IN THE MAORI LAND COURT

LVT 1-159

IN THE MATTER OF	the Maori Reserved Land Amendment Act 1998
AND IN THE MATTER OF	applications for Determination of Compensation
BETWEEN	A I & K J WILLIAMS First Applicant
AND	C M & P J CHRISTIE AND OTHERS Second Applicant
AND	ATTORNEY-GENERAL First Respondent
AND	CHIEF-EXECUTIVE OF THE MINISTRY OF MAORI DEVELOPMENT Second Respondent

Judgment: 18 February 2003

DECISION OF TRIBUNAL IN RESPECT OF COSTS

Introduction

[1] In our reserved decision of 13 August 2001 we invited Counsel to forward submissions if a ruling was required as to costs. This issue has not been resolved and we have now received the following:

(a) Memorandum of Counsel for Applicants as to costs dated 16 August 2002.

(b) The affidavit of Ivan Charles Willis in support dated 13 August 2002.

(c) The affidavit of John Patrick Larmer in support dated 2 August 2002.

(d) Memorandum of Counsel for Respondents on application for costs dated 3 September 2002.

(e) Memorandum (in reply) of Counsel for Applicants dated 13 September 2002.

[2] The applicants are representatives of a wider group of lessees affected by the Maori Reserved Land Amendment Act 1998. Most but not all of the West Coast Lessees were represented by the West Coast Settlement Reserves Lessees Association. Certainly all of the applicants in these proceedings were represented by that Association. For the purposes of our decision on 13 August 2001, seven applicants involving 10 test case leases put their case to the Tribunal. Our decision was then hopefully to provide the basis upon which the remaining claims could be settled. As will be plain there were 159 claims filed. Settlement has occurred.

[3] All parties, including the Crown interests, have incurred substantial costs in having this matter resolved. The successful applicants now make an application for costs against the respondents. As discussed in a telephone conference between Counsel and the Chairman of the Tribunal on 7 February 2002, the applicants seek an award of costs payable to the Association on behalf of all applicants and on a global basis. The Association would then distribute the costs to the applicants and on the basis that the Association did not retain any costs to its own account. It is submitted, and we agree, that if an award of costs were to be made at all this would be a more convenient course than the Tribunal endeavouring to determine specific costs for each of the individual lessees and in respect of each individual lease.

[4] As set out in the Memorandum from Mr Hodder, the applicants, subject to the costs application, generally divide into two groups:

(a) The 10 "test-case leases" (involving seven applicants) whose compensation claims were specifically determined by our decision of 13 August 2001; and

(b) The 140 "non-test case leases" (involving 112 applicants) who waited in the wings and whose claims were determined by individual consent orders on 10 April 2002.

It should be mentioned that even though 10 cases proceeded for the purposes of endeavouring to establish a precedent all of the leases to which we refer were the

subject of claims which have been filed before the Tribunal. There may be other applicants for compensation who have acted independently of the Association but we do not concern ourselves with such applicants in this decision on costs.

[5] We are informed that the total compensation paid to the applicants by the second respondent either as directed by our decision or following settlement, is $30,144,000.00. We mention that figure to put in context the quantum of costs now sought.

Jurisdiction

[6] Mr Parker, counsel for the respondents, submits that the Tribunal lacks jurisdiction to make an order for costs on an application for compensation under the Maori Reserved Land Amendment Act 1998 and that accordingly the application should be declined. He points out that the Land Valuation Tribunal is established by section 19 of the Land Valuation Proceedings Act 1948. There is no specific provision in Part I of that Act dealing with an award of costs against any party to an application before the Tribunal. Sections 19-27 of the Act provide for the structure and procedure of the Tribunal. These sections do not in themselves confer any jurisdiction to hear any specific application. With the exception of the provisions of part II of the Act, which deals with claims for compensation under the Public Works Act 1981, the Tribunal finds its jurisdiction in specific statutes, which deal with valuation matters. He submits that unless the specific statute provides a power to award costs the Tribunal lacks jurisdiction to do so.

[7] As an example, Mr Parker refers us to s40 (2A) of the Public Works Act 1981 (which is contained in Part III of that Act)). This gives the Land Valuation Tribunal jurisdiction to determine the price for land which is being offered back to a former owner when it is no longer required for the public work for which it was held. There is no specific provision as to an award of costs. However, s90 in Part V of the same Act, which deals with claims for compensation, expressly provides that the Tribunal may make an award of costs on an application under that part. Another example is found in sections 36 to 38 of the Rating Valuations Act 1998, which give the Land Valuation Tribunal power to hear objections to roll valuations.

