

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

CIV-2011-485-817

**IN THE MATTER**

of an application by the late **CLAUDE AUGUSTIN EDWARDS (deceased), ADRIANA EDWARDS and others** on behalf of Te Whakatohea for a recognition order of protected customary rights and/or customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”)

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**AMENDED APPLICATION PURSUANT TO s.100 OF THE ACT FOR A  
RECOGNITION ORDER OF PROTECTED CUSTOMARY RIGHTS  
AND/OR CUSTOMARY MARINE TITLE**

Dated: 18 May 2015

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Judicial Officer: Hon Justice Mallon

Next Event Date: None scheduled pending further directions

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**RIGHTLAW**  
Barristers and Solicitors  
AUCKLAND  
11 Kaihu Street, Northcote, Auckland 0627  
Telephone: (09) 889 4468  
Mobile: 021 303 923  
Partner Acting: Gerald Sharrock  
Email: [gsharrock@rightlaw.co.nz](mailto:gsharrock@rightlaw.co.nz)

**Counsel acting**  
T J Castle  
Barrister, Wellington  
PO Box 10048  
Level 14, 89 The Terrace  
Wellington 6143  
Telephone: (04) 471 0523  
Mobile: 021 419 323  
Email: [tim.castle@xtra.co.nz](mailto:tim.castle@xtra.co.nz)

Case Manager  
*Michelle*  
Next Event: / /

29 MAY 2015

THE HIGH COURT  
WELLINGTON

**TE WHAKATOHEA MARINE AND COASTAL AREA (TAKUTAI MOANA) CLAIM**

1. This application is made to the High Court for a recognition order of protected customary rights (s.51 of the Act) and/or customary marine title (s.58 of the Act) by the applicants named herein, whose contact details are appended as **Schedule One**.
2. In addition to those named applicants, hapu of Whakatohea are expected to engage progressively in this application and to consider appointing hapu representatives to join with the applicants in this application.
3. As at the date of filing this application, already confirmed mandated hapu representatives are Rita Wordsworth for Ngai Tamahaua, John Hata for Ngati Patu and Robert Edwards for Ngati Rua.
4. This application was first made to the Maori Land Court under the (now repealed) Foreshore and Seabed Act 2004 in January 2005 by the descendants of the iwi of Whakatohea.
5. A further particularised application under the now repealed Act to the Maori Land Court was made on 30 May 2005 by the late Claude Augustin Edwards (on whose behalf his daughter Adriana Edwards is a named applicant).
6. This amended application is made in compliance with the Directions (para.[3](a)) of the Court's Minute dated 13 April 2015.
7. The marine and coastal area (including foreshore and seabed), as defined in s.9 of the Act, to which this application relates is all of the takutai moana within the tribal rohe of Whakatohea – from at least Te Horo (between Ohope and Whakatane) in the west; to Te Rangi (between Opape and Torere) towards the east; and through at least to the Motu Awa at its most eastern extremity, and extending out to a distance of 12 nautical miles. Further delineation of the marine and coastal area the subject of this application will be provided upon the finalisation of kaumatua evidence.

