IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV-2023-485-614

UNDER	The Declaratory Judgments Act 1908
BETWEEN	**TE OHU KAI MOANA TRUSTEE LTD** together with **TE OHU KAIMOANA TRUST** Plaintiff
AND	**Attorney-General on behalf of His Majesty the King in right of New Zealand** Defendant

PLAINTIFF'S STATEMENT IN REPLY TO AMENDED STATEMENT OF DEFENCE DATED 14 DECEMBER 2023

18 January 2024

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In reply to the affirmative defences and positive allegations pleaded in the defendant's amended statement of claim dated 14 December 2023:

1. The plaintiff says that for the avoidance of doubt, any positive allegation made by the defendant in the amended statement of claim dated 14 December 2023 that is not expressly admitted is denied.

2. The plaintiff denies paragraph 6.2.

3. The plaintiff denies paragraph 7.1.2.

4. In response to paragraph 9 it:

    4.1 agrees that the final sentence of paragraph 9 of the Amended Statement of Claim dated 29 November 2023 ("The final tranche was transferred on 1 October 1992") is incorrect, and admits that the final tranche was transferred in 1994;

    4.2 denies paragraph 9.3.1 and says that the "Backdated Quota Agreement" was entered into on 27 March 1991, and relies on the full terms of that agreement to the extent relevant to this proceeding;

    4.3 admits that paragraphs 9.3.2 and 9.3.3 are a summary of the matters recorded in the relevant Cabinet Paper and relies on the full content of that paper to the extent relevant to this proceeding.

5. The plaintiff denies paragraphs 11.3.2 and 11.3.3 and says further:

    5.1 the study of the QMS referred to in paragraph 11.3.4(c) did not encompass the as yet unascertained implications of the 28N rights on the proportion of quota transferred to Māori under the 1989 interim settlement;

    5.2 if the Crown was aware of those implications or potential implications of its legislative design decisions at the time of the

Deed of Settlement, the Crown did not convey that information to the Māori negotiators.

6. The plaintiff denies paragraphs 12.3.1 – 12.3.3 and relies on the entirety of the Settlement.

7. In response to paragraph 13 the plaintiff apprehends that these are matters of submission but to the extent that they plead any positive allegations of fact, denies them.

8. In response to paragraph 14 the plaintiff apprehends that these are matters of submission but to the extent that they contain any positive allegation of fact, denies them.

9. In response to paragraph 17 the plaintiff:

9.1 denies paragraphs 17.3.1 and 17.3.2;

9.2 denies paragraph 17.3.3 and says the legislative design to accommodate the Crown's desire to honour its commitment to the 28N rights holders has shifted over time, with the design choices made by the Crown having an increasingly adverse impact on the Crown's commitment to Māori under the Fisheries Settlement;

9.3 denies paragraph 17.3.6(i) and says as the QMS operated prior to the commencement of the Fisheries Amendment Act 1990 redemption of 28N rights made no permanent change to the proportion of total ITQ held by other quota holders, and the system of sale and purchase of quota by the Crown allowed quota holders to maintain their proportional share of the industry;

9.4 denies paragraph 17.3.6(i) to the extent that the Crown does not appear to have implemented any 28N rights adjustments to the 1989 settlement quota prior to the 1992 Deed of Settlement;

9.5 does not know and therefore denies whether the Crown implemented or implemented in full any 28N rights adjustments to the 1989 settlement quota prior to the introduction of quota shares in 2001;

9.6 says that the implications for the 1989 settlement quota of the legislative design choices in 1990 and 1996 relating to the 28N rights were not apparent at the time of the 1992 Deed of Settlement.

10. The plaintiff denies paragraph 18.

11. In response to paragraph 20 the plaintiff says that the agreements by the Joint Working Group were also recorded in their final report dated 10 December 2019 delivered to the Minister of Fisheries on 17 December 2019, but admits that this report is watermarked "not government policy".

12. In response to paragraph 21, the plaintiff:

12.1 repeats paragraph 20 above and refers also to the draft and final work group reports at paragraph 6 of Appendix 2;

12.2 denies paragraph 21.2; and

12.3 says that the officials on the Joint Working Group were members of the Group in their official capacity.

13. In response to paragraph 25, the plaintiff denies paragraphs 25.4.2 and 25.4.3, repeats paragraphs 11 and 17(f) above, and says the benefits Māori received under the Fisheries Settlement are far less than the entitlements that Māori were guaranteed under Te Tiriti, which the Crown failed to honour.

14. The plaintiff denies paragraph 26.2.

First affirmative defence - jurisdiction

15. In response to the first affirmative defence in paragraphs 33 to 36, the plaintiff:

    15.1 apprehends that these are matters of law to which it is not required to plead; but

    15.2 says that the obligation on the Crown not to re-take the settlement benefits is wider than an obligation not to do so by way of subsequent promotion of legislation;

    15.3 says that the Court has jurisdiction to declare that enacted legislation is inconsistent with other rights; and

    15.4 says that the relief in sought in paragraph 30 of the amended statement of claim does not necessarily require the promotion or enactment of legislation.

Second affirmative defence – s 308 of the Fisheries Act 1996

16. In response to the second affirmative defence in paragraph 37, the plaintiff:

    16.1 apprehends that these are matters of law to which it is not required to plead; but

    16.2 denies that the claim is barred by s 308 of the Fisheries Act 1996; and

    16.3 says further that it would be repugnant and contrary to the Fisheries Settlement, Te Tiriti o Waitangi and tikanga for the Crown to legislate its own immunity for contraventions of the Fisheries Settlement.

Third affirmative defence – s 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992

17. In response to the third affirmative defence in paragraph 38, the plaintiff:

17.1 apprehends that these are matters of law to which it is not required to plead; but

17.2 denies that the claim is barred by s 9 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992; and

17.3 says further that it would be repugnant and contrary to the Fisheries Settlement, Te Tiriti o Waitangi and tikanga for the Crown to legislate its own immunity for contraventions of the Fisheries Settlement.

Fourth affirmative defence – limitation

18. In response to the fourth affirmative defence in paragraph 39, the plaintiff apprehends that these are matters of law to which it is not required to plead, but says that the Crown's obligations to honour and make good its promises under the Fisheries Settlement are derived from contract, Te Tiriti and tikanga and are not of a nature that is barred by operation of the Limitation Acts or by analogy.