I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA
In the Māori Land Court of New Zealand
Aotea District

A20210007549

WĀHANGA *Under*	Sections 30, 98L and 231, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Sections 57, 58, 70, 72 and 100 of the Rātana Pā Block
I WAENGA I A *Between*	HARERUIA APERAHAMA, ANDRE MEIHANA, WIKITORIA WAITAI-RAPANA, PIKI-TE-ORA MANUEL, LANCE RAPANA AND TIOWAANA HARRINGTON Ngā Kaitono Tuatahi *First Applicants*
ME *And*	ANDRE TUTERE ANDERSON, DANA PUKETOHE, DESIREE DOCHERTY, JAMIE NEPIA, REO MARAKU, JASON HIHIRIA, PIRI RURAWHE, RAWININA ANDERSON, MERE TUNGA NEPIA, PIRIHITIA MEIHANA, MURRAY RIRINUI, COLE PAKI AND ERROL TURUKI MEIHANA Ngā Kaiurupare *Respondents*

Nohoanga: *Hearing*	8 April 2022, 447 Aotea MB 80-92 (Heard at Wellington via Zoom)
Kanohi kitea: *Appearances*	L Watson for First, Second, Third and Fourth Applicants C LaHatte for Respondent J P Ferguson for the Trustees of the Rātana Pā Reservation Trust
Whakataunga: *Judgment date*	11 April 2022

TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Proceedings continued overleaf

Copies to: All counsel

Proceedings continued

ME *And*	JACK SMITH AS A TRUSTEE OF THE RĀTANA PĀ RESERVES TRUST Te Kaitono Tuarua *Second Applicant*
ME *And*	NGAPERA BELLA SMITH, WIKITORIA WAITAI-RAPANA AND ANDRE MEIHANA ON BEHALF OF WHĀNAU AND BENEFICIAL OWNERS OF THE RĀTANA PĀ RESERVES Ngā Kaitono Tuatoru *Third Applicants*
ME *And*	MITA RIRINUI ON BEHALF OF NGĀ APIHA O TE HUI WHAKAPŪMAU Ngā Kaitono Tuawha *Fourth Applicants*
ME *And*	DANIELLE HIKA, KAHUI HURINUI, TE PAHUNGA DAVIS, KEVIN ANDERSON, LEI GRAHAM AND JOSEPHINE HOTU AS TRUSTEES OF THE RĀTANA PĀ RESERVES TRUST Ngā Tangata Whaitake *Interested Parties*

Ngā kōrero tīmatanga me te take o te tono nei
Introduction and issue

[1] Te Hāhi Rātana is a spiritual movement founded by the prophet Tahupōtiki Wiremu Rātana. Its followers are called the morehu. According to the 2018 Census data, there are 43,281 morehu, 42,711 of whom are Māori.

[2] Te Hāhi Rātana is governed by Te Kōmiti Matua o Te Hāhi Rātana. Two rival kōmiti (committees) each claim to be Te Kōmiti Matua.[1] One of those kōmiti, who I refer to as the "applicant kōmiti", has asked the Court to determine who are the most appropriate representatives of Te Hāhi Rātana per s 30 of Te Ture Whenua Māori Act 1993 ("the Act").[2]

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1 See cl 11 of the constitution of Te Hāhi Rātana. There is no dispute that Te Kōmiti Matua is the kōmiti that exercises governance of Te Hāhi Rātana. However, two sets of persons claim that they each are the appropriately appointed members of Te Kōmiti Matua.

2 The members of the kōmiti that have applied to the Court are Hareruia Aperahama; Andre Meihana; Wikitoria Waitai-Rapana, Piki-te-ora Manuel; Lance Rapana; and Tiowaana Harrington.

The other kōmiti, who I refer to as the "respondent kōmiti", consider the Court does not have jurisdiction in relation to Te Hāhi Rātana.[3]

[3] Accordingly, there is a threshold issue as to whether the Court is able to determine the most appropriate representatives of Te Hāhi Ratana. If this threshold is not met, the application must be dismissed for lack of jurisdiction.

I ahatia?
What has happened here?

[4] Since 2020, there has been a representation dispute within Te Hāhi Rātana. The details of how that dispute arose, and the reasons why each of the kōmiti assert that they are the true representatives of Te Hāhi Rātana, are only relevant if the Court has jurisdiction here. It is sufficient for present purposes to say that the representation dispute is such that it has prompted an application to this Court to resolve it.