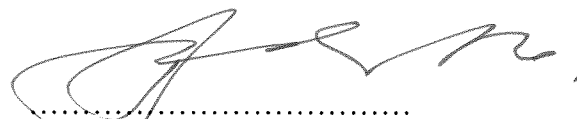
8. The legal entity that is proposed to represent Whakatohea and its descendants is the Whakatohea Takutai Moana Trust (which will be formed in due course) the trustees of which, it is proposed, will hold the protected customary rights recognition order and/or the customary marine title.
9. The activities, uses or practices which are claimed to be the subject of and deserving recognition of protected customary rights and/or customary marine title are the exercise of rantatiratanga over the takutai moana foreshore and seabed; the exercise of kaitiakitanga over the takutai moana foreshore and seabed; use of takutai moana as tauranga waka; planting and harvesting of native flora; aquaculture – growth and harvest of kai moana; extraction of fossils, rock, sand and minerals; and complimentary customary activities, uses and practices to be the subject of evidence at the hearing of this application.
10. The purpose for which the activities, uses and practices were and are carried on, exercised and followed include, inter alia:
  - (a) The preservation and maintenance of mana motuhake, rangatiratanga and kaitiakitanga of the takutai moana-foreshore and seabed;
  - (b) The sustenance and continued observance of customary and traditional practices, integral to *tikanga* carried out by descendants of Whakatohea;
  - (c) The sustenance and physical, spiritual and cultural well-being of all Whakatohea whanau, hapu and iwi;
  - (d) The economic development of Whakatohea whanau, hapu and Iwi; and
  - (e) The conservation of natural and physical resources in the takutai moana-foreshore and seabed.
11. The applicants hold, in accordance with *tikanga* customary rights and customary marine title over the marine and coastal area (as defined) as particularised in para.7 hereof. The *tikanga* integral to the descendants of

Whakatohea governing these activities, uses and practices will be provided in the evidence from the Whakatohea descendants to be given at hearing.

12. The activities, uses and practices for which the descendants of Whakatohea seek recognition as protected customary rights and/or providing the foundation for customary marine title:
  - (a) Have been and continue to be carried on, exercised and followed in accordance with *tikanga* of the descendants of Whakatohea in a substantially uninterrupted manner since 1840 in the area of the takutai moana (including public foreshore and seabed) specified herein;
  - (b) If interrupted since 1840 then only by unlawful interruption or interference;
  - (c) Are not prohibited by any enactment or rule of law; and
  - (d) Have not been extinguished as a matter of law.
13. Particulars, sufficient for the purposes of this application (including as to its public notification), as to the scale, extent and frequency of the activities, uses and practices carried on, exercised and followed by the descendants of Whakatohea are appended as **Schedule Two**. Whilst the particulars in this schedule are linked, by specific reference, to particular customary uses, activities and practices, they are also generic to all.
14. The particulars will be the subject of further explanation, expansion and refinement, and evidentiary support in the evidence to be given by the descendants of Whakatohea at the hearing of this application.
15. To the best of the knowledge of the applicants, no other application has been made to the Court that affects the same area of the takutai moana to which this application relates or in the same way as does this application.
16. The preferred location for the hearing (by the High Court) of this application is at marae within the rohe of Whakatohea in and around Opotiki. At an appropriate time the applicants will make application to the

Court pursuant to High Court Rule 10.1(4) for a change of venue (hopefully by consent) from Wellington to the proposed marae venue on the grounds, inter alia, that the application can more conveniently and more fairly be tried there.

**DATED** at Wellington this 18th day of May 2015.



**T J Castle**  
Counsel for the Applicants

**THIS** application is filed by **GERALD SHARROCK**, Solicitor for the applicants, of RightLaw. The address for service on the applicants is 11 Kahu Street, Northcote, Auckland 0627.

Documents for service may be (preferably) forwarded to Counsel, T J Castle:

- (a) By post to PO Box 10048, Wellington, 6143;
- (b) By facsimile to (04) 471 0672;
- (c) By email to [tim.castle@xtra.co.nz](mailto:tim.castle@xtra.co.nz).

