

Supreme Court decision on Crown's obligations to Maori owners of customary land – *Proprietors of Wakatu and Others v Attorney-General*

The key findings

The Supreme Court (by majority decision 4-1) has held that:

- the Crown owed fiduciary duties to:
 - reserve one tenth of the land purchased by the New Zealand Company (15,100 acres) for the benefit of the Maori customary owners of land in Nelson, Motueka and Golden Bay; and to
 - exclude their pa, urupa and cultivations.
- The Crown reserved only 5,100 acres of the tenths reserves, and failed to reserve the remaining 10,000 acres. Further, there were subsequent losses to the 5,100 acres of tenths reserves.
- The case has been sent back to the High Court to determine matters of breach and remedy.

Chief Justice Sian Elias stated:

‘there is overwhelming evidence on the historical record that the Crown intended to and did deal with the reserve land as a trustee.’

The New Zealand courts have not previously determined that the Crown owes fiduciary duties to Maori land owners.

The background to the ‘Wakatu’ decision

This claim was filed in 2010. It was heard in the High Court in 2011 and in the Court of Appeal in 2014. Then in October 2015, a full bench of five Supreme Court Judges considered the claim. The Decision of the Supreme Court was delivered today.

Who is bringing this claim?

The case was brought by the Wakatu Incorporation, a Maori incorporation established in 1977 to receive the remnants of the ‘Nelson Tenths Reserves’. Wakatu Incorporation holds the Tenths Reserves in trust for approximately 4000

shareholders who descend from the original Maori customary landowners of the Nelson, Tasman and Golden Bay regions.

The second plaintiff was Rore Stafford. Rore is a kaumatua of Ngati Rarua and Ngati Tama descent and beneficial owner of the Tenth's.

The third plaintiff was a trust, Te Kahui Ngahuru Trust, set up to represent all the descendants of the original Tenth's Owners.

The Crown argued the parties did not have standing to bring the claim.

The Supreme Court unanimously confirmed that Rore Stafford has a right to bring the claim as a rangatira.

The history behind the claim

This case goes back to the early days of colonial New Zealand.

In the late 1830s the New Zealand Company came to New Zealand to buy land for its planned colonisation scheme. At the time, an integral part of the New Zealand Company's scheme was that one tenth of the land it purchased from Maori landowners would be set aside and held in trust for the Maori landowners in perpetuity.

In 1839 the New Zealand Company claimed to have purchased a large area of the northern South Island and southern North Island from Maori landowners. The Company's first settler towns were established at Wellington and Nelson.

The Nelson settlement was to be in Whakatu (Nelson), Motueka, Waimea, Moutere and Massacre Bay (Golden Bay). The land was to be sold to settlers by lot, with purchasers selecting by ballot one town (1 acre), one suburban (50 acre) and one rural (150 acre) section. The Maori landowners were to receive a tenth of the sections, known as the 'Nelson Tenth's Reserves'.

By 1840 only the Crown could lawfully buy land from Maori and only the Crown could grant title to land. A law was passed requiring commissioners to inquire into the equity of pre-1840 purchases from Maori.

William Spain was appointed to review the validity of the New Zealand Company purchases. Spain confirmed a purchase of 151,000 acres for the Nelson settlement, on the terms that one tenth of the land (15,100 acres) would be held in reserve for the Maori hapu and whanau who were the customary landowners (the 'Tenth's')

Owners'). He also confirmed their pa, burial grounds (urupa) and cultivations would be excluded from the purchase.

In 1845 the Crown accepted Spain's recommendation, and granted 151,000 acres to the New Zealand Company for the settlement of Nelson on the terms set out by Spain. The grant included the Nelson Tenth's Reserves that had already been selected (100 town and 100 suburban sections totalling 5,100 acres). The remaining 10,000 acres (the rural sections) was never reserved.

After 1845, the Crown changed its position and decided not to fulfil the terms of the New Zealand Company purchase. Not only did it never select the full 'tenth' of the land, but it removed some sections from the existing Nelson Tenth's Reserves. As at 1850 the Nelson Tenth's Reserves comprised only 3,953 acres, significantly less than Maori landowners had been guaranteed.

Later more Tenth's' land was lost (right up to 1977).

By 1977 when the Nelson Tenth's Reserves were vested in the Wakatu Incorporation the estate was just 1,626 acres.

The claim is about property rights

The purpose of this claim is to ensure that the descendants of the original Tenth's' Owners (and their descendants) have their property rights protected and restored.

The Tenth's' Owners were guaranteed that one-tenth of the land purchased by the New Zealand Company for its Nelson settlement would be retained and held in trust by the Crown for their benefit. That did not occur.

The Tenth's' Owners argue that prior to 1840 the New Zealand Company agreed to hold one-tenth of the land purchased in trust for Maori landowners (and their descendants) and that from 1840 the Crown took on the role of trustee of this estate.

The Supreme Court has determined that the Crown had a legal (fiduciary) duty to the Tenth's' Owners to act on their behalf in fulfilling the terms of the New Zealand Company's purchase and that it failed to act in their best interests (as any trustee of property or land is required to do).

This is not a Treaty claim. It is a claim about the rights of the land owners to hold the Crown to account in circumstances where the Crown agreed to act on their behalf in fulfilling the terms of the New Zealand Company purchase.

What was the claim?

There are a number of specific claims but in general terms the claim is that:

- in 1840 the Crown agreed to act as trustee of the Nelson Tenth's Reserves and to act on their behalf in selecting sections to be put into the trust
- the Maori landowners were never granted their full entitlement of land. The trust property should have been 15,100 acres, and pa, urupa and cultivations should have been excluded
- the Crown breached its legal duties when it:
 - significantly reduced the 5,100 acres Tenth's Reserves already allocated to the Maori landowners;
 - failed to ensure that the full tenth (15,100 acres) was allocated;
 - failed to ensure that pa, urupa and cultivations were excluded from the NZ Company land; and
 - reduced the area of the Nelson Tenth's Reserves further between 1850 and 1882 without the consent of the Tenth's Owners.

In the High Court and the Court of Appeal the Crown argued that it did not have such a legal (fiduciary) duty; it argued that in relation to the Tenth's Reserves the Crown was acting in its governmental capacity and that in that capacity no legal duties applied. The Supreme Court rejected this argument on the basis that the Crown was acting on behalf of the Maori landowners in relation to their land.

What did the claimants want from the Court?

Wakatu Incorporation and Rore Stafford simply wanted the terms of the sale of the Maori land to be honoured and the same legal standards that apply to any other trustee of land applied to the Crown. They said the Crown had legal duties to act in the best interests of the Tenth's Owners, and it failed to live up to those duties.

The Supreme Court accepted this argument. The Supreme Court has referred back to the High Court the question of determining the extent of the losses the Maori landowners suffered as a result of the Crown's actions.

The Supreme Court recorded the Crown's acknowledgement that 10,000 acres of the tenth's reserves (the rural sections) were never reserved, but found that the extent of

loss to the 5,100 acres (the town and suburban sections) that had been reserved in 1842 was not clear.

The Supreme Court has remitted the case back to the High Court for determination on matters of breach and remedy.

What happens next?

The decision of the Supreme Court is lengthy and complex. It will take all parties some time to read it and understand its implications.

No land that is privately owned will be affected by this Decision.