third matter was possible strike-out applications against national applications, those by Mr Paul and Mr Dargaville. Unfortunately, I haven't received the memorandum which I understand has been filed this morning, and I'm not aware of what it says, except that I understand a withdrawal is likely, but perhaps my learned friend can educate me on that.

COURT:
Just on that, Mr Erskine, I'm happy to reserve to you the right to respond once we've heard from Ms Mason if there are matters arising out of what she says to the Court specifically in relation to that issue. If you do wish to have the opportunity to respond to what's said, I'm happy to grant you that this morning.

MR ERSKINE:
Yes, sir, I do note that, further to your exchange with Mr Ward, I will appearing in Whangarei on 25 June and I do wonder whether issues arising could be further addressed at that conference in particular, which is in a couple of weeks or so.

COURT:
Yes, that seems sensible but obviously I want to hear from Ms Mason before I make any order.

MR ERSKINE:
Yes. So, those are three issues. And I haven't heard from Mr Sharrock in respect of the application on behalf of Mr Dargarville also.

The next matter is that the approach I've taken with the four applications is that on the assumption that there will be no substantive hearings at least until 2021 or 2022, it had

occurred to me that the matters could be set down for substantive hearing and then orders for the filing of evidence working backwards. It has occurred to me though, further to some discussions with my learned friends this morning, is that it might assist the Court if other applicants are so minded that a joint memoranda could be filed on behalf of the various applications in terms of estimate of number of witnesses, estimated length for each applicant's hearing and then there should be plenty of time for people to file their evidence later down the track.

COURT:
Yes, well certainly that sort of information greatly assists the Court staff in determining the amount of judicial resource they need to allocate something. So, that makes sense to me.

MR ERSKINE:
Yes, I appreciate that it would take a long time today to try and tease out, number of witnesses today, but perhaps a joint memorandum could be forthcoming further to exchanges with other applicant groups in respect of Wellington claimants.

COURT:
Yes, rather than the Court trying to impose a straight-jacket on parties saying you will have this done by this time and that time, it may be more appropriate if you talked to your colleagues and then ideally file a joint memorandum setting out what you think you need, or if you can't agree on the joint memorandum, then individual memoranda setting out counsel's position.

MR ERSKINE:
Yes sir.

COURT:
I'll leave that to you as counsel to do. I won't order that you do that.

MR ERSKINE:
Yes sir. That, in short, is what I can say at the moment unless my learned friend, Mr Hill, wants to add anything.

COURT:
Thank you.

CIV-2017-485-229.

MR HULLENA:
Tēnā koe.

Sir, we filed a memorandum.

COURT:
Yes, I have that.

MR HULLENA:
Was there anything you wanted me to speak to in terms of that sir?

COURT:
Yes, you have asked me to make a direction compelling the Crown to confirm whether it intends to enter into direct negotiations with you, and if so, by when. And having heard Mr Ward this morning, I'm not sure there's going to be a lot of value in me making such a direction. I've encouraged him and pointed out to him, the difficulty that this creates for applicants like your clients. I've encouraged him to make progress with all speed. I suspect if I made a more coercive direction at this stage, it might not necessarily advance matters. But, I note your concern. I certainly understand the frustration that your clients will be feeling. We are probably not yet at the stage where the Court can be coercive. We will get to that stage eventually. I've heard what Mr Ward has got to say about the progress it is making. I've heard the timeframes he's anticipated will result in some progress. Obviously, if things don't happen within those timeframes, you're at liberty to come back to the Court and ask the Court to set down either interlocutory hearing or another CMC other than what is likely to be the annual series of CMCs.

MR HULLENA:
Thank you sir. We appreciate the encouragement on that matter.

Also, I just wish to highlight to the extent that we've said we would be ready in terms of evidence gathering to proceed to a hearing in late 2020, to the extent that overlaps with my friend if that was to be 2021 or 2022 then we could agree to that as well sir.

COURT:
Well, again if you can just speak up, for some reason I'm having trouble hearing some counsel.

MR HULLENA:
We just wanted to highlight sir, that the timeline doesn't necessarily have to be to 2020. My friend, Mr Lyall, has indicated that 2021 or 2022 may be more appropriate, and we're in agreeance with that as well sir, in terms of evidence gathering.

COURT:
Yes, thank you. That may be inevitable given that we're starting to have fixtures for next year, some have been allocated already. Thank you.

Now CIV-2017-485-258.

MS BROWN:
Thank you sir. We filed a memo on 16 May.

COURT:
Yes, I've got that.

MS BROWN:
I think it's fair to say it's relatively straightforward in terms of where we're at the moment. Progress has been made in terms of evidence gathering. I understand our clients are close to finalising their engagement with the expert, and then they're anticipating that process of getting expert evidence completed will be about 12 months. So, the dates that have been discussed earlier of 2021/22 seem to be realistic for us.

I do note we do have some overlap with three other applications, and I'm also happy to file a memorandum just updating the position on that. But, very briefly they're 261, 512 and 538, and that was in one of our earlier memos we identified that.

In terms of what we're seeking today, obviously, we're interested to see how some of these issues play out that don't directly affect us right now. But, I think it's fair to say we're in the position as some of the other applications, we would be seeking an adjournment.

COURT:
It's simply through to the next annual CMC.

MS BROWN:
Yes, and if anything changes, I think it's, provided we're able to file a memorandum updating the position if anything changes, but as it stands at the moment, I think that would be appropriate.

COURT:
Yes, thank you Ms Brown.

Now CIV-2017-485-211.

MR HULLENA:
Thank you sir.

Again, we filed a memorandum dated 16 May and the position is largely the same sir, in terms of our preparation and directions sought.

Unless I can assist you sir, with anything in that memorandum.

COURT:
No, it's essentially adjourned for 12 months with no specific directions required?

MR HULLENA:
No, thank you sir.

COURT:
Thank you.

Now CIV-2017-485-220.

MR HULLENA:
Yes sir. Again, if there's anything you would like me to speak to in our memorandum dated 16 May, be of assistance?

COURT:
You indicate in your memorandum that the Crown has not responded to your request for direct negotiations beyond noting that the application has been received. Have you followed up your original correspondence with the Crown?

MR HULLENA:
Not as yet sir, but we'd anticipated that would be raised today. And, in terms of seeking directions to that extent, I understand that your position is it probably is unhelpful at this point to direct that the Crown progress on the matter.

COURT:
Thank you. So, 12 months adjournment essentially for you?

MR HULLENA:
Yes sir.

COURT:
Now CIV-2017-485-214.

MR MCGHIE:
Mr McGhie sir.

We, too, filed a memorandum on 16 May.

COURT:
Yes, I have that.

MR MCGHIE:
We note there's been some site visits, some whanau meetings, but a lot of research was still to be done. I'd say, for this claim sir, it's too early to say how many witnesses we're going to have, too early to say what the evidence is going to be without that research being completed.

