

**CASE MANAGEMENT CONFERENCE  
ROTORUA  
7 JUNE 2018 at 10.00 am**

**COURT:**

Good morning and thank you all very much for coming.

Primarily for the benefit of the people who are seated at the back of the Court, I wish to make some introductory comments which repeat what many of the counsel have already heard.

I am very grateful for you all coming for what is the sixth of the first round of case management conferences concerning the 202 claims that have been filed under the Marine and Coastal (Takutai Moana) Act.

Because of the logistical challenges in trying to manage 202 claims, I have confined the first round of case management conferences just to the parties. I am aware that there are a large number of interested parties, and I do propose to engage with them after we have gone through the first round of case management conferences.

The purpose of a case management conference is to assist the parties in advancing their proceeding to a substantive hearing. Sometimes it may be possible in a case management conference to resolve a dispute, but the primary objective is to assist the parties in facilitating the advancement of their case to a substantive hearing.

One of my tasks is to put in place a timetable for eight cases that have been afforded priority by Parliament when it passed the Act. But in conjunction with that, I also need to work out which applicants' cases should be heard in conjunction with the priority cases. I am also aware that there will be other cases that don't meet the statutory criteria for being a priority case, but which may also be able to be advanced just as quickly as a priority case. So although I am trying to identify the priority cases and the claims which overlap the priority cases, I wouldn't want it to be thought for one moment that I am not interested in also advancing other cases that are able to be advanced.

At this stage, we seem to have cases falling into the following categories. First, there are the eight priority cases. Then there are the claims which overlap to varying degrees with those eight priority cases. Then there is a third group where active steps have are being taken to engage with the Crown to try and negotiate a resolution. Parties in this category are seeking adjournments of their Court proceedings while they focus om trying to negotiate with settlement. Then there is a broad group of cases that don't fit very comfortably into any of the three previous categories.

So having given you this overview, I now will invite counsel to announce their appearances I will go through the list in the order that the Court Registry have prepared.

I'll start with Mr Melvin and Ms McKay, good morning

**MR MELVIN:**

Good morning sir.

**COURT:**

Ms Sykes, good morning

**MS SYKES:**

Kia ora, kei te tū au ki te tautoko i ngā mihi kua mihia, kātahi anō i tū māua mai te tari i a koe, e te Kaiwhakawā, i runga i taua tūmanako kei te mihi atu au ki a koe. Ko te raruraru i te rā nei, kei te tangihanga mō Ngāti Ira kei te kāinga ki Ōpōtiki i runga i taua tūmanako, kei te mihi atu au ki a rātou, e noho ana i reira i raro i te kapua pouri, ki te kaitono o tēnei o ngā kaikerēme Rua Te Rakuraku hoki, anā, ka huri atu ki a koutou o Ngāti Ira, Te Whakatōhea i tae mai i te rā nei, a, tēnā koutou katoa.

Sir, it is with pleasure I appear with my junior Ms Jordan Bartlett Kameta this morning. Our applicant has been detained because of a tangihanga. His sister has died suddenly and we send his apologies but we have representatives from Ngāti Ira for this application. I note that there are some esteemed elders from Whakatōhea that have also made their way today, notwithstanding the requirements of that tangihanga and I have taken the opportunity to greet them on this important occasion. This is our first appearance at any judicial conference largely because we are still unfunded sir and it's a continuing issue. Kia ora.

**COURT:**

Thank you very much Ms Sykes. I am very grateful to you.

Ms Linstead-Panoho

**MR WILLIAMS:**

Kei te mihi atu ki a koe e te Kaiwhakawā ara ki a tātou katoa, a tēnā koutou.

Sir, Mr Williams, I appear with my learned colleague Ms Linstead-Panoho sir.

**COURT:**

Thank you very much Mr Williams and Ms Linstead-Panoho.

Mr Hirschfeld, good morning again.

**MR HIRSCHFELD:**

Good morning again sir.

May it please your Honour I appear today for a number of claimants, three in particular. My learned friend Mr Sinclair will appear also.

**COURT:**

Did you say just three?

