



# THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

31 October 2024

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## **MEDIA RELEASE**

RORE PAT STAFFORD v ATTORNEY-GENERAL

[2024] NZHC 3110

## **PRESS SUMMARY**

This summary is provided to assist understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at High Court Judgments of Public Interest: <https://www.courtsofnz.govt.nz/judgments/high-court/>.

### **Supreme Court judgment**

In 2017, the Supreme Court held that the Crown owed fiduciary duties to the customary owners of land located at the top of the South Island (Te Taihū o te Waka a Māui, the prow of Māui's canoe). Issues of liability, loss and remedy were referred back to the High Court. This judgment determines those issues.

The duties found by the Supreme Court required the Crown to reserve 15,100 acres of land (the Tenth) for the benefit of the customary owners and, in addition, to exclude pā, urupā and cultivations from the land obtained by the Crown in 1845.

These are unique private law duties owed to the customary owners. They are not duties owed by the Crown to Māori more generally, and the plaintiff's claim is not for breach of te Tiriti o Waitangi | the Treaty of Waitangi.

## **Background**

In 1839, the New Zealand Company purported to purchase extensive tracts of land, including the customary owners' land for the intended settlement at Nelson.

The Tenthhs were the primary form of payment for this land. These were sections comprising one-tenth of the land granted to the Company for its proposed settlement. It was intended that the Tenthhs would be held in trust for the customary owners and administered for their exclusive benefit (for example by leasing the Tenthhs to settlers to generate rental income). The Tenthhs were to be kept for future generations and were not to be sold, at least until 1856. See at [4] and [305].

It was also intended that the customary owners would continue to occupy their pā, urupā and cultivations. These are referred to as the Occupation Lands in the judgment. These lands had not been sold and they were to remain in customary ownership. The customary owners would therefore have the benefit of the Tenthhs and, in addition, retain their pā, urupā and cultivations. See at [7]–[9] and [404]–[407].

The Crown obtained the customary owners' land when it accepted an award made by Commissioner William Spain in 1845. Commissioner Spain investigated the terms of the Company's purchase and recommended that the Crown make a grant of land to the Company subject to the reservation of 15,100 acres of Tenthhs and, in addition, the exclusion of pā, urupā and cultivations. On acceptance of the Spain award, the land became Crown land and the Crown owed fiduciary duties to the customary owners to fulfil these conditions.

## **The present claim**

The plaintiff represents the descendants of the customary owners. He seeks the return of land and compensation for different heads of loss resulting from alleged breaches of the fiduciary duties found by the Supreme Court. The total sum claimed ranges between \$4.4–6 billion.

The Crown denies it breached its fiduciary duties and raises affirmative defences based on the Limitation Act 1950; Treaty settlements received by the customary owners; and the equitable defence of laches and acquiescence.

## **Issue one: did the Crown breach its fiduciary duties?**

Yes, but not to the extent claimed by the plaintiff.

Due to the passage of time, many of the plaintiff's claims cannot be proved. However, the Court finds the Crown breached its fiduciary duties in four different ways.

First, as the Crown accepted, it failed to reserve 10,000 acres of Tenth. This was a breach of the fiduciary duty found by the Supreme Court to reserve 15,100 acres for the benefit of the customary owners. These 10,000 acres comprised a significant proportion of the payment for the customary owners' land. The Crown could not provide a reasonable justification for the failure to reserve these Tenth. Like any other fiduciary or trustee, the Crown was not at liberty to simply decide it would not reserve these Tenth for the customary owners. See at [24] and [439]–[490].

Second, the Crown engaged in two transactions which resulted in the loss of some of the Tenth which had been reserved (the Allocated Tenth). In 1844, 400 acres of Tenth were wrongly surrendered so that land within Te Maatū, a large wood in Motueka, could be secured. In 1847, 47 acres of Tenth were withdrawn from the Nelson township and not replaced. The Court finds that the Crown breached its fiduciary duties by failing to preserve these Allocated Tenth for the customary owners. See at [27]–[29], [31] and [491]–[493]; Appendix 1 at [78]–[99] and [112]; and Appendix 2 at [3]–[13].

