MACA CASE MANAGEMENT CONFERENCE
WHANGAREI
25 JUNE 2019 at 10.00 am

COURT:
Tēnā koutou katoa. Nau mai, haere mai ki te Kōti Matua o Aotearoa. Ko Justice Churchman ahau.

Thank you all for coming to this series of CMCs. For most of the lawyers involved you have already attended a number of these, but so far as the interested parties are concerned and the whanau who are here in big numbers, welcome. I acknowledge your presence here today.

The purpose of these CMCs is to try and keep all of these proceedings on track to identify the issues that might potentially hold up resolution of the proceedings and to the extent that we're able to, to address those issues, with the objective that the proceedings can go as far as the hearing as quickly as possible.

I have read all of counsel's memoranda, from those counsel who have filed their memoranda. Obviously with such a large number of matters for call this morning, we're going to be pressed for time. Counsel need not repeat matters that they've put in their memoranda unless there is a point that they specifically wish to emphasis for me. You can take it that I've read all memoranda and to the extent that I haven't understood what you've submitted, I will ask you questions about that.

There are many overlapping interests in the cases that are going to be called this morning. One of the matters that I'm particularly interested in and want the assistance of counsel or the representatives of, is what has been done to date to address the resolution of the overlapping claims and what might be done in the future. Because it seems to me that one of the major impediments or obstacles to resolving a lot of these cases is that there are so many overlapping claims. It would appear on the face of things, not to be in the parties' interests to be at odds one with the other, and ultimately it seems to me there is a far greater prospect of success in terms of these applications if those parties whose claims are overlapping are able to address that matter as between themselves rather than ultimately put it before the Court and leave the Court to have to come to a unilateral decision.

So, I am particularly interested on the extent to which parties have addressed that particular issue and will want to hear from you all.

So, Mr Registrar if we could simply proceed to call matters.

REGISTRAR:
CIV-2017-485-515 – Reti Whānau
CIV-2017-485-398 – Ngāti Kawau and Te Waiariki Kororā

MS MASON:
Tēnā koe sir. Many of these matters have been raised previously so sir I'll just stick to the matters that haven't yet been raised.

A memorandum was filed on 17 May and that memorandum dealt with both applicants. The first issue that has been raised in that memorandum is the interlocutory application under r 10.15 of the role and status of the Attorney-General in these proceedings.

Counsel has been asked to raise this as a very urgent matter. The matter was first raised in a memorandum filed by counsel on 20 April 2018. They are really concerned that this issue be determined early before any substantive hearings. The applicants' view is that the Crown, the Attorney-General should not be a party to these proceedings at all, and not an interested party or in any other way.

They are concerned because in the application to state a case to the Māori Appellate Court, the Attorney has filed substantive submissions objecting to that, and it does transpire that the Attorney has no right at all to be involved in these proceedings then the applicants are simply being prejudiced. So, that is the reason for asking for urgent timetabling for this matter to be heard.

In relation to timetabling, I'd like to submit that the applicant would like to file evidence by way of affidavit so if the timetabling could provide for that.

COURT:
Are you now talking simply about the application in relation to the Attorney-General's role or to your clients' substantive claims?

MS MASON:
In relation to the Attorney-General role sir.

The Crown has already filed something clarifying the Attorney-General's role as an interested party. The applicants object to the Crown being there as an interested party, and that's the evidence that they would like to file.

COURT:
Isn't that a matter of law?

MS MASON:
Yes sir. But, there is that role, as well as the alternative, if the Crown is allowed to be there as an interested party, then there are some issues around the actual role that the Attorney takes because of the special nature of this legislation.

COURT:
How is evidence going to assist the Court to resolve the matter of law?

MS MASON:
The evidence would be about the manner in which the applicants have been prejudiced in relation to the funding, in relation to some statements that have been made about what the Crown is doing in protecting, or the Crown's view of what the public interest combined is. That's the nature of the evidence.

Sir, I'd expect there to be no more than two affidavits in that regard, so not substantive amounts of evidence.

COURT:
How is issues as to funding difficulties, which is a matter that has been put before the Court as you're aware at pretty much every one of these CMCs, relevant to the role of the Crown?

MS MASON:
Sir, the position is that the Crown favours, or actually has, a very minimalist view of what the test entails and therefore where title would be found, and that its actions in funding the applicants show that that they are prejudiced in that regard. And sir, some of the communication between the funding agency and the applicants.

And so, there will have to be evidence showing or substantiating this idea that the Crown does have a certain view of how the legislation should be interpreted and then that view is contrary to the view of the applicants.

COURT:
But how does that achieve your outcome of wanting to exclude the Crown completely from these proceedings?

MS MASON:
Well sir, in terms of it would be inappropriate, well it is inappropriate given that the legislation was not established to give the Attorney a role that was adversarial, that these proceedings were not intended to be framed as a Crown versus Māori proceedings and that was not the intention of Parliament.

So sir, the request is that the timetabling for these substantive matters to be heard to be undertaken as a matter of urgency because, depending on the outcome, some of the hearings can't even get underway. Sir, even the interlocutory matters such as the case stated to the application respectfully requesting his Honour to refer tikanga matters to the Māori Appellate Court.

The Crown has filed substantive submissions in that regard and if it is found that the Crown is not actually meant to be there, then the applicants would have been put to great cost and to great prejudice. Sir, in saying prejudice, many of the applicants are very elderly and it's a matter of concern that as the years go by, the number of kuia and kaumatua and elderly Māori who have knowledge that will be absolutely vital to their case, are passing on.

Sir, the next matter that was put in the memorandum was the test case or so-called test case of Mrs Collier. A lot of the detail in that will be covered later on this afternoon, so I won't talk about that except to say that that test case area had applied to Whangarei. Mrs Collier and her supporters would like to add Whangaroa which is further north.

In relation to the overlapping matters, many of the applicants in Whangaroa have had a number of meetings, about four meetings to work through the overlapping issues and they have progressed well in that regard.

COURT:
What does that actually translate to in reality?

MS MASON:
There's no definite agreement. Sir, these things do tend to take a long time and to get to some kind of arrangement, it can take years which, as we'll cover this afternoon, which is really why progressing one application and timetabling for progressing one application and, I think in the circumstances, is necessary. Otherwise sir, we are just going round and round in circles. One party might put up a proposal to move forward and to propose solutions and then others are not happy. This is how things have been progressing for the last three years.

And, referring back to my earlier submission about prejudice and the age of many of the applicants and the witnesses, it's really, this waiting for agreement is not working sir.

Just in that regards sir, the options are, waiting for people to agree which, in this area, with the history of people waiting for the parties to agree. And, with the number of applicants which is in excess of 40 and that's not counting the interested parties, that will take a very very long time. The option that had been proposed in relation to resolving the overlapping issues was to have a stage where the issues around, is there actually any title to argue over at all be progressed first. And the resolution of the overlapping issues be progressed second.

Sir, the other option is, which is what is going to be covered this afternoon, these issues that are subject of the overlapping matters are tikanga matters and may well be that the referring those matters to the Māori Appellate Court will assist in resolving the overlapping claims. The Māori Appellate Court is a much better option in terms of the scale and the expertise of that Court.

COURT:
Look I'd rather you didn't address me on the matters that are going to be discretely dealt with this afternoon.

MS MASON:
Yes sir. And then the next issue had been the timetabling for the High Court proceedings.

COURT:
Just before we get on to the next issue, just in terms of your comments that you seem to be saying that there's no hope for resolving the overlapping issues and now is the time for some timetabling. It does seem to me that there are a couple of particular examples of the overlapping claims that have unnecessarily generated complications. And I refer in particular to the two national claims, but there are also claims on behalf of iwi to represent interests of hapū and whanau where the hapū and whanau concerned don't welcome or want the assistance of the iwi or other entity.

To me, that probably is imperative number one in terms of clarifying, particularly in respect of the national claims, exactly who is being represented. Because these claims can only be advanced in respect of the entity and that could be iwi, whanau, hapū who holds the right, or is alleged to hold the right. It can't be advanced in a vacuum at a theoretical level.

So, in terms of the roadblocks I see to satisfactory progress, that's one that I really want addressed. I think it needs to be addressed so that the parties who are subject to disputed claims know exactly who it is, is asserting a claim in respect to the same area as them.

MS MASON:
Yes sir.

In relation to the national claims, the Edwards' submission in Wellington was that some time had been requested to provide information to the Court as to who was being represented in those claims. There have been a number of parties that had approached Mr Paul and Mr Dargaville to be included as claimants.

In relation to the other problem about some iwi saying that they speak for hapū and whanau who also have claimants, this is a, sorry to be going into matters that will be covered this afternoon, but this is a matter that is proposed that evidence be called at the Māori Appellate Court who will familiar with this. And the idea is that they each have different types of interests and that tikanga evidence and expert evidence in this regard would actually resolve those issues and sort through those problems.

COURT:
If I could just comment on that.

So far as the two national applications are concerned, it can't be asserted that the Māori Council has interests that are separate from iwi, hapū or whanau because they were only established in 1960s and the test is to show uninterrupted exclusive exercise of rights as from 1840. So, at least, so far as they are concerned, the time has come. It's been a couple of years. The whole concept of having a protective application is a perfectly valid one, but ultimately the point has to be reached where those sorts of applicants indicate exactly on whose behalf the application is being advanced.

And, given that we have had now so long, and you're right, it's been a long time, and there's been no progress that I see on the identification of that. As you're aware there have been suggestions that there be an application to strike those claims out. I'm most reluctant to put that down for hearing because that's a very confrontational way of resolving it. Whereas, if those two national bodies are able to identify who it is they're advancing their claims on behalf of, that may well remove the impetus on the part of those bodies.

Other applicants have said, look this is interfering with our claim, we want to have it struck-out in whole or part. So, it's very much, the Court's in the parties' hands, ultimately if the parties press with an application to have things like that struck out, the Court will have to hear it and that's unlikely to be as satisfactory an outcome as if those applications are refined to make it clear exactly on whose behalf the rights are being asserted.

MS MASON:
Yes sir, that's all accepted. And, I recall the proposal at the Wellington CMC was that the actual applicants will be notified to the Court prior to the next judicial conference. So, early next year.

COURT:
I have to say that's a proposition that I'm not greatly attracted to. You, yourself have mentioned the effect of the delays, the Court is taking that very much on board and waiting yet another 12 months, it seems to me not to be in anybody's interests. Those parties must know now who it is they're being approached to advance claims on behalf of. And, while I've yet to reflect on the matter, it's unlikely that I'm going to come to a conclusion that a whole year should pass before that should be clarified.

MS MASON:
Thank you sir.

The next matter, can I consult with my clients on that and we can get back to you with a new date, will that assist, earlier the next year?

COURT:
The Court will ultimately make its own decision as to what is appropriate. If you have further information that you wish to put before the Court, you're welcome to do that, but it's not a matter for the parties themselves telling the Court what the appropriate process is to be. I've made the point, and as indeed you have said that there have been delays, part of the Court's role is to make sure those delays don't continue. And I'm flagging for you, my present view is that, waiting for another 12 months to have that information clarified is simply too long.

MS MASON:
As your Honour pleases.

In relation to the timetabling at the High Court, the applicants seek that some time be laid down. In relation to the meetings that have been held in Whangaroa, what has been indicated there is that it is considered that in total six weeks would be required.

There's this complication sir, I'm sorry to keep referring to matters that will be subject to the conference this afternoon, however, if the tikanga part of the case was referred to the Māori Appellate Court, then it's envisaged that the time required will be split in two so that half of it would be with the Māori Appellate Court and the other half will be with the High Court.

COURT:
How many cross-applications are there that apply to the same subject area?

MS MASON:
For Whangarei, I think there's about 39, and then if you added Whangaroa, it would be around the 40, 49.

COURT:
Separately 40, or inclusive of the 39?

MS MASON:
I think inclusive of the 39.

COURT:
So that's only one cross-application for Whangaroa?

MS MASON:
Sir, a lot of the, especially in Whangarei/Whangaroa, many of the applications overlap. I haven't counted the Whangaroa ones because it's just a recent request that had been moved there. But the Whangarei ones are included at the back of the memorandum dated 24 July. There's an Annex B which has all of the Whangarei ones in turn. We'd have to do that for the Whangaroa ones as well.

COURT:
Now, when you say six weeks, presumably that's simply your clients' case and doesn't involve any estimate if the cross-applicants or those parts of the cross-applicants' case that overlap with your case, also being heard at the same time.