**SCHEDULE ONE  
APPLICANT CONTACT DETAILS**

Applicant Name	Postal Address (Included for continuity purposes)	Phone Number	Email Address
Claude Augustin Edwards (Deceased)			
Adriana Edwards	141 Portage Road, New Lynn, Auckland	027 7332310	adriana.edwards@hotmail.com
Jim Wikotu	Wellington Street, Opotiki 3198	021 086 57781	-
Murphy Ihe	25 Bairds Road, RD 2, Opotiki	(07) 315 8869	-
Graeme Riesterer	Paerata Ridge, RD 2, Opotiki	(07) 315 5420	-
Julie Te Urikore Lux	RD2 Omaramutu, Opotiki 3098	(07) 315 8858	-
Margaret Williams	11 Redcrest Ave, Papakura, Auckland	(09) 299 2132	ashfordmarg@gmail.com
Tuwhakairiora Williams	2211-10 Waterloo Quadrant, Auckland Central, Auckland 1010	021 899 891 or (09) 302 0865	tuwill@xtra.co.nz
Muriel Smith-Kelly	272 Crooked Road, RD2, Opotiki 3198	(07) 315 5419	
Eric Tamaitikore Hudson	4 Huber Street, Weymouth, Manurewa, Auckland	027 4964 722	-
Theresa McMurtrie	9 Wellington Street, Opotiki	(07) 315 6753	-
Wek Michael Riri	Otara Road, RD 1, Opotiki	(07) 315 4750 – work	-
Christine Rolleston	51 Goring Street, Opotiki	(07) 315 5440	-
Rita Wordsworth (Ngai Tamahaua)	Paerata Ridge, RD2, Opotiki		rita.wordsworth@yahoo.com
John Hata (Ngati Patu)	PO Box 110, Opotiki, 3198	(07) 315 5591	-
Robert Edwards (Ngati Rua)	Hukuwai Beach, RD2, Opotiki	(07) 315 7718	-

**SCHEDULE TWO  
PARTICULARS**

Customary activity, use and/or Practice	Scale of activity/use/practice	Extent of activity/use/practice	Frequency of activity/use/practice	Substantially uninterrupted use since 1840
1. Harvesting Kaimoana - to feed whanau - to feed kaumatua - to feed hapu - to provide kai for hui, tangihanga and marena	<ul style="list-style-type: none"> <li>• Enough kaimoana for consumption:               <ul style="list-style-type: none"> <li>- personally</li> <li>- by whanau</li> <li>- by kaumatua</li> <li>- by hapu</li> <li>- by iwi</li> <li>- at hui, tangihanga or marena</li> </ul> </li> <li>• As much kaimoana but no more than needed for drying, preserving and storing for hui, tangihanga and marena</li> <li>• Hapu would sometimes come together to harvest kaimoana – as much as but no more than needed by the hapu</li> <li>• Enough kaimoana for the survival and sustenance of whanau, hapu and iwi</li> </ul>	<ul style="list-style-type: none"> <li>• Ohope</li> <li>• Ohiwa</li> <li>• Waiotahi</li> <li>• Waiaua River Mouth</li> <li>• Omarumutu</li> <li>• Opape</li> <li>• Opape to Hinehinenui</li> <li>• Motu River Mouth</li> </ul>	<ul style="list-style-type: none"> <li>• As often as every day – as little as annually</li> <li>• As often as food was and is needed</li> <li>• Seasonal harvesting for some kaimoana species</li> <li>• Kaimoana continuously harvested as necessary</li> <li>• Kaimoana continuously harvested as and when sustainable management of kaimoana stocks allows</li> <li>• Gathered any time kaimoana is available</li> </ul>	<ul style="list-style-type: none"> <li>• Mai rano nga tikanga me nga kawa e pa ana ki tenei mahi</li> <li>• Tikanga associated with harvesting kaimoana is passed down through generations of whanau</li> <li>• Knowledge passed on to current generation from parents, grandparents and tupuna</li> <li>• Knowledge also passed on to children and grandchildren</li> <li>• A strong connection is still maintained with the moana</li> <li>• Practiced continuously since before 1840; still practiced today</li> <li>• Exercised continuously without restriction, except as imposed by themselves</li> </ul>
2. Fishing - to feed whanau - to feed kaumatua - to feed hapu	<ul style="list-style-type: none"> <li>• Enough fish for consumption:               <ul style="list-style-type: none"> <li>- personally</li> <li>- by whanau</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Waiaua River Mouth</li> <li>• Motu River Mouth</li> <li>• Omarumutu</li> <li>• Waiotahi</li> </ul>	<ul style="list-style-type: none"> <li>• As often as every day – as little as annually</li> <li>• As often as food was and is needed</li> </ul>	<ul style="list-style-type: none"> <li>• Mai rano nga tikanga me nga kawa e pa ana ki tenei mahi</li> <li>• Traditional fishing grounds</li> </ul>