**MR HIRSCHFELD:**

Yes sir. It's a division of labour. The explanations will be forthcoming. My ones Sir today are 480, 482 and 483. That's Ngāti Hei, Ngāti Huarere ki Whangapoua and Ngāti Pu respectively. Mr Sinclair will explain the balance of the appearance in my chambers sir.

**COURT:**

Thank you very much Mr Hirschfeld.

Mr Sinclair, you've been thrown into it.

**MR SINCLAIR:**

Tēnā koe sir. I support that statement entirely. This is my first appearance sir in these matters. There's been a change of counsel with the claim CIV-2011-485-000817 Mr Edwards. I am now counsel for that claim sir. I'm also appearing on a number of other claims sir, Raymond Parkinson 2017-404-562 CIV number; Larry Delamere CIV number 2017-485-264; Christina Davis CIV-2017-485-269; Dean Flavell CIV number 2017-485-375. Sir that's all I have at this point in time.

**COURT:**

Thank you very much Mr Sinclair, I'll come back to you in a few moments.

Mr Pou, good morning

**MR POU:**

Kia ora sir, I appear for two groups today, I'm sorry one of my memorandums had a bit of a typo in it so I'm not appearing for Ngāti Manuhiri today.

**COURT:**

That's an Auckland matter I take it.

**MR POU:**

It is an Auckland matter sir.

Sir, I'm appearing for two. The first one is 291, that's Ngāti Pikiao and Ngāti Makino. Just by way of explanation those are Te Arawa groups and my appearance today will largely relate to a number of the discussions that occurred in Tauranga yesterday and the other one that I'm appearing for is 292 Whakatōhea Māori Trust Board.

**COURT:**

Thank you.

Mr Kahukiwa

**MR KAHUKIWA:**

Tēnā koe Your Honour

**COURT:**

Good morning

**MR KAHUKIWA:**

Ka nui te mihi ki a koe. Nāu mai haere mai ki tēnei Kooti, i hāngai, i tūwheratia i runga i te mana o Ngāti Whakaue, i raro i te pukapuka Fenton Agreement i 1880. So welcome to this courthouse. It was erected under the Fenton Agreement, which was the agreement between Ngāti Whakaue and the Crown. I'm representing Ngā Koromatua Hapū of Ngāti Whakaue. Mr Hoki Kahukiwa is the applicant and he's in attendance today as well as Mr Hamuera Mitchell, who's the principal hapū tribal historian for the case. Tēnā koe.

**COURT:**

Thank you very much.

Ms Tahana, good morning again

**MS TAHANA:**

Tēnā koe your Honour, I'm appearing for matter number 510 Tārewa Rota on behalf of a number of hapū from the north. I'm also appearing for Te Whānau-ā-Apanui 318 and Your Honour I did appear yesterday in relation to that application but I understand that today counsel for Edwards 817 is appearing and there is an overlap with that application so I thought it more appropriate –

**COURT:**

I'm very grateful for you making the effort to be here again.

Mr Webster

**MR WEBSTER:**

Tēnā koe Your Honour. I'm in a similar boat sir. I'm appearing today for Te Rūnanga o Ngāti Awa, which is 196. So obviously you heard me yesterday I'm the western

extent of their application and now we're dealing with probably what's more the core part of their application and the overlap with the Edwards application.

**COURT:**

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

Now Mr Sinclair, I appreciate that you have come to this very interesting and challenging exercise very late in the piece and you now act for a priority applicant, which has been loosely referred to as "the Edwards application" and by calculation I think there are some 21 other applications which overlap to varying degrees with the Edwards application. Let me just check that again.

**MR SINCLAIR:**

Certainly in that vicinity sir.

**COURT:**

Yes I've got 21 listed [inaudible – coughing] with the application brought on behalf of your client. Obviously it's going to be difficult for me to put in place a timetable that binds you and your clients given the very short period of time that you've had to come to grips with this matter. I was reflecting on the dilemma caused by your late involvement and was wondering whether or not the most appropriate course of action is to adjourn this first case management conference in relation to Ms Edwards' application and the overlapping claims to a date later in this year. If that suggestion is unnecessary please tell me. If you are able to box ahead then that would be even greater but I am mindful of your circumstances.