Significantly, Counsel submits, s38 (4) of that Act gives the Tribunal the power to award costs but that power is limited to awarding costs in a punitive way where a party fails to appear or fails to give adequate notice of abandonment, or the objection is frivolous or vexatious.

[8] In continuing with the principle upon which the submission is based Counsel points out that there is no specific provision in the Maori Reserved Land Amendment Acts of 1997 or 1998 for orders for costs on applications before the Tribunal. It needs to be mentioned, however, that the Amendment Acts are stated to be part of the Maori Reserved Land Act 1955. It is significant that under s54 of the Maori Reserved Land Act 1955 the Land Valuation Tribunal shall have power to make such order as to costs in respect of any proceedings before it under the part of the Act within which s54 is contained. There is no jurisdiction to award costs against the Valuer-General. Section 54 is contained within Part III of the Maori Reserved Land Act 1955, which deals with leases of Maori Reserves and Township Land. The 1997 and 1998 Maori Reserved Land Amendment Acts deal with issues of compensation quite separate from the matters contained in this specific part of the Maori Reserved Land Act 1955. Nevertheless, the ability to award such costs under this Act is part of the tapestry of legislation which we need to consider in dealing with this issue.

[9] Counsel for the applicants submits to the contrary that jurisdiction to make a costs award is founded in s19 (14) of the Land Valuation Proceedings Act 1948. This provides that every Land Valuation Tribunal is, within the scope of its jurisdiction and subject to any rules or regulations made under the Land Valuation Act, deemed to be a commission of inquiry under the Commissions of Inquiry Act 1908. All provisions of that Act shall apply accordingly. Section 11 of the Commissions of Inquiry Act 1908 provides that a Commissioner upon hearing any inquiry may order that the whole or any portion of the costs of the inquiry or any party thereto shall be paid by any of the parties to the inquiry, or by all or any of the persons who have procured the inquiry to be held. Accordingly, the applicants submit that s11, by referring to "the whole or any portion of the costs of the inquiry or any party thereto", allows for the full range of costs orders including the award of full indemnity costs.

[10] In reply to this submission Mr Parker for the respondents submits that the words "within the scope of its jurisdiction" in s19(14) of the Land Valuations Proceedings Act 1948 means that the Tribunal does not have jurisdiction in this case to award costs. This is on the basis that the Tribunal is a statutory body and its jurisdiction is limited totally by statute. He submits that unless authority to award costs is specifically provided by the statute under which the Tribunal is proceeding, it lacks jurisdiction to make an award and any award would not be 'within the scope of its jurisdiction'.

[11] In support of his submission Mr Parker referred us to the decision in *Chief Executive of Land Information New Zealand v Culab* (LVP56/00, Auckland Land Valuation Tribunal, Judge J D Hole, decision 23/7/02). In particular the respondents rely upon the statement in that decision that the power to award costs is a jurisdictional one rather than a procedural one. Of course, that particular decision was dealing with an application under s40(2A) of the Public Works Act 1981 determining the price for disposal to a former owner of land not required for public works. As we have already pointed out, under the provisions of the Public Works Act 1981 dealing with the setting of compensation, the Land Valuation Tribunal has specific statutory authority to award costs.

[12] In addition to reliance upon the *Culab* decision, Mr Parker has pointed out that neither the Commissions of Inquiry Act nor the Land Valuation Proceedings Act 1948 bind the Crown. He refers specifically to the provisions of s37(A) of the Land Valuation Proceedings Act as to costs. This section is specifically stated to bind the Crown, which he says, confirms his submission that the balance of the provisions of that Act do not. This particular section when dealing with costs, deals with appeals to the High Court other than appeals from a decision of the Land Valuation Tribunal on claims for compensation under the Public Works Act 1981 or in proceedings under the Land Settlement Promotion and Land Acquisition Act 1952.

[13] This submission seems somewhat facetious. The Crown has submitted to the jurisdiction of the Land Valuation Tribunal and acquiesced in and adopted jurisdictions and procedures contained in the Land Valuation Proceedings Act 1948

for the purposes of the hearing. It now argues that its provisions do not bind it when there is the potential for an adverse order on costs.