Funding has been an issue. I think the Crown table on funding in their memo last week said that last communication with us had been back in 2017. And there seems to have been a bit of communication gap. We were waiting to hear from them and they're waiting to hear from us, but I'll speak to the Crown afterwards and see if we can clarify where things are at, and perhaps move forward on that.

COURT:
Yes, just on that Mr McGhie, as I've indicated to some of your friends, I think it is important that when the applicants are not getting a response from the Crown, as a number have said that is the case, that you do follow up because there are a lot of these cases I'm sure the Crown is inundated with them, but unless they know you still want a particular response, it is easy to see how things can get overlooked. As they say, "the squeaky wheel gets the oil". I would encourage those of you who are not receiving responses in a timely manner, to draw that to the Crown's attention.

MR MCGHIE:
Today sir, overlapping claims appear to be an ongoing issue and a way we could move forward. I think there are four or five other counsel today whose claims are going to overlap, either entirely with ours, or partially. To us, the way to move forward really is consultation with these other claimants. It's going to be difficult to move forward without taking into consideration what the overlapping claimants actually are.

COURT:
There do seem to be, I note your client's claim is for a relatively defined area and again, it's, I think in everybody's long-term interest, if you do talk to your colleagues and see if you can't make some progress because, if there are ultimately overlapping claims, particularly those that cover the entire area that the Court is going to have to adjudicate upon in terms of meeting the statutory tests, that creates a conundrum for the Court that it doesn't, if the parties get together and are able to agree as between themselves on certain aspects of their claim. That may well limit the issues the Court has to consider, and it may enhance the position of all claimants in that area.

MR MCGHIE:
Yes, I was hoping to clarify with the Court what would be the Court's position in that situation – is the Court going to make a determination on customary interests or defer to what the Tribunal has perhaps said?

COURT:
Well, the answer to that is, it all depends. It depends on a particular claim, it depends on what rulings or determinations may have been made by any other body, what the evidence is. I don't know I can give you blanket answer. But, all I can say at this stage, and again it's

coming very early in my responsibility for this list, in this legislation, is that I see significant advantages potentially to applicants where there are overlapping claims, not simply to dump everything ultimately on the Court and say you sort it out. But to agree to the extent you can, and ideally put a united case, if I could call it that, or at least a case where there are as few disagreements as between the parties as it is possible to get. And there may well be opportunities to co-operate, to iron out some of the differences in respect of overlapping claims. They are not all, totally, mutually exclusive.

MR MCGHIE:
We'll take that moving forward sir.

The last point was the status of overlapping claims, not the status of overlapping claims, the whole of New Zealand claims. If we do organise these discussions with overlapping claimants, where do the whole of New Zealand claimants stand? Do we have to discuss with them, are they going to appear at our hearing? Perhaps if that could be clarified.

COURT:
It may be that there is some progress in relation to those nationwide overlapping claims. It is an issue of concern for me just to try and reconcile those and I am troubled by the fact that we do have overlapping claims of that nature. Again, it is something that the parties need to talk themselves with the various entities involved. Again, it may well be, if overlapping or in terms of the national claims, they've been advanced with the dominant purpose of being a protective one. In other words, to make sure that nobody missed a time limit or slipped between the cracks. If the national claimants can be satisfied that, in fact, all of the iwi or hapū or whoever it is, who have a genuine interest in respect of that area, are represented and are capable of advancing that, it may well be in respect of that area, they're happy to leave it at that. And, from the Court's point of view, that does make things simpler.

MR MCGHIE:
That would take away some concerns of ours sir, if that was the situation.

COURT:
Yes, indeed. And that seems to me at least a possible outcome. I wouldn't go so far as to say a likely outcome, but at least possible.

MR MCGHIE:
I think this matter could be adjourned to the CMC next year sir – that's where we are now.

COURT:
Yes, thank you Mr McGhie.

MR MCGHIE:
Thank you sir.

COURT:
CIV-2017-485-224.

MS ANDERSON:
Tēnā koe sir.

In our memorandum filed, we too, indicated that Crown engagement was our preference, but I've heard what your Honour has said today and we'll follow up appropriately in that respect in order to progress that. In that respect sir, I have also taken note of what you said, it's not a wasted exercise to be preparing in any case, and as we've set out in our memorandum, we are tracking well in terms of preparing our evidence.

There is the complication of being involved in the Clarkson Priority application sir, and I had hoped that Mr Hope would've been here today, but there is a memorandum filed from him in relation to the Clarkson application. But, I note that there was a date for evidence to be filed and we haven't seen that. Whether or not that has been filed or not, and we've been missed, but we haven't seen it sir. So, I know that it's set down for a hearing in November 2020 but other than that we haven't seen anything in that respect. I'm unsure whether you want me to comment on the memorandum filed but perhaps just worth noting that Mr Hope has indicated he would be making an application for the evidence to be heard before the Court for Ms Clarkson. And I think it just prudent that we note, without seeing the application, I can't comment on it. But perhaps just to indicate that we would likely be opposing an application of that respect sir, but would obviously have to wait and see what the nature of that was.

COURT:
Well, just on that again, I really want to encourage the parties to be proactive – that's everybody not just the Crown. If Mr Hope hasn't served you with a document that he

should've, now that you know such a document exists, I'd encourage you to telephone him and say, I need to see that document, can you email me one straight away.

MS ANDERSON:
Yes sir.

COURT:
And that's a more efficient way of you getting that information than me waiting 'til whatever CMC Mr Hope attends and raising those sorts of issues with him.

MS ANDERSON:
Yes sir.

I had also intended to respond, or touch on, my friend's Mr Erskine's memorandum from 7 June. He has indicated discussions between counsel that applications that are affected by that could occur after this which I'm happy to engage in those discussions. Again, just to think in terms of noting it for the record because the memorandum has put forward an approach sir, that would affect my client and we would disagree with the approach that Mr Erskine has taken. So, just to note that but as I say happy to have those discussions after this as well.

COURT:
Yes, as I've said it would be helpful for the Court, if there's consensus, that a memorandum is filed identifying the consensus and, probably equally if there isn't consensus, for the Court then to realise, okay we're going to have allocate some time to address these issues because the parties are not of one mind.

MS ANDERSON:
Yes sir. Other than that, I think the memorandum addresses where the application is at, if you have any questions in that respect.

COURT:
Thank you, I think we've covered everything. But again, a simple adjournment for 12 months?

MS ANDERSON:
Yes sir.

COURT:
Thank you.

Now CIV-2017-485-260.

MR FRASER:
Fraser sir.

Essentially seeking the 12 months adjournment sir. There's a memorandum which was filed.

COURT:
Yes, I've got that.

MR FRASER:
The applicants are on their way to have a historian, they've engaged and are preparing research themselves. Not ready to proceed yet, but should be ready by 2021 or whenever sir.

