

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**CIV-2017-485-535
[2017] NZHC 1845**

UNDER the Declaratory Judgments Act 1908
IN THE MATTER of the Māori Community Development
Act 1962 and the Māori Community
Development Regulations 1963
BETWEEN SIR EDWARD TAIHAKUREI DURIE
Plaintiff
AND CLETUS MAANU PAUL
First Defendant
THE NEW ZEALAND MĀORI
COUNCIL
Second Defendant

On the papers

Counsel: F E Geiringer for Plaintiff
A N Isac for First Defendant
P V Cornegé for Second Defendant

Judgment: 4 August 2017

JUDGMENT OF THOMAS J

[1] The plaintiff, Sir Edward Taihakurei Durie (Sir Edward), has applied for a declaration that the second defendant, the New Zealand Māori Council (NZMC), has lawfully appointed Sir Edward as its sole chair and the first defendant, Cletus Maanu Paul, is therefore no longer a co-chair of the NZMC.

Background

[2] By his affidavit evidence, Sir Edward says the issue goes back to the start of 2016 when Mr Paul sought to take control of the NZMC by holding an unlawful

meeting, which purported to elect him as the sole chair. Another meeting was held on 16 April 2016 where Sir Edward says he was elected as the sole chair.

[3] In related judicial review proceedings, Mr Paul challenged the latter decision but he then discontinued his application for review. However, Sir Edward says Mr Paul continues to hold himself out as the co-chair, hence the need for the declaration. Sir Edward considers resolution of this issue is both urgent and significant because the NZMC needs to continue its important work unhindered by the dispute.

[4] Mr Paul has filed a notice of appearance for ancillary purpose. Mr Paul does not oppose the application and filed no evidence disputing that of Sir Edward. He simply seeks to be heard on costs.

[5] The NZMC supports the application for the declaration.

Should a declaration be made?

[6] Sir Edward now seeks the declaration to be made on the papers. His counsel, Mr Geiringer, has filed a helpful memorandum acknowledging whether or not to make the declaration is still an exercise of the Court's discretion.

[7] As noted by Mr Geiringer, the Court has held it lacks jurisdiction to make a declaration in cases where there are no contested legal rights (existing or future) between the parties.¹

[8] Notwithstanding Mr Paul's lack of opposition to the application for the declaration, in Mr Geiringer's submission, there remains a contest as to the legal rights of the parties. Mr Geiringer refers to Sir Edward's affidavit evidence that Mr Paul has been holding himself out as still being the co-chair of the NZMC.

[9] While Mr Paul has purportedly undertaken not to refer to himself as co-chair, Sir Edward notes that as recently as June 2017 representations were made to the Waitangi Tribunal to the effect Mr Paul was still the co-chair of the NZMC.

¹ *Sim's Court Practice* (online looseleaf ed, LexisNexis) at [DJA2.5].

[10] Sir Edward says:

35. This issue needs to be resolved promptly to prevent further interference with the ability of the second defendant to carry out its statutory duties. The advocacy that the second defendant does for the benefit of all Maori is of vital importance. There needs to be a rapid end to the harm that the first defendant is causing.

[11] Notwithstanding Mr Paul's lack of opposition to the application, in the circumstances of his recent behaviour I am satisfied there remains a contest as to the correct position.

[12] I am also satisfied from the evidence that, particularly in light of the role of the NZMC, it is important to make the declaration to repair the damage done and to prevent further damage to the NZMC.

Declaration

[13] For these reasons, I make a declaration that:

The New Zealand Māori Council has lawfully appointed Sir Edward Taihakurei Durie as its sole chair and Cletus Maanu Paul is therefore no longer a co-chair of the New Zealand Māori Council.

Costs

[14] Mr Paul does not accept any liability for costs. In the circumstances, any application is to be filed and served by 9 August 2017. Any response is to be filed and served by 23 August 2017, and there is leave for a reply to be filed and served by 30 August 2017. The decision will be made on the papers.



Thomas J

Solicitors:
Papageorgiou Law Office, Wellington for Plaintiff
Phoenix Law Ltd, Wellington for First Defendant
Tompkins Wake, Hamilton for Second Defendant