MS MASON:
Sir, we were trying to include time for the others and the way that we put these estimates down was to look at how much hearing time was granted. In the Waitangi Tribunal, the Paparahi o Te Raki inquiry, which has just been held over the last few years, and they required about three to four weeks for each region. So, that's figuring roughly how that figure was arrived at, along with just trying to work in with the meetings that have been held in Whangaroa and trying to work this out with the other applicants, or some of them.

COURT:
It just seems to me if the Court's being asked to hear, not just your clients' application but the relevant parts of 39 other applications that six weeks seems a pretty optimistic period of time to get through all of that. Have you talked to your colleagues who might represent the other 39, potentially relevant areas?

MS MASON:
Sir, some of them. And, many of their responses have been that people haven't thought that far ahead. So, there have been some discussions. It's very difficult at this stage, unless

people do come up and say, we have this many witnesses, and we've done that. We did that a long time ago and frustration has been held up because people aren't ready.

And I'm sorry again to be going into matters that will be discussed this afternoon, but many of the objections that have been received are because people are saying they haven't been ready, or they're not ready, they haven't been funded, they haven't been consulted. And, so their submission is that, those sorts of reasons can't be sustained three years on, and that some timetabling must be set down.

COURT:
Yes, the Court is unlikely to set down a timetable unless it knows accurately how long is needed, otherwise all that will happen is that there will be applications for adjournments.

MS MASON:
So sir, in that case, the applicants will be respectfully requesting directions that each applicant provide a list of how many both tangata whenua and expert witnesses they will require and an estimate of how much time they require.

Thank you sir, those are our submissions.

COURT:
Yes thank you Ms Mason.

REGISTRAR:
CIV-2017-485-277 – Ngāti Manu and its hapū Te Uri Karaka and Te Uri o Raewere

MS BARTLETT:
Tēnā koe te Kaiwhakawā. Hurinoa ki tātou nei te whare te iwi of Ngapuhi Nui Tonu. Tēnā rā koutou katoa.

Counsel's name is Ms Bartlett sir and I appear on behalf of Mr Hamilton who is at the back here and he represents Ngāti Manu and its hapū Te Uri Karaka and Te Uri o Raewere.

COURT:
Tēnā koe Ms Bartlett.

MS BARTLETT:
I don't propose to go through the memorandum filed on 17 May. I only wish to make one additional comment and you've heard this at previous CMCs and that's our support for the proposal of the national mapping approach proposed by counsel for the Attorney-General.

We have proposed at previous CMCs the approach of regional committees and our client here is of a similar view.

Your Honour has asked for submissions in respect of the extent to which parties have sought to resolve overlapping issues. Our client has not yet engaged with other applicant groups to resolve application overlapping issues. That has been largely due to funding. Your Honour is very alive to the issue of funding. That's an issue particularly for these clients. But it is getting better, reimbursements are getting easier for these clients.

We break into 14 other overlapping applications within the Bay of Islands area which impact or overlap with Mr Hamilton's application, and I do anticipate that Mr Hamilton will be engaging with those overlapping applications within the next 12 months.

COURT:
If I could just interrupt you there Ms Bartlett.

You've heard the comments I made to Ms Mason. Counsel are legitimately raising with me the effect of delays, but it is something of a two-edged sword. It's one thing to come along to the Court and complain about delays in advancing these cases and I hear those submissions, but, if counsel come and say to me we haven't spoken to any of the claimants that have overlapping claims for the last 12 months, or the last two years, or whatever, and we might do that within the next 12 months, it just seems to me that counsel are not, or their clients they represent are not, taking seriously their obligations to try and progress matters. The Court can't force that to happen. But, it does seem to me that that is probably the single most important issue that's actually going to advance to clarify the issues and to advance these claims to resolution.

So, I'm reluctant to be too directive in what I do, but it just seems to me the submission which a number of counsel have put in their submissions that we haven't done it yet, but we

might think about it in the next 12 months really isn't good enough, if everybody is actually trying genuinely to resolve these issues.

MS BARTLETT:
Thank you sir. With the other three applications that we represent, I can say that we have engaged with other overlapping issues. It just been a particular issue for funding for this applicant group but I am confident that we will be engaging with those overlapping applications.

COURT:
Indeed, and I sympathise, as I have indicated in the other CMCs, with your funding issues, and I've raised that issue with counsel for the Crown, but it does seem to me that there are some forms of dialogue as between overlapping claimants that aren't hugely intensive of funding issues. It's simply getting on the phone or talking kanohi ki te kanohi. That's not an expensive exercise. So, while I do hear and understand your point, I think it may be overstated as a complete excuse for not engaging in some dialogues and kōrero with the other applicant parties.

MS BARTLETT:
Thank you sir.

Subject to the outcome of the test case proposal, our client would be seeking a further adjournment to continue to progress their application. As I've stated in the memorandum, our research is well on its way for the application, and we look forward to further discussions with counsel for the Attorney-General in respect of mapping.

COURT:
And a further adjournment, you want is what, a 12-month adjournment?

MS BARTLETT:
Yes sir.

COURT:
Right. Yes, thank you. Are they your submissions?

MS BARTLETT:
Yes sir.

COURT:
Thank you Ms Bartlett.

REGISTRAR:
CIV-2017-485-239 – Te Rae Ahu Whenua Trust

CIV-2017-485-249 – Ngāti Kawau, Ngāti Kawhiti, Ngāti Haiti and Ngāi Tupango

CIV-2017-485-256 – McGee Whānau

CIV-2017-485-250 – Te Tawharau on Ngāti Pūkenga

MS THORNTON:
Tēnā koe sir. Counsel is Ms Thornton.

COURT:
Tēnā koe Ms Thornton.

MS THORNTON:
I'll start with 239. I'm appearing on behalf of my colleague, Mr Lyall this morning on that matter.

This is a [inaudible] and I don't have much to add in addition to what has already been submitted in writing. It's very straightforward. I will say that I don't believe there has been a lot of discussion concerning overlapping claims. I don't see that as, from one claim, this may not be one that has a lot of major overlapping issues. These people have owned these lands since it became, it was granted by the Crown, and it's adjacent to their coastline. They just don't anticipate a lot of controversy. Otherwise they anticipate being prepared, they've done their research and they've approached a historian.

COURT:
Have you clarified what overlapping claims there are?

MS THORNTON:
We aren't aware of any other than possibly larger claims like the Trust Board that is claiming entire areas. We don't know of any local claims that are conflicting with this one. We'll continue to investigate of course sir.

COURT:
There are, and all of the information is now available right from the two national claims down through the Hauraki, so, there are, at least as far as I'm aware, there are some overlapping claims and I would, as you've heard me comment to both the last counsel, it really is incumbent on the parties not to come to these CMCs and say we haven't even talked to the other parties. That isn't going to advance these hearings at all.

So, if you could encourage your client, firstly, to identify exactly who the overlapping claimantss are, obviously it's a less pressing matter if they are, for example, just the national claims, but I suspect you'll find that that's not ultimately the position, and to do justice for your clients and enhance their prospects of achieving the sorts of outcomes that they want, it really is important that you do try and come back to the Court ultimately with a unified approach.

MS THORNTON:
Certainly sir, thank you. I will do that.

COURT:
Just before we leave this, are you seeking a 12-month adjournment?

MS THORNTON:
I think that's great sir.

COURT:
Thank you.

MS THORNTON:
The next one is 249 – Ani Taniwha.

This is, again, pretty straightforward. I won't repeat the issues that we raised but I will say that this client has been working on identifying and resolving as much as possible overlapping issues and overlapping claims.

There are several that are known to her. She has been engaging with them. In some cases, they seemed to have reached a level of agreement about how to co-ordinate their evidence and work together to expand and develop it so that it's as comprehensive as possible. There are some where it becomes obvious that there's likely to be conflict that may or may not be resolved. But, it's less likely to be resolved. But, it is being addressed, at least.

COURT:
Does that extend as far as contemplating joint evidence?

MS THORNTON:
To those that we have agreement with, yes sir, that's true, we are. But, again, our way is to try and, even maybe, well I don't want to get too specific in terms of the actual format, but, yes, they're talking about collaborating and co-operating in preparing evidence and submitting it in a way that avoids conflict and disparate outcomes.

COURT:
Does that extend as far as appointing a joint historian to prepare a combined report?

MS THORNTON:
I can't say that's been, there has been some historic research that's already been done and that was in connection with the Waitangi Tribunal process that went on p there and, so, I know they're both relying on some of that evidence and it hasn't been decided what additional, if any, needs to be developed. But, of course you get more bang for your buck if you can put all your money together in that regard sir. I'm sure that will be something that we will contemplate.

COURT:
I would encourage that. And also, there is the concept, it seems to me, available of making a submission that there was a joint exclusive right or entitlement in the sense that, so far as the rest of the world were concerned, the parties have agreed that they jointly exercised overlapping rights, and they will meet the criteria in the Act. Whereas, if they say no, we had

the whole of the right as compared to the other parties, that may be more problematic. So, you may want to consider that.

MS THORNTON:
We're alive to that theory and that understanding of how that exclusivity could work and that's been discussed amongst ourselves and our clients and we're keen to develop that, if it can be done, because of course it has a potential for a better outcome.

COURT:
Yes. Do you also want a 12-month adjournment?

MS THORNTON:
Please.

COURT:
Thank you.

MS THORNTON:
My next number is 256 – that's the McGee Whānau.

I had asked for additional time and I have not been able to get a current map together for this claim. This is a small claim and if I can explain to the Court it does need strong attention to working with overlapping claims.

This is one of several claims, and I believe Mr McCarthy can probably explain this more fully than I am because he represents the other claimants in this group or many of the other claimants in this group, who began with a co-ordinated approach to breaking down their rohe into their different whānau arrangements so that they would minimise, if not avoid, overlapping claims issues.

And the claims, as I understand it, were filed and now things have kind of broken down. So, we do need, and because they're neighbouring peoples, and because they're all related, anyway there's issues that are, that need their attention. In that regard, I have to say we've had limited success in the claims, but again we're mindful of problems.

COURT:
What, if anything, can the Court do to assist you to make progress?

MS THORNTON:
Well, I don't want your Honour to order us into something, but encouragement would be probably a good idea. It seems like the procrastination feature might be cut to the quick if we had some encouragement from the Court to advance maybe some kind of a hui where this is discussed and hopefully resolved.

COURT:
That's at a level of abstractness that I doubt the Court can do terribly much. We can't force parties to mediate.

MS THORNTON:
No, I understand that sir.

COURT:
There are available things like judicial settlement conferences under the HCR. It seems to me you're perhaps not even at a stage where you could sensibly take advantage of something like that.

MS THORNTON:
Right. It seems a little early on, but if we were to go back to our clients and say, this is available, and it may happen if we can get all our programmes together, it might be effective.

COURT:
Yes, in terms of incentive, the other risk is that, unless your clients do get their act together, they risk being left behind, and no doubt they'll be very unhappy if that happens.

MS THORNTON:
Well, I guess that will be the final outcome on that. But a year would be, I'm tempted to go for a shorter time, I don't know if your Honour would be open to having a report time in six months or something, on this type of situation?

COURT:
Well, not all cases need to be adjourned through for 12 months, so it's possible. If you think it's likely to be of assistance, that we could schedule a CMC in respect of this particular

matter, for say, six months, the probability is though that it may be held by AVL link to Wellington, unless there are a number of parties who wish to participate in such a conference and then it could be scheduled again for here.

MS THORNTON:
I'd be open to six months. I think that might be a way of motivating change.

COURT:
Alright, well, I've got that noted.

MS THORNTON:
Thank you sir.

And last, I'm here on behalf of Mr Bennion for 250.

I know very little about this as I'm on special instructions, other than to say that counsel has agreed with the proposal, the position of the Attorney-General in this matter. And I can't, I'm sorry, reasonably address any questions about what they're doing to address overlapping claims or the issues that your Honour has raised this morning because I just had instructions on those matters, I'm sorry to say.

COURT:
Thank you. Do you know what he wants to have happen in terms of the leave for adjournment?

MS THORNTON:
I think a year is probably in order sir.

COURT:
Thank you.

MS THORNTON:
Those are my submissions sir.

COURT:
Thank you Ms Thornton.

MS THORNTON:
Thank you sir.

COURT:
CIV-2017-485-228 – Te Whakapiko Hapū of Ngāti Manaia
CIV-2017-485-352 – Rewiti and Rewha Whānau
CIV-2017-485-305 – Te Parawhau

MR HOCKLY:
Tēnā koe te Kaiwhakawā. Counsel's name is Hockly. E te kahuimana o nga hapū, nga iwi na whanau, o Te Tai Tokerau. Kia ora tātou katoa.