[14] In his submissions in reply, Mr Hodder points out that s4(6) of the Maori Reserved Land Amendment Act 1998, which specifically binds the Crown, incorporates the provisions of the Land Valuation Proceedings Act 1948 and in turn the Commissions of Inquiry Act 1908. The Land Valuation Proceedings Act is to apply with all necessary modifications. This submission in itself seems to provide the answer to the submission that there is no statutory jurisdiction vested in the Tribunal to award costs in this instance. We accept Mr Hodder's submission that the intersection between the Commissions of Inquiry Act 1908, the Land Valuation Proceedings Act 1948 and the Maori Reserved Land Amendment Act 1998, points to a clear conferral of general jurisdiction to award costs against the Crown on the current application.

[15] In addition Mr Hodder relies upon the general jurisdiction of the Tribunal conferred by s37 of the Land Valuation Proceedings Act 1948. He submits that that wide jurisdiction would include the power to award costs.

[16] Finally, we raise a point, which was not part of submissions. We are of the view that the use of the words "within the scope of its jurisdiction" contained in s19(14) of the Land Valuation Proceedings Act 1948 as mentioned in the context of the Commissions of Inquiry Act 1908, does not limit the jurisdiction to award costs in the way submitted by Mr Parker. Those words ensure that, while acting as a commission of inquiry the Land Valuation Tribunal is limited to determining the substantive questions put before it by Statute. This is in the same way that a commission of inquiry when set up to determine a question is limited to its terms of reference. We believe the words "within the scope of its jurisdiction" equates to the concept of "terms of reference" as far as a commission of inquiry is concerned. Under s2 of the Commissions of Inquiry Act 1908 commissioners are appointed to inquire into and report upon any question arising out of the matters then set out in the balance of the section. In other sections in that Act there is reference to "the subject of the inquiry" which again is a reference to the terms of reference.

[17] We do not accept the submission made by Mr Parker that use of the words "within the scope of its jurisdiction" in s19(14) of the Land Valuation Proceedings Act 1948 fetters, in the way submitted, the effect of s11 of the Commissions of Inquiry Act 1908 as to costs. What can be added generally about the legislative approach is that where straight valuation issues are being decided, the legislation is silent on an award costs. However, where compensation is being determined, power to award costs is often specified. While we were required to determine what might be regarded as valuation issues, the purpose of doing so was to quantify compensation. In considering the legislation as a whole this would tend to confirm an interpretation in favour of our jurisdiction to award costs in this instance.

[18] Accordingly, we believe this Tribunal has jurisdiction to award costs if it considers it appropriate in this case.

Full Solicitor/Client Costs or "Party to Party" Costs?

[19] Following the filing of submissions by Mr Parker on behalf of the respondents Mr Hodder in a submission in reply has made certain concessions. We do not need to deal with those issues further.

[20] Once the jurisdictional issue is resolved, the main issue remaining between the parties is whether the applicants are entitled to costs on a full indemnity basis. The alternative is that costs should be approached on some other basis such as an adaptation of the schedules now adopted by the High Court, or by dealing with costs on a percentage basis against the full solicitor/client fees incurred or some other form of departure from full indemnity.

[21] In support of the claim for full indemnity Mr Hodder in his submissions refers first to the issue of the merits of the dispute with costs following the event. It is suggested that the respondents took a stand in the proceedings, which was untenable, and without merit. We would prefer not to deal with the matter on this basis. While we levelled some criticism at the valuation evidence of the respondents in our decision, we are of the view that it was open to the respondents to conduct the matter in the way they did. Certainly in dealing with costs, we are not prepared to do

so on the basis that there might be any suggestion of a punitive element. We prefer to consider costs on the basis of ensuring that the applicants are properly compensated. Accordingly, in setting costs as we do, it is on the basis of that compensatory approach rather than as an expression of any attitude which might reflect the statements contained in, for example, paragraph 29 of Mr Hodder's memorandum of 16 August 2002.

[22] We accept Mr Hodder's submission that costs should be considered in the context of the principle under the statutory scheme contained in the Maori Reserved Land Amendment Acts. This is that there should be full and fair compensation to the applicants. This is the approach that we took in our substantive decision and we adopt the same approach when dealing with costs.

[23] Subject to individual quantum issues, which we deal with below, we consider that the applicants should be entitled to full reimbursement of costs.

[24] The break down of the applicants' costs is categorised in Mr Hodder's memorandum as to costs. There are two categories. The first relates to the direct costs incurred by the applicants in respect of solicitor and filing fees for the applications, valuation fees and processing fees paid to the solicitor holding the compensation payments which were made directly to the solicitor's trust account. The total under this category, which includes GST, amounts to $341,475.00 ($303,534.00 excluding GST).