COURT:
All right. You say you seek leave to further refine your maps if necessary. Yes, you can and obviously the Court would rather have a map that accurately reflects what the claim is rather than one which it may be of historic nature only. I don't think any counsel, if they want to file more accurate maps needs to seek the leave of the Court, you should take it as a given that that can be filed.

There wasn't anything else you wanted assistance with, just a 12 months adjournment?

MR FRASER:
Yes sir, thank you.

COURT:
Thank you Mr Fraser.

Now CIV-2017-485-261, 259, 217, 254.

MR BENNION:
Thank you sir. Mr Bennion.

You should have our memorandum of 16 May.

COURT:
Yes, I have that and someone has written on it – "no map filed". So, it's probably the first point I need to raise with you.

MR BENNION:
Yes, so, sir, we're representing, I think some 16 clients around the country. We looked through the maps and I think the memorandum refers to mapping and says we don't have any changes to those maps but we're happy to file them again, although we have realised there is one change that we did need to make that is in relation to the Muaūpoko matter – 261.

Firstly, sir, I'm happy to file all those maps again but they will just be the same maps as with the applications, except for the 261 application where we've realised that the eastern-most point shown we need to indicate is to Rakarai Head which is on the eastern side of Wellington Harbour. At the moment the application suggests that it is on the western side – we're going across the Harbour mouth.

COURT:
All right. The intention for these maps is that they go onto the website. So, ideally they should be as accurate as they possibly can.

MR BENNION:
Yes sir. Well, if I can undertake, we'll separately file a memorandum following this conference and just attach each of the maps for that website purpose and correct or make clear what is happening with the 261 map for Muaūpoko.

Now, can I just indicate that, for all of the four applications, we would be happy with an adjournment to June 2020 conference. I guess, reflecting on my friend Mr Erskine said, perhaps in each case, and particularly in the Wellington region cases, perhaps with leave to come back with a joint memorandum, if we get to that point.

COURT:
I'd be optimistic that you will do that.

MR BENNION:
Yes, I think a number of counsel here are familiar with Waitangi Tribunal processes and familiar with developing timetables – I think it's what maybe Mr Erskine was alluding to, so we could certainly attempt that, I think in the Wellington region or any other regions where we think research is reasonably advanced with a number of groups – which I am aware that it is particularly around the Kapiti Coast area.

And then on these specifics, general matters I'll come to in a second, but the only other specific matter I have was in relation to 217, which is the Rehe Hunau on the Chatham Islands, and I know you're familiar with those sir.

There is a memorandum filed by Maui Solomon and we understand that's on behalf of the Hokotehi Moriori Trust and that's supportive of the Hunau's application. So, we just note that, it says: "Hokotehi supports the application of the Rehe Hunau as it applies in Rekohu" – that [7] of the memorandum. So, we understand their support for the application from the Trust.

COURT:
So, you confirm what's said there is correct?

MR BENNION:
Yes, we're happy with that support sir, and we have actually been in touch with Mr Solomon.

Sir, if there's nothing further on the specific matters, I do have some general comments about the Attorney-General's comments.

The first is in relation to mapping. I think everybody here is relying on the helpful initial maps from the Attorney-General attached to the June memorandum. I think we all look at those maps as our sort of base to begin talking about overlaps.

We are going to need more specific mapping and I think of a general nature is very important, but I am very concerned about what we hear this morning which is that in the general mapping process that the Crown is developing, it's going to talk about third party uses. Now

that will have to happen at some stage but given the limited resource, and the Crown says we're not making more resource available for maps, given that we're also starting from the position that protected customary rights are presumed to exist, unless there's evidence to the contrary, we're starting with rights that are hundreds of years old that are being claimed, it's a great concern to our clients that the Crown is beginning a generalised mapping process by looking at third party uses. That seems to me to suggest that the Crown is far from being proactive in terms of mapping and helping applicants to fill out and flesh out and understand what the cases are, and the overlaps are between them, customarily, is simply building an effective case around uses that could potentially interrupt those current uses. It seems to me, in my submission, the wrong way around. And can I give a concrete example of something the Crown should be doing, but is not doing. For example, the Crown could be, if it was being proactive, developing in relation to its maps, but in relation to information, indexes of hapū and whānau uses around the Coast from the archives.

COURT:
Sorry, if I could interrupt you – what archives are you talking about?

MR BENNION:
I'm talking about the National Archives sir. The Government's holdings of files about customary uses and fisheries. Can I give a practical example sir?

There are Māori Affairs fisheries files which record all of the information that's been gathered by Māori Affairs Department over the years about fisheries disputes. And I'm aware of one group of historians who have already, on their own, gone out and created a private index of those files. Now, if that's developed by one group of historians, questions come up about how others would get access etc etc. But that seems to be the sort of centralised tool, and associated with mapping, that the Crown could be undertaking. But it chooses to come from the other end, which is what third party uses are happening in these areas, before we even assist parties or gather from the Crown resources what we understand about what the historic uses in these areas have been. Even by way of sort of generalised indexes, not having to go in and, they're not trying to make the case for applicants, but just simply producing in a very useful form the Crown would say exist, by way of an index or something equivalent.

COURT:
The archives you talk about, are they publicly accessible?

MR BENNION:
Yes sir, they are, and searchable in that way. The Crown is taking publicly accessible information about current consents and choosing to map that, but it could be choosing to do this with the resource that it has as a first step. So, it's just that concern about how the Crown's thinking about this task and what it chooses to apply its resources to, first, and are we going to end up with a map DNS, mapping from the Crown, that sets out all the third party uses, usefully, around the coast, and essentially provides applicants with a little more than the Crown, or let's say, interested party cases. That seems to be a somewhat difficult position for the Crown to get to if it's undertaken an active protection role in relation to this legislation, its role generally.

It's just something I think the Crown should be careful to think about. Because the impression for claimants also, if that's produced in that way, could be that the Crown is being less helpful than it might be, if I can put it that way.

COURT:
Well I wouldn't go that far but it does seem to me that ultimately the Court may have to look at, or consider, depending on the nature of the protected interest claimed, whether there are other activities, let's say, governed by some form of resource consent or another. So, it's not irrelevant, potentially. What you're saying is it's not the whole picture and the Crown might be more helpful to talk to all of the applicants if it undertook and incorporated in its maps produced, the sort of information which you say is available from the historical archives.

MR BENNION:
Yes sir. Particularly, the Crown said, well, we've done some mapping, but that's the extent of it, or we've run out of resources or something and the mapping produced is, as I say, it sort of ends at third party uses and some underlying basic information and then leaves claimants wondering well, what about customary uses, what do you have, essentially, as Government.