As listed, I'm here for Te Whakapiko Hapū of Ngāti Manaia, Rewiti and Rewha Whānau and Te Parawhau. I'll go through those in terms of proximity to where we are today.

Te Parawhau in Whangarei. They have engaged informally with other applicants in the harbour, and there is some progress in those discussions. And I think they plan to formalise those within the next 12 months. There are no complaints about the delay within that process because these things do take time, but, should the High Court track continue, I think they would be planning to present their case within the year following that. So, I think that's 2021, or late 2020 sir.

We have a bit of a situation around Crown engagement. Now, the Te Parawhau application was lodged by Tamihana Paki, and Marina Fletcher in unison with him and other members of Te Parawhau made the application for Crown engagement. We're still don't have any response from the Crown on that, and we are waiting for that. There is some enthusiasm from them to see if they can directly engage with the Crown. And that's actually their preferred course.

So, I'll be looking to my friends from the Crown and following up with their staff as well to see if we can get some clarity on that, and that will obviously change things.

COURT:
Perhaps if I could just interrupt you there Mr Hockly. You say you will be, what actual contact have you made with the Crown to follow up on that to date?

MR HOCKLY:
We have written to them. I believe we followed up last year but also more recently, I think, about a month ago I wrote to them to follow up.

COURT:
And are you writing to Crown Law or Te Arawhiti?

MR HOCKLY:
I'm writing to Te Arawhiti. I'm told that's the correct, and to the Minister.

COURT:
Have they given you any substantive response?

MR HOCKLY:
No response sir.

COURT:
No response at all?

MR HOCKLY:
No response at all, other than the standard "your email has been received" response sir.

COURT:
Well that is unacceptable as I've indicated at other CMCs. It's discourteous and it shouldn't be happening.

MR HOCKLY:
Kia ora sir.

I want to note on that application for Te Parawhau, and we heard, I think, from your staff this morning, the application by Finnisha Tuhiwai-Birchall which sort of phrases it on behalf of either Korokoto Marae or Te Parawhau hapū in different places. They do overlap with this application. And I've been trying to get in touch with her. I don't believe they're represented.

We also haven't served notice on them. So, there's a bit of a technical requirement that we haven't, because we only realised that application existed very late in the piece. So, I just

want to acknowledge that. But we will continue to follow up with her. I believe my clients do occasionally bump into her but she's hard to get hold of. And, for that particular application sir, we think there is, without compromising my client's view or tying Ms Tuhiwai-Birchall into anything, I think there's a very real possibility that the applications will either become joint or mutually supportive in one way or the other, ultimately, before this goes to the next stage.

COURT:
And what do you mean by before this goes to the next stage?

MR HOCKLY:
Well, obviously sir, the Crown engagement desire is there and if my applicants are able to get engagement from the Crown directly, that may be able to proceed without that application being a part of it. We would have no issue with that one being tied in as well. And I'm quite happy to inform my friends of that.

It's another one of those situations sir where it overlaps administratively, but they're completely aligned in terms of the hapū, whānau and the collective that they represent.

COURT:
As you heard me indicate to other counsel, it's likely to be of great assistance to your client for those matters to be resolved among the parties themselves rather than as a result of a direction from this Court.

MR HOCKLY:
Absolutely sir. There's no intention to oppose that application in any shape or form.

Moving further north up the East Coast to Whananaki. This is the application by Te Whakapiko Hapū of Ngāti Manaia. That's 228.

The memorandum that I filed on 10 June indicated a desire to hold the hearing in late 2020. There is, again, there's been informal engagement and considerable discussion, I think, between my applicants and other overlapping applicants.

As I set up in the memo sir, this application is one of the most discrete that we have and is still here. And for that reason, the ability to align, I think, would be helpful and resolve those out of Court.

COURT:
What do you mean when you say, the ability to align?

MR HOCKLY:
To align the applications with, that's a way of removing overlapping to say that they align rather than oppose each other. And that's quite a complex thing to do in terms of tikanga, and the application that's been made by Te Whakapiko. And there are a number of overlapping applications that they will, in fact, oppose. So, they certainly won't be planning to resolve all of those because they do disagree with a number of those applications.

COURT:
Well, you said you want a hearing in late 2020, that's a hearing for what?

MR HOCKLY:
Sir, the hearing proper in late 2020 and the proposal which I wanted to, which I did raise in that memo, was the idea of a preliminary hearing. And this is to look at the initial period post-1840, and that era in the 19th century.

There is a lot of record which sets out how the whenua was dealt with then by the Native Land Court, how hapū and whānau of that rohe dealt with each other, and how they acknowledged the whole kainga.

And sir, in terms of dealing with those overlapping applications that aren't resolved, we think sir, that would be one way that you could target a particular period which needs to be shown and address that, and in that way, remove those applications that haven't shown that connection during that period, and allow the next stage of the hearing to focus on the 20th century.

COURT:
Isn't that going to involve a duplication of processes?

MR HOCKLY:
Sir, it would be a substantive hearing, yes sir. But, in terms of duplication, it wouldn't be duplication because it would be isolating evidence to a particular period. It would be on those other applications, whether they wish to actually contest the evidence and be a part of that hearing, and if that matter was then put before the Court, the Court would be able to approve those applications that have provided the evidence required to show the connection required under the legislation, to move into the next stage.

COURT:
Are you proposing that hearing consider not just your client's application but any overlapping applications?

MR HOCKLY:
We would be comfortable with that sir.

COURT:
So, you're comfortable with it, is it something you've talked about with counsel representing the overlapping applications?

MR HOCKLY:
No, I would need to follow that up with them sir.

COURT:
And I can suggest that before the Court is likely to make that sort of order, it would want to know the views of all those who are going to participate in such a hearing. Obviously, if there's strong opposition from some parties, that's a matter that the Court would have to consider as to the utility of such a split hearing.

MR HOCKLY:
Yes sir. And I recognise the difficult administrative position that you're in, and for these applications, the area is so discrete. They are in an area that doesn't extend really further than 15-20 kilometres along the coastline. It's a very discrete application.

And those other applications that have those wider boundaries, the onus is really on them to either produce evidence that deal with that particular area or not. As I said, there will be some that I think we can resolve those overlapping issues and show alignment, to use my

terminology. But, there will be others where, I say sir, I think that the Court is able to adjudicate on that part of the evidence before proceeding to the next stage of the hearing.

COURT:
Well if you're seriously advancing that as a realistic alternative for the Court, one option you may want to follow would be to obtain the consent of the parties with overlapping claims to that, and that removes a major impediment that might otherwise be an obstacle.

MR HOCKLY:
Thank your sir.

From that indication, I'm getting a clear sense that if there's not consent then it won't go ahead?

COURT:
It's just too early to give any indication because, apart from a couple of lines in your memo and what you've just told me, I've got no other information about this. But, we do need to be practical about these things and the co-operation between, particularly overlapping claimants in terms of process, is important.

MR HOCKLY:
Thank you sir. And, for my clients, and for this application, this is a particularly fraught situation because, for such a discrete application in area, they are very much dwarfed by all of those other applications, both that come to or end in Whananaki, and those that are right out and off the coast. And proceeding to a full hearing on a much larger area would be cumbersome I think in a way that wouldn't be beneficial to the Court.

COURT:
Look, the concept is perfectly valid, and I don't know if you're familiar with the recent Ngāti Porou legislation, but if you look at the map that that relates to, there are parts that have been carved out from the overall settlement, for exactly the sorts of reasons you advance. The concept is fine, but it can only work effectively if you have a measure of agreement. It doesn't have to be total agreement, but if there's extreme opposition, then it's unlikely that it's going to be a realistic proposal.

MR HOCKLY:
Thank you sir.

And just to round off on that one sir, the idea there was that preliminary hearing could take place in early 2020 but their desire is to hold their hearing, or at least present their application, in late 2020 sir. So, that kind of fits with your 2020 adjournment.

Moving to the application for Rewiti and Rewha Whānau by Bella Thompson – that's 352.

Their desire is to move to hearings again by late 2020 or early 2021. This application and these applicants have basically scheduled a plan and they are beginning to engage with overlapping applicants. They want to have a clear view and try and resolve as many of those as they can by the end of this year and they will provide the Court with an update on that, wherever it gets to.

Again, they have not received any response on the issue of Crown engagement and we are still waiting for a response from that. I actually haven't followed up on that one personally or filed anything with them. But there has been no official response.

COURT:
As I've said in prior CMCs, it tends to be the squeaky wheel that gets the oil, and if you haven't communicated with Te Arawhiti or with the Crown, you can hardly complain that you haven't heard anything from them.

MR HOCKLY:
Thank you sir.

I think that concludes what I need to say for those three individuals. I do want to note a couple of things sir.

The role of the Attorney-General. There was an application opposing that, or seeking to clarify the role under Tamihana Paki, and that was supported by the other two applications that I've referred to.

COURT:
Yes, I see you've made some comments about that in [9] of your memo of 10 June in respect of this matter that we've just been addressing. What role do you see, if any, the Attorney-General have?

MR HOCKLY:
Sir, unlike my friend Ms Mason, I don't intend to, and I won't say now, but I don't think the Attorney-General has no role. I simply feel that would be an argument that we are not going to win, and we are not making that argument.

For us, we would appreciate clarity, and we don't think we've had it yet, from the memorandum filed on what the public interest is, in itself, and what the evidence that will be adduced by the Crown looks like, and how much they actually focus on the public interest, or whether that actually focuses on issues of alienation and location of the whenua and Takutai Moana.

So, for us that's the clarity that we are seeking. We would like, first of all, the Attorney-General to provide more clarity around what that looks like. For us, one of the things that I've discussed with my clients is the idea that Māori and hau kainga are very much a part of the public interest.

So, you can't simply say that the public interest relates to everybody that is not applicants in this particular matter. And I think that's kind of obvious in a sense, but it seems to be hidden by that terminology that's been used at the same time.

In terms of that case, my clients do want to proceed to a hearing, to have clarity on that. As I've said sir, I don't know if we can see much need for evidence being filed, and as your discussions with my friend suggested, it seems that this is a legal issue. We do think that that stage is an opportunity for the Attorney-General to provide further clarity really, on where they're coming from, what that means to them and then we can have a discussion on whether that's suitable on these applications.

Final matters, I do support my friends, the Crown, and their suggestion around the national mapping. I think that's a very helpful proposal. I am going to get a very definite response

from my clients and file that. I also appreciate your comments around joint solicitor applications and the like.

Those are my submissions your Honour.

COURT:
Tēnā koe Mr Hockly.

MR HOCKLY:
Thank you sir.

REGISTRAR:
CIV- 2017-404-442 – Rōpū o Rangitiri

CIV-2017-404-522 – Te Ihutai Ki Oria

CIV-2017-404-540 – Ngāti Torehina Ki Mataure Ō Hau

MR HIRSCHFELD:
May it please your Honour. Tēnā koe.

COURT:
Tēnā koe Mr Hirschfeld.

MR HIRSCHFELD:
Sir, I address those three matters. I'll take them in order – 442.

The applicant is Richard Nathan. There are 21 overlaps and the historical evidence will probably be completed by the end of the year.

My instructions are that there has to be realism about positions and that all is well in that Mr Nathan understands that the overlap situation requires mindful progress in terms of accommodation. And, in that regard, progress has been made. Hui have been held sir.

It is not going to be a quick task. This one is fairly substantial. Looking at those 21 sir, two fall away, those are national ones. I'm in contact with Mr Sharrock on that one. He has no interest, but, so far as understanding your Honour's point in making progress with the

neighbours, if I can put it that way sir, that is underway. And, as I mentioned the report, once it's finished, will be useful in speeding things up at that point.

So, in that case sir, I'm looking for an adjournment for a year.

COURT:
Just in terms of your historical research, has your client given consideration to any form of joint report where they may co-operate with overlapping claimants?

MR HIRSCHFELD:
Your Honour, yes.

COURT:
And?

MR HIRSCHFELD:
Positively. It's beyond mere conception sir. It's really about who's in with it. How that co-operation is to be achieved, the good news is this that we have a highly experienced historian and who can be helpful in any joint enterprise in that regard with others.

COURT:
Yes, because it seems to me that that sort of approach is, again, likely to make it easier for your clients to establish ultimately what their entitlements are.

MR HIRSCHFELD:
Yes sir. I heard your Honour mention judicial settlement conference that could well be on the cards. I certainly strongly advocate for that if it is in any way to be available.

