WAITANGI TRIBUNAL

Wai 2892

CONCERNING the Treaty of Waitangi Act 1975

AND the Wairoa Deed of Settlement (Callaghan) Claim

DECISION
ON APPLICATION FOR AN URGENT HEARING

23 September 2019

Introduction

1. This decision concerns an application for an urgent inquiry into Wai 2892, the Wairoa Deed of Settlement (Callaghan) Claim. The claim concerns the Wairoa settlement process and the alleged failure of the Crown to protect the rights and interests of Ngai Te Rātakō.

Background

2. The historical claims of Ngai Te Rātakō were settled in the Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 (the Settlement Act). Schedule 1 of the Settlement Act sets out the groups included in this settlement, listing Ngai Te Rātakō alongside Rongomaiwahine Iwi as one group.

3. The Post-Settlement Governance Entity (Tatau Tatau o Te Wairoa Trust) Trust Deed was signed in 2016. This Deed went through a number of revisions as iwi and hapū went through the process of mandating entities to represent them within the Tatau Tatau o Te Wairoa Trust. It is through this process that the applicant claims Ngai Te Rātakō has become subsumed within Rongomaiwahine Iwi and represented by Rongomaiwahine Iwi Trust, not their original Ngai Te Rātakō Social Services Trust.

Procedural History

4. On 17 July 2019, the Tribunal received a statement of claim and an application for an urgent inquiry from Dr Phyllis Gwen Callaghan (Wai 2892, #1.1.1 & #3.1.1). Affidavits of Alice Wairau, Pua Taumata, James Keil, Laura-Margaret Kele and the applicant, Dr Callaghan were also filed in support of the application (Wai 2892, #A1- #A5).

5. On 17 July 2019, the claim was duly registered as Wai 2892, the Wairoa Deed of Settlement (Callaghan) Claim (Wai 2892, #2.1.1).

6. On 2 August 2019, the Crown and the Rongomaiwahine Iwi Trust filed submissions opposing the application (Wai 2892, #3.1.4 & #3.1.2). The Tatau Tatau o Te Wairoa Trust filed a memorandum however counsel did not indicate a position in relation to supporting or opposing the application for urgency and stated that it would abide by the Tribunal's decision in this regard (Wai 2892, #3.1.3).

7. On 16 August 2019, counsel for the applicant filed submissions in reply to those of the Crown and interested parties (Wai 2892, #3.1.5).

8. On 19 August 2019, counsel for the Rongomaiwahine Iwi Trust sought an extension, due to emailing issues, to file affidavits in support of their submissions opposing the application and subsequently filed these (#A7-#A10). The applicants were granted leave to respond to these affidavits (Wai 2892, #2.5.3), which they filed on 6 September 2019 (Wai 2892, #3.1.10).

Parties' Submissions

Applicants' Submissions

9. The applicant submits that they are suffering and are likely to continue suffering, significant and irreversible prejudice as a result of being excluded and left out from representation

within the Settlement process. In particular, they submit that Ngai Te Rākatō had a partnership with Rongomaiwahine Iwi which has been changed through the Trust Deed; Ngai Te Rākatō have now become subservient and subsumed, which the Crown has stood idly by and allowed to happen.

10. The applicant submits that there is no alternative remedy available that would be reasonable to exercise. While the applicant acknowledges that a hui with Rongomaiwahine Iwi has been offered, they submit that Ngai Te Rākatō have not engaged in such a hui due to fear of intimidation and bullying. The applicant further submits that the Crown has offered no guidance, intervention or other alternative remedy.

11. Counsel for the applicant says they are ready to proceed to hearing urgently.

Crown's Submissions

12. The Crown opposes the application for an urgent inquiry on the basis that it does not meet any of the urgency criteria. The Crown submits that the allegations are, in substance, against parties who are not the Crown and therefore the Tribunal is not the appropriate forum for resolving what the Crown sees as an internal dispute of iwi and hapū.

13. The Crown further submits that the Tribunal is barred from inquiring into matters in relation to the Settlement Act, through section 15 of this Act.