COURT:
Well, I'm sure that Mr Ward will have heard what you've said and it's probably not for this Court to direct what the Crown uses its resources for, but all I can say is I hear your

submission, and yes it does seem the Court is likely to be assisted in having that sort of information available by way of some sort of centralised mapping. Although I would anticipate that ultimately if the Crown doesn't incorporate, or can't incorporate, that into their maps, then the individual parties will ultimately put that information before the Court if these archives are publicly searchable or indexes are publicly searchable.

MR BENNION:
Yes, as a practical matter, can I say, the current problem or the current inefficiency we face is different historians realising that it's very useful to have an index. And then they create that index within that historical group and then other groups don't have access. So, it might be of assistance to the Crown to, perhaps parties can indicate which historians they are using and whether those historians are open to a discussion with the Crown officers about tools they would find useful, across many applications.

COURT:
All that makes sense to me. Again, as I've indicated, direct communication with the Crown is likely to be much more productive than the blunt hammer of a Court direction.

MR BENNION:
Yes, thank you sir.

Moving on to the next matter which is around funding and Te Arawhiti, certainly for us, we cross a number of applications, it is still the case that we attend these conferences with some apprehension about when and if bills will actually be paid in terms of the current process. And that's currently generally many months off. So, just to understand that that's a bit of a concern as we try and work with claimants and clients and attend to these matters still at that stage.

I was at a hearing of the Tribunal about Te Arawhiti. A question was asked is GST included in your funding, and that question did not get a clear answer. So, the level of understanding is, in my submission, still somewhat off the pace, it needs to be more on the pace.

Thirdly, the Attorney-General issue, we've actually had some engagement with the Crown about this. I think provisionally we probably support an early hearing on that issue, but if we can reserve until other conferences because I will be appearing up in Hamilton and Tauranga.

COURT:
As I have indicated that issue is not going to be resolved today but it may well be able to be traversed in more detail and be the reason for a discrete memorandum or minute from this Court after one of the other CMCs.

MR BENNION:
Thank you sir. That's all I had.

COURT:
Thank you Mr Bennion.

We will now take the morning adjournment.

Now CIV-2017-485-512.

MS MASON:
Good morning sir.

I filed a memorandum of counsel this morning but I'd like to sir, refer to the memorandum that was filed on 17 May.

COURT:
Yes, I have both of them.

MS MASON:
In [5] of that memorandum, there are five matters that are set out for submission at this CMC, and the memorandum filed this morning merely elaborates on those and refers to submissions that have previously been made in this Court. So, I'd just like to reassure you that there is nothing new in them. It was merely collating the previous submissions to assist with the consideration of these issues.

So, if I may, could I just go through those one by one.

The first matter was about the timetabling for the interlocutory hearing on the role and status of the Attorney-General. That application was filed on 4 September 2018 and the question that had been asked which is set out at [4] of my memorandum, was what is the appropriate

status and role of the Attorney-General in legal proceedings under the Marine and Coastal Area Act?

Sir, at this point, I'd like to continue and say that our clients are as concerned as Mr Bennion is about the role of the Attorney-General in these proceedings. The mapping exercise that has been undertaken by the Crown has gone on for some years and the applicants have not been consulted in that process. It sounds like it's at the end of the process and now it has been set out here for the assistance of the parties, so it seems.

Sir, in the context of this Act, the provisions are not clear in terms of the criteria. They're quite ambiguous. The Attorney has a view of what those provisions mean and how they should be interpreted. Their view of the interpretation is they're minimalist. It's quite different to the interpretation which the applicants have, and this collection of data for a mapping exercise is one which supports their very minimalist view of how the Act should be interpreted.

Many of my applicants are quite elderly and they have filed, this is now three years on from when they filed, certain matters which they thought were quite straightforward such as tikanga matters being referred to the Māori Appellate Court, have been objected to quite strenuously by the Crown, and this has led to substantial delays which they are very alarmed about, and hence the submission is that the timetabling for the interlocutory application into the status, and the role of the Attorney-General, ought to occur.

Sir, the reason for this also, is that the legislation did not anticipate Māori versus the Crown. This is a completely separate type of creature and type of proceeding. And with the experience of the applicants thus far, the Crown's approach to all of what they have seen as helpful ways forward, have been objected to. So, in their case, it is looking very much like it is of a very adversarial Crown versus Māori nature.

My friend, Mr Bennion, referred to a Waitangi Tribunal hearing that has just been held. During that hearing, a Crown witness stated when cross-examined about what exactly the public interest is, she stated that it was the interest of non-Māori. So that admission was of great concern and really made the applicants feel certain that this was the approach that the Crown was taking, and that approach was to thwart their efforts to demonstrate title. And to

act in a manner in which the statute, nor Parliament, envisaged. And that was why this request was made for this interlocutory hearing to occur.

When you place all of that in the backdrop of this funding which counsel understands the Court is not able to make directions on, but in the claimants' case, there was some funding available initially, but then it stopped at the point of advancing the test case, and advancing the case stated to the Māori Appellate Court, and the reason given was that those processes or those requests were not advancing the applicants' case. So, the interpretation that the Crown has, which is arguable, is being used to influence all of the procedures that are occurring in this Court, and also the funding procedure and the funding allocation. And it is the submission of the applicants that that is highly inappropriate, and that the timetabling for the interlocutory hearing be done with some urgency.

In relation to what application that could attach to, counsel submits that the test case application which is being heard in Whangarei, that it is better to attach this to that inquiry because that inquiry, that proceeding, the application is quite advanced in terms of where those applicants want to get to, and the processes they want to use, and they're a good demonstration of the role that the Attorney-General has been playing thus far.

COURT:
Yes, although you would've heard my comments to Mr Ward. I see this as a potential generic issue across all applications and, as I explained to him, unless we address it promptly, we risk the situation of either the High Court on judicial review or some appellate court essentially overturning every application that the Court has heard, if it is not addressed first.

MS MASON:
Yes sir, and that's always been the case for the applicants. And they would be happy whether it was generic or cast as a generic, or whether it was attached particularly to one application not another. The main submission is that this be timetabled with some haste.

COURT:
If you do attach it to something else, that is arguably only going to extend out the time that it takes to deal with it which may be counter-productive to achieving the goal of many of the applicants which is to get some clarity around this before we get too far into the hearing proceedings.

MS MASON:
Yes sir. And some of these matters will be addressed at the Whangarei CMC but the Whangarei test case applicants are gathering evidence now and they would like to proceed, they're working towards the deadline of 31 April 2020 for their tikanga issues to be heard.

COURT:
Yes, I see that as a discrete or a separate conceptual issue to the role of the Crown.

MS MASON:
Yes sir, so what they were working backwards from there, they would like to have some determination of this issue well before then and this year.

COURT:
Yes, I see what you mean. Well, you've heard what I said to Mr Ward about that.

MS MASON:
Yes sir.

If I could move onto the next two issues were related about test case, and the applicant Mr Paul supports the test case and supports an area being put up for determination earlier rather than later. And we'll make submissions on those two matters at the Whangarei hearing.

