

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

**I TE KŌTI MATUA O AOTEAROA  
WHANGĀREI-TERENGA-PARĀOA ROHE**

**CIV-2017-404-305  
Continued .../3**

UNDER 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 TAMIHANA PAKI on behalf of TE PARAWHAU  
First Named Applicant

AND KOROKOTA MARAE on behalf of TE PARAWHAU HAPŪ  
Second Named Applicant

Continued .../3

Hearing: 22 August 2024

Counsel: C Hockly for Te Parawhau (CIV-2017-485-000305)  
R and M Enright for Korokota Marae on behalf Te Parawhau Hapū (CIV-2017-485-799)  
K Dixon, L Tothill and T Talamaivao for Patuharakeke Te Iwi Trust Board (CIV-2017-485-281)  
B Lyall and H Swedlund for Te Rae Ahu Whenua Trust (CIV-2017-485-239)  
M Chen and C Saunders for Te Rūnanga o Ngāti Whātua (CIV-2017-404-563)  
J P Kahukiwa for Te Waiariki, Ngāti Korora, Ngai Takapari (CIV-2017-404-566)  
J Inns and K van Wijngaarden for Ngāti Wai (CIV-2017-485-283; CIV-2017-404-554)  
J Mason, U Kuddus and P Corbett for Ngāti Kawau (CIV-2017-485-398); Ngā-Puhi-nui-tonu (CIV-2017-404-537); Reti Whānau (CIV-2017-485-515)  
T Bennion and O Ford Brierley for Ngāti Pūkenga (CIV-2017-485-250)  
C Terei-Tipene for Ngāti Hine (CIV-2017-485-231)  
T Afeaki and G Erskine for Ngā Hapū O Tangaroa aki Te Ihu o

Mania ta atu ki Mangawai (CIV-2017-404-579)  
J Golightly for North Port Limited  
J Golightly for Marsden Cove Management Ltd  
C Simmons, E Ellis for Channel Infrastructure NZ Ltd  
R Roff and Y Moinfar-Yong for Attorney-General

Minute: 16 September 2024

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**MINUTE OF HARVEY J**  
**[Admissibility and conflict issues]**

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Continued ...

**CIV-2017-485-799**  
**CIV-2017-485-2841**  
**CIV-2017-485-239**  
**CIV-2017-404-563**  
**CIV-2017-404-566**  
**CIV-2017-485-283**  
**CIV-2017-404-554**  
**CIV-2017-485-398**  
**CIV-2017-485-250**  
**CIV-2017-485-231**  
**CIV-2017-485-515**  
**CIV-2017-404-573**  
**CIV-2017-404-579**  
**CIV-2017-404-537**

AND

PATUHARAKEKE TE IWI TRUST  
BOARD  
Third Named Applicant

STEPHEN PANOHO on behalf of TE RAE  
AHU WHENUA TRUST  
Fourth Named Applicant

ALAN RIWAKA, Chief Executive of TE  
RŪNANGA O NGĀTI WHĀTUA  
Fifth Named Applicant

PERERI MAHANGA on behalf of TE  
WAIARIKI NGĀTI KORORA, NGĀTI  
TAKAPARI  
Sixth Named Applicant

NGATIWAI TRUST BOARD on behalf of  
NGATIWAI  
Seventh Named Applicant

KARE RATA on behalf of NGĀ HAPŪ O  
NGĀTI WAI  
Eighth Named Applicant

LOUISE COLLEYR on behalf of NGĀTI  
KAWAU and TE WAIARIKI KORORA  
Ninth Named Applicant

TE TAWHARU O NGĀTI PŪKENGĀ on  
behalf of NGĀTI PUKENGĀ

Tenth Named Applicant

TE RŪNANGA O NGĀTI HINE on behalf  
of NGĀTI HINE

Eleventh Named Applicant

ELVIS RETI on behalf of the RETI  
WHĀNAU

Twelfth Named Applicant

MAIA HONETANA on behalf of NGĀ  
TAHUHU NGĀATI TU KI NGĀTI  
KUKUKEA

Thirteenth Named Applicant

WAIMARIE KINGI on behalf of NGĀ  
HAPŪ O TANGAROA AKI TE IHU O  
MANAIA TAE ATU KI MANGAWHAI

Fourteenth Named Applicant

JOEPH KINGI on behalf of NGĀPUHI NUI  
TONU, NGĀTI RAHIRI, NGĀ TAHUHU  
and NGAITAWAKE

AND

NORTH PORT LIMITED,  
MARSDEN COVE CANALS  
MANAGEMENT LIMITED,  
CHANNEL INFRASTRUCTURE NZ  
LIMITED,  
ATTORNEY-GENERAL,  
NGĀPUHI HAPŪ and NGĀPUHI-NUI-  
TONU (MAC-10-10-50)  
Interested Parties