Customary activity, use and/or Practice	Scale of activity/use/practice	Extent of activity/use/practice	Frequency of activity/use/practice	Substantially uninterrupted use since 1840
<ul style="list-style-type: none"> <li>- to provide kai for hui, tangihanga and marena</li> </ul>	<ul style="list-style-type: none"> <li>- by kaumatua</li> <li>- by hapu</li> <li>- by iwi</li> <li>- at hui, tangihanga or marena</li> <li>• As much fish but no more than needed to store over winter months</li> <li>• Sometimes got extra for whanau who could not go to beach</li> <li>• Gathered enough fish to dry and smoke to last the whole year</li> <li>• Preservation of fish until next season</li> <li>• If more was gathered, it would be given to other whanau who could not get their own</li> <li>• Enough fish for the survival and sustenance of whanau, hapu and iwi</li> </ul>	<ul style="list-style-type: none"> <li>• Opape</li> <li>• Opotiki Harbour (Huntress Creek)</li> <li>• Otara River Mouth'</li> <li>• Snells Beach</li> <li>• Matahiwi</li> <li>• Ohiwa</li> <li>• Fishing grounds = Rurekereke and Hamataru</li> <li>• Maunga Tapu</li> <li>• Hamama / Whangai-Ika</li> </ul>	<ul style="list-style-type: none"> <li>• Continuous fishing as was and is necessary</li> <li>• Continuous fishing when sustainable management of fish stocks allow</li> <li>• Seasonal fishing for some fish species               <ul style="list-style-type: none"> <li>- Moki</li> <li>- Frost fish</li> <li>- Whitebeai</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• are still used today</li> <li>• Tamariki and mokopuna fish in the same places as their kaumatua did</li> <li>• Descendants are steeped in Whakapapa and teachings from Ranginui and Papatuanuku</li> <li>• Tikanga associated with fishing is passed down through generations of whanau</li> <li>• Knowledge passed on to current generation from parents, grandparents and tupuna</li> <li>• A strong connection is still maintained with the moana</li> <li>• Exercised continuously without restriction, except as imposed by themselves</li> </ul>
<p>3. Exercise of kaitiakitanga</p> <ul style="list-style-type: none"> <li>- conservation of kaimoana and fish stocks</li> <li>- conservation of</li> </ul>	<ul style="list-style-type: none"> <li>• The responsibilities to exercise kaitiakitanga are inherited</li> <li>• Obligations of kaitiakitanga are necessarily undertaken continuously</li> </ul>	<ul style="list-style-type: none"> <li>• From Te Horo to Te Rangi</li> <li>• Opape</li> <li>• Omarumutu</li> <li>• Opotiki</li> </ul>	<ul style="list-style-type: none"> <li>• Kaitiakitanga exercised daily</li> </ul>	<ul style="list-style-type: none"> <li>• Tikanga is passed down through generations of whanau</li> <li>• Relationship with moana and its whenua is timeless</li> <li>• Conservation techniques</li> </ul>