COURT:
Well it's available in terms of the HCR. There has to be quite a bit of homework done generally before those are effective. So, you're likely to have to have your evidence in pretty final form.

MR HIRSCHFELD:
I was also thinking of that sir, yes. Thank you for that.

So far as 540 is concerned, that's Richard and Maraina McGrath. A similar situation as mentioned in respect of Mr Nathan sir.

The report is to be done, again. That should be ready by the end of the year sir, if not, ready early next year. There have been conversations with the neighbours. And, those comments made sir in respect of Mr Nathan are also for this particular application.

That leaves sir, for me, 522.

COURT:
Just before we leave 540, you want a 12-month adjournment?

MR HIRSCHFELD:
Your Honour, yes please.

522 – that's Ms Makarita Tito. That can go to trial next year sir.

COURT:
That's a bold statement.

MR HIRSCHFELD:
Based on this, there are no overlaps.

COURT:
No overlaps?

MR HIRSCHFELD:
Your Honour, yes.

I was going to suggest to your Honour that this might be listed for mention in your Honour's call-over list in February, or if not sooner sir. I feel cautiously optimistic about that one making progress sooner rather than later, hence the boldness of my statement.

COURT:
Alright. So, am I to understand then that you've got your historical evidence and any other evidence that you propose pretty much under control and in final form, or close to it?

MR HIRSCHFELD:
Yes sir. It's a work in progress of course but it should be completed amply so by the end of this year, and ready to report to your Honour on a list date in February. I think your Honour suggested that on previous occasions that there is a February…

COURT:
I'm happy to schedule that, again, depending on numbers, it may be by audio-visual link with Wellington, but if enough numbers of people want mention, we can certainly arrange for it to be here.

MR HIRSCHFELD:
Thank you sir. I'm happy to be directed by your Honour in respect of that being sooner rather than later.

COURT:
Alright. Have you got as far as giving any thought to the time for the hearing?

MR HIRSCHFELD:
Your Honour, yes. So far as the application is concerned, I imagine it not exceeding three days. I don't know what the Crown position is, or is likely to be, I can't comment on that at all.

COURT:
We'll hear from Mr Ward or Mr Melvin later on.

MR HIRSCHFELD:
There are likely to be four witnesses sir, one of whom is professional, something in that order.

COURT:
Yes, thank you.

MR HIRSCHFELD:
The only other matter I have to mention overall is this sir. I wish to report to your Honour that I intend to indicate to the Crown shortly that, so far as the mapping is concerned, the idea of a working party suggested, or working group suggested, is one that I certainly would like to participate in.

COURT:
Well, that's a very sensible suggestion. Mr Melvin seems to have been the principal sponsor of that, so I encourage you to talk to him as soon as we're finished here.

MR HIRSCHFELD:
Your Honour, thank you. May it please your Honour.

COURT:
Thank you Mr Hirschfeld.

REGISTRAR:
CIV-2017-404-525 – Ngāti Manu and Ngāti Rangi

CIV-2017-404-535 – Ngāti Rāhiri Hapū

CIV-2017-404-554 – Ngā Hapū o Ngāti Wai Iwi

CIV-2017-404-555 – Te Whānau o Hōne Pāpita Rāua Ko Rewa Ataria Paama

CIV-2017-404-559 – Ngāti Kahu, Te Rawara and Te Uriohina

CIV-2017-404-523 – O Ngā Hapū o Taiamai Ki Te Marangai

MR SINCLAIR:
Tēnā koe sir.

COURT:
Tēnā koe.

MR SINCLAIR:
My name is Sinclair sir, and I appear for the applicants.

He mihi tenei ki te rōpu, ko te whare taitai. Tēnā koutou. I ngā iwi o Ngāti Wai, tēnā koutou. Ngapuhi-Nui-Tonu, tēnā koutou katoa.

Kia ora mai sir.

Sir, I will be brief. As you no doubt realise sir, you never received my memorandum. So, I'll address the matters in general sir, for the applicants.

COURT:
Thank you.

MR SINCLAIR:
I won't identify any matters specifically sir, needless to say, give you an update.

COURT:
And if you could do on the number basis so I know which of the matter you're referring to.

MR SINCLAIR:
Sir, 523 – Hone Tiatoa.

Sir, they are well underway and putting together their research. The research they're putting together is oral and traditional, and as you've heard from other clients, they've had the benefit of a Waitangi Tribunal historical inquiry.

They've also had the benefit sir, of fisheries engagement and negotiations which has dealt with a lot of their fisheries area. And they had a substantial amount of oral and traditional evidence which belongs to the whānau.

Sir, I'll move onto the next one.

COURT:
Before you leave them Mr Sinclair, you heard my comments about dialogue between cross-claimants, can you give me an update as to what your client might have done?

MR SINCLAIR:
Thank you sir, I was going to update that after I've addressed all of them, because they are all intertwined, and the matters will become quite clear when I've completed going through each applicant sir.

COURT:
You follow that process.

MR SINCLAIR:
525 is Bill Moran.

Sir, this applicant has overlapping claims with other applications who, they presented this morning. The applicant does have a substantial amount of evidence and they're going to be working with other claimants in compiling their evidence.

The applicant's evidence relates from 1840 to the present day, and in that regard, there will be professional historians engaged as well for that particular claim.

I'll move on to the next one. That's 535 – it's Merehora Taurua, Ngāti Rāhiri.

Sir, the Bay of Islands, as you've pointed out, it's about a myriad of overlapping claims. They've also got a myriad and substantial bundles of evidence, supporting each one of those overlapping claims, no doubt.

Sir, evidence has been compiled over the last six to eight months and we're progressing quite well on that regard.

I'll move to the next claim – 559. That's the Sir Hector Busby claim. Sir Hector Busby passed away recently. We're in the process of discussing with his whānau who shall take Mr Hector Hekenukumai Busby's claim over sir.

If I can just mention that particular claim. If you look at that claim it's rather extensive and it does overlap with Mr Busby's tribal entity, who have a similar application.

Just in regard to protective, rather than political, in regard to claims. The claim forwarded by Mr Busby was a protective claim in the first instance. And it was protective simply because the knowledge or knowing, or not knowing, who else was claiming in the area, was unknown.

So, in regard to a protective claim, Mr Busby instructed, before he passed away, to engage with other tribal members and discuss how the benefit of several claims in one area, can be worked through. That, no doubt, will continue.

I just want to give the indicator that some of these claims are quite extensive. I've mentioned before that drawing lines on Takutai Moana maps is quite an inflammatory thing to do, for Māori. The protective element comes in for the reasons I've just explained. When it

becomes political, was when the hapū in those areas asked for that protection to be removed because it was no longer necessary, and there's a resistance to removing.

And that's when, I believe sir, it becomes, the shield then becomes the sword, and it's no longer protective. But, it's more or less a political claim. And that would be more, and related sir, to the national claims.

COURT:
Those are really separate issues. But I understand the point you're making.

MR SINCLAIR:
I just wanted to make the point sir for the benefit really, not so much of the Court, but of the whānau who are looking at these fairly extensive claims that I've got here in front of me.

I'll move to the next one sir. It's 554 – that's Patu Harakeke whānau claim. It's another extensive claim sir. A claim that's got a substantial amount of historical evidence behind it, and I'm taking instructions on that matter as we speak.

The other claim is 555. I'm making an appearance on that, but I don't have any instructions to speak on that in any depth sir. So, I'll leave that one at that.

Sir, if I can mention an application that's not in this inquiry, but, for the record, it's Mr Leigh Parker – 524, for Auckland. He's also passed away sir, and his whānau are in the process of replacing him on that claim.

Sir, just to answer your question about the dialogue among the parties, the people in the North know better any anyone, after having 10 or so years, of a substantial historical inquiry, followed by inter-tribal mandate issues, and then on top of all that, to come into this type of arena and start dividing up Takutai Moana area, it's a big ask to get those groups into one room.

However, the claimants that I have represented have held several hui. One of the things I've noted about holding hui is, in my view, they can't be held as hui are normally held. They must be held as wānanga. Because applicants simply will not openly and freely discuss issues that may be used in Court in a later date sir, in a form of minutes.

So, wānanga is open, without prejudice discussions, about overlapping areas, about history, about who has a legitimate claim for this area, or that area.

The other point sir, is it takes quite a bit to get this across. It takes multiple hui, and I've held multiple hui to open hui, and that means there's other applicants, probably sitting in here, who are freely able to come in and engage in those hui and may not identify themselves.

The point is in s 51 and s 58. One relates to customary and protected rights. I'm pretty sure that most of the applicants won't have too much trouble dealing with that matter. The more distinctive matter is the marine title, and that's where hui really needs to step up and deal with boundary lines. And the way sir, to deal with boundary lines, a big map up on the wall and start talking to it.

Because talking in your mind sir, it takes too long. And our people are much more receptive to visual dialogue.

Anyway sir, that's where I've been and that's where I continue to work for probably the next six months in regard to that date, 12 months period for hearing. Sir, I've got no problem with that, and the reason why is, research, and dialogue continues. That doesn't stop. So, whatever hearings go on between now and then sir, it won't affect these claimants. These claimants will continue, business as usual, gathering research and carrying on discussions.

So, we've got really no objections to any of the interlocutory matters that are put before the Court sir.

Sir, that ends my submissions.

COURT:
Thank you Mr Sinclair. I would encourage you with your efforts with the kōrero. It's likely to be of great significance. Am I correct in assuming that all the matters that you've referred to, you think the appropriate outcome is simply a 12-month adjournment?

MR SINCLAIR:
Sir, we'll know well before then. But a 12-month adjournment will be acceptable sir.

COURT:
Alright, and if you want to bring matters back to the attention of the Court before then, you've heard that it's likely to be some form of CMC in February. Again, it's subject to my other sitting commitments and I'm pretty heavily committed in February, but hopefully we can organise that. If matters develop that mean that your position is further advanced, you can apply to be part of that.

MR SINCLAIR:
I'd appreciate that sir. One qualification on that, in discussing with my clients, they don't want to see these matters dealt with before the High Court, and they don't want to rely on the Court's resources or adjudicatory processes. They do really want to try and attempt to deal with these matters outside of the Court sir. And come before you with their evidence and a set of orders.

Thank you sir.

COURT:
Yes, I think your clients are probably in a very similar position to most of the other people I've dealt with. But, it does seem that, despite your client's preferences, they may be stuck with me and stuck with the Court in the end.

MR SINCLAIR:
Thank you sir.

COURT:
Alright, thank you Mr Sinclair.

REGISTRAR:
CIV-2017-485-252 – Te Popoto ki Ōturei.

MR ERSKINE:
Good morning sir, Erskine acting for the applicant.

As I hope you're aware, Mr Te Tuhi and Te Popoto seek to have their application set down for substantive hearing, having substantially completed the task of gathering evidence. As I noted in my recent memorandum, there are, with the exception of the two national

applications, seven overlapping applications, however, as is evident or apparent in the schedule which annexed maps of each of those applicants.

They have the same issue that the two national applications have which is that they are, in our submission, far too wide, which includes Ms Collier's application, Mr Dargaville's application and Mr Kingi's application, all of which seek title over the coastline from more, or less, the Bombay Hills upwards. South of Auckland right up to Cape Reinga.

There are another two applications which are also too wide, in our submission, including because they have, would include too many other applications which have no overlapping application without the application, and the hearing of that would take a very long time.

When it boils down to it, there's really only one other, in my submission, application which is discrete. And that is the application by Te Uri o Hau, number 205.

As is apparent from the Attorney-General's map, it can be seen that their application, if you like, includes within it, Te Popoto's application area which is very discrete.

With Te Uri o Hau, they have commenced Crown engagement. While this memorandum has been bought to your attention, I have not, as yet, received any communication from them in respect of that, although that might be understandable. But, what their memorandum proposes, at least given that, on the basis that all the other applications are too large to be heard, that they should only be heard, if they're to be heard, with Te Popoto's application, only to the extent that they overlap with it.

And with that in mind, I had sought directions at the conclusion of my memorandum, to that effect, including Te Uri o Hau. While they're at Crown engagement, they still have an extant High Court application. And the Court, in my submission, must deal with that application. And, therefore, it's my submission that they should also be heard to the extent that they overlap, while they carry on with the Crown engagement, the state of which I'm unaware.

With the other applications, including Mr Dargaville's, Mr Kingi's and Ms Collier's in particular, and also Te Runanga o Ngāti Whātua's, which is also of a wide area, I propose that a direction be made that they file and serve memoranda within two months, advising as

best they can, their estimate of witnesses in order that the length of trial can be estimated and set down.

