Urban Iwi: The New Tribes of Maoridom?

***Te Runanga O Muriwhenua and 12 Ors v Te Runangnui O Te Upoko O Te Ika Association and 19 Ors; Temuranga "June" Jackson & Ors v Treaty of Waitangi Fisheries Commission & Ors; Te Runanga O Muriwhenua & Ors v Treaty of Waitangi Fisheries Commission & 19 Ors*, Court of Appeal, 30 April 1996, CA 155/95, CA 165/95, CA 184/95. Lord Cooke of Thorndon P, Richardson, Gault, Henry, Thomas JJ.**

This case, while of relatively narrow compass, is significant for its contribution to the development of Treaty of Waitangi jurisprudence, and its role in the ongoing saga of the Maori fisheries settlement process. It is also noteworthy as the final judgment delivered by Lord Cooke of Thorndon in the Court of Appeal.

This appeal is the culmination of a number of cases involving disputes between Maori groups over the allocation of assets under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. This Act implemented the 'Deed of Settlement', the highly contentious agreement between the Crown and Maori representatives which was intended to settle Maori claims to fisheries resources. Earlier, under the Maori Fisheries Act 1989, Maori were granted ten percent of the national fishing quota (the pre settlement assets). The Deed of Settlement provided Maori with a further twenty-six percent of the quota,[1] and a guarantee that Maori would be entitled to twenty percent of any new species brought into the quota management system. The Maori Fisheries Commission, created by the earlier legislation, became the Treaty of Waitangi Fisheries Commission (the 'Commission'), whose principal task is to distribute these assets to Maori. Its attempts at doing so led to these proceedings before the Court of Appeal.

Issues concerning representation and eligibility have troubled the fisheries settlement process since its earliest beginnings. The first argument addressed by the Court related to the jurisdiction of the Waitangi Tribunal. The Court held that the Tribunal did not have jurisdiction to inquire into the question of whether or not the Commission was in breach of Treaty principles by considering how to allocate the settlement assets. The second and more profound matter dealt with in the litigation concerned the eligibility of urban Maori groups to a share of these assets.

As noted by Lord Cooke,[2] neither the Deed of Settlement, nor the Treaty of Waitangi (Fisheries Settlement) Act 1992, referred to the term 'iwi' - other than in the resolutions[3] recorded by Schedule 1A of the Maori Fisheries Act, as inserted by s 18 and the Schedule to the 1992 Act. The omission was significant, because it gave rise to the question of whether non-tribally based groups were entitled to a share of the quota being allocated by the Commission, as the representative of the Urban Maori Authorities group contended.

The Court's task was to determine the effect and meaning of the references which were made to 'iwi'. It decided in favour of directing the Commission to include Maori without specific tribal affiliations *within* the definition of iwi,

1 This was achieved through a fifty per cent shareholding in Sealords Products Limited, hence the common name for the Deed "the Sealords Deal".

2 At 27.

3 Adopted by the Maori Fisheries Commission at its 1992 Annual General Meeting.

thereby allowing urban Maori groups to benefit from the fisheries settlement. It was the opinion of the Court that such an interpretation was justified on two grounds. First because the settlement assets were stated as being for "all Maori", and second because the term connotes "the people of tribes" regardless of tribal affiliation or leadership. With all due respect, Lord Cooke effectively replaces the common understanding of 'Maori' with the far more complex concept of 'iwi'.

The lengthy settlement negotiations were not conducted in terms of individual iwi, and the resultant Deed reflected this fact. Thus, Clause 4.5.1 states that the commercial fishing rights being granted under the agreement are "ultimately for the benefit of all Maori". Clearly the legislation incorporating the agreement created ambiguity by referring to 'iwi', but the argument that 'all Maori' and 'iwi' mean the same thing is a problematic approach to resolving the uncertainty.

In accordance with standard practice, a dictionary definition was sought to shed light on the meaning of 'iwi'. When the meaning of an English word is desired, dictionaries often provide useful and precise guidance. However, in respect of Maori terms, precise meanings often do not exist. Dictionaries can therefore only give superficial and exclusive interpretations of concepts which are highly context sensitive. The respected Williams' *Maori Dictionary* [4] consulted by the Court defines iwi as "Nation, People", a definition developed into "the people of tribes; and this must include those entitled to be members although their specific tribal affiliation may not have been and even cannot be established".[5] A more accurate definition would have included the two fundamental criteria of any basic understanding of what an iwi is, namely 'whanaunatanga' and 'manawhenua'.

The notion of whanaunatanga relates to kinship, which underpins the relationships, rights and obligations between individual members of an iwi. Manawhenua refers to the tribal boundaries determined by conquest and occupation,[6] and the right to exercise authority therein. It is the tangata whenua iwi, or (putting it loosely) the local tribe, who have manawhenua over any particular area. Urban Maori groups do not possess these characteristics. Indeed, it is not asserted by anyone that they do.

There is certainly a need for urban Maori groups and individuals to be recognised as coming within the scope of the Treaty of Waitangi, regardless of iwi affiliation. The very words of the Treaty provide the basis for such recognition, for 'all Maori' (ngaa taangata katoa) are expressly provided for.[7] Moreover, the groups represented by the Urban Maori Authorities collective are inherently capable of exercising rangatiratanga, thereby qualifying them to the protection afforded by the Treaty. The Waipereira Trust in west Auckland is well known example of such a group. Given the awkward drafting of the relevant pieces of legislation, such a purposive interpretation of the Treaty was, in the present case, not really in order.

4 Williams, *A Dictionary of the Maori Language by H. W. Williams*, Wellington, 7th ed (Revised 1985), GP Publications, 1971.

5 At 29.

6 The Maori Land Court recognises conquest prior to 1840 and occupation since.

7 Article II, Treaty of Waitangi (Maori version).