

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2011-485-789

| | |
|------------------|---|
| IN THE MATTER OF | the Marine and Coastal Area (Takutai Moana) Act 2011 |
| IN THE MATTER OF | an application for an order recognising Customary Marine Title and Protected Customary Rights |
| BY | CATHERINE MARJORIE CLARKSON AND OTHERS |

On the papers:

Counsel: G R Aislabie for Applicants

Minute: 12 June 2020

MINUTE (NO. 4) OF CHURCHMAN J

[1] Mr Aislabie is a solicitor in Tauranga. He is the solicitor on the record in these proceedings on behalf of the applicants.

[2] He had instructed a barrister, Mr Hope, to act in the matter and beyond his office being the address for service, has had little active involvement.

[3] As a result of issues in another set of proceedings (unrelated to the Marine and Coastal Area (Takutai Moana) Act 2011) where Mr Hope was acting for one of the applicants, he had advised the Court and Mr Aislabie that he is no longer able to continue as counsel. The Court has noted his withdrawal as such.

[4] The position of counsel who wished to withdraw is not covered by the High Court Rules 2016 (HCR) but by the Court's inherent jurisdiction.¹

[5] As officers of the Court, counsel owe duties to the Court to complete a retainer unless good grounds exist to allow withdrawal. I accepted that good grounds existed for Mr Hope's withdrawal.

[6] The situation in relation to solicitors is governed by HCR 5.40. That rule imposes certain obligations on a party who either wishes to dispense with the services of their solicitor or whose solicitor wishes to withdraw.

[7] Pursuant to HCR 5.40(1), such a party must file and serve on every other party to the proceeding a notice of change of representation. Pursuant to HCR 5.40(2), if the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was immediately before the change, the party's address for service.

[8] Pursuant to HCR 5.40(5), a party may change their address for service by filing a notice of the change showing the new address for service and serving a copy of the notice of every other party.

[9] The correct way for a solicitor on the record to withdraw is to file an interlocutory application seeking leave and an affidavit in support. Mr Aislabie has done this.

[10] I am satisfied that he has valid grounds for withdrawal and grant his application.

[11] However, the fact that I have granted Mr Aislabie leave to withdraw as solicitor on the record, does not affect the fact that he remains solicitor on the record until changed by the party pursuant to HCR 5.40. The change of representation takes effect only when the party's affidavit under HCR 5.40(5) is served.

[12] Therefore, Mr Aislabie will continue as solicitor on the record and, more importantly, as the applicants' address for service until such time as the applicants (or one of them)

¹ See *Burgess v Monk (No 4)* [2017] NZHC 2618.

advises that they are now representing themselves or have appointed another solicitor. Unless the new notice of address for service is filed, the old address for service will remain the address for service to which other parties and the Court are obliged to send relevant documents. That risks the applicants not receiving such documents.

[13] It is therefore up to the applicants to promptly file a notice of change of representation and notice of change of service so that Mr Aislabie can be released from those roles.

Churchman J