[5] The application was filed on 20 May 2021. By directions of the Chief Judge dated 2 June 2021, it was referred to me.[4] I directed the parties to consider mediation per ss 30D to 30G of the Act. By February 2022, it was clear that there was no agreement between the parties to enter into mediation.

[6] A judicial conference was held on 4 March 2022 to discuss next steps in the proceeding. At that judicial conference, there was consensus between the parties that the most appropriate forum in which to resolve the representation issue would be the forthcoming Hui Whakapūmau. This is the annual Easter gathering of Te Hāhi Rātana and the morehu. It was apparent that, if the parties could agree on a process to call and hold the Hui Whakapūmau, including providing space in the agenda for representation issues to be discussed and resolved, the parties would likely resolve the dispute through the internal processes of Te Hāhi Rātana. Accordingly, I issued directions asking the parties to consider whether they would be prepared to meet (including with an independent facilitator) to agree the procedure to be followed to call and hold the Hui Whakapūmau.

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3 The members of the respondent kōmiti are Andre Tutere Anderson; Dana Puketohe; Desiree Docherty; Jamie Nepia; Reo Maraku; Jason Hihiria; Piri Rurawhe; Rawinina Anderson; Mere Tunga Nepia; Pirihitia Meihana; Murray Ririnui; Cole Paki; and Errol Turuki Meihana.

4 2021 Chief Judge's MB 700 (2021 CJ 700).

[7] Unfortunately, the respondent kōmiti did not agree to such a process meeting. A further judicial conference was then held on 11 March 2022 to discuss procedural matters to bring the matter to hearing. It was then that the respondent kōmiti submitted that the Court does not have jurisdiction over Te Hāhi Ratana. The parties were therefore directed to file evidence and submissions on the Court's jurisdiction by 23 March 2022. Those submissions and evidence were provided to me on 29 March 2022. I provided an opportunity for the parties to be heard on the issue. That hearing was held on 8 April 2022.

He aha ngā kōrero a ngā kaitono?
What does the applicant kōmiti say?

[8] The applicant kōmiti says that the Court has jurisdiction here. In summary, they say:

(a) Te Hāhi Rātana is a Māori organisation. It was established by Māori, for Māori, for their survival. It is a Māori movement. Its membership is overwhelmingly Māori.[5] Operational and administrative aspects of Te Hāhi Rātana are undertaken in te reo Māori. It is recognised nationally, including by other Māori organisations, as being Māori in nature.[6]

(b) Section 30 of the Act does not expressly require the membership of Te Hāhi Rātana to be exclusively Māori for the Court to have jurisdiction. Otherwise, the remainder of the Act, the Hansard concerning s 30 (including the amendments made in 2002) and the Māori Land Court Rules 2011 do not provide any illumination on whether a class or group of Māori must be exclusively Māori for the Court to have jurisdiction.

(c) The report of the New Zealand Law Commission on s 30, citing *Tararua District Council*, confirmed the general tikanga principles to be applied to representation issues.[7]

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5 Based on data from the 2018 census, approximately 3 per cent of the morehu are not Māori. Te Hāhi Rātana does not otherwise maintain details of the ethnicity of the morehu.

6 Evidence was filed on behalf of the applicant kōmiti by a number of kaumātua and kuia with long associations with Te Hāhi Rātana, including as members of Te Kōmiti Matua. Evidence was filed by Kataraina Raurangi, Hareruia Aperahama, Sharl Pullvoorder, Piki-te-ora Manuel, Mita Ririnui, Anaru Ratapu and Jack Smith. This evidence was not contested.

7 *Tararua District Council* (1994) 138 Napier MB 85 (138 NA 85) as cited in Law Commission *Determining Representation Rights under Te Ture Whenua Māori Act 1993, an Advisory Report for Te Puni Kōkiri* (NZLC SP8, 2001) at 17.

(d) A purposive approach must be taken to s 30. There is nothing in the statutory scheme which would lead to a conclusion that there is a clear legislative purpose to limit the Court's jurisdiction to assist resolving representation disputes to only situations where the membership of the class or group of Māori are exclusively Māori.

(e) The Court of Appeal in *McKenzie v Attorney General* held that "grammatical meaning must yield to sufficiently obvious purpose."[8] The purpose of s 30 is to provide a mechanism for the resolution of disputes as to representation among Māori, and setting a threshold that the class or group must be "exclusively Māori" would unnecessarily limit the achievement of that purpose.