COURT:
What I would like to hear from you today, if you're in a position to address me on it, is the justification for the national claim, if I could call it that, particularly in a situation where I understand the protective concept behind the application seems to be to make sure nothing was missed out but now we've been through the process of registration of the claims, we do know the identity of the claims, I'm not aware that there are folk who may have missed time limits who arguably your client could represent, but if there are, it may also be the time where we narrow down the scope of the intervention to be able to deal with matters in a more efficient way.

MS MASON:
Yes sir, those submissions are covered in this memorandum and essentially there's a couple of things that are proposed. One, is that the applicant has been approached by a number of

parties, and one of the problems is the funding. The funding regime, we've been advised by the Te Arawhiti officials, that there's one lot of funding for each application. So, as Mr Paul has been having discussions with people, different groups who have missed out in their review, about this process, there is this issue that they don't get separate funding despite having the nature of discrete, their discrete applications – some in Wellington and up north. So, that's being worked through, but counsel submits that, and seeks leave, for that to occur before the next CMC – that process be worked through.

In relation to the issues raised by my friend Mr Erskine, there is a proposal that Mr Paul's application says, it's on behalf of all Māori. So, the proposal is that it says, on behalf of all Māori, whānau, hapū and iwi who are not otherwise applicants or represented in these proceedings.

COURT:
Yes, and that's likely to be a relatively small number, I suspect, given the specific nature of the applications. They all relate to a specific area or a specific activity within a specific area.

MS MASON:
Sir, do you mean the potential applicants to join Mr Paul's claim?

COURT:
No, the applicants you say relate to Māori who are not applicants. Given that the whole nature of the rights conferred by the Act, it's either customary title, and again it's for an area to be identified, or a specific protected right which will depend on evidence showing a connection between a claimant whether they be an iwi, hapū or an individual even, and their family going back to 1840, so, there has to be that specific connection. And if you're saying to me the interests of Māori who are not claimants need to be protected, I'm struggling to see how that might be where there is a specific application in relation to a particular area.

MS MASON:
Sir, the idea is that they be added as applicants to Mr Paul's claim, and then there would be, depending on what areas they seek to have title recognised, there would be individual maps for each of the applicants.

COURT:
Where we have specific applications by applicants who are ready, willing and able to proceed either through engagement or the Court process, why would we need another layer of application, as it were?

MS MASON:
Sir, because there are competing and overlapping claims amongst Māori which is why we have all these overlapping ones and some who consider that the people or the groups who are current applicants do not represent their interests.

So, the Act allows for iwi, hapū or whānau to make an application and there are instances where a whānau or a hapū say, to those people, that applicant doesn't represent me and doesn't represent my interests and I've missed the statutory deadline.

COURT:
Yes, I can understand how a national application could be used to represent those interests, but it seems to me that there will be a number of applications where there aren't those sorts of conflicting claims or where there are overlapping claims all of the parties who have overlapping claims will already be a party to proceedings.

MS MASON:
Yes, there are, but on the other hand, there are parties that aren't represented or don't fit into any of those groups.

COURT:
Has your client attempted to identify those and articulate those particular hapū or iwi or whoever that they seek to represent?

MS MASON:
Yes sir. He's in the process of doing that and there are a number of them throughout New Zealand and the submission is that he be given until the next CMC to work through those and work through the arrangements with them about adding them to the claim.

COURT:
The outcome of that process may be something that resolves the concerns that a number of the other applicants have raised.

MS MASON:
Yes sir, it is submitted that that will ensure all of the concerns that have been submitted. So, that process about identifying parties who wish to join Mr Paul's application, who missed the statutory deadline, and who are not otherwise represented, would alleviate that. That, in conjunction with perhaps an amendment to Mr Paul's application which says that. So, the problem is people are saying, how can he have a claim over an area, how can he represent my applicant when they're already represented.

So, this minor amendment to his application to say, on behalf of all Māori, whānau, hapū and iwi who are not otherwise applicants and not otherwise represented in these proceedings, might provide some relief to the parties who are concerned about these applications saying that they're on behalf of all Māori.

COURT:
Yes, and there would be a third criteria also that it's in respect of those presently unrepresented who wish to advance a claim in respect of a particular area or an overlapping claim.

MS MASON:
Yes sir.

COURT:
Maybe you're coming to it, and this reflects my comparative lack of understanding as yet of these proceedings, there are two national claims. Can you explain to me why there are two and how one differs from the other?

MS MASON:
They've been made by two different persons, both of whom are New Zealand Māori Council members, and Mr Paul makes his on behalf of his district Māori Council which is the Mātaatua one which is in the Whakatane area; and the other one by Mr Dargaville is made on his behalf in relation to his role as the Chair of the Tai Tokerau District Māori Council, which is the one up North.

The reason why there are two, there were two persons who instructed that they would like to do that. Both of them have obligations under the Māori Community Development Act.

COURT:
Yes, it does seem to me to be potentially a duplication of resource and cost, and as you've heard there are lots of issues about how the available funding should, and is, being allocated, and it may represent my present ignorance about the detail of these matters, but while I can understand what you've said to me about representation for those who have missed the boat, as it were, in terms of the time, it's more difficult for me to understand how it's an efficient use of resources for there to be two such claims. And I can understand if the claim your client is advancing is largely focused on a particular area and the other claim is largely focused on another area, I understand that entirely, but don't see why there should, effectively, be two national claims as they're being advanced, in respect of the same class of people, namely those who would, could, or should have lodged claims but for various reasons didn't, and need some representation.

MS MASON:
Sir, perhaps if I propose discussing with my friend Mr Sharrock, because depending on how many people are unrepresented, it may well be or who want to join. I know that Mr Paul has at least five different groups who wish to join his application. I'm not sure about how many groups wish to join the application which Mr Sharrock represents. But perhaps if Mr Sharrock and I work together on this and we put forward, and we ensure, that those people who are in the category of not having put a claim in, that that matter is sorted out before the next CMCs.

COURT:
Well, that would seem to be eminently sensible and may mean that there's a significant amount of resources that might otherwise have been put into a duplicative effort be able to be targeted more productively.

MS MASON:
Yes, the problem with the funding is that once these other applicants are added, it is just treated as one application.

COURT:
We're probably getting ahead of ourselves at the moment on that point.

MS MASON:
Yes. Sir, in relation to the next issue was about how to deal with the overlapping interests or the overlapping cases, and the applicant has made previous submissions proposing that the proceedings be seen in two parts. So, earlier on there was discussion about whether the applicants should resolve their overlapping issues before the substantive hearing, or whether this should occur after the substantive hearing, and the submissions of the applicants are that, the resolution of the overlapping issues between the applicants ought to be undertaken after the substantive hearing.

Mr Bennion this morning talked about the Waitangi Tribunal inquiries and how counsel mostly involved in these proceedings are used to working in this environment where there are overlapping applications.