## **Admissibility**

[1] Before the close of the Whangarei Harbour E1(a) hearing, I requested Mrs Golightly for Northport Ltd to have Gregory Blomfield file a map or maps setting out the areas referred to in submissions and evidence. The purpose of this was to provide me with an aid to understanding the parties respective cases better.

[2] An affidavit with three maps was filed on 14 May 2024. Soon after, various counsel raised objections to the scope of the affidavit arguing that its content went beyond what the Court requested. Mrs Golightly argued that what Mr Blomfield had filed was consistent with the Court's request. At a case management conference, the suggestion was raised that the matter could be subject to either oral arguments or I could decide on the papers. These matters lay until 22 August 2024.

[3] At the hearing held on 22 August 2024, Mr Enright and Mrs Golightly requested a ruling on whether questions could be put to Mr Blomfield on his May 2024 affidavit with Mr Enright intimating that he and other counsel were not entirely prepared for that exercise. I then ruled that questions could be put to Mr Blomfield. Counsel then filed a memorandum requesting a formal ruling.

[4] At the commencement of that hearing, I confirmed that admissibility had not been determined and that this was still a live issue. I outlined to counsel that it was my preference to not only consider further that affidavit but to also hear counsels' questions for Mr Blomfield. After all, that had been one of the principal objections to the evidence — that counsel did not have the opportunity to question Mr Blomfield so late in the hearing process and after matters had effectively concluded.

[5] The questioning of Mr Blomfield then proceeded. During that process, two parts of his evidence were struck out at Mr Enright's request, namely paragraphs 3(b) and 4. Mrs Golightly expressed her concerns with that approach, underscoring that she considered those parts of Mr Blomfield's evidence were consistent with the Court's request. Mr Enright's point was that if applicant counsel could not cross-examine interested party witnesses on substantial interruption, then it was not appropriate for such witnesses to refer to Māori customary matters.

[6] I agreed with that submission, hence the determination at the time that 3(b) and 4 of the affidavit would be struck out. Mr Blomfield was then subject to extensive questioning from counsel, including Mr Enright, along with re-examination from Mrs Golightly.

[7] The result is that I am now better informed as to the applicants' case and of the interested parties' argument that their grounds for substantial interruption are based primarily on applicant evidence. In any event, I reiterate that Mr Blomfield's maps, subject to the challenges put to that evidence by applicant counsel, remain a useful aid to assist in the Court's determination of these matters.

[8] In addition, Mr Blomfield accepted, however cautiously, Mr Enright's contention that he had taken an expansive approach to his lines on the maps. That said, I also noted Mr Blomfield's reply that he had attempted to prepare maps consistent with what he understood the various resource consents and related authorities had to say regarding where lawful activities of the interested parties occurred. Mr Enright made the equally valid point that, where there are no existing resource consents, future developments are speculative.

[9] Mr Blomfield's May 2024 affidavit is admissible, subject to the changes at [5] and taking account of his answers to counsels' cross-examination and re-examination.

[10] Finally, regarding Mr Lyall's objections, Ms Roff for the Attorney-General suggested, having viewed the notes of evidence of Mr Blomfield's evidence from 22 August 2024, if Mr Lyall had further questions, they could be put in writing. Helpful as that suggestion was, for consistency, if Mr Lyall considered he had questions for Mr Blomfield, I would prefer that the latter be recalled.

### **Conflicts**

[11] I refer to my minute of 19 April 2024 concerning Mr Sinclair where it was pointed out that it would have been preferable for him to have disclosed his relationship with Ms Rata from the start. I made two further points. First, that Mr Sharp continuing to act as counsel to the end of the proceedings was appropriate with Mr Sinclair assisting in a junior capacity without appearance. This was on the

proviso that Mr Sharp as senior counsel would make all the trial strategy decisions. Secondly, that in light of this, I could take matters no further without additional argument.