**MR SINCLAIR:**

Sir I very much appreciate that. In addition to that offer I've not sited the file as of yet.

**COURT:**

I note that from your memorandum.

**MR SINCLAIR:**

Yes it still remains in Wellington. I've taken brief instructions sir but I do require more time to sit with the clients and take further instructions thank you sir. I'd appreciate that offer sir.

**COURT:**

When I was preparing for this morning's hearing I was wondering how you would be able to advance matters.

Thank you very much Mr Sinclair.

Counsel who represent parties that have an overlapping claim and I think when I went through and tried to work out the cases today, there are 10 and the other two that have been added from Tauranga yesterday, so we've got 12 of the 21 applicants that overlap with Ms Edwards' application. Are counsel who are involved in those overlapping claims content for me to adjourn this first case management conference to a date later in the year when we will hopefully be in a better position to be able to advance the Edwards claim and the 21 overlapping claims?

Ms Sykes

**MS SYKES:**

Sir I'm not opposing the proposal but I have a difficulty. There's another overlap of course with the Reeder application yesterday which I understand is being timetabled.

**COURT:**

It is.

**MS SYKES:**

And so I do not want to agree to something that may in the longer term be prejudicial to my applicants' course so on that position unless there is some parallel procedure for both of those applications to be heard contemporaneously within reason sir, I'm not talking immediately the same court at the same time. I apprehend a greater difficulty for my claimant. I have elderly witnesses, the original claimant for them was Mr John Kameta. They were contemporary of the Whakatōhea Māori Trust Board and were in discussions about these matters while they were alive so I am very conscious also of that obligation to the hapū and the iwi that I represent. So I would be interested for the view of the Crown on that.

I have a second matter sir and that's we have no resources. We are arguing with the Crown about it. I note the Act says we don't have the same rights as the legal aid applicants but this

position is now at such a state that it's completely in my view unfair and a breach of the Bill of Rights. So I would appreciate an earlier conference on that issue before this Court. We have had some movement with the powers that be at Office of Treaty Settlements but really sir we have a claim before the Tribunal. It's becoming quite apparent to me that the movement here is being hindered by the administration there and that's inappropriate. It's not an independent arbiter of entitlement to resources so I would like some pre-trial discussion nationally in some way on that fundamental issue being very aware of course that this matter was asked to be mediated in the Waitangi Tribunal and the Crown have chosen not to take that as an opportunity saying that they wished to see the policy plan which was argued but in the meantime the practical implications of their approach has meant unfair prejudice for unscheduled claimants like myself who are battling like the David amongst the Goliath of settled claimants and this cannot continue. It's now over 14 months and I have to say this, that even your basic request for a map is difficult.

On that second point, I would also like some assistance from the Court. It seems nonsensical for me that we all commission map experts and we might be using different coordinates or different parameters when it may be appropriate that we have a single mapper that's commissioned to identify the nuance either customary rights or customary title issues prepared for the Court because one of the difficulties my applicants are having is identifying where they overlap particularly as we go out, and I use the contentious Whānau Apanui example of White Island. We have rights there. We have definite rights there. Contrary to what Mr Gage asserts Whakatōhea has rights there. We may not have rights sufficient in legal terms for a title but unless we start to work in some collaborative sense I think we will be bogged down in a bureaucracy around mapping before we actually get to the substantive rights arguments which are outstanding. So those three matters I would ask need to be dealt with at an acute urgency, that's mapping, resourcing and understanding the nature of the overlap so that if there's a contest about title or if there's a contest about rights within those that assert title I think that is needed.

The last thing is that OTS in charge of settled iwi and I'll use my clients. They are in the middle of a dilemma at the moment. We do not accept the right of Whakatōhea Māori Trust Board to represent Ngāti Ira. We understood that the resolution for their participation in these proceedings, and I have witnesses present today if you want to hear from them, their application the Whakatōhea Māori Trust Board was made simply as a holding



pattern for those hapū that had not made their own claimants. So we would like that very clearly spelt out early so that they have no right of representation for Ngāti Ira for the purposes of these applications. Now that may require a specific judicial conference for those that are contesting the right of Whakatōhea Māori Trust Board to assert a right of representation of their interests.

