IN THE WAITANGI TRIBUNAL

WAI 2961
WAI 1781

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of an application by Tracy Hillier for an urgent hearing into the Crown decision to resume negotiations with the Whakatohea Pre-Settlement Claims Trust (WPSCT) and continued recognition of the WPSCT Mandate

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APPLICATION FOR AN URGENT HEARING
Dated 7 July 2020

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MAY IT PLEASE THE TRIBUNAL:

1. This application for an urgent hearing is filed by Tracy Hillier as named claimant for Wai 1781, a claim for and on behalf of the hapū of Ngai Tamahaua ("**the Claimants**").

Application

2. The Claimants by this application seek to challenge Crown acts and omissions following the 2018 Whakatōhea vote process including but not limited to:

    (a) The Crown failure to adhere to the Tribunal's recommended steps of engaging all parties in the event that the 2018 Whakatōhea vote resulted in levels of support and opposition being close which it did;
    (b) The Crown indicating soon after the vote a clear preference to continue to support the WPSCT to achieve a settlement despite the significant levels of opposition from claimants and hapū of Whakatōhea;
    (c) The Crown's continued support for the WPSCT mandate despite clear findings from the Tribunal that the mandate strategy departed (without evidence of collective support) from the collective decision to uphold hapū decision-making and hapū-driven negotiations as set out in the Te Ara Tono document;
    (d) The Crown decision to resume negotiations with the WPSCT in spite of the tenuous levels of support following the vote; and
    (e) The Crown decision to require the WPSCT to amend the withdrawal mechanism in the deed of mandate without fully addressing the Tribunal's recommendations with regard to hapū withdrawal; and
    (f) The Crown's continued failure to actively protect hapū rangatiratanga.

Criteria for Urgency

3. Clause 2.5 of the Waitangi Tribunal Guide to Practice and Procedure sets out the criteria for an urgent inquiry:

    (a) That the Claimants are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

(b) That there is no alternative remedy that, in the circumstances, would be reasonable for the Claimants to exercise;

(c) That the applicants are ready to proceed urgently to a hearing.

4. Other relevant factors the Tribunal may consider include whether the claim for urgency challenges an important current or pending Crown action or policy and/or any other grounds justifying urgency.

Current or pending action of the Crown

5. The current and pending action of the Crown that is the subject of this application has been summarised at paragraph 2(a) to (f) above. The focus of this urgent application is therefore on the Crown acts and omissions which have occurred since the Whakatōhea Mandate Inquiry Report was released in April 2018 and the subsequent Whakatōhea vote results were released in October 2018.

Significant and Irreversible Prejudice

6. The Claimants are suffering and will continue to suffer significant and irreversible prejudice as a result of the Crown's decision to re-engage with, and continue to support and assist the WPSCT to rebuild its mandate despite the strong findings of Treaty breach in the Whakatōhea Mandate Inquiry Report.

7. That prejudice includes:

(a) Having the hapū choice of settlement pathways removed by the Crown and a third party without their consent or authority;

(b) Having the claimants choice of settlement pathways removed by the Crown and a third party without their consent or authority;

(c) The Crown continuing to negotiate with an entity that has no authority to represent the interests of the hapū or claimants;

(d) Being locked into a deed of mandate which the hapū never consented to or supported since it was first proposed and despite that the hapū met the 5% withdrawal threshold under the original deed of mandate on a hapū basis;

(e) Further damaging already tenuous whanaungatanga relationships within the hapū and whanau of Whakatōhea; and

(f) That the continued action by the Crown of negotiating will not address the hapū grievances.

No alternative remedy

8. There is no alternative remedy that the Claimants that the Claimants can reasonably seek.

9. The findings and recommendations sought by the Claimants can only be produced by the Waitangi Tribunal.

Ready to proceed

10. The Claimants are ready to proceed to an urgent hearing.

Other grounds justifying urgency

11. The Crown's decision to resume negotiations with the WPSCT is a current Crown action.

12. It is in the interests of natural justice that the urgency sought is granted.

13. In considering what next steps should be taken in respect of the Whakatōhea settlement, the Crown was required to take a generous and patient approach and has failed to do so.

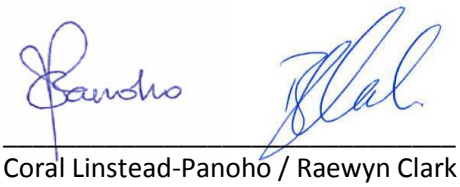
14. The Crown has acted in bad faith towards hapū of Whakatōhea and the Claimants which is not conducive to rebuilding the Treaty partnership.

15. As set out in the Brief of Evidence of Tracy Hillier, Ngai Tamahaua has remained resolute in its opposition to the WPSCT for the past 5 years.

16. The WPSCT has failed to make any changes to address the hapū concerns raised, and the Crown has continued to recognise a mandate which lacks support and which was flawed from the outset.

17. The Tribunal is therefore requested to inquire into this matter as a matter of urgency.

Dated at Auckland this 7th day of July 2020



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