



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

25 October 2024

MEDIA RELEASE

WHAKATŌHEA KOTAHITANGA WAKA (EDWARDS) AND OTHERS v NGĀTI IRA O WAIŌWEKA, NGĀTI PATUMOANA, NGĀTI RUATAKENGA AND NGĀI TAMAHAUA (TE KĀHUI TAKUTAI MOANA O NGĀ WHĀNAU ME NGĀ HAPŪ O TE WHAKATŌHEA) AND OTHERS

(SC 121/2023, SC 123/2023, SC 124/2023, SC 125/2023, SC 126/2023, SC 128/2023, SC 129/2023)

Hearing in the Supreme Court Monday 4 November – Thursday 7 November and Tuesday 12 November – Friday 15 November 2024

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Background

This case concerns the interpretation and application of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA). Under MACA, the common marine and coastal area (previously referred to as the foreshore and seabed) cannot be owned and public rights to fish, navigate and access these areas are protected. However, iwi, hapū and whānau groups can apply to have their customary rights in the common marine and coastal area recognised by two types of recognition orders. These are called customary marine title (CMT) and protected customary rights (PCRs). Applicant groups can apply to the High Court for recognition orders or negotiate with the Crown for recognition. The test to establish CMT is in section 58 of MACA and the test for PCRs is in section 51.

Te Whakatōhea is an iwi whose rohe (traditional area) is situated in eastern Bay of Plenty around Ōpōtiki. Originally, one application was made to the High Court on behalf of Te Whakatōhea for recognition of the iwi's customary rights to the marine and coastal area within its rohe. This has led to three levels of dispute:

- Within the iwi: various hapū and other groups within Te Whakatōhea oppose the recognition orders being held at iwi level. As a result, these groups have made their own applications.
- With neighbouring iwi: neighbouring iwi are participating to the extent that Te Whakatōhea's applications overlap with their own applications.

- With third parties: other parties are participating as they may be impacted by the interpretation and application of MACA. These parties include the Attorney-General, Ngā Hapū o Ngāti Porou, interest groups (such as Seafood Industry Representatives and the Landowners Coalition Inc), Crown Regional Holdings Ltd and local authorities.

On 7 May 2021, the High Court made various PCR orders and three CMT orders in favour of certain applicants. However, on 18 October 2023, the Court of Appeal determined that two of the CMT orders should be reconsidered by the High Court. In its decision, the Court of Appeal explained the statutory tests for establishing PCRs and CMT. Several parties then applied for leave to appeal to this Court.

This appeal

On 17 April 2024, the Supreme Court granted the applications for leave to appeal the correctness of the judgment of the Court of Appeal. The appeals raise issues of statutory interpretation, MACA's application to the specific facts in the application area and procedure. While there are seven separate appeals before this Court, they are being treated as a single case due to the significant overlap in terms of issues and location.

On 23 July 2024, the Court granted the application for leave to intervene by Ngā Hapū o Ngāti Porou.

Viewing of hearing

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Kós	The Hon Justice Ellen France	The Hon Justice Glazebrook	The Hon Justice Williams	The Hon Justice French
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Judges as seen from the public gallery

Counsel

- Whakatōhea Kotahitanga Waka (Edwards): *R J B Fowler KC, A J Sinclair and B M Cunningham*
- Ngāti Muriwai and Kutarere Marae: *M J Sharp*
- Te Upokorehe Treaty Claims Trust on Behalf of Te Upokorehe Iwi: *J S Cooper KC, B R Lyall and H L B Swedlund*
- Attorney-General: *A J Williams, R L Roff and Y Moinfar-Yong*
- Ngāti Ira o Waiōweka, Ngāti Patumoana, Ngāti Ruatākenga and Ngāi Tamahaua (Te Kāhui Takutai Moana o Ngā Whānau me Ngā Hapū O Te Whakatōhea)
 - Ngāti Ira o Waiōweka: *A T I Sykes and S W H Fletcher*
 - Ngāti Patumoana: *M S Smith and T H Bennion*
 - Ngāti Ruatākenga: *K S Feint KC and N A T Udy*
 - Ngāi Tamahaua: *C M T Panoho-Navaja and J C Alexander*
- Te Tāwharau o Te Whakatōhea (Formerly Whakatōhea Māori Trust Board): *J M Pou*
- Ngāi Tai and Ririwhenua: *B R Arapere, A E Gordon and E K Rongo*
- Te Rūnanga o Ngāti Awa: *D M Salmon KC, H K Irwin-Easthope and R K Douglas*
- Landowners Coalition Inc: *J E Hodder KC, B E Morten and S O H Coad*
- Te Whānau-ā-Apanui: *M K Mahuika and N R Coates*

- Seafood Industry Representatives: *T D Smith and R J J Wales*
- Crown Regional Holdings Ltd and Ōpōtiki District Council: *M H Hill and J L Hollis*
- Whakatāne District Council: *A M Green and E S Greensmith-West*
- Ngā Hapū o Ngāti Porou: *M K Mahuika, T N Hauraki and H L P Ammunson*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 504](#) (18 October 2023)

Supreme Court leave decision: [\[2024\] NZSC 33](#) (17 April 2024)