[12] Recently, the matter has been raised again. In short, having considered the issue afresh, given the arrangements now in place for Stage 1 (a) and Stage 1 (b), I have every confidence that, with Mr Sharp continuing to be engaged as senior counsel for Ms Rata, her case can proceed as planned. This is because I know Mr Sharp to be an experienced, professional and well-respected practitioner. Overall, I consider, as intimated previously, that any formal complaint is a matter for the New Zealand Law Society - Te Kāhui Ture o Aotearoa. I say this while taking careful account of the principles outlined in *Black v Taylor*.<sup>1</sup>

[13] Then there is the issue raised on 19 August 2024 by Phoenix Law Ltd regarding their former employee, Ms Johnson, who is now working for Ngātahi Law Ltd and Mr Sinclair. In summary, Mr Kuddus submitted that, as Ms Johnson had been privy to the strategy of Phoenix Law's clients, it would be unfair for her to continue to have any involvement in the case for another claimant. Counsel contended that this is a clear case of conflict. Ms Johnson should therefore, according to this argument, stand down and have no further involvement in the hearing. Ms Mason filed a further memorandum on 20 August 2024, setting out additional concerns.

[14] Then, on 21 August, Mr Sharp sent a reply to Ms Mason setting out why Ms Johnson was not in breach of r 8.7.1 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 that would prevent her from acting for Ms Rata. Counsel made the point that Ms Johnson was only employed for three months working with Joseph Kingi reviewing affidavits for the Stage 1 (a) hearings. This did not involve access to confidential information which might be prejudicial to Mr Kingi's claims for Stage 1 (b), according to Mr Sharp.

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<sup>1</sup> *Black v Taylor* [1993] 3 NZLR 403 (CA). See also *Stewart v Legal Complaints Review Officer* [2016] NZHC 916, [2016] NZAR 900.

[15] Following that, on 28 August 2024, Phoenix Law then sent a reply disputing the position submitted for Ms Johnson that she did not receive confidential information because she had participated in strategy meetings.

[16] In his reply memorandum of 28 August 2024, Mr Sharp accepted that the appropriate process was for a response to be provided for Ms Johnson to the claim. Then, if the matter could not be resolved, Phoenix Law would need to file an application seeking orders restraining Ms Johnson from appearing. Mr Sharp referred to *100 Investments v Walker* as a relevant authority in the present context.<sup>2</sup> In that decision, the overarching question is whether allowing a lawyer to act would impair the integrity of the judicial process. According to Campbell J, that could happen in three instances.

[17] First, where the lawyer was effectively defending their own conduct or advice. Secondly, where the lawyer could be required to give evidence of a contentious nature. Thirdly, where a lawyer acts against a former client and restraint is necessary to protect confidential information held by the lawyer about the client. Before restraint is appropriate, there must be a reasonable risk of the concern arising; mere speculation or theoretical concerns are insufficient.<sup>3</sup>

[18] Further, Mr Sharp submitted that the ongoing assertion that Ms Johnson has a conflict is not accepted. He contended that if Ms Mason's clients wish to take the matter further, a restraint application should be filed as soon as possible. Counsel also sought directions.

[19] If Phoenix Law wish to continue with this conflict claim, then an application to restrain should be filed within five working days (by 4 pm on **Monday 23 September 2024**) along with any supporting affidavits and memorandum of counsel. Mr Sharp will have a further five working days to reply (by 4 pm on **Monday 30 September 2024**). This constrained timeframe is necessary because, as counsel are aware, the proceedings are set to conclude by 11 October 2024.

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<sup>2</sup> *100 Investments v Walker* [2023] NZHC 2227, 3 NZLR 78.

<sup>3</sup> At [35]–[56].



[20] In that context, I would ask counsel to review their positions. With the case concluding next month, I wonder what actual prejudice, if any, can be or has been caused. The effort involved in complying with the directions set out in [19] might be better deployed to closing submissions or some other critical aspect of the proceedings. I say this merely as an observation, accepting that counsel and her clients are entitled to bring such a claim if they so wish. Otherwise, a chambers conference can be arranged sometime during the week to discuss these matters further, as there does appear to be some flexibility around scheduling.

A handwritten signature in blue ink, consisting of a large, stylized initial 'H' followed by a series of loops and a long horizontal stroke ending in a small flourish.

Harvey J