One thing that I'd like to propose in this regard is that some more definitive timetabling would assist to focus people on the evidence gathering process that is required. And that this would assist the parties to come together and collaborate on the evidence they're gathering.

The issue of requesting more definitive timetabling will be addressed at the Whangarei CMC, but so long as it's a sort of academic argument about everyone should work together or everyone shouldn't, is very difficult to see how the parties would work together. But as soon as there's a timetable set in, and everyone knows that they have to get their evidence in by a certain date, then a lot more of this collaborative activity, counsel proposes, would occur. Because that's how the Waitangi Tribunal inquiries occur, and how the evidence gathering occurs for that process.

COURT:
Just explain to me how the connection between the request for some definitive timetables is relevant to the issue of whether or not, in terms of overlapping claims, they should be resolved first or subsequently?

MS MASON:
Well, the issue at the moment, the arguments that are raised are that the applicants should resolve all of their overlapping issues first before they get into the substantive, that's one way of looking at it, before they get into it.

COURT:
When you say the argument, who's argument?

MS MASON:
That had been an argument put forward by the Crown earlier in these proceedings. I can file later a memorandum setting out when that occurred. Counsel made submissions objecting to that. For instance, in Whangarei there are 30 something overlapping applicants and it's just unrealistic to expect that they will resolve all of their matters before a substantive hearing. Affidavits were filed by Mr Paul, affidavits by Mrs Titewhai Harawira, some applicants who are quite experienced in this area and quite elderly who had proposed that the substantive hearing be held and then, much like the fisheries settlement, that issue was decided in the High Court. And then the issue of who would be allocated whatever there was to be allocated, whether that was a lot or little, be decided as a second stage, in accordance with a tikanga Māori process.

COURT:
Yes, I have read those two affidavits, but I've also read the memorandum in respect of a number of the other parties involved in that particular case who appear to be strongly opposed to that. I mean ultimately the Court is going to have to make a ruling but that's probably more for the Whangarei hearing than today's hearing.

MS MASON:
Yes sir, and the difficulty was the people who were opposed were holding the matter up for the people who wanted to progress and there was no real way of determining that.

The submission that counsel is making now is that if there were a deadline, if there were timetabling for one of the applications, then presumably the other parties who wanted to be involved would file evidence as interested parties or would further their own application. And there is really nothing like a deadline to focus people on the task at hand.

COURT:
All right. I think I understand the submission now.

MS MASON:
Thank you sir. And those are all my submissions. Thank you.

COURT:
Thank you Ms Mason.

Now CIV-2017-404-538.

MR SHARROCK:
Thank you sir.

I would first like to just pause to record the demise of Sir Hector Busby, a Ngāpuhi elder and Polynesian navigator of the most extraordinary extent, who was to be a witness here. And so, we are now going to have to have his evidence passed on second-hand. And I think, although it is a problem we have in these jurisdictions, it is important that we don't rush forward excessively. But, I just thought it was worth recording this man's passing.

Sir, there are various matters. We'll start with mapping. I strongly concur with the idea that we need a standardised form of mapping that will facilitate everybody's understanding of what is in contention.

I'm not a mapping expert but I understand there are various ways that are very well accepted of having a map which makes slightly different shapes which of course adds to confusion. But I'll just say, if we can have a standard form, that will make life a lot easier.

The next question is on the databases. I think it is important that we look at databases that are available that, for example, record Māori land which is close to the coastline, land which is subject to Treaty claim, which is close to the coastline, even if it's under a settled claim.

We need, also, to have and to hear the archaeological site record that's held by the replacement for Historic Places Trust.

Those are very important to provide a heritage and a historic context to the matter.

I'd also like to commend the submissions of Mr Bennion with regards to fisheries records. Because although fish, per se, are not part of this inquiry process, it is inferential of the interests that were exercised in all manner of ways by Māori in a particular area.

I'd like to now go onto the question of overlapping claims.

There is quietly going along in some areas, and I have particular knowledge of the area of Whangaroa, but the point is, there are hui going on where the hapū and the interested parties are getting together to working out some sense of common approach. And, it is not exactly in line with the Crown's divisions but not too far apart. So, you know there is a logical segment where the history, the whakapapa, and other matters coincide sufficiently to have a level of commonality.

This takes time. I can only really speak for Ngapuhi in this matter, but it is a struggle for them to move always together. They have a tendency to stay strongly apart. But, they are also working earnestly.

With respect to the national claim, it's an overlapping claim, I suggest it should be dealt with in Auckland because that's where Mr Ward is planning to be, and Ms Mason and myself will both be there. I don't think it's terribly inconvenient for Mr Erskine?

MR ERSKINE:
I will be in Auckland as well sir.

MR SHARROCK:
But, to say we are working along the lines of setting out a timetable to get definity on those claimants who have missed the bus. I, like Ms Mason, have four or five applicants who we are talking to, we are not sure yet that they're going to go forward, but what I see happening in the pleadings will be, when those five applicants are identified and their specific areas of interests are identified, within a specified period, then we will seek to make an amendment to take away areas where there is otherwise cross-link.

COURT:
You've heard my interaction with Ms Mason. Do you differ from her explanation as for the reasons that the claimant she is representing has advanced that claim? Is there something different or something else in respect of Mr Dargaville that you want to put before me?

MR SHARROCK:
Yes, Mr Dargaville has certain areas he is concentrating on, Tai Tokerau in the North, he has certain interests in Taranaki, he has certain interests down in the South Island. So, there are areas where he has personal focal points.

One of the things, and it goes to payment, we've had a chilling effect on is our inability to properly canvas as to people who feel that they have missed. I was in a meeting a week ago where someone came out and said, we want to be part of this and we aren't able to be part. So, that's where we are.

The other point is, the filing of the two applications arose, in fact Ms Mason's application only was rescued by her subsequent appeal. There was a possibility that she was out of time. But she obtained a ruling from the Court that she was in time. But we were all rushing madly at the end to get things done. And I would have to say, although we will be two applications, we're effectively, we'll be trying to carry the burden of five applications, or four or five applications each. So, it's not as much a duplication but in fact an efficiency.

COURT:
Yes, and I appreciate that. It would be very helpful for the Court in respect of those areas where you identify that there are no people who missed out and need help so we can delete those and then just focus on the actual issues that are arising from those areas.

MR SHARROCK:
That's entirely our intention sir.

Sir, we should get onto the question of payment.

Payment has been a chilling effect on doing these applications, not only for myself, my clients who were expecting to receive payments for their project management activities. They have, on their own costs, and they are then of modest means, have arranged more than a dozen hui, it might even be 20 hui each. And they have done that and had to absorb those costs. Now, we're talking work that goes back to November 2016. It is not a cashflow issue of two or three months.

I, myself, am out of pocket to the tune of somewhere between $15,000 and $20,000 in monies I have personally expended with a liberal expectation.