[25] The second category involves the Association's costs, which are set out in full in a table attached to the affidavit of Mr Ivan Charles Willis who is its Chairman. The total under this category, which includes GST, amounts to $552,877.98 ($491,447.10 excluding GST). As we have indicated, there were a number of items under this head which were disputed by Mr Parker and upon which the applicants have now made a concession and these items need to be deducted. The total value of those items amounts to $22,659.16 (excluding GST).

[26] There are some remaining issues between the parties upon which we need to make a ruling. The first relates to the submission that a distinction needs to be made

between the claim for costs in respect of the test cases and the claims for the non test cases. It is suggested that no costs should be awarded for the latter. The basis for this submission is that the non test cases did not proceed to a hearing but were settled. We do not accept this submission. As will be evident from the intituling, this matter involved the filing of 159 separate applications before the Land Valuation Tribunal. Of these 140 proceeded. The procedure agreed to whereby the test cases proceeded in the hope that they would set a precedent for the other claims has resulted in costs being less than they would have otherwise been. We do not see why the applicants, who were not part of the test case process, should not be reimbursed for the costs which they have incurred, not only in filing the applications but in having valuations made on the basis of the findings in our substantive decision. Similarly we allow the claim for $17,850.00 (excluding GST) incurred by all of the applicants in having their solicitor process payment and distribution of the funds. While it is true that it is not directly a cost of the hearing, we are of the view that it is appropriate on the basis of the compensatory approach to which we referred earlier.

[27] There has been an objection to the claim for $4,047.00 (excluding GST) incurred in purchasing a computer sales analysis programme by Mr Larmer. It seems to us that Mr Hodder meets the objections contained in Mr Parker's submissions in the submissions in reply. It is plain that the purchase of this programme was necessary for the preparation of his evidence and will not be used for any other purpose. Accordingly this claim is allowed.

[28] These sums of $17850.00 and $4047.00 are already included in the totals specified in paragraphs [24] and [25] above. No further additions are therefore necessary.

[29] So far as GST is concerned, it appears to be conceded that GST should be excluded from any costs award. We make it plain that we have deducted GST in reaching the final figure for our award of costs. We do, however, reserve this point for further submission if we have misunderstood the concession, which has been made in this regard, and it needs to be reconsidered.

[30] So far as the issue of the costs on the costs application itself is concerned, we cannot see why the applicants should not be reimbursed for such costs. However, we have given careful consideration to the claim of $11,250.00, ($10,000.00 excluding GST). The more appropriate sum under this head is $5,000.00 (excluding GST) and this claim is reduced accordingly.

[31] Before we deal with the final mathematics of the matter we wish to emphasise again that we have approached the issue of costs on the basis that we consider that the applicants should be properly compensated for costs as part of the overall consideration of compensation. This is as opposed to any feeling that the costs award should be made having regard to punitive elements. We do not accept the submission that the respondents' stand in this matter was inappropriate. The valuation methodology put forward was one that was completely open to the respondents to raise in reply to the position taken by the applicants.

[32] We also emphasise that the issue of interest is not really open to the applicants to raise in view of the wording of the legislation in this regard. In setting the level of costs we have not taken account of any issue that the applicants have 'missed out' on interest, and thereby the award of costs should be higher on that account. We accept the submission made by Mr Parker in this regard and the issue of interest has been totally excluded from our deliberation on costs.

[33] Having regard to our findings in respect of jurisdiction there will be an award of costs in favour of the applicants. The total amount of such costs is $777,321.94 (excluding GST) that is calculated in accordance with the schedule attached. Costs are to be paid to the Association for distribution on the basis set out in paragraph 4 of Mr Hodder's memorandum dated 16 August 2002.

(M E Perkins) **District Court Judge, Chairman**	(W A Cleghorn) **Member**	(J W Briscoe) **Member**

Solicitors: Chapman Tripp Sheffield Young for Applicants
Crown Law Office for Respondents

SCHEDULE

1.	Direct Costs (paragraph [24])	$341,475.00	
	Less GST	$37,941.00	$303,534.00
2.	Association's Costs (paragraph [25])	$552,877.98	
	Less GST	$61,430.88	
	Less adjustments agreed (paragraph [25])	$22,659.16	$468,787.94*
3.	Costs on Application for Costs (paragraph [29])	$11,250.00	
	Less GST	$1,250.00	
		$10,000.00	
	Less adjustment by Tribunal	$5,000.00	$5,000.00
	Total award of Costs (paragraph [33])		**$777,321.94**

* The sum of $468,787.94 includes the sums of $17,850.00 and $4,047.00 referred to in paragraphs [26] and [27].