In respect of Te Runanga o Ngāti Whātua, their application, as I see it, can also be regarded as, what's been described as a protective application, and I quote in my memorandum what their second amended application states, which includes that "It files this application to ensure all its people who have customary marine title and protected customary rights are represented, and able to benefit".

And in terms of the area, one of the groups that is represented or listed, is Te Uri o Hau. So, on that basis, it can be argued that there is no need for their application to cover that particular area.

In terms of dialogue with overlapping applications, it's my submission that given that at least six of the seven plus the two nationals, it's, putting it bluntly, a pointless exercise. It's not like my people can talk to their neighbours, to the north, to the south, because they're not neighbours. I feel it's a fruitless exercise that leads nowhere. They're in Crown engagement and this application is somewhat unique in that the basis of it is, and it might be unique, having not seen it elsewhere, is that this is an application which is based on the other limb of s 58, which is that they received the specific area after 1840 through customary transfer, from Te Uri o Hau.

And given that, and my understanding from having talked to Mr Te Tuhi is it's not going to be something that's resolved by dialogue. It's more a case of this is something that was gifted to us in 1873 or not. So, I don't think this application is a case that can be resolved through meaningful dialogue as the Court has encouraged. And for that reason, at least with the large applications, it seeks that direction that, if any other applicant want to be heard with the application then they file memoranda.

The other factor is that Mr Te Tuhi is in his mid-80s and there is an urgency in that sense of having his application set down as soon as possible.

COURT:
Have you taken the precaution of recording his evidence?

MR ERSKINE:
Yes, we've done some quite substantial work in recent times to get his evidence down and what we're intending to do is file an affidavit as soon as practical, at least his sworn evidence.

COURT:
Yes, I'd encourage that. In terms of your suggestion at [15] of your memorandum, is that something you have discussed with the other counsel?

MR ERSKINE:
No, I haven't.

COURT:
Any reason for that?

MR ERSKINE:
Part of this exercise was working out who should be heard with this application. I mean it may well be that my learned friends might agree to not be heard, but I'm not optimistic that the other applications will be ready within that timeframe, and hence, I'm aware of the Court's encouragement to engage in that dialogue, but that's why I proposed a direction that there is a finite reasonably spaced timetable for the other, those large applications as I'm calling them, to advise their position to the Court, including numbers as best can be determined.

COURT:
Do you want a timetable order for the hearing of your application?

MR ERSKINE:
Yes sir, but my understanding was that the Court will require the number of witnesses from the other parties and if they're to be heard, an order to estimate hearing time. So, it depends on, the hearing should be between Te Uri o Hau and Te Popoto ki Ōturei, and perhaps the other applicants may not wish to be heard, but that's not something I can determine.

COURT:
Right, thank you. Are those your submissions?

MR ERSKINE:
Thank you sir.

COURT:
Thank you Mr Erskine.

REGISTRAR:
CIV-2017-485-233 – Ngāi Tupango

CIV-2017-485-245 – Te iwi o Te Rarawa ki Ahipara

CIV-2017-404-529 – Te Whānau-o-Rataroa

CIV-2017-404-577 – Ngāti Rāhiri and Ngāti Kawa

CIV-2017-404-578 – Ngāti Tara

MR HILL:
Tēnā koe sir. I just want to start by tautokoing Mr Erskine's suggestion there relating to the larger, I guess, more ambitious, applications for the five applicant groups listed.

I think our main concern is trying to ascertain the true extent and nature of those larger applications. And so, we just wish to add further to the memorandum filed on 21 June. We might be greatly assisted, and the other applicant groups might as well, by those groups working to specify, this is the larger and more ambitious groups, working to specify as much as possible the precise extent of their claim. So, this could be for the extent, the size, and also the nature of the claim as well, whether it's a protective claim or it's intended to be exclusive.

I also just want to quickly note in relation to my colleague, Ms Mason, raising the issue of the Whangaroa discussions. This is in relation to two applicants in particular, CIV nos 233 and 529.

Our advice is that there has not yet been an agreement but that discussions there are ongoing. But, it's unclear at this stage how successful they're likely to be.

I think those are my submissions.

COURT:
What directions do you want in respect of 233, 245, 529, 577?

MR HILL:
Only that we are happy to adjourn for another 12 months for the next CMC. And, really our only concern at this stage while we intend to resolve any overlapping issues with other

applicant groups, is just to try to understand what the nature and extent of those larger applications are, in order to assist with that.

COURT:
Can the Court have confidence that matters would actually proceed over the next 12 months given there doesn't seem much has happened in the last 12 months?

MR HILL:
Our task of evidence gathering is ongoing. We have historians lined up for each of those five applicant groups, and that evidence gathering is continuing in the background. At this stage, our focus has been on trying to establish who the core overlaps are, what overlaps we can attempt to resolve through negotiations and which ones are left outstanding. And it's just those larger applicant groups that are really stood out there, as being a little bit more difficult.

COURT:
I certainly hear your submission to the effect that you're concerned about time passing and the age of your kaumatua, and the Court is very sympathetic to that, but there's a bit of a dissonance between that submission and then saying, look we'll have another 12 months by way of adjournment.

What is it that the Court can do to assist you to actually make some progress?

MR HILL:
Probably simply an encouragement to those larger applicant groups to refine the nature and extent of their interests.

Aside from that, we have a view of completing the task of evidence gathering, should hearings commence, in 2021 onwards.

Nothing further than that sir.

COURT:
Yes, well the Court, 12 months ago encouraged the applicants to that effect and certainly I've made similar comments at each one of the CMCs that have been held to date. But, it is difficult for the Court to hear that the kaumatua and kuia are ageing, some are in poor health and all of the applicants are concerned about that, but then in the same submission to have the

applicants say, well look we just want it adjourned. Because ultimately some of those people will pass before we're able to hear these things, and that's a matter that troubles the Court.

All I can do is encourage you. I mean, this business of resolving the cross-party claims or the inter-party claims, is critical and it really needs to be a matter that all parties put absolutely as their primary goal, if we're going to make realistic progress.

MR HILL:
Yes sir. And we can provide the Court with an update as to the status of those, through this year, as we continue with that.

COURT:
So, you simply want 12-months' adjournments for all of those matters?

MR HILL:
Yes sir, at this stage, yes.

COURT:
Thank you.

REGISTRAR:
CIV-2017-404-579 – Ngā Hapū o Tangaroa ki te Ihu o Manaia tae atu ki Mangawhai
CIV-2017-485-268 – Ngā Hapū o Ngāti Kahu

MS TUWHARE:
May it please the Court. Ms Tuwhare. I'm appearing today on behalf of Afeaki Chambers.

There is the first application which I will address today, is the 579 application, which is one of the Whangarei application for Ngā Hapū o Tangaroa.

Your Honour there's not much I can report in terms of readiness for hearing, except to update the Court that the gathering of evidence has been slow but there's still quite a bit of work to be done there. There have been several approaches by other overlapping groups in relation to the overlapping issues and resolving, attempting to resolve those out of Court, and there have been meetings with some of those groups and with others there are meetings scheduled, I'm informed, in July.

But there are 20 overlapping groups, and what I'm referring to in terms of scheduled meetings, it's only in relation to six parties.

So, there is an issue around the application itself, probably requiring amendment and I am going to take further instructions to clarify the extent of the application and who specifically the applicant groups are to be, in relation to each of those areas which I anticipate will assist in the discussions of overlapping claims sir.

The other matter I just wanted to point out is that the applicant herself has been involved for a number of years in a process through the Ministry of Fisheries initially, and MPI more recently, in becoming appointed a kaitiaki of a particular rohe moana which just as a way, by corollary I guess, in terms of giving an example about how long these things actually take in reality.

The initial application was filed in 2006, sat in stalemate for a number of years because of the extent of the application and the number of groups that it drew in. And then, finally, there was some movement in 2016 and it has taken three years to get one part of that initial application finally resolved and gazetted.

Sir, one of the, I'm instructed by my client, one of the reasons that that was actually able to be resolved was because there was a clearer understanding of both the evidence, I guess, and the parties that were recognised as having legitimate interest within a smaller defined area rather than the larger application.

So, on that basis, I think it would be helpful, and other counsel have already suggested it, for there to be further delineation of applications. And it may be that some of these things don't really come to, any sort of point able to be resolved until the evidence is gathered. But, there is somewhat gathered and filed sir, because they also need to understand other parties' claims and the basis of those claims.

So, whilst there is genuine intent to resolve some of the overlaps, there's also some honest difficulties with understanding respective positions of other groups without all of that information. Mr Sinclair raised the issue of having hui and I know your Honour mentioned earlier, telephone calls and so on don't cost too much, but it takes a lot more than that. And,

Mr Sinclair raised the matter of needing to actually wānanga on these matters and it's not until you have an acceptable level of detail that these things will actually reach a resolution.

So, without that level of detail, you know between the parties, and shared amongst the parties, it is quite difficult to simply get an agreement.

In saying that sir, in other forums, other jurisdictions, what has been helpful, particularly in the Waitangi Tribunal, is for there to have timetabling to direct parties to file evidence by certain dates, particularly within specific geographic areas. It may be that there can be some kind of rationalisation of what those geographic areas might be, who could get filing dates for evidence filed sooner rather than later. Possibly after today, the Court may be in a better-informed position to consider that.

And the other thing that's assisted in large district inquiries involving hundreds of claimant groups has been the mechanism of nominating either a co-ordinating counsel or co-ordinating counsel group whose role it is, amongst the lawyers, to basically keep cracking the whip. And rationalising amongst themselves, amongst all the lawyers, how things can be progressed and what needs addressing and so on and so forth.

Sir, I appreciate this is a different scenario in a lot of respects to a district inquiry before the Waitangi Tribunal but those suggestions may assist.

In terms of the 579 group is simply seeking an adjournment for another 12 months. They honestly do need the time to continue to have those overlapping claims discussions and complete the evidence.

The other group is for Ngāti Kahu further north. It's 268. They've only just received from Te Arawhiti confirmation that funding is available. They are actively working now to gather their oral and traditional history evidence and to engage a historian for some of the technical research. But, again, will need a 12-month adjournment.

But just on that particular application sir, the extension of the proposal by Ms Mason which seems to, as of today, now include Whangaroa, is likely to drag them in as an overlapping

claim. And certainly, the proposal, as it previously was, certainly includes the previous group that I was referring to in Whangarei.

Sir, unless your Honour has any questions, those are my submissions.

COURT:
Yes, thank you Ms Tuwhare. The Court doesn't underestimate the challenges that the parties face in terms of overlapping claims, but there are certain things that the Court can do to achieve outcomes. They're not always the most effective things and there are many other things that the parties themselves can do to assist in the progress of their claims that the Court encourages. And you've heard the comments I've made to the various other counsel.

MS TUWHARE:
Yes, thank you sir.

COURT:
Alright, thank you Ms Tuwhare.

MS TUWHARE:
Thank you sir.

COURT:
You want both adjourned to 12 months essentially?

MS TUWHARE:
We do sir, thank you.

COURT:
Thank you.

REGISTRAR:
CIV-2017-404-537 – Ngapuhi nui tonu, Ngāti Rāhiri, Ngāti Awa, Ngā Tāhuhu, and Ngaitawake

CIV-2017-404-539 – Ngāti Kauwau, Ngāti Awa Whangaro

CIV-2017-404-565 – Ngāti Kahu

CIV-2017-404-570 – Te Hiutū Hapū

CIV – 2017-404-558 – Ngaitawake (Dargaville)

MR SHARROCK:
Tēnā koe sir.

COURT:
Tēnā koe Mr Sharrock.

MR SHARROCK:
Sir, the first point, yes, I would like an adjournment for 12 months for all of the matters.

COURT:
You will have to do better than that.

MR SHARROCK:
The situation sir is, to date, there is some good news, I've received one-eighth of the invoices I have outstanding which will give me one-eighth of the money for services to provide to 1 May 2017.

My claimants have been engaging, particularly in the Whangaroa, Hokianga, and the parts of the Mahurangi.

With regards to the Whangaroa, I think it is noted that they are probably more advanced than the other areas, and part of that can be observed to be because they have received funding from their local runanga, something that hasn't been possible in the Ngapuhi runanga. The Whangaroa runanga has been more generous and more aware of this obligation.