Customary activity, use and/or Practice	Scale of activity/use/practice	Extent of activity/use/practice	Frequency of activity/use/practice	Substantially uninterrupted use since 1840
<ul style="list-style-type: none"> <li>- resources and environment protection from erosion</li> <li>- marine farming</li> <li>- caring for plant and mineral resources, (e.g. harekeke and pingao)</li> <li>- sustainable management of resources</li> </ul>	<ul style="list-style-type: none"> <li>• The incidents of kaitiakitanga all reflect the elements of inherited responsibility and continuous exercise</li> <li>• Examples of the incidents of kaitiakitanga include: <ul style="list-style-type: none"> <li>- every time anyone goes out fishing or harvesting kaimoana;</li> <li>- whenever anyone goes out to harvest and preserve plant resources</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Tirohanga</li> <li>• Waiotahi</li> <li>• Ohiwa</li> <li>• Snells Beach</li> <li>• Bryan's Beach</li> <li>• Morrison's Bay</li> <li>• Opotiki to Tirohanga</li> <li>• Opotiki to Bryan's beach</li> </ul>		<ul style="list-style-type: none"> <li>• developed and improved over time</li> <li>• Exercised continuously without restriction, except as imposed by themselves</li> </ul>
<p>4. Exercise of Mana Motuhake and Rangatiratanga</p>	<ul style="list-style-type: none"> <li>• The responsibilities of Mana Motuhake and Rangatiratanga are inherited</li> <li>• The incidents of Mana Motuhake and Rangatiratanga all reflect the elements of inherited responsibility and continuous exercise. For example: <ul style="list-style-type: none"> <li>- self determination</li> <li>- self management</li> <li>- self governance</li> <li>- kaitiakitanga</li> </ul> </li> <li>• Mana Motuhake and Rangatiratanga embrace</li> </ul>	<ul style="list-style-type: none"> <li>• From Te Rangi to Te Horo</li> </ul>	<ul style="list-style-type: none"> <li>• Mana Motuhake and Rangatiratanga exercised daily</li> </ul>	<ul style="list-style-type: none"> <li>• Continuously maintained and observed</li> <li>• Responsibility passed down through the generations</li> <li>• Exercised continuously without restriction, except as imposed by themselves</li> </ul>

Customary activity, use and/or Practice	Scale of activity/use/practice	Extent of activity/use/practice	Frequency of activity/use/practice	Substantially uninterrupted use since 1840
5. Use of resources for medicinal and healing purposes	<p>acknowledgment of shared interests in certain areas</p> <ul style="list-style-type: none"> <li>• Certain areas were set aside for healing and bathing purposes</li> <li>• Certain plants used for rongoa were only planted in areas where they would be protected</li> <li>• Use of as many or as much as was required</li> </ul>	<ul style="list-style-type: none"> <li>• Opape</li> <li>• Omarumutu</li> <li>• Waitotahi</li> </ul>	<ul style="list-style-type: none"> <li>• As often as was and is needed</li> <li>• Regularly when someone is sick</li> <li>• As often as several times a day and as little as once every few years</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge passed down since before 1840 from one generation to another</li> <li>• Medicinal and healing uses still practiced today</li> </ul>
6. Resource Extraction <ul style="list-style-type: none"> <li>- shells/fossils</li> <li>- wood</li> <li>- bones</li> <li>- sulphur</li> <li>- seaweed</li> <li>- stones</li> <li>- sand</li> </ul>	<ul style="list-style-type: none"> <li>• Enough shells/fossils for whanau gardens, fowl houses, paving/driveways, ornaments, to fill swamp areas</li> <li>• Enough wood for cooking and heating (e.g. sufficient to last through the winter months)</li> <li>• Enough bones for jewellery, carvings and other taonga</li> <li>• Enough sulphur for fertiliser</li> <li>• Enough seaweed for garden mix, fertiliser, kai, rongoa</li> <li>• Enough stones for hangi pits, for cooking and for</li> </ul>	<ul style="list-style-type: none"> <li>• Opape</li> <li>• Omarumutu</li> <li>• Tirohanga</li> <li>• Waitotahi</li> <li>• Bryan's Beach</li> <li>• Whakaari</li> <li>• Ohope to Opape</li> </ul>	<ul style="list-style-type: none"> <li>• As often as needed</li> <li>• Continuously if required</li> <li>• Continuous extraction when sustainable management of resources allow. For example: <ul style="list-style-type: none"> <li>- As often as stocks (e.g. wood) were available</li> <li>- After storms have exposed resources</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge used today has been passed down through generations</li> <li>• Practices are developed and continuously used down the generations</li> <li>• Lifetime uses in particular were passed down to be carried on by the next generation</li> <li>• Only restrictions on continuous use were those imposed by the people themselves</li> </ul>