Sir, I came to the law at a time when the profession was not one in pursuit of mammon but there was an element of social good. But I think three years waiting to be paid is beyond a reasonable expectation of social good.

I can say myself sir, that I did take up the offer of oiling of wheels at the judicial conference in February with Justice Collins, and I did get some assistance which caused an email to be proffered by the organisation and they were sort of indicating four weeks would be the likely period of time. I've had a series of memos since then from them which really indicated they have not properly read the papers and I sent them back letters of clarification.

Finally, last week sir, without leading from the Bar, the most recent response has been one of, it cannot be processed because the CEO is out of the country. So, I'm feeling somewhat dissatisfied.

COURT:
Again, you heard my comments to Mr Ward. Ultimately, there may be some things I can do, but I can't direct the Crown as to allocation of funding. I can encourage, and I can ultimately get grumpy if my encouragements are ignored, but there are limits on what I can compel the Crown to do.

MR SHARROCK:
Perhaps sir, this is somewhat tongue in cheek, perhaps an order to avoid the CEO leaving the country might assist my situation.

COURT:
We have probably missed the boat there too.

MR SHARROCK:
The situation, however sir, is that three years is really beyond the pale, and I'm not sure how much longer there's an expectation I can continue to appear at these hearings.

I wish to support Ms Mason in her submissions with regards to the Attorney-General matter. I would also like to lay before this Court the issue, actually I find this legislation inherently

abhorrent. It's a breach of the Treaty of Waitangi. It's a breach of the International Declaration of Human Rights and other UN conventions sir.

COURT:
This isn't an application to quash the legislation or challenge it, so this Court, as must all of you, work within its confines unless, and until, the legislation is changed or declared to be invalid. That's not something I can do in the context of these proceedings.

MR SHARROCK:
As you please sir.

Otherwise, I agree to the one-year adjournment and look forward to seeing you in Auckland sir.

COURT:
Yes, thank you.

Now CIV-2017-485-817 (Interested Parties: NZ Rock Lobster Industry Council, Paua Council Ltd, Fisheries Inshore NZ Ltd, NZ Federation of Commercial Fishermen Inc).

Wellington International Airport Ltd – Ms Barry
Seafood Industry Representatives – Ms K Rouch

MS ROUCH:
Ms Rouch for all of the abovenamed parties.

The seafood industry representatives simply wanted to be interested in all of the applications and listen to what was to be said. There is an expectation that, to the extent that information the seafood industry representatives hold will be useful and relevant, that will be offered, but that's some time down the track.

COURT:
I've got your memorandum here. Is there anything in particular you are seeking from the Court by way of declaration or any other?

MS ROUCH:
No sir. It was simply to absorb information today.

COURT:
All right, and are you happy for the matters that you're an interested party in simply to be adjourned to 12 months to be called again?

MS ROUCH:
Yes sir, thank you.

COURT:
All right, thank you Ms Rouch.

Now CIV-2017-485-538 and 513, that's Methanex.

MS BARRY:
I am acting on agency instructions simply to watch and report for Methanex, so they don't have anything to add.

COURT:
And you're happy for a 12-month adjournment Ms Barry?

MS BARRY:
Yes your Honour.

COURT:
Now CIV-2017-485-538, 512, 261, 260, Wellington International Airport.

MS BARRY:
Yes your Honour. Wellington International Airport had, in its memorandum dated 30 August last year and 15 May this year, sought that the two nationwide applications 538 and 512 be heard as a Priority. Given the discussions that have been held today, it seems evident that those parties are making efforts to refine their claims. Obviously, Wellington International Airport would only be interested in applications relating to its location and so is just wanting to know whether or not it needs to remain as an interested party for these applications and it seems that in due course that will be known. However, if it could happen as soon possible then that would be much appreciated.

COURT:
Again, you've heard the discussion with counsel. It looks like we're making progress. I'm optimistic or hopeful that within 12 months that it may be it is no longer an issue.

MS BARRY:
Thank you your Honour.

COURT:
So, you're happy for 12 months adjournment on this one too?

MS BARRY:
Yes, your Honour.

COURT:
Thank you.

Alright. Have I left anybody out? Is there someone that I've overlooked?

No.

MR HIRSCHFELD:
Your Honour, if I may, I seek to associate myself with the submissions made by my learned friends about the mapping. I should've mentioned that in my submission to your Honour. Sir, it's a significant one. It's been around for a while. The Crown of course is aware of it. Indeed, the Crown is also aware that it is part of matters being traversed by the Waitangi Tribunal at the present time.

Thank you sir.

COURT:
Before you sit down Mr Hirschfeld, when you say it's part of matters being traversed before the Waitangi Tribunal, is there a possibility that the Waitangi Tribunal may make some recommendation relevant to what the Crown is doing in terms of mapping?

MR HIRSCHFELD:
I apprehend sir, that it's to be an important part of what the Tribunal will consider, and it is very likely to be reported upon. Certainly, I can say that substantial submission will be advanced before the Tribunal.

COURT:
And do you have a timeframe or an estimated timeframe for that?

MR HIRSCHFELD:
Regrettably not sir. But we're looking towards the end of the year before we can see a winding up phase. I think that's fair comment. I would expect reporting by the first third of next year, perhaps, if things go well.

COURT:
Thank you.

Now, do you have something Mr Ferguson?

MR FERGUSON:
The two matters upon which I entered an appearance sir, which, I think we've worked out, the memorandum hadn't reached the Court's file.

COURT:
Not yet, no.

MR FERGUSON:
Would you like me to address those matters?

COURT:
I assume the memoranda exist.

MR FERGUSON:
They do, and I have copies here.

COURT:
Well perhaps it would be helpful if you could just provide these to Mr Registrar and I'll have a quick look at them.

MR FERGUSON:
And I've provided copies to my friends for the Crown who indicated they hadn't received them. It appears sir, I was away at the time that they were prepared but may well have fallen short in terms of the filing, and that may have been the case. So, I apologise for that sir.

COURT:
Now is there anything you want to draw my attention to? I will read these in full.

MR FERGUSON:
I think the only matters and they build upon topics that have been commented on already today. So, if I can just address those.

First, with reference to the 221 application which is by the Trustees of Ngāti Kahungunu ki Wairarapa Tāmaki Nui-a-Rua Settlement Trust. In relation to that matter, that overlaps with the Clarkson Priority proceeding. So, in terms of that one, the different position I would seek in relation to that application is that it be adjourned to a further CMC to be held at the same time as the next Clarkson CMC which is in Wellington on 5 February 2020.