My general position on the situation of Whangaroa is, I am optimistic. Yes, there is a resistance. Yes, there is suspicion. But I believe that the experience that most of the claimants have had in the 1040 processes mean that at least they feel comfortable in co-ordinating on the research and evidence gathering part of the process. Although due to their heritage, with the declaration and confederation, they still wish to hold to themselves the right to have specific evidence from their whānau or hapū.

The situation is that there is, I think, a strong likelihood, that at least a substantial number, of the claimants will agree a process by which they can come to the Court, as a coherent whole, and they will find their own mechanism to address and apportion their interests within their customary title.

COURT:
I'm encouraged to hear that Mr Sharrock because the Court would certainly prefer the applicants to resolve those issues as between themselves according to tikanga.

MR SHARROCK:
Thank you sir.

The Hokianga advancements have been less formal but nevertheless are making progress. They have been one on one rather than hui-based, but they have made progress.

The question of the broader claims sir, is we have, as previously said, minded to be a shield rather than a sword. But, there may be certain areas where we may wish a record, or a recognition of a broader hapū or iwi interest to be recorded within the process.

COURT:
Well you heard my comments to Ms Mason on that Mr Sharrock that, there's really been enough time, I think, to identify who it is you're acting for, and the Court expects that to be clarified. It's not fair to the other parties.

MR SHARROCK:
No, I understand that sir. And with regards to what I'll call, the national claims sir. We, it's our intention to finalise our list of claimants within the next three months, and to provide an amendment to our documentation accordingly.

COURT:
Why is that going to take you three months to do that?

MR SHARROCK:
Well firstly, we have six that we're looking at and we actually wish to make further inquiries through our broader national networks to make sure that those that have missed the bus, that are genuine claimants, are not to be prejudiced sir.

COURT:
But, you've had two years to do that to date.

MR SHARROCK:
Sir, we've had two years in which we have not really had any resource whatsoever to be able to pursue that matter. I mean for example, it's our intention to at least put a number of advertisements in local or regional newspapers. And that, although a modest sum of money, is still money that someone has to find, and at the moment, there's not money, up until recently, seem to have any prospect of being paid.

COURT:
Well to some extent, you're putting the cart before the horse, and while it's not any part of this Court's function to direct the Crown how to spend its funds, that's well beyond my jurisdiction, it may well be that, if there is an identified application that you're able to focus on, the Crown may well be much more receptive to saying yes, we understand exactly who it is you're representing and that's appropriate that you be funded to do that.

I have no idea whether that's been a hold up, but it just seems to me that may well be part of the problem.

MR SHARROCK:
Right sir. I hear what you're saying.

When it comes to death sir, I have to report with regret that my historical programme has been somewhat set back by the death of my historian in my front lounge. And that means I'm now going to have to sort out another historian, hopefully with greater longevity.

We are making progress with the collection of crucial evidence, and that is sir why we see that the 12-month adjournment would make sense because by then, we would have most of that evidence at an advanced state of preparation. So, certainly no duration.

We would commend the idea of a update in February. I would ask that sir, towards the end of February because I suspect there could well be some advance over the Waitangi week when many of the claimants, and their associated parties, will be together. Which may mean that certain agreements can be finalised at that time and reported it back to the Court.

COURT:
So, there's no obstacle to any party, at any stage, filing a memorandum with the Court, recording agreement or as a result of agreement seeking further directions. So, while as you've heard there are likely to be some CMCs in February, and I do know that I have many other sitting commitments in February, so I can't tell you when the CMCs might be, but if you wished to be part of that, then all you have to do is file a memorandum outlining what's happened, and what you're seeking the Court to assist you with.

MR SHARROCK:
Thank you sir. Those are my submissions.

COURT:
Thank you Mr Sharrock.

REGISTRAR:
CIV-2017-404-566 – Te Waiariki, Ngāti Kororā
CIV-2017-404-572 – Ngāti Toehina ki Matakā

MS HARPER-HINTON:
Tēnā koe your Honour. Ms Harper-Hinton appearing for Te Waiariki, Ngāti Kororā and Ngāti Takapari, that's 566; and Ngāti Toehina ki Matakā, 572.

COURT:
Tēnā koe.

MS HARPER-HINTON:
So 566. I want to update your Honour that the evidence preparation is going very well. They've made a lot of progress with their evidence gathering, historical evidence, and their tangata whenua evidence.

Regarding overlapping applications, they do agree that it's preferable to resolve these prior to going ahead with the hearing where possible. They are involved with the test case to be heard later today because it overlaps with the application area. So, this is quite contentious because the results of that necessarily inform the resolution of the overlapping applications.

So, in this respect, they're seeking to adjourn for 12 months so that they can complete their evidence gathering which they are quite far through. They've engaged a historian, and I've seen that progress there. And then also to focus on resolving the overlapping applications areas so that when they come to, preferably, come to have the hearing of the application resolve this.

With regard to Ngāti Torehina ki Matakā, no. 572, these applicants are also quite far advanced with their preparation. The hapū themselves are having conversations with their neighbours who overlap with them. We actually haven't really interjected in that because it's for the hapū to do that themselves at this stage. So, again, for them, we'll seek an adjournment for 12 months so that they can continue with their evidence delivery for hearing and continue these conversations and hopefully come at that stage with a resolution.

And, if either of these matters resolve prior to that, then I'd like to update the Court on that with a memorandum.

Those are my submissions your Honour.

COURT:
Yes, thank you Ms Harper-Hinton. You heard the comments I made to the other counsel that at any stage you can file a memorandum.

REGISTRAR:
CIV-2017-485-279 – Ngāti Takapari
CIV-2017-485-281 – Patuharakeke te Iwi
CIV-2017-485-286 – Patuharakeke
CIV-2017-485-307 – Ngāti Korokoro Trust
CIV-2017-485-438 – Henare Waata Whānau

MS DIXON:
Tēnā koe te Kaiwhakawā. Counsel's name is Kelly Dixon.

I guess most of the issues that we had are set out in our memorandum dated 16 May 2019. And in that regard, in relation to the mapping that my friend, Ms Bartlett, has raised in terms of the standardised approach, just to confirm that we support that approach to the mapping.

In relation to the evidence gathering, I can update that all four groups that we represent are in the relative throws of preparing their traditional evidence. However, in relation to the historical evidence or research that's now being commissioned, we have confirmation from two of the researchers that work on that, that research isn't able to be started at least until the end of this year.

So, for the most part, the applicants are constrained by that timeframe, despite having sourced their commissioning quite early in the piece. And I think that's just largely due to the number of applicants up here, utilising their skills.

In relation to that, and for that reason, an adjournment is sought. Just to enable to get that research completed.

Sir, in relation to the overlapping interests and the resolution of some or all of those issues, for the application 279, the Ngunguru Marae Trust, on behalf of Ngāti Takapari, we have 14 overlapping applications for that one.

For the Pauharakeke Te Iwi Trust Board application, there are at least 10.

The Hokianga application, the Ngāti Korokoro Trust, on behalf of Te Wahapu, have six and Ms Margaret Hughes, which is a whānau claim, there are at least 14 overlaps.

For the most part, in relation to application 307, I understand there is, because of the numbers, there is a lot more progress that has been made in terms of those overlaps being at least discussed at this stage.

I acknowledge some of the kōrero that Mr Sinclair has raised in relation to the context in which some of the hui or meetings or wānanga, they take place in terms of the tensions that have been caused by some of the settlement context in the north, and I know that that is the case for at least one of the applicants that we represent in being able to address their overlapping interest or overlapping issues to a greater degree, at this point.

I also acknowledge what my friend, Ms Tuwhare, has suggested in terms of filing dates for evidence and setting those dates down to perhaps align some of the core issues that some of the overlapping groups have. And, further to that, where those overlapping issues can be

addressed prior to the actual filing date, where those issues can be resolved, perhaps those claims could then move to a substantive hearing to hear the core matters on substantial interruption and whether the area has been held in accordance with tikanga, should there still be outstanding or matters arising in relation to the overlap.

We are aware that there are mechanisms under the HCR for assistance from the Court to be able to perhaps resolve some of those issues further on application.

Sir, those are my submissions in relation to those applicants, unless there's any further questions.

COURT:
Tēnā koe Ms Dixon.

REGISTRAR:
CIV-2017-485-236 – Ngapuhi/Ngāti Kahu ki Whāingaroa
CIV-2017-485-290 – Te Rarawa

MR TAPSELL:
Tēnā koe your Honour. [Mihi]. Ko Adam Tapsell toku ingoa.

Your Honour, you've read our memorandum and I came here today to, I guess, provide an update. And I'll start with Te Runanga o Te Rarawa. Progress has been made in relation to the collation of existing evidence, both written and otherwise. But, in relation to the gathering of tangata whenua evidence, there's still work to be done there. A historian has been engaged to work with the iwi to gather more evidence in this area. As the two subjects are, I think, very intertwined and relate to each other. I think, with regard to Te Runanga o Te Rarawa, we would be seeking a 12-month adjournment.

That is because conversations with overlapping applicants are ongoing. There has been some work in that regard, but more work will need to be done.

If you have no further questions on that application, I'll move now to Te Runanga of Whāingaroa.

So, other counsel have mentioned work that's been done by Te Runanga of Whāingaroa to facilitate discussions with overlapping applicants in this area. They have facilitated hui on a number of different occasions and work is still to be done in this area. But, if I could just address the comments made by Ms Mason early this morning in regard to extending that area. I know that there's a more substantive conference to be held today which I didn't intend on going to due to the fact that there was no overlap initially, and this morning is the first indication I've had that there is an application to extend that area. With respect, I feel as though there should be a more formal application to make this extension because I don't have any instructions on behalf of the runanga, in regard to the extension of a test case area.

I think there needs to be more clarification as to the necessity to extend this area. Because, in the first instance, there was the emphasis for having a test case was based on the Whangarei area and the various parts of that area that would create a great scenario for a test case. To extend that area further into the Whāingaroa rohe when ongoing discussions are still being held, I anticipate, I don't have any instructions, but I anticipate there might be opposition from the runanga because they won't have those discussions further, and I share the optimism put forward by Mr Sharrock, but as has been mentioned by a number of others, these discussions do take time. And, I know that the runanga are keen to look at some sort of understanding as to how those applications can be progressed going forward.

As far as an update goes in relation to that application, they are a little bit further behind than Te Runanga o Te Rarawa, and that is based on the fact that they are still working with those overlapping groups.

I acknowledge the points that have been made that there has been 12 months since the last CMC, and these things should have progressed by now but I'm positive that those kind of conversations will be ongoing and that there will be some sort of resolution as to whether or not a co-operative approach could be reached within those 12 months.

If you have no further questions your Honour, those are my submissions.

COURT:
Tēnā koe Mr Tapsell. You heard the comments I made to other counsel. I'm not going to repeat them but I'd like you to convey them to your clients.

MR TAPSELL:
Yes your Honour, thank you.

REGISTRAR:
CIV-2017-485-271 – Te Whānau Moana me te Rorohuri
CIV-2017-485-321 – Ngāti Kuta and Patukeha ki te Rāwhiti

MS WALKER:
Tēnā koe te Kaiwhakawā. [Mihi]

Your Honour, we haven't filed a memorandum ahead of the second CMC. But just by way of updates for the Haititaimarangai Marae application, in terms of readiness to progress to a substantive hearing. The process of gathering evidence for this application has been incredibly slow moving. So, I guess in short, the application is nowhere near at a point of being substantially progressed to set down for timetabling for next year.

However, we had an update yesterday from our client, who has the mandate to represent the application informing us that they have secured witnesses to give traditional customary evidence. We've been informed that that evidence will be quite extensive and will probably take some time.

Another reason why there's been such a huge delay in getting the ball moving on all of this, is that there's been a lot of hold up with having Te Arawhiti funding secured. We still have not received confirmation from Te Arawhiti that the other funding on it has come through. However, I've received an interim update that it should be approved and signed off within the next two weeks.

Just in regards to the historical research, we've been informed from the client that they are really keen to engage with a researcher to have a research report commissioned on their mana whenua, their interest in their CMT area.

In relation to the overlapping claims with this application, we filed a memorandum last year in April, and we had identified that there are 15 overlapping applications with this application. And, our update is that we have not progressed any conversations or discussions with any of those applications as of yet, but it is our intention to have those conversations as

soon as possible. But, it is our priority to start gathering evidence to support the application to hearing.

Those are my submissions, your Honour.

COURT:
Tēnā koe Ms Walker. I have to say, I am disappointed that in the last 12 months nothing has happened at all. You say your client is keen to engage a researcher. We're really not going to get very far if in another 12 months you come back and say the same things. I also note the memorandum (there's two memoranda that have been filed here), are brief to the point of virtually nothingness in telling the Court what's going. For the next CMC, we need memoranda that are significantly more informative.