**COURT:**

Thank you very much Ms Sykes. Can I just in relation to the first issue you raised about your caution about exceeding to an adjournment of the Edwards application. I would be and subject to what Mr Sinclair and the client have to say, I would be thinking in terms of only an adjournment of three or four months to let Mr Sinclair come up to speed and then hopefully get this priority claim timetabled in tandem with the claimant in Tauranga, the Ngā Pōtiki claim.

**MS SYKES:**

Sir I wouldn't be unhappy with that approach. I think that's an extremely commendable approach. But resourcing means we don't actually have much resourcing to understand the Tauranga application by Mr Reeder for Ngā Pōtiki. There is no petrol money for them to do the resource.

**COURT:**

There is no actual money did you say.

**MS SYKES:**

Petrol money.

**COURT:**

Petrol money, I'm sorry.

**MS SYKES:**

Petrol money to get to the Courts. Ngā Pōtiki of course are settled group. They have had Waitangi Tribunal report. My groups haven't. They come here like I say very much David in the den with Goliath but I think very astute Davids who understand their rights and have customary title within the boundaries of their customary understandings.

**COURT:**

All Davids are very astute Ms Sykes.

**MS SYKES:**

I'm glad to hear that Justice Collins and that was by no means an attempt to try and curry favour sir. But they are real issues and those are the matters that I have been asked to bring to this Court's attention notwithstanding they are before the Waitangi Tribunal. It's most unsatisfactory. In 30 years I've never had this position before. Ever.

**COURT:**

Thank you very much Ms Sykes and I take aboard everything you've said.

Now, are there any other counsel representing claimants who overlap with the Edwards application who wish to be heard in relation to my general proposal?

**MR WEBSTER:**

Yes sir. No issue with the proposal sir, I think it's very sensible. I think it's probably also incumbent on counsel to do some work in that period to see whether or not we can't clarify a way forward for the Court much like what has happened in Tauranga with the Reeder application. I think I'll undertake certainly to do that in relation to the Ngāti Awa applications and then no doubt Mr Sinclair and I and others will need to have a discussion to see whether or not we can't formulate a programme.

**COURT:**

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

Ms Tahana, are you in a similar position?

**MS TAHANA:**

Yes sir we don't oppose the adjournment. I just want to point to a memorandum of counsel that we filed on 1 June, just noting that the Attorney-General had not listed our application as a materially overlapping application. Our position is that it does materially overlap and we do want to be heard in relation to the priority application in so far as it relates to the overlap Your Honour.

**COURT:**

Thank you very much Ms Tahana.

Are any other counsel representing an overlapping applicant?

Mr Pou.

**MR POU:**

Yes sir. Sir in my submission the suggestion is sensible. I don't see any other way that we can't timetable things with counsel and I'm not sure that the overlap with the Reeder application is necessarily an issue. My understanding from the notes from yesterday and from communications with Mr Hovell is that there's been an effort to create a sub-region within the region –

**COURT:**

That is so.

**MR POU:**

– which confines that mini hearing to more around Maketū and I just understand that this Edwards application goes as far as Ōhope so there's quite a bit of a gap and in terms of the Reeder application it's already subject to an adjournment to allow the parties to discuss and again I think that's a good place for the discussions to occur around those representational issues that Ms Sykes raised. In my submission, case management conferences aren't the places for those they should be discussed back where the applications were made. Sir those are my submissions.

**COURT:**

Thank you very much Mr Pou.

Does any other counsel wish to comment on the proposed adjournment of this first case management conference in relation to the Edwards application?

I'll hear from you on that point now Mr Melvin and if you would like to address any of Ms Sykes' concerns please do so.