As I indicate in more detail in my memorandum, there's obviously an issue as to whether, and, if so, to what extent, my client's application is heard at the same time as that. And I think when that matter was last before the Court, but at that stage it hadn't been vacated, the hearing that was to be heard next month. Obviously, issues of pressure of time and preparation were likely to preclude my client's application being heard at the same time but now we're off to a November 2020 date for that. That makes it a more realistic possibility, subject of course to this notion of the domino effect of overlapping claims being heard. And I know a particular approach has been taken for the Motiti Island Priority in the Bay of Plenty where other overlapping applications are to be heard only to the extent of the overlap. But we don't have any such determination in relation to the Clarkson Priority, and I think that's a matter that prudently needs to be addressed in February next year, and I think rather than generic adjournments for a year, an adjournment to that date would be appropriate for my client's application at least, because it overlaps with that.

In relation to more generic issues, in terms of mapping, I endorse the comments that have been made by others in that regard. I think some way, and this will require some co-ordination with Crown counsel and others, it would be good for there to be a common

mapping system so that, while everybody seems to produce maps in different ways and different scales and different levels of details, at some point before hearing it would be good to bring all of those together. So, we do have areas mapped on the same terms.

COURT:
Instead of saying at some point before the hearing, could I encourage you to do that as soon as possible?

MR FERGUSON:
Yes, I think it needs to occur and we just need to work with Crown counsel on how that's best achieved.

COURT:
Yes, it just seems to me that there is a bit of a disconnect, you will recall the specific passage in the submission that I raised with Mr Ward. It's not solely his responsibility. The applicants do have to really, if not take the initiative, at least raise their concerns because nothing is sure than if they're not raised they'll be overlooked.

MR FERGUSON:
I agree entirely in that regard on all such matters.

In relation to the issue of the two national applications, I do comment briefly on that in my memorandum as well. In fact, both memoranda.

I think I'm comforted a little by what my friends, Ms Mason and Mr Sharrock, have said regarding the intention behind those applications which was to ensure that no-one missed out because of the filing deadline. I think the imperative in that regard is that those two applications obviously need to move sooner rather than later to a point where they specify the particular people in the particular areas to which they will continue to relate. And certainly, if they were to continue to be maintained in any way on some default representative basis for all Māori not otherwise represented, as a broad class, then I think my clients would have concerns with that. But I don't apprehend that's what's proposed.

COURT:
No and the Court is likely to have some concern if, ultimately, they're advanced in respect of that general class as opposed to specific applicants who might not otherwise get to ventilate their claim before the Court.

MR FERGUSON:
Now just building on that point, I understand, correct me if I'm wrong, are both of those have been generically adjourned for this one year period, I understood that was the case, but obviously with the Priority fixtures, it would be imperative that any overlap with those be identified at a much earlier date than waiting a year because those have timetabling that is in place or will be in place early in the new year. And so, the sooner that my friends can confirm whether they have any applications or instructions in relation to applicants in relation to areas that will overlap with priorities, the better in that regard sir.

COURT:
Yes, indeed, I'd encourage that. Again, that will come by way of direct interactions between the parties rather than the Court's intervention.

MR FERGUSON:
Thank you sir. That was a point raised in relation to 221 in the adjournment sought through to 5 February 2020.

In relation to the second matter which is Gerrard Albert and Te Kenehi Mair, in 301. That's another matter where a certainty is required from the Crown in relation to the request for direct engagement. Your Honour's comments are noted in relation to the obligation on counsel to proactively pursue those matters with the Crown rather than simply rely on Crown counsel to do that, and I agree. That's a case where I will seek further instructions as to the extent which communications have occurred in that regard.

In view of that they wish that to be their primary course before investing resources in the High Court processes so an adjournment of that for a period of one year would be appropriate.

So, those are the only matters and that summarises the two memoranda sir.

COURT:
Thank you Mr Ferguson.

Now Mr Ward, I'm conscious that some of my comments might result in your phone ringing more than it would normally over the next few weeks.

MR WARD:
Your Honour, I anticipated that that would be a result of these CMCs.

COURT:
Yes, is there anything you specifically want to draw to my attention as a result of what you've heard from the applicants and interested parties?

MR WARD:
Just to submit sir, that the Crown is not engaging in the mapping exercise in order to build a case against the applicants. The intention is to provide a tool that would be able to depict the range of different types of data sets. I'm happy to speak to Mr Bennion and my other friends, to see if we can find ways, whether it's viable to take particular data sets and have them depicted in some way in the mapping software.

COURT:
Well, that's helpful. And as I said to Mr Bennion, I think the information that it looks like you are contemplating, well, ultimately, it will have to come before the Court, but I think he probably also makes a point, and again I can't tell you how to spend your budget, but there are other different types of data sets that may be equally, if not even more helpful, for the Court.

MR WARD:
Certainly, there are a range of things which need to be considered including resourcing constraints.

Your Honour, the only other point was whether, in relation to the Whangarei CMC, what has been referred to as the test case issues which are to be heard there, I just want to confirm the Court's intention about the process for that. There are no directions at present for any further memorandum to be filed.

COURT:
No, the reason that it was set down in Whangarei initially, Justice Collins intended to address the matter on the papers and he's received pretty full memoranda. He formed the view that it would be helpful for him to have the benefit of oral arguments. So, we've been allocated half a day in Whangarei, and there's some reasonably hard constraints about that given I'm sitting in another city the next day, so obviously if there are 32 people wanting to speak to me and we've got half an hour for everybody, the arguments are going to have to be pretty focused. What I can indicate to all counsel that are going to be in Whangarei is that I've read all the memoranda, so counsel needn't think they need to take me through line by line. And to some extent it will be a matter of responding to such oral arguments, at least from the Crown's perspective, as the parties wish to emphasise or highlight to me.

So, no I'm not expecting you to file anything else but if there's something that's been omitted, that's significant, clearly you will address me on it, as indeed will the other parties who filed memoranda as well. But everybody needs to understand, we've got a finite period of time allocated and if we can't get through that, it's not an option for me to sit the next day because I'm actually sitting back here.

MR FERGUSON:
Thank you sir.

COURT:
Alright. Well, look thank you to all counsel. I know that it is an imposition on counsel's time and often an imposition on the resources of the parties that you represent to attend these CMCs, and I'm also aware that, for many of the applicants, a litigated outcome is not their preferred option so some of you would, rather your clients, would rather you were not here at all. But I think it is important to impose, to the extent we're able to, some discipline on these proceedings and, ultimately, I think a lot of the work that some of you may end up having to do for your clients would be equally as relevant to litigated outcomes as to a negotiated outcome.

So, I've found this helpful for me today, trying to come to terms with what's a very broad number of applications and number of issues, and hopefully we will be able, at least incrementally, to make some progress to resolving some of the bigger issues and that will

give your clients a sense of being able to focus in a more productive way on the issues that pertain to them.

So, thank you all. I'm sure I'll see some of you over the next three weeks again and again, and look forward to that.

Unless anybody has got anything else they want to raise before we adjourn?

Thank you Mr Registrar, the Court will now adjourn.

CMC CONCLUDES – 12:48PM