Again, you've heard the comments I've made to other counsel, they apply to your clients too. The Court can only do so much to advance these things and it is distressing to hear that the kaumatua and kuia are passing away and that many of the applicants don't seem to be, of themselves, advancing their claims in a way that's open to them, and in a way that the Court can't force them to do if they don't want to do it.

Right, thank you.

MS WALKER:
Yes I understand your Honour, and I suppose we are going forward, but we will make it a priority to ensure that the application progresses as soon as possible. Thank you.

COURT:
Thank you.

MR DENTON:
May it please your Honour. My name is Denton and I appear on behalf of Graham or Ngāti Kuta and Patukeha ki te Rāwhiti – that's 321.

My submissions will be brief and unfortunately not much to update on for your Honour. In the first point about evidence, our application is still in the early stages. We've only very recently been granted funding as well. So, we have still a fair bit to do in that respect.

And in response to questions you raised about the overlapping claims, Ngāti Kuta has identified there are 25 overlapping applications in this one. And, I can say there's been no progress on communicating with the other applications for the overlapping. Counsel is very aware of the comments you've made today about concerns that there hasn't been progress, and acknowledge those, and going forward, we will definitely look to make that a priority, as well as gathering evidence.

Unfortunately, your Honour that's the end of my submissions. Unless you have any further questions or comments.

COURT:
Well the same comments I've made to the other counsel apply to you. It is disappointing for the Court to come back after 12 months and just find no progress and no apparent effort.

What you do need to tell me is what you want me to do with these two cases. Do you want 12-months adjournments?

MR DENTON:
We support the 12-month adjournments for both the cases, thank you.

COURT:
Thank you.

REGISTRAR:
CIV-2017-485-237 – Pārengarenga A Incorporation and Iwi

MS ANDERSON:
Tēnā koe the Kaiwhakawā. Ko Alice Anderson ahau. May it please your Honour, counsel's name is Ms Anderson, and I appear for the party.

COURT:
Tēnā koe Ms Anderson.

MS ANDERSON:
Sir, we filed a relatively comprehensive memorandum updating the Court on where the Incorporation is at. Since having filed that, the Incorporation have, as good as, instructed a

historian. We're just finalising the contract but then, in order to get that research underway, they are actively preparing that evidence and working with us to get that progressing sir.

And as outlined in the memorandum, there have been some discussions with overlapping applicants. They are, the Incorporation is seeking to continue those, and in that respect, have heard your comments that you've made today as well. There is a member of the applicant group here to take that away. But we could simply request a 12-month adjournment sir to keep the matter going and allow that time for conversations to continue.

COURT:
Yes, thank you for your comprehensive memorandum Ms Anderson. Just a couple of comments in it that I'd like further clarification from you on please.

At [16], you asked for a response from the Attorney-General regarding the development of the guidelines for mapping. Are you up to speed with the memorandum that Mr Melvin filed, I think in Rotorua, have you got a copy of that?

MS ANDERSON:
Yes. Sir, I was in the Wellington CMC where it was discussed in depth and then I have seen it filed in Wellington on 17 June as well. So, I understand that that is a matter that is progressing and just keeping up to date with those sir.

COURT:
I see at [21], you tell me you intend to engage with some overlapping applicants before officially instructing a historian. Again, same comments I've made to the other parties apply to that.

Now at [26], you tell me that the applicant has not heard from the Crown in respect of its application in relation to engagement. And then you say in any case it has focused its resources on obtaining and collating evidence for the High Court. And obviously the evidence that you prepare for the High Court could be equally as useful, should you engage, but have you actually contacted the Crown and Te Arawhiti around the whole concept of direct engagement?

MS ANDERSON:
No sir, not since the original application was made for engagement.

COURT:
Yes, again, you've heard the comments that I've made. I would encourage those parties who are awaiting a response from the Crown, and I've already indicated, it's unacceptable that applications are not acknowledged and treated in a civil and courteous manner. I would expect counsel to follow up because otherwise it just seems to be nothing is happening at all.

MS ANDERSON:
As your Honour pleases.

COURT:
Right, thank you.

REGISTRAR:
CIV-2017-485-420 – Te Whānau Whero.

MS WAATA:
[Mihi]

Your Honour, I greet you. I'm a claimant and I'd like to give an update where we're at. I'm here with my matua, Tapapari Waata, and my whaea, Huririni Waata. And we're here as claimants for Te Whānau Whero.

Updates: To date, we have completed annotated bibliography which touches on all the research and sources that we have researched, plus extracted information that is relevant to Te Whānau Whero's application.

We are also in the middle of our tangata whenua evidence, gathering our evidence on how we gathered our kai moana in our backyard.

In terms of the overlapping issues, I see my whānau here, [inaudible]. Under the law of whaka whanaungatanga we hui and we are currently hui with one another because it's the law of whaka whanaungatanga that takes over from any other law or turei, or whatever that is.

I'd like to also say that we've held wānanga rather than hui because it does get adversarial when we all come together because we're all stating our claims and our positions so straightaway we become an adversarial sort of spirit.

So, what we've done is we've called wānanga, so from 2017, 2018 and 2019 we've had at least two wānanga throughout the year. We've held them in conjunction with our marae, Whakapaumahara, which is in Whananaki, of which is a whare of Te Whānau Whero.

So, we've held these hui for us your Honour because, in the space of Te Whānau Whero, there's basically one whānau title line that holds the kōrero for Te Whānau Whero, and that's Hineona Waata, Hineona Walters and my uncle and aunty are his children, and I'm a descendant of Hineona Waata.

So, we hold the kōrero for Te Whānau Whero. We also, through our historical evidence, we've also finished the report and annotated bibliography which places Te Whānau Whero in the area prior to 1840, we just stuck with 1835, and we brought it forward to now.

So, we're pretty much ready to roll. I heard words of alignment. Well, we're saying the same thing that our neighbours, that we align with each other. Not that yous got to align with us, not that way, but we align with each other because the land and the water brought us together. It didn't separate us.

So, your Honour, that's where we are at. If our whānau and hapū seek 12 months, well then we'll wait alongside our whānau members. Kia ora, tēnā koutou katoa.

COURT:
Tēnā koe Ms Waata.

Just one thing before you go, my file tells me that you haven't filed a map yet showing the nature or the boundaries of your claim. Is that something you're going to be able to get onto?

MS WAATA:
Yes, we are meeting with our mapper to put in all our areas. We're meeting with her next week.

COURT:
Alright, well that would be helpful to get a map filed in due course.

MS WAATA:
We're also meeting with our historian that we're looking at tomorrow. So, that's where we're at.

COURT:
Alright, thank you.

Yes, I see that we've reached 1 o'clock. I am very conscious that we haven't made as fast a progress this morning as I had hoped. We do have the hearing this afternoon. What I propose doing, subject to vociferous objection from counsel, will be to have a shorter lunch hour.

My suggestion would be, unless someone has a pressing counter commitment, that we press on for half an hour and we'll take a shortened lunch adjournment, and that would will those people who are not wanting to participate or attend the hearing this afternoon to go their own ways. It seems to me the most efficient way of dealing with it, because in terms of time, we only have today. To give some comfort to those people who are involved in the afternoon's hearing, we have this venue available, I think, until 7 this evening. I don't want to put anybody through an extended hearing until 7 pm, but we can, if necessary, because I have to be back in Wellington tomorrow and will now fly back first thing tomorrow morning. We can therefore sit late tonight.

So, is anybody violently objecting to that proposed course?

Alright we'll take that as a unanimous decision.

Mr Registrar, if you could call the next case and we'll sit until 1.30pm.

REGISTRAR:
CIV-2017-485-298 – Whakarara Māori Committee.

MS ZWAAN:
I've heard all the submissions that have been said this morning. I just want to comment on Ms Mason's comment this morning that there is a possibility of extending the test case to Whangaroa.

This application is solely based in Whangaroa and currently they are not involved in the Whangarei test case. So, I would like some confirmation as to whether or not the discussion that's happening this afternoon will include the Whangaroa area or just the Whangarei test case because that will determine whether I stay and what happens, and I'd just like that confirmation to happen either at the luncheon adjournment or at some point so I can get some updated instructions on that. I'm in a similar position to Mr Tapsell on that, as we don't have instructions and haven't been following the matter.

In relation to the discussions in Whangaroa, the overlapping claimants have met as you've heard this morning. I'm instructed that discussions are continuing but, as yet, no agreement has been reached. I've discussed with the applicant, Mr Kira, who is with us today, that he is interested in exploring the shared exclusivity possibility. And, in order to encourage these discussions to keep happening, I would seek that we have a six-month adjournment rather than 12 months, as I'm sure everyone is aware, if you put in deadlines people just work to them, so if we can have the matter moving forward quicker than 12 months, that would be appreciated.

I have been brief, and I have nothing further to add, unless your Honour has any questions.

COURT:
No, thank you Ms Zwaan.

In terms of the answer to your first question, it's not really in my hands. The matter has been set down this afternoon on the basis of a particular geographical area that didn't include Whangaroa. We've had an application, well not an application but an indication, very very simply that it may be extended to Whangaroa. What I would encourage counsel to do over the luncheon adjournment is to see whether that's feasible or not. I'm very reluctant to see the application further adjourned because counsel say they are taken short. I fully understand your position and the position of Mr Tapsell, and my preference would be, rather than have to adjourn the matter and send counsel away, send it to another date, goodness knows when, that

we address it on the basis as it was originally intended. But, obviously if counsel can reach agreement, that's entirely a different matter, if you come back with an agreement on that, we'll deal with it on the basis of that agreement.

MS ZWAAN:
Yes, we'll have those discussions over lunch. Thank you your Honour.

COURT:
Yes, thank you.

REGISTRAR:
CIV-2017-485-231 – Ngāti Hine

CIV-2017-485-265 – Ngāti Kawa and Ngāti Rāhiri

CIV-2017-488-26 – Te Kapotai

CIV-2017-485-240 – Te Aupōuri

MS DOWNS:
Tēnā koe te Kaiwhakawā. Counsel's name is Ms Downs and I appear on behalf of all applications, 231, 265, 488-26, and 240.

Your Honour, the first three applicants are in the same group C, some overlap into D, and the latter applicant, Te Aupōuri, is in the Far North region.

Our applicants have a bit of a unique position in that they were the first applicants to the Waitangi Tribunal for the urgent application in relation to the MACA Act.

They, from the outset, of having to engage in the 2011 Act, took issue with it, and what it did to the nature of their rights and their customary interests. So, they commenced the application in 2017 and, as you will know, our inquiry is significantly underway now. Stage 1 is nearing the end of its phase and the applicants have taken a lead role in that inquiry.

For the reasons that they challenged the legislation and they felt the need or the urgency to have to engage, they did make applications, but it isn't a priority for them. What they do seek is more substantive changes to the legislation through a successful outcome in the

Waitangi Tribunal process. Obviously, the two pathways are different, the jurisdictions are different, and it has implications for the application.

So, they are taking what they consider to be an approach which will preserve their interests in the High Court, as well as give them the ability to pursue their litigation in the Waitangi Tribunal.

All applicants have sought an adjournment and were granted an adjournment. Recently, update was discussed with the Crown and the applicants sought an adjournment until the next CMC, which would allow some of the bigger issues with the applications to be sorted around funding, around overlapping claims, and to allow the Tribunal process to continue and get underway and try and get some traction there. And I note your Honour, traction has been gained there.

As a result of that inquiry, Te Arawhiti has identified that it will undertake a review of the funding policy. So, there is value in the Tribunal process taking place for the applicants in the High Court and involvement in the Crown engagement process.

In terms of the first three applicants, they all are in the Bay of Islands region and they have significant overlapping claims issues. Many of those have been discussed today by other counsel and I endorse the comments and submissions in relation to the particular nature of the political environment which makes dealing with overlapping claims difficult, particularly in the Bay which has very historic and long running overlapping claims issues.

That said, there has been leadership amongst the claimant groups and I note that all the hapū: Ngāti Hine, Ngāti Kawa and Ngāti Rāhiri, alongside Ngāti Manu and Ngāti Te Kapotai, who are the main hapū in that region, have met on a number of occasions to have preliminary discussions about overlapping claims. But, I note that it does, like counsel have spoken to the Takutai Moana issue and the MACA issues, significantly inter-relates with settlement, with the Rohe Moana and Fisheries legislation and other RMA issues which are very alive in that region. So, while they are attempting to resolve overlapping claims, I don't think it will be a very fast process.