Rongomaiwahine Iwi Trust submissions

14. The Rongomaiwahine Iwi Trust also opposes the application for an urgent inquiry on the basis that it does not meet the urgency criteria. The Trust's reasons reflect those of the Crown and they submit that:

    (a) the allegations relate to other hapū and iwi and not the Crown;

    (b) there is no prejudice; and

    (c) the claimants have not demonstrated all other avenues of resolution have been taken.

15. The Rongomaiwahine Iwi Trust also disagree with the level at which the claimants represent Ngai Te Rākatō and have asked the claimants legal counsel to provide evidence of hapū support for their position.

Applicants' Reply

16. In response, the applicant maintains her claim justifies the grant of an urgent hearing. The applicant raises concerns regarding the role of the interested parties in these proceedings as the applicant submits that they appear to be siding with the Crown against their own.

17. The applicant submits this is not an internal dispute between iwi but is a breach of the Treaty as the Crown is standing idly by.

18. While Crown counsel submit that alternative remedies are available, the applicant submits these are not available due to a lack of resources to pursue court action and the unsuitability of a hui process.

19. The applicant disagrees entirely with the submissions of the Rongomaiwahine Iwi Trust in relation to the status of Ngai Te Rākatō. The applicant highlights again that the rights and interests of Ngai Te Rākatō have not been protected or recognised post-settlement and they are now at risk.

20. Last, the applicant submits that the criteria for granting an urgent hearing are all satisfied.

21. In response to the affidavits filed in support of Rongomaiwahine Iwi Trust, the applicant submits that the Crown knowingly agree to the change in post-settlement group and have sided with Rongomaiwahine Iwi and Tatau Tatau o Te Wairoa Iwi, leaving Ngai Te Rākatō in no man's land.

22. They further emphasise that the Crown has created the situation the applicants are now in through their interference, causing divergence between iwi whereby they are once again fighting amongst their own.

Urgency Criteria

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

24. 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

25. The applicant has not made a case for the grant of urgency.

26. A review of the file indicates clearly that this is in fact a dispute between parties after settlement legislation has passed and that the Crown has been drawn to invoke the

jurisdiction of the Tribunal. The Deed of Settlement and the legislation simply mirror each other in the description "Rongomaiwahine Iwi/Ngāi Te Rākatō". The change in name in subsequent documents appears to be simply that, a name change, and not a matter of substance. The mana of Ngāi Te Rākatō is not conditional on names on pieces of paper and that group is appropriately represented in the Trust we are concerned with.

26. In as far as it is a claim against the Crown, the Tribunal does not have jurisdiction under section 15(4) of Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018 to inquire into or make a finding in respect of:

    (a) the Deed of Settlement;

    (b) this Act;

    (c) the redress provided under the Deed of Settlement for this Act.

27. While there is jurisdiction in relation to interpretation or implementation of the Deed of Settlement or the Act those matters are not in play here.

28. There is also the matter of alternative remedy. The applicants have declined an offer of meeting to resolve the matter on the basis that they feel they will be bullied. The basis for this is somewhat dubious and, in any event, could be mitigated with the presence of an independent observer or electronic recording of the meeting. Applicants cannot expect to trigger urgency when they will not meet and negotiate with those they oppose.

29. There is also the question of the number that the applicants claim to represent. Rongomaiwahine directly raised the issue in para [42] of Mr Watson's memorandum dated 2 August 2019. Despite that the applicants remain silent. Numbers matter and silence in this regard is particularly telling.

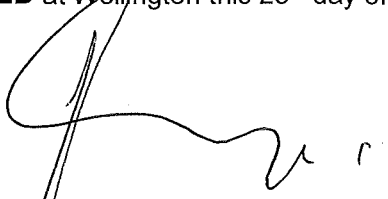
30. Urgency is only granted when something is imminent. On a reading of the pleadings and evidence that is clearly not the case here.

Decision

31. Urgency is declined.

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 2892, the Wairoa Deed of Settlement (Callaghan) Claim.

DATED at Wellington this 23rd day of September 2019



Judge P J Savage
Deputy Chairperson
WAITANGI TRIBUNAL