

IN THE WAITANGI TRIBUNAL

Wai 2566

CONCERNING

the Treaty of Waitangi Act 1975

AND

an application for an urgent hearing by Vernon Winitana on behalf of Ngāti Ruapani

**DECISION OF THE DEPUTY CHAIRPERSON
ON APPLICATION FOR AN URGENT HEARING**

20 September 2016

Introduction

1. On 28 July 2016 the Waitangi Tribunal received a statement of claim and an application for an urgent hearing from Vernon Winitana on behalf of Ngāti Ruapani (Wai 2566, #1.1.1 and #3.1.1). This was accompanied by the brief of evidence of Vernon Winitana (Wai 2566, #A1). The claim concerns Crown actions in relation to the settlement of Ngāti Ruapani's historical Treaty of Waitangi claims.
2. The applicant alleges that the Crown, by allowing the Waikaremoana Tribal Authority (WTA) to seek the mandate for Ngāti Ruapani, has allowed a non-Ruapani based body to seek the mandate for settlement, in breach of the principles of the Treaty of Waitangi.
3. On 29 July 2016 I directed the Crown and interested parties to file submissions and evidence by 12 August 2016 in response to this application for an urgent hearing. I also directed the applicant to file submissions and evidence in reply to those of the Crown and interested parties by 26 August 2016 (Wai 2566, #2.5.1).

Submissions of the applicant

4. The applicant submits that he will suffer significant and irreversible prejudice if the Crown continues to allow the WTA to seek the mandate for Ngāti Ruapani (Wai 2566, #3.1.1). The applicant notes that he has informed the Crown that the WTA is a Tūhoe based entity, and it is therefore inappropriate for the WTA to be seeking the mandate for Ngāti Ruapani.
5. The applicant submits that if the WTA is allowed to continue seeking the mandate for Ngāti Ruapani it will mean that Ngāti Ruapani's historical claims may be settled by a body that does not represent them, and does not recognise them as an iwi in their own right.

Submissions of the Crown

6. On 12 August 2016 the Tribunal received the submissions of the Crown responding to the current application for urgency (Wai 2566, #3.1.2).
7. The Crown opposes the application for an urgent hearing on the following grounds:
 - a) The applicant has not demonstrated he is suffering or is likely to suffer significant and irreversible prejudice as a result of Crown action or policy;
 - b) The matters complained of are internal matters;
 - c) A Tribunal inquiry would be premature;
 - d) The applicant has other avenues available to him to pursue which are more reasonable and appropriate in the circumstances; and
 - e) The Tribunal's criteria for an urgent inquiry have not been met.
8. The Crown notes that settlement of Ngāti Ruapani's historical Treaty claims is in its earliest stages, and that as yet there is no mandated entity formally proposed by Ngāti Ruapani to negotiate a settlement of Ngāti Ruapani claims.



9. The Crown submits that it has received the following instructions:
 - a) Te Toi Kura o Waikaremoana – which is a Ngāti Ruapani entity – and the WTA have facilitated the formation of a joint working group to progress a Ngāti Ruapani mandate (the working group);
 - b) The members of the working group are not delegates of either entity, but are Ngāti Ruapani people of Waikaremoana;
 - c) The working group is developing a draft mandate strategy with advice from the Office of Treaty Settlements (OTS); and
 - d) The draft mandate strategy proposes the formation of a new entity, the Ngāti Ruapani mai Waikaremoana Negotiating Group, to seek a mandate to represent Ngāti Ruapani in Treaty Settlement negotiations with the Crown.
10. The Crown submits that there is no current or pending Crown action which is likely to cause the applicant significant and irreversible prejudice. The Crown notes that while it considers that it is for a claimant group to decide who will represent it in settlement negotiations, the Crown has developed principles and policies for the mandating phase of the settlement process. With that in mind, the Crown submits that it will scrutinise the mandating process to ensure it has been sound, fair and transparent. The Crown will also scrutinise the outcome of the process so as to be satisfied that the decision reached has the broad support of the iwi and hapū members concerned and is likely to be enduring.
11. In relation to the Ngāti Ruapani settlement negotiations, the Crown has not endorsed any mandate strategy and no group has yet received the mandate of Ngāti Ruapani. The Crown has had no involvement in the mandate process thus far, beyond providing advice to entities who are interested in forming a body to seek the mandate. Accordingly, the Crown submits that there is no current or pending Crown action that could be conceived of as likely to cause prejudice to the applicant.
12. The Crown reiterates that the matters complained of are internal iwi matters, noting that the Tribunal has previously expressed hesitance in inquiring into matters of this nature. The Crown submits that such caution is required here.
13. The Crown submits that an urgent inquiry would be premature, noting that there are still a number of steps to occur before Ministers make a decision about whether or not to recognise any group's deed of mandate.
14. Finally, the Crown submits that there are a number of other avenues available to the applicant, including:
 - a) Making submissions on any draft mandate strategy;
 - b) Attending any hui that are held for the purposes of discussing who should represent the claimant group in negotiations with the Crown; and
 - c) Making submissions on the draft deed of mandate that will ultimately be considered for approval by the Crown.

Submissions of interested parties

Submissions of the Waikaremoana Tribal Authority

15. On 12 August 2016 the Tribunal received a letter from Lance Winitana, who is the Chairman of the WTA (Wai 2566, #3.1.3). Mr Winitana submits that the WTA is not pursuing and will not pursue the mandate to represent Ngāti Ruapani mai Waikaremoana in settlement negotiations with the Crown. Mr Winitana notes that the WTA supports the efforts and progress of the working group in informing hapū and whānau on the settlement process and to invite participation.