There is a concern among all applicants as to the speed in which their funding is going to be exhausted in attempting to address overlapping claims issues, without even getting into the substantive preparation of their applications.

Another issue which is of concern to our claimants is the test case, and the implications of advocating their position which will be dealt with this afternoon. On the test case, that issue has required legal research and is absorbing funding which is precious and is running out very quickly.

So, these are all issues which we have raised in the Tribunal process as part of the discussion around Stage 1 issues.

In terms of what the applicants have done for their over-arching applications, all are currently trying to develop programmes in terms of project management for their research and for their evidence.

Two of the applicants are currently looking at engaging a historian as well as their own internal project managers to assist with the progression of their applications. Fortunately, some of the evidence that is collated in the Tribunal proceedings is customary in nature and will be able to be used also in these proceedings. But, it is a significant piece of work and accessing the funding for project management seems to be a bit more difficult than accessing the funding for legal fees.

So, we're currently working through what that means for the applicants and finding the appropriate people that are prepared to engage with uncertainty around funding, and that's really difficult.

That deals with the circumstances upon which the three first applicants are engaging with, and we also have, as I mentioned, Te Aupōuri in the Far North. They prefer to go through the Crown engagement pathway, and they have written to Te Arawhiti to try and seek clarification around whether or not they will be engaged. They haven't had a response. I think that falls in the general category and the general action which Te Arawhiti is responding to all applications, which is, "We'll get back to you soon. We haven't yet determined who we will engage with". So, they haven't had the progression of their

application, through Crown engagement, as they would have envisaged and liked when they first filed over a year ago now.

With that in mind, they are looking to the High Court and they are also trying to engage historians. I've had an update from our applicant that they could possibly enter into an agreement with their neighbouring applicants to share a historian, and that would be really positive if that can be underway.

They are also dealing with overlapping claims and the issues that they are facing in terms of their takutai is also significant given they have rights to the 90 Mile Beach sir.

Those are my general updates.

COURT:
Tēnā koe Ms Downs.

Just one comment. I've read your memorandum. It helpfully sets out your clients' position. At [8], you ask for the applications to be adjourned sine die, and I've been reluctant to do that for the simple reason that that means the Court loses control over the proceedings, and unless you can convince me otherwise, my proposal would simply be to adjourn them for 12 months and then we can review it and if there are any impediments to progress, the Court can do something about it in 12 months' time, we can do it.

I do understand your submissions about the Tribunal proceedings and I don't doubt they have produced some value, but, they are parallel proceedings that this Court really can't interfere with. It may ultimately influence the way in which this Court approaches this matter, or the way in which these proceedings are resolved, but they are a separate matter. Your clients are perfectly entitled to pursue them, but this Court must try and keep these proceedings on foot and moving forward in an orderly fashion.

MS DOWNS:
I agree sir, and I think the intention of all of our applicants is to stay preserved in both pathways. They don't want to miss out on progressing or fall behind in the progression of their applications because of the Tribunal inquiry. But, they are also, as I've submitted, very

careful about wanting to try and get some real change to the legislation which will no doubt take a significant period of time. But both pathways seem to be taking a bit of time.

COURT:
Thank you Ms Downs.

MS DOWNS:
That's my submission sir, tēnā koe.

COURT:
Tēnā koe.

REGISTRAR:
CIV-2017-485-306 – Ngātiwai (Whānau of Ohawini)
CIV-2017-488-029 – Walker
CIV-2017-485-408 – Ngā Uri o Hairama Pita Kino Davies
CIV-2017-485-409 – Whangaroa Ngaiotonga Trust

MR MCCARTHY:
Tēnā koe sir. Counsel's name is McCarthy, I'm appearing on behalf of the applications that were just mentioned.

I just want to acknowledge Mr George and [inaudible].

Just to orientate you sir, these four applications, they're sort of adjoining bays: 306 – Mr George (Ohawini). It's in the Bay to the north-east; 029 – Walker; 408 - Ngā Uri o Hairama Pita Kino Davies, which is further north; 409 – and Whangaroa Ngaiotonga Trust, which is around the same area.

We heard from Ms Waata earlier and that's in terms of overlapping applicants, and that's basically been the applicants' sort of attitude to these proceedings. They don't want unnecessary conflict. So, that sort of explains how these applications came to be, because they knew beforehand before putting them in.

They also met with the Ngā Toi Trust Board which put in, I guess, what you refer to earlier today, as a sort of a protectionary sort of claim just in case people couldn't put them in. In a

previous CMC their counsel did indicate that they supported these whānau applicants and any whānau applicants that sort of want to join.

So, we've had informal discussions with a number of overlapping claimants, and I guess at this point, this timetable, this wānanga that we're talking about, and that's informed by the research that has been prepared.

While I understand your Honour's comments on progress, to have those sort of meaningful discussions that needs to be sort of baseline acknowledged there, and we're at that point now.

Ms Waata has invited us to a hui next week which is positive. Ms Thompson has invited us to a hui in September and we will be holding our own hui, and it's extended to everyone here, in November.

So, that's the approach we're taking sir. And, given Ms Waata's comments, and given our conversations with counsel for Ms Thompson and Ms Thompson herself, I think it can be very productive.

If there are no questions, those are my submissions.

COURT:
Tēnā koe Mr McCarthy. Well, I'm encouraged by your comments. Do keep up the good work. A 12-month adjournment?

MR MCARTHY:
Yes sir.

COURT:
Thank you.

REGISTRAR:
Interested Parties:
Landowners Coalition Group

MR NEWMAN:
We've actually got no comments to make. We are just observing today.

COURT:
And who is addressing me?

MR NEWMAN:
Sorry, Frank Newman.

COURT:
Mr Newman, thank you.

REGISTRAR:
Kaipara, Hauraki, Waikato District Councils

MS JONES:
Tēnā koe te Kaiwhakawā o te Kooti Matua o Aotearoa.

Sir, counsel's name is Ms Jones appearing on behalf of the Kaipara, Waikato and Hauraki District Councils.

Sir, we do not have any submissions to make on matters raised today, unless the Court has questions.

COURT:
Tēnā koe Ms Jones. I do have just some observations.

I'm not sure whether the councils you represent have been the subject of OIA requests, that's certainly been the case in other CMCs that have been held, and that's been as an alternative to non-party discovery being sought. If the Councils you represent have been the subject of those requests, I'd encourage you to expedite them. I suspect if it has happened, some of the requests may be extensive and seek much historical information. All I can say is the provision of that information is likely to be of assistance in allowing these matters to proceed in an orderly fashion.

MS JONES:
Yes sir. This matter has been raised at previous CMCs that you've mentioned. I think before I answer that, it might be worthwhile first to clarify the District Council's regulatory

functions which do not directly involve control of coastal marine area, that being within the jurisdiction of the Regional Council.

The District Councils' functions are, under the RMA, involve the integrated management of the effects of land use and development, and the protection of land and the associated natural and physical resources of the district.

So, with those functions in mind, the Councils' position in relation to information requests or disclosure sir, is that we are happy to engage with applicant groups and invite counsel to approach Councils to make formal requests. To my knowledge, the Kaipara District Council has majority interest in this rohe. We have received no information requests, whether that be by way of the Local Government OI&M Act, we haven't received any requests yet.

On that note, we are willing to engage with applicant groups and invite them to do so. And, as you mentioned sir, if such requests do come through, we just ask that they be specific, focused and relevant to the claim. Something as broad as dating back to 1840 is just impractical, from the Council's point of view. But, in saying that, we do invite counsel to approach.

COURT:
Thank you Ms Jones.

REGISTRAR:
Northport Ltd and Refining NZ.

MR REEVES:
May it please the Court. Counsel's name is Reeves appearing for Northport Ltd as an interested party and also on agency for Refining NZ.

Sir, I don't really have any major submissions, just one point. The parties would like to reserve their right to have a reasonable time to file any evidence, if any arises. It's likely to be in three or six months that's required to file our evidence, but at this stage, we are not sure where we stand.

COURT:
Yes, well you really can't make an informed decision as to whether you file evidence until the evidence on behalf of the applicants is available. But, I note that you want a reasonable response time. I doubt there will be any difficulty with that.

MR REEVES:
Thank your sir.

COURT:
Thank you Mr Reeves.

REGISTRAR:
Sailor Morgan on behalf of Ngāti Ruamahue

COURT:
Ms Mason.

MS MASON:
Sir, these are interested parties. Sailor Morgan, on behalf of himself; and Ngāti Ruamahue. Memorandum was filed on 14 June. Counsel apologises for the lateness but had only just been instructed by the clients.

Sir, this group, this hapū, were inadvertently left off the applications to the High Court. They instead went directly to the Crown, and they are likely to be joining either Mr Paul's application or Mrs Collier's application.

They have started talking about their evidence and started the process of gathering it. They are located in Whangaroa. They would want the timetabling directions in the way that Mrs Collier would want timetabling directions. And sir, this afternoon as part of the judicial conference, I'll present some more submissions in terms of the Whangaroa issue.

Thank you sir.

COURT:
Thank you.

Right, that brings us now to the Crown. Thank you Mr Ward.

MR WARD:
Te Kaiwhakawā, tenā koe.

Sir, with the leave of the Court, Mr Melvin will present submissions on this.

COURT:
Yes thank you Mr Ward.

MR MELVIN:
Tēnā koe te Kaiwhakawā.

I intend to just address two or three points arising from matters that have arisen out of counsel's submissions today.

First, in respect of my friend, Mr Hockly's, submissions regarding Te Parawhau, that's 485-305. My instructions are that Mr Hockly had a telephone conversation with officials at Te Arawhiti recently and Te Arawhiti agreed to meet with Mr Hockly today in respect of matters, and so there is engagement occurring in respect of that matter.

Mr Hockly's written submission has pointed to a proposal for a preliminary hearing. The Attorney-General doesn't have a particular position on that at this stage. The Attorney-General would wish to see a fully-fledged proposal before taking a particular view on that. I do note however at this point that, if the purpose of a preliminary hearing is to seek to address or remove overlaps between applications, then counsel would have some doubt as to whether a fully-fledged High Court evidential hearing is the best approach for that. I'm told an application was, or a proposal, is soon. I can't take that any further.

Mr friend, Mr Hirschfeld, for 485-522, that's, I understand, an application by Mr Tito, asks for it to be set down for hearing next year, and in part, he makes that request on the basis that there are no overlaps, no overlapping applications. However, our records show that there are 12 notices of appearance filed in respect of that application. Two of those are the so-called national applications, but that leaves 10 applicants who have filed notices of appearance in respect of that notice. I'm just flagging that there may need to be a check as to whether there

are indeed overlaps or not. And I'm very happy to discuss that with Mr Hirschfeld if that would assist.

One other matter in my friend's Mr Lyall's memorandum filed for this CMC for Stephen Panoho on behalf of Te Rae Ahu Whenua Trust, that's 485-239. The memorandum states that funding has yet to be granted. My instructions are that funding has been granted for that, for clarification.

Those are the particular points I wish to address your Honour on, unless you have any questions. Those are my submissions.

Perhaps I can just add sir that throughout the CMCs we have listened to your Honour's statements about Crown engagement. We've made full note of those sir. We will be conveying them to the appropriate officials and making your concerns known to them.

COURT:
Yes, thank you Mr Melvin. I don't underestimate the magnitude of the difficulty that Te Arawhiti faces and the constraints of funding, but, it's very difficult for this Court to hear that parties who have requested to engage in the direct engagement process, have simply heard nothing back at all. I'm sure Te Arawhiti can do better, just in terms of politeness.

MR MELVIN:
Yes, my understanding sir is that certainly every request for engagement has at least been acknowledged. It is certainly the case that in general they haven't been substantially advanced. But there has been, as we've indicated, there's work going on in respect of that.

COURT:
I acknowledge the assurances you've given me at other CMCs as to the timetable for that, and as you've heard, I've encouraged parties to liaise directly with either you or Te Arawhiti. Thank you.

MR MELVIN:
Tēnā koe sir.

COURT:
Tēnā koe.

Mr Registrar, there's no-one we've missed?

REGISTRAR:
No, sir.

COURT:
Alright. Thank you counsel for your patience and your submissions. I acknowledge the whānau here – thank you for your attendance as well. You don't need to stay for the afternoon's hearing if you don't have any particular interest in it.

Thank you. We'll now adjourn until 2.15pm Mr Registrar.

CMC CONCLUDES – 1:32PM