

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

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

CIV-2011-485-000817

IN THE MATTER

of an application by the late CLAUDE
AUGUSTIN EDWARDS (deceased),
ADRIANA EDWARDS and others on behalf
of Te Whakatōhea 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”)

Hearing: 26 October 2018 (at Rotorua)

Counsel: A J Sinclair for CA Edwards and others on behalf of Te
Whakatōhea
A J Sinclair (acting on instructions on behalf of Mr C B
Hirschfeld) for RM Parkinson for Te Uri a Tehapu, L Delamere on
behalf of Whakatōhea Pakowhai Hapū and Te Whānau-a-Apanui
Hapū, C Davis on behalf of Ngāti Muriwai Hapū and D Flavell of
Hiwarau C, Turangapikitoi, Waitotahe and Ōhiwa of Whakatōhea
A T Sykes for Te Rua Rakuraku for and on behalf of the hapū o
Ngāti Ira o Waioweka Rohe
N Tahana for the Trustees of Te Rūnanga o Te Whānau on behalf
of Te Whānau-a-Apanui
N Tahana (acting on instructions on behalf of T J Castle) for
M Tarau (substituted for Caroline Takotohiwi) on behalf of Ngāi
Taiwhakaea Hapū
R A Siciliano for PT Biddle, KS Mokomoko and the Uri
(Descendants) of Whakatōhea Rangatira Mokomoko
R N Zwaan for Te Ūpokorehe Treaty Claims Trust on behalf of
Te Ūpokorehe
S T Webster for Te Rūnanga o Ngāti Awa on behalf of Ngāti Awa
T T R Williams and H Clark for TF Hillier on behalf of Ngāi
Tama and Ngāi Tamahaua Hapū and MM Jones on behalf of Ngāi
Tai Iwi and Ririwhenua Hapū
J J M Bartlett (acting on instructions from Mr T H Bennion) for
J Hata on behalf of Ngāti Patumoana
J Mason for CM Paul on behalf of the Manu Paora Whānau and
CM Paul for an order recognising Customary Marine Title for all
Māori in Marine and Coastal Area of Aotearoa
G E Sharrock for R Dargaville on behalf of Members of the
New Zealand Māori Council
G M N Gillies for Attorney-General

MINUTE (No. 2) OF COLLINS J

[1] On 26 October 2018, I resumed the first case management hearing in Rotorua. It was necessary to adjourn the hearing on 7 June 2018 because Mr Sinclair, counsel for, amongst other claimants, CA & A Edwards, had only recently been instructed to act for the applicants.

[2] This minute should be read in conjunction with Minute (No. 5) dated 18 July 2018.

[3] The claim brought by members of the Edwards family is a priority claim. Mr Sinclair advised the Court that his clients were making reasonable progress in compiling their evidence. He anticipated being in a position to have his clients' evidence ready by May or June 2019. The principal caveat to Mr Sinclair's planning concerns his clients' desire to obtain a brief of evidence from a legal historian concerning the Crown's actions in seizing Whakatōhea lands in 1865.

[4] It is at this juncture difficult to ascertain if the Court will be greatly assisted by a legal historian's report. As counsel for a number of the applicants with cross-claims explained, the events of 1865 have been canvassed in considerable detail in Waitangi Tribunal hearings and reports and ultimately, it will be for the Court to determine whether, as a matter of law, the Crown's actions in 1865 mean that the applicants are unable to establish continuous occupation and use of the foreshore in question since 1840.

[5] Ms Sykes, counsel for Te Rua Rukuraku and on behalf of the hapū o Ngāti Ira o Waioweka Rohe, continued to stress the importance of a unified approach towards mapping. The Crown have made some acknowledgements in that direction. From the Court's perspective, Ms Sykes is entirely correct when she says that mapping will be the key to unlocking a number of issues concerning cross-applications.

[6] At this juncture, counsel anticipate that a hearing of the application brought on behalf of the Edwards family, and the cross-applications, will take approximately eight weeks. It is likely therefore that a hearing will not be able to be held until 2020.

[7] Interested parties who are not applicants are invited to participate in the second case management conference, which will be conducted in Rotorua on **19 June 2019**. Interested parties who are not applicants and who wish to participate in the hearing of the priority application will need to start preparing their evidence and comply with the timetable set out below.

[8] The following timetable is put in place to ensure that as much progress as possible can be made towards a hearing in 2020:

- (1) All evidence in support of the Edwards priority application is to be filed and served by **5 July 2019**.
- (2) All evidence on behalf of applicants with cross-claims is to be filed and served by **6 September 2019**.
- (3) Evidence from interested parties who are not applicants is to be filed and served by **2 December 2019**.
- (4) Any evidence from the Crown in response is to be filed and served by **2 March 2020**.
- (5) A hearing date is allocated to commence on **17 August 2020**.

D B Collins J

Solicitors:

Foster & Milroy, Hamilton Central for CA & A Edwards on behalf of Te Whakatōhea, RM Parkinson on behalf of Te Uri a Tehapu, L Delamere on behalf of Whakatōhea Pakowhai Hapū and Te Whānau-a-Apanui Hapū, C Davis on behalf of Ngāti Muriwai Hapū and D Flavell of Hirwarau C, Turangapikitoi, Waitotaha and Ōhiwa of Whakatōhea

Annette Sykes & Co, Rotorua for Te Rua Rakuraku on behalf of Ngāti Ira o Waioweka Rohe
Kahui Legal, Wellington for Te Whānau-a-Apanui

McCaw Lewis, Hamilton for Whakatōhea Rangatira Mekomoko

Zwaan Legal, Wellington for Te Ūpokorehe

Koning Webster Lawyers, Papamoa for Te Rūnanga o Ngāti Awa

Wackrow Williams & Davies Ltd, Auckland for TF Hillier on behalf of Ngāi Tama and Ngāi Tamahau Hapū and MM Jones on behalf of Ngāi Tai Iwi and Ririwhenua Hapū

Bennion Law, Wellington for Ngāti Patumoana

Phoenix Law Ltd, Wellington for CM Paul and CM Paul on behalf of Manu Paora Whānau

Rightlaw, Auckland for R Dargaville on behalf of Members of the New Zealand Māori Council

Crown Law Office, Wellington for Attorney-General