(f) The statutory language of "class or group of Māori" appeared in s 438 of the Māori Affairs Act 1953. Many trusts established under that section invariably include beneficial owners who are not Māori, yet the beneficiaries were still described as a class or group of Māori. This shows that a class or group of Māori need not be exclusively Māori.

(g) The Māori Appellate Court has recently confirmed it has jurisdiction over post-settlement governance entities.[9] The membership of these entities is not necessarily exclusively Māori. This fact does not oust the Court's jurisdiction.

[9] In summary, the applicant kōmiti submits that Te Hāhi Rātana is a class or group of Māori for the purposes of s 30(1)(b) and that a common sense and purposive approach to the interpretation of s 30 should be favoured. A preferred and common sense approach is that the class or group of Māori under s 30 must refer to "a majority of members of a class or group who are Māori", who are organised according to Māori values and/or kaupapa, and who are recognised within te ao Māori as being a Māori group.

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8 *McKenzie v Attorney General* [1992] 2 NZLR 14, at 17.

9 *Moke v Trustees of Ngāti Tarāwhai Iwi Trust* [2019] Māori Appellate Court MB 265 (2109 APPEAL 265); *Nikora v Tūhoe Te Uru Taumatua* [2020] Māori Appellate Court MB 248 (2020 APPEAL 248). See also *Te Korowai Tiaki o Te Hauāuru Incorporated Society v Te Rūnanga o Ngāti Tama* (2019) 407 Aotea MB 47 (407 AOT 47).

He aha ngā kōrero a ngā kaiurupare?
What does the respondent kōmiti say?

[10] The respondent kōmiti made two primary submissions:

(a) The constitution of Te Hāhi Rātana separates the spiritual and the earthly. It clearly provides that the spiritual aspects of Te Hāhi Rātana are not intended to be justiciable in any court, including the Māori Land Court. This accords with the manner in which Te Hāhi Rātana was first established and the philosophy of its founder.

(b) Section 30(1)(b) of the Act allows the Court to determine who are the most appropriate representatives of a class or group of Māori. Te Hāhi Rātana is not a class or group of Māori, because it is primarily a faith-based organisation, the membership of which is not exclusively Māori. Further, the two pillars of this Court are land and whakapapa. As a faith-based organisation, Te Hāhi Rātana does not rest on those pillars.

Te Ture
The Law

[11] Sections 30 to 30J grant jurisdiction to the Court to advise on or determine representation of Māori groups. The most relevant sections are ss 30 and 30A, which provide:

> **30 Maori Land Court's jurisdiction to advise on or determine representation of Maori groups**
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> (1) The Maori Land Court may do either of the following things:
>
> (a) advise other courts, commissions, or tribunals as to who are the most appropriate representatives of a class or group of Maori:
>
> (b) determine, by order, who are the most appropriate representatives of a class or group of Maori.
>
> (2) The jurisdiction of the Maori Land Court in subsection (1) applies to representation of a class or group of Maori in or for the purpose of (current or intended) proceedings, negotiations, consultations, allocations of property, or other matters.

> (3) A request for advice or an application for an order under subsection (1) is an application within the ordinary jurisdiction of the Maori Land Court, and the Maori Land Court has the power and authority to give advice and make determinations as the court thinks proper.
>
> **30A Intent of sections**
>
> The intent of section 30 and sections 30B to 30I is—
>
> (a) to enable and encourage applicants and persons affected by an application under section 30 to resolve their differences concerning representation, without adjudication; and
>
> (b) to enable the Chief Judge to facilitate, as far as possible, successful resolution of differences surrounding an application by the persons affected, without adjudication.

[12] There are a number of decisions of the Court per s 30.[10] However, none of them squarely address the question as to what constitutes a class or group of Māori.

[13] Determining the ambit and scope of s 30 is an exercise of statutory interpretation. Section 10 of the Legislation Act 2019 sets out the general principles of statutory interpretation and provides that the meaning of legislation must be ascertained from its text and in light of its purpose and context.[11]

[14] In *Commerce Commission v Fonterra Co-operative Group Ltd*, the Supreme Court made the following comments with regard to statutory interpretation:[12]

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10 *Te Reo Mana o Whakatōhea* (1994) 69 Opotiki MB 11-26 (69 OPO 11-26); *Ngāti Pahauwera* (1994) 92 Wairoa MB 66 (92 WR 66); *Ngāti Toa Rangatira* (1995) 21 Nelson MB 17-18 (21 NