IN BRIEF
RAINEY COLLINS
MAORI ISSUES
HOTOKE (WINTER) 2005

Welcome

to the Winter edition of our Rainey Collins Maori Issues Newsletter.

This edition covers the Waitangi Tribunal process, some family law changes relating to grandparents, Maori Land issues, sports law issues and our regular recent news section. These articles and others are also available on our website www.raineycollins.co.nz if you want to download or send them to anyone.

James Johnston
Chairman of Partners

Contents

How You Can Get the Best Out of the Waitangi Tribunal Process

The Tribunal process is taxing upon claimants. Peter Johnston sets out a number of things that claimants can do to ensure that they put their best case before the Waitangi Tribunal.

1. Know What You Want

You should, as a claimant community, have clear ideas of what it is that you want to achieve out of the hearing process.

For some groups, the Tribunal process will be seen as an opportunity to pour out the pain that has been experienced over the generations.

For other groups, the hearings will be seen as the first step in the negotiations process with a Tribunal report providing some ammunition to take into negotiations with the Crown.

Whatever the goal is, the mere fact of having one will ensure that when times get difficult, claimants know where they are going and why they are going through the ordeal of the hearing process.

2. Legal Representation

Get legal representation. There are a number of factors that should be considered when choosing your lawyer including a proven track record in the Treaty field and an ability to communicate complex issues in lay terms.

Having excellent legal representation will mean that the complex Tribunal process can be effectively navigated for your benefit by professional advisors who know what they are doing because they have done it for many groups before.

3. Excellent Historians

Ensure that you have expert witnesses. You should have lines of communication with the Waitangi Tribunal and the Crown Forestry Rental Trust so that you can ensure the historian who will be doing research for you is the best available. Make sure you meet with them before they start researching your important claim. Your lawyer will be able to assist you with this.

4. Claims Committee

Appoint the right people to your claims committee. The early establishment of a claims committee is important. Ideally, they should have a mixture of skills including proven leadership qualities and expertise in a field such as finance, business, communications and tikanga. In addition, because the Tribunal process takes years, members of the committee will need to be committed for the long haul and include rangatahi.

5. Communications Strategy

Ensure that there is an effective communication strategy to inform the claimant community about what is going on. A robust claims co-ordination process will ensure that people are included in the process and will help unify the claimant community.

continued on page 2

Recent News

Urewera Inquiry
The second week of Crown evidence in the Waitangi Tribunal Urewera Inquiry was held at Taneatua School during the week commencing 11 April 2005. This concludes the evidence for the Urewera Inquiry.

Closing submissions by claimants and submissions in response by the Crown will be heard at Ruatoki over a 9 day period beginning on 7 June 2005.

Final Date for All New Whanganui Claims
The cut off date for any new claims in the Whanganui District Inquiry to be filed in the Waitangi Tribunal is 29 July 2005.

Northland Research
The Crown Forestry Rental Trust has approved a research programme for the Northland area which includes five Tribunal Inquiry districts - the Bay of Islands, Hokianga, Whangaroa, Mahurangi and Whangarei. A Crown Forestry Rental Trust research hui is scheduled to be held on 31 May 2005 at Waitangi. Please contact Clare Savali for further information.

Constitutional Arrangements Committee
Parliament has established a special Constitutional Arrangements Select Committee to review New Zealand's constitutional arrangements. For more information visit www.constitutional.parliament.govt.nz

Kyoto Protocol - What Maori Landowners Need to Know

The New Zealand Government has recently ratified the Kyoto protocol.

Under the Kyoto protocol landowners who plant land with new permanent forests may receive tradable sink credits that will be able to be sold.

The protocol has implications for all landowners including owners of Maori land who are considering using their land for forestry.

The Government has established a Forestry Sink Initiative to encourage landowners to plant forests.

In order to qualify for these credits, landowners will need to meet a number of criteria:

1. The main requirement is that timber can be removed from the land after 35 years but only if the forest canopy continues to cover the land.
2. If yearly harvesting or clear felling occurs then a penalty needs to be paid.
3. Mature indigenous forests and normal plantation forests do not qualify for the Forest Sink Initiative.

It should be noted that the Crown will hold all credits until 2012 when they will be transferred to landowners.

The Kyoto protocol comes into force in 2008 and the Government is working on ways to implement its international obligations under the protocol.

For more information refer to our website www.raineycollins.co.nz.

Foreshore & Seabed Act

The Foreshore and Seabed Act 2004 came into force on 17 January 2005.

The new Act sets out the process by which the High Court or Maori Land Court can investigate rights to the foreshore and seabed.

Whanau, hapu or iwi can now apply to the Maori Land Court for a customary rights order. Where they can establish exclusive use and occupation of the foreshore and seabed, they can also apply to the High Court for a territorial customary right. If proven, they can ask the Court to establish a foreshore and seabed reserve or refer the matter to the Crown to discuss redress.

For more information please refer to our website www.raineycollins.co.nz.

from front page

6. Working with Others

Establish lines of communication where you can work with other claimant groups now. By doing this, you can identify what issues you have in common and avoid wasting energy during Tribunal hearings on airing disagreements.

Remember, the Waitangi Tribunal will make recommendations on what the Crown has done or should have done. The Crown is the focus and working with other claimants to collectively present your case against the Crown is essential.

7. Life After the Hearings

Once the hearings have finished, there will be a delay before the Tribunal's report is released. Use that time to plan for the next phase of the process that includes preparing for negotiating with the Crown. This is also the time when it is vital that the claimant community be kept informed about what is happening. By continuing to communicate, the group has more chance of sticking together. Without cohesion there is little point going through the Tribunal process.

Peter Johnston

Maori Land - Beware When Changing the Status

It is becoming increasingly difficult to change the status of Maori freehold land to General land especially where there is a possibility that the land will be sold. The Maori Land Court is reluctant to change the status just to enable a sale to take place. Clare Savali looks at a recent High Court decision which highlights some of the difficulties.

The case involved a block of Maori land that the owners wished to sell. The owners entered into a sale and purchase agreement with a third party. The sale was conditional on the status of the land being changed from Maori freehold land to General land.

The Maori owners applied to the Maori Land Court for the status to be changed from Maori freehold land to General land. The Maori Land Court was not advised of the sale agreement and an order was made changing the status.

A relative and preferred alienee subsequently sought a rehearing of the status change on the basis that the information provided to the Maori Land Court was inaccurate. The rehearing was granted and an injunction issued halting the sale of the property.

The Maori owners found themselves in a difficult position. If they had followed the correct procedure the situation could have been avoided. The case also highlights that all land does not have the same status. Where the land is Maori freehold land the rights of preferred alienees (including any children or whanaunga associated with the land of the person selling) also need to be taken into account.

The bottom line is that careful planning is needed when dealing with or changing the status of Maori freehold land to avoid ending up in this position.

Clare Savali

Did you Know...

All land in New Zealand has one of the following six statuses:

Maori customary land is land held by Maori in accordance with Maori customary values and practices.

Maori freehold land is land that has had beneficial ownership determined by the Maori Land Court.

General land owned by Maori is land (other than Maori freehold land) that has been alienated from the Crown and is beneficially owned by a Maori or by a group of whom the majority are Maori.

General land is land that has been alienated from the Crown and is not subject to the Te Ture Whenua Maori Act.

Crown land is land other than Maori customary land and Crown land reserved for Maori that has not been alienated from the Crown.

Crown land reserved for Maori is land (other than Maori customary land) that has not been alienated from the Crown but set aside or reserved for the benefit of Maori.

New Rights for Grandparents...

Grandparents will be able to apply to the Family Court for access to their mokopuna from 1 July 2005.

The Care of Children Act, which comes into force in July this year, considerably widens the group of people that are entitled to apply to the Family Court for contact with a child, and gives grandparents new rights.

The new law recognises that families are no longer traditional nuclear families and that there are now all sorts of different family units that care for children. The Family Court will now be able to recognise the very important role that grandparents play in their mokopuna's lives.

Under the previous law, only a "parent" had the right to apply to the Court for access to children. This meant that if the parents refused to allow the grandparents to see the children, then there was nothing the grandparents could do about it. Grandparents could therefore be totally excluded from being involved with their mokopuna.

There were only limited exceptions which allowed a grandparent to apply to the Court for access and that was when a parent was not having access themselves or had died.

We are aware of a very sad situation where the grandparents had regular contact with their mokopuna, but then had a "falling-out" with the parents of the mokopuna. The parents then refused to allow the grandparents to have any contact at all with the mokopuna. The grandparents sought legal advice and, sadly, were told that there was nothing that the Family Court could do to help.

This situation could get even worse if the parents separated or divorced and custody was awarded to a parent who chose not to involve the grandparents in the children's lives.

The new law is much fairer, and means that all of the people that are involved in a child's life have the right to apply to the Court to have contact with the child. This not only includes grandparents, but also a partner of a parent of the child, or any other person who is a member of the child's whanau.

Jacinda Rennie

The $Million Tackle

The recent Court decision in Australia concerning the tackle that ended Jarrod McCracken's career raises some interesting issues in New Zealand for sports clubs, administrators and players. In this article, Campbell Duncan looks at the implications for New Zealand sports people and organisations.

An Australian Court has found that Melbourne Storm players, including Kiwi Steve Kearney, were liable for negligence in the spear tackle that ended fellow Kiwi Jarrod McCracken's rugby league career. The Melbourne Storm club was also found liable by the Court.

Jarrod McCracken is seeking some $AUS700,000 but the Court is yet to rule on the amount of damages. With Court costs, fees and other resources expended, the overall cost of the tackle could be as much as $1,000,000.

There has also been controversy regarding injuries sustained by New Zealand cricketer Michael Papps, when he was hit in the head by a bouncer from Australian fast bowler, Brett Lee.

Fortunately for clubs and players in New Zealand, such injuries would be covered by the Accident Compensation regime. Jarrod McCracken would receive payments for the injury, but he could not sue Kearney or his club for damages for the injuries caused. However, this does not mean that there are not other possible areas of liability that New Zealand players, clubs, associations, unions and administrators should be aware of.

Players who seriously maim other players could be charged with assault under New Zealand's criminal law. A jury could find a player guilty of assault regardless of whether he actually intended to severely hurt the injured player, particularly if the actions were well outside the expected norms of the particular sport.

In addition, players can be sued in New Zealand for damages if their conduct is sufficiently high handed. The legal terms for these damages are "punitive" or "exemplary" damages. For example, if a player deliberately head butts, then it is possible for the victim to sue and claim exemplary damages. This is because the conduct is the focus and not the injury suffered. Suing for the injury is prohibited by the Accident Compensation laws.

There are a number of ways in which associations, clubs and administrators can protect themselves.

Associations and clubs should ensure that they have effective disciplinary processes in place. If players know that they are likely to receive sanctions for foul play, including life bans, then this may cause a player to think before they take certain actions on the field.

Insurance cover for liability for exemplary damages claims can be obtained.

Education programmes on fair play should be encouraged so that players maintain acceptable standards.

Having prominent players in a code promote fair play is also recommended.

Coaches should be trained to ensure that they are aware of the basic skills including safe ways of tackling, scrummaging etc.

Campbell Duncan

Peter Johnston Elected Chairman of Wellington Maori Business Network – Te Awe

Te Awe is an incorporated society established to promote Maori business success. Peter was elected Chairman in May 2005.

Peter's first official function as chairman was to host Minister Parekura Horomia's address to Maori business leaders concerning the recent budget. The address, hosted at Rainey Collins' Wellington offices, was attended by over 100 leaders. Leith Comer, Chief Executive for Te Puni Kokiri, also introduced Sir Paul Reeves who announced the completion of the Hui Taumata 2005 Summary Report and introduced the new members of the Hui Taumata Taskforce.

RAINEY COLLINS

LAWYERS

Receive future editions of *In Brief*

If you are not on our mailing list and would like to receive future editions of *In Brief*, phone Maureen on 04 473 6850 or email mharris@raineycollins.co.nz
You can unsubscribe in the same way if you do not want to receive future copies.

TELEPHONE 64 4 473 6850 · FACSIMILE 64 4 473 9304 · DX SP20010 · WWW.RAINEYCOLLINS.CO.NZ
LEVEL 23 · MOBIL ON THE PARK · 157 LAMBTON QUAY · PO BOX 689 · WELLINGTON