Third, the Crown failed to exclude pā, urupā and cultivations from eight of approximately 72 claimed sites of Occupation Lands. The Court fixes the boundaries of the eight sites by reference to the Tenth allocated in the area. Some of this land has already been returned to the customary owners and the plaintiff's claim is only to the net balance of the land. See at [32]–[36] and [494]–[499].

Fourth, the Crown allocated Tenth over pā, urupā and cultivations instead of reserving them from Crown land. These Tenth are referred to as the Occupied Tenth. This was a breach of the fiduciary duty to exclude pā, urupā and cultivations from the Crown land. It was also a breach of the fiduciary duty to reserve the Tenth from the land obtained by the Crown. The occupation of the Tenth meant that the Tenth could not be used to generate benefits for all customary owners. It also created a risk that the Tenth sections would be returned to the occupiers, meaning they were no longer held as Tenth for the benefit of all customary owners. See at [38]–[40], [417]–[427] and [502]–[504].

As a result of these breaches, the Crown obtained land which should have been held in trust for the customary owners, or which should have remained in customary ownership. This land was taken and used by the Crown as if it was Crown land.

**Issue two: did the customary owners suffer loss as a result of these breaches?**

Yes, but not to the extent claimed.

The Court finds that the customary owners suffered a loss of land, being the Tenth, and their pā, urupā and cultivations.

The customary owners also suffered the loss of the beneficial use of the Tenth. This loss is represented by the rentals that would have been generated by these Tenth.

However, loss of use of the pā, urupā and cultivations is not proved. That is because there is evidence that the customary owners were occupying the pā, urupā and cultivations at the relevant time.

**Issue three: are there any defences to the plaintiff's claims?**

Yes, but only in part.

The Limitation Act 1950 bars some of the plaintiff's claims but it does not bar any of the four claims outlined above. That is because a statutory exception applies to claims for the recovery of trust property still in the Crown's hands, or for trust property converted by the Crown to its own use. In this case the Crown converted both the land and its income generating potential when it used the land as if it was Crown land. See at [43]–[44] and [776]–[859].

The Treaty of Waitangi settlement received by the customary owners does not act as a complete defence to the plaintiff's claim. That is because the claim is preserved by a statutory provision in the Treaty settlement legislation. However, to ensure there is no double recovery, the Court finds that the sum of \$48 million should be deducted from the final sum awarded to the plaintiff. See at [45]–[47] and [860]–[899].

The equitable defences of laches and acquiescence do not operate as a complete defence to the plaintiff's claim. These defences capture situations where delay or a failure to assert rights, coupled with prejudice, make it inequitable to enforce the plaintiff's claims. While many of the plaintiff's claims fail due to the lack of evidence, the evidential prejudice to the Crown is not such that it constitutes a complete defence. Moreover, the Court finds that the plaintiff did

not act unreasonably in waiting to commence his claim—the customary owners have persisted in their efforts to seek redress for the Crown’s actions since at least 1854. See at [48]–[50] and [900]–[944].

**Issue four: is the plaintiff entitled to relief?**

Yes, but in a form yet to be determined.

The Court makes interim findings that the Crown holds certain land on trust for the benefit of the customary owners. This land does not include land owned by Crown entities, as sought by the plaintiff. See at [51], [533]–[647] and [1014].

The Court also holds that the plaintiff is entitled to the payment of compensation. This sum includes the current market value of the land which was held on trust but is no longer in the Crown’s hands. It also includes compensation for the value of the beneficial use of the Tenthhs which is represented by a calculation of the lost rental income. See at [52], [648]–[726] and [1015]–[1016].

The plaintiff’s claim for cultural loss compensation is declined. This is a novel claim, not previously recognised in the common law. While the Court considers the common law can accommodate this head of loss, further information is required before developing the law in this new direction. Treaty settlements received by the plaintiff include a cultural redress package which compensates for this loss to some extent. See at [41]–[42] and [727]–[775].

The form of relief cannot be settled until the final acreage of land to be returned and other issues (such as the application and calculation of simple interest) are determined. Further submissions are sought on these issues. See at [53] and [1009]–[1012].

However, the final monetary award, before interest, is likely to be substantially less than \$1 billion. Nevertheless, it will be a significant sum of money. An award of this nature against the Crown is not unprecedented in New Zealand and is a consequence of the Crown’s breach of its private law fiduciary duties owed to the customary owners. See at [53].