Submissions of Te Toi Kura o Waikaremoana

16. On 12 August 2016 the Tribunal received a letter from Nicky Kirikiri and Kath Pebbles, who are the Co-Chairs of Te Toi Kura o Waikaremoana (TTK) (Wai 2556, #3.1.4).
17. TTK is a working group consisting of representatives from the Ruapani ki Waikaremoana Collective Charitable Trust and Ngāti ki Waikaremoana Ruapani claims. In 2012 TTK was given permission from the Crown to seek a mandate to negotiate the settlement of Ngāti Ruapani's historical Treaty claims. However, that mandate process was unsuccessful. Since TTK's failed attempt to secure a mandate it has sought to work with other groups within Waikaremoana who have interests in achieving a mandate to negotiate the settlement of Ngāti Ruapani's historical Treaty claims, including with Te Tatau Pounamu o Waikaremoana (Te Tatau).
18. After unsuccessful engagement with Te Tatau, TTK wrote to and met with the WTA. After a number of meetings TTK and the WTA agreed to support the establishment of a working group to develop a mandate strategy for Ngāti Ruapani.

Submissions of the applicant in reply

19. On 26 August 2016 the Tribunal received the submissions of the applicant in reply to the submissions of the Crown, the WTA and TTK (Wai 2566, #3.1.5).

Reply to the submissions of the Crown

20. The applicant submits that the Crown has not provided any information as to why they are requiring Ngāti Ruapani to continue to speak to and work with the WTA, despite the assurance that the WTA is not intending on seeking the mandate for Ngāti Ruapani.
21. In terms of the Crown assertion that it has not been involved in the mandate process thus far, the applicant submits that this is incorrect. The applicant submits that the Crown wrote to him asking him to work with the MTA to form a mandated entity, which he submits is evidence of Crown involvement.

22. Finally, in terms of the Crown submission that the matters complained of are internal iwi matters, the applicant submits that the Crown allowing another iwi to seek the mandate for Ngāti Ruapani is not an internal iwi matter.

Reply to the submissions of the WTA

23. The applicant submits that he has not received any assurances from the WTA or the Crown that the WTA are not intending to seek the mandate to negotiate the settlement of Ngāti Ruapani's historical Treaty claims.

Reply to the submissions of TTK

24. The applicant submits that although WTA is not seeking the mandate directly, it is still involved in the process despite being from a different iwi. The applicant further submits that it is unclear from the submissions of TTK what the working group is intending to do.

Urgency Criteria

25. The Tribunal's *Guide to Practice and Procedure* states the following with regards to applications for an urgent hearing:

In deciding an urgency application, the Tribunal has a regard to a number of factors. Of particular importance is whether:

- The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
- There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- The claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- The claim or claims challenge an important current or pending Crown action or policy;
- An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
- Any other grounds justifying urgency have been made out.

Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.



Discussion

26. The central matter in the claim is Mr Winitana's belief that the Crown and the WTA are somehow colluding so that a non-Ruapani based body will obtain the mandate of Ngāti Ruapani for settlement purposes.
27. This is encapsulated in paragraph [3] of the statement of claim (Wai 2566, #1.1.1) which states:
- 3. The claimants say that by allowing the Waikaremoana Tribal Authority ("WTA") to seek the mandate for Ngāti Ruapani, the Crown has allowed a non-Ruapani based body to seek the mandate for Ngāti Ruapani's historical Treaty Settlement.*
28. That assertion is simply not made out on the evidence. I can understand that alarm bells may have rung on 11 March 2016 when Emily Owen, settlement development officer for OTS, in a letter to the interim chair of Te Tatau said, (Wai 2566, #A1 at attachment A):
- We understand the Authority are also interested in seeking a mandate to represent the Ngāti Ruapani ki Waikaremoana LNG [Large Natural Grouping]. With this in mind TTKOW [TTK] and TTPOW [Te Tatau] will also need to work with the Authority to secure a mandate to represent the Ngāti Ruapani ki Waikaremoana LNG. It is important that all three entities work together.*
29. The matter, however, has been well and truly clarified now at paragraph [20] of the Crown response (Wai 2566, #3.1.2) which states:
- In relation to the Ngāti Ruapani settlement negotiations, the Crown has not endorsed any mandate strategy and no group has yet received the mandate of Ngāti Ruapani. The Crown has had no involvement in the mandate process thus far, beyond providing advice to entities who are interested in forming a body to seek the mandate. Accordingly, there is no current or pending Crown action that could be conceived of as likely to cause prejudice to the applicant.*
30. The Chairman of the WTA Mr Lance Winitana wrote to the Tribunal in these terms (Wai 2566, #3.1.3):
- The Waikaremoana Tribal Authority is not and will not pursue the mandate to represent Ngāti Ruapani mai Waikaremoana in settlement negotiations with the Crown. At a well attended public hui held in June 2015 at Te Waimako marae I was very clear in declaring this position.*
31. In response, counsel for the applicant made a number of assertions contesting the Crown's submissions as to what had or had not happened (Wai 2566, #3.1.5 at [5]), pointing out that the applicant has not received any assurances from the WTA or the Crown that the renunciation of mandate referred to above will continue to be the case. The applicant is in fact driven back to the position of fulminating against the Crown and the WTA, but may rest content in having fired a warning shot.

Decision

32. There is no factual basis upon which I could find that there is a current or pending Crown action or policy likely to cause significant or irreversible prejudice.



33. The application for urgency in this matter is therefore dismissed.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel, and those on the notification list for Wai 2566, the Waikaremoana Tribal Authority Mandate claim.

DATED at Wellington this 25th day of September 2016

Judge P J Savage
Deputy Chairperson

WAITANGI TRIBUNAL