**MR MELVIN:**

Yes sir. No objection to your Honour's proposal to adjourn the Edwards matter. Three to four months would seem appropriate particularly if my friend Mr Webster's suggestion is taken up for efforts to be made to try and at least begin some internal discussions between the applicant groups that would be very helpful in my submission.

Just briefly in respect of Ms Sykes' submissions I don't have –

**COURT:**

Resourcing is becoming a recurring theme isn't it at these conferences.

**MR MELVIN:**

Yes sir. There is funding available. There have been some issues around the understanding of the funding policy. The Ministry of Justice of the Marine and Coastal Area team have been [inaudible – coughing] Minister of Justice is in the process of holding funding hui around the country to explain that policy so that applicants and their counsel have a better understanding of it. It is not identical to the legal aid process. It is separate from the legal aid process. So there is a need for counsel and their clients to apprehend those differences and to understand how the policy works. It operates for example, retrospectively. It's a position where costs are reimbursed. They are not met in advance and not all costs are met. So it is important that applicants and counsel do understand the parameter of policy. I can have a discussion with Ms Sykes today just to try and understand the nature of the particular issues that she has –

**COURT:**

I'd be grateful if you would. It may be possible that some of her concerns can be addressed through discussion.

**MR MELVIN:**

I should also add sir that certainly up until recently my instructions from the Ministry of Justice was that there is still a large number of High Court applicants to even apply for funding so there are many applicants who have not yet even begun that application process of funding.

**COURT:**

Thank you Mr Melvin.

I will possibly come back to you after I've dealt with other cases that don't overlap with the Edwards application.

Now, as I understand matters Mr Hirschfeld and Mr Sinclair, I think it's three of the applicants that you represent I don't think are actually overlapping applications. Is my understanding correct?

**MR HIRSCHFELD:**

Your Honour that is the position sir.

**COURT:**

So just very briefly those are the applications that end 480, 482 and 483? I don't think they're overlapping applications.

**MR HIRSCHFELD:**

None of those overlap sir.

**COURT:**

Can you advise whether you're hoping to proceed to a proceeding and or direct negotiation with the Crown in relation to those non-overlapping applicants.

**MR HIRSCHFELD:**

They're going to trial sir. Those are my instructions.

**COURT:**

That's fine. Now are there overlapping claims with those three applications?

**MR HIRSCHFELD:**

Not that I'm aware of sir.

**COURT:**

So they're three discrete claims?

**MR HIRSCHFELD:**

Your Honour yes. I can say this sir there are neighbours but nothing overlapping at this point.

**COURT:**

So common boundaries.

**MR HIRSCHFELD:**

For example sir.

**COURT:**

Yes right okay.

Now, have you been able to give consideration to a possible timetable then to advance those three claims?

**MR HIRSCHFELD:**

They would be ready for trial next year sir. We're at the point where we're organising the historical evidence for example. That's well in discussion in two cases with historians already commissioned. We're about to begin on the tangata whenua aspect of evidence gathering for instance so I can say with a degree of confidence sir by the end of the first quarter next year they should be ready for trial.

**COURT:**

And how much hearing time do you anticipate will be required from your clients' perspective?

**MR HIRSCHFELD:**

Not a long time sir but I'm hesitant to put it out there as it were in terms of timetabling. I could only nominate a rough estimate.

**COURT:**

I've been provisionally setting aside three weeks. Would that be realistic?

**MR HIRSCHFELD:**

In that case sir more than ample.

**COURT:**

Can the three be heard together or should they all be heard separately?

**MR HIRSCHFELD:**

They can be heard one after the other sir. They're on eastern Coromandel, that coastline. It seems to be full speed ahead as it were. Now it's because of this point as I've indicated to your Honour we're advancing matters on the evidential front and that should be well finished by the end of this year.

**COURT:**

Thank you very much Mr Hirschfeld. I'm very grateful to you for that.

**MR HIRSCHFELD:**

May it please your Honour.

Mr Pou, I think you act for two claimants who do not overlap with the Edwards matter. Is my understanding correct?

**MR POU:**

That's correct sir. They overlap with the Reeder matter.

**COURT:**

So we need to work through the Tauranga claims in relation to your clients' matter.

**MR POU:**

Yes sir I had a look at the memorandum that was filed by Mr Hovell. He helpfully forwarded it last night. We don't disagree with it and it would seem that Ngāti Makino and Ngāti Pikiao are partially encompassed by the area near one of the claims that are contemplated being heard partly in the sub-region and then dealt with by some other mechanism. My suggestion sir

would be that the second part of the application should possibly follow the prioritised ones so should follow the timetabling in terms of that sir.

**COURT:**

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

**MR POU:**

Thank you sir.

**COURT:**

Ms Tahana, was there anything further you wanted to add?

**MS TAHANA:**

No your Honour.

And you Mr Webster have made the submissions that you wished to make.

**MR WEBSTER:**

Yes thank you sir.

**COURT:**

Now is there any party that I have not heard from that wishes to make any submissions in relation to the advancement of their respective claims?

**MR KAHUKIWA:**

Your Honour, Koromatua Hapū o Ngāti Whakaue that's 568. By dint of the allegation that the Reeder application encroaches into Ngāti Whakaue territory, Ngāti Whakaue is bound to be heard in –

**COURT:**

– in relation to the Reeder application.

**MR KAHUKIWA:**

Yes.



**COURT:**

Have you been in contact with Mr Hovell about that?

**MR KAHUKIWA:**

Yes, we have. Yes my friend Mr Hovell has been quite good at facilitating discussions. We are going to participate but just to let your Honour know that this particular case will be part of that subdivision of the Zone H I think it is.

**COURT:**

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

Mr Melvin, anything in relation to the separate claims that we've heard from?

**MR MELVIN:**

Sir I was just looking at the three claims that Mr Hirschfeld represents and our information shows that there are a considerable number of other applicants who have filed notices of appearance in relation to those three claims.

**COURT:**

Interested parties but not overlapping?

**MR MELVIN:**

That's not entirely clear to me so I think that would require a little bit more analysis sir I can't just do immediately, but from a glance at the map certainly there would appear to be some overlapping applications.

**COURT:**

Alright. You perhaps ought to have a discussion with Mr Hirschfeld because I suspect that's news to him.

**MR MELVIN:**

Yes, I imagine this is a matter that would be clarified in the next round of case management conferences in any case.

**COURT:**

Thank you very much Mr Melvin.

Is there any other counsel or person who is not represented who would like to say anything this morning?

**MS SYKES:**

Sir can we just ask if the Hovell memorandum could be served on Area I?

**COURT:**

Yes by all means.

**MS SYKES:**

Our difficulty is that we've filed as interested parties in those areas that we think we may have a contest of interests but we have tried to focus participation in a single area and it seems like the Hovell, Ngā Pōtiki, have got the jump on everybody and the other thing is I'm unclear from Mr Hirschfeld's application whether we are overlapping or interested, you know we may be some of the 21. We are finding it increasingly difficult with the resources we have to work out where we are to be frank. It's very clear to those that have got priority by Parliament we're definitely overlapping them but for any of these other ones it's less clear and we haven't even had the courtesy of being served with some of the applications.

**COURT:**

Well Ms Sykes I can do better than that. If you speak with the Registrar as soon as I retire she'll give you a copy of Mr Hovell's memorandum that was filed in Tauranga yesterday and if any other party wishes to have that then they can get a copy of the Court Registrar this morning.

**MR POU:**

Can I just ask sir because the memorandum I received refers to a map with lines on it but there was no map provided.

**COURT:**

That is correct. I didn't have a map either. It was merely the written description but as I understand it Mr Pou, cross-referencing to earlier maps so Mr Hovell was reasonably confident that people would be able to work it out and I certainly didn't challenge him on that yesterday but if there is any issue then I suggest that you liaise directly with Mr Hovell if there's any uncertainty.

**MR POU:**

Will do sir.

**COURT:**

Thank you very much Mr Pou.

Alright. Unless there is anything else I will adjourn and conclude by thanking everyone for coming. It's been a pleasure to be here and I look forward to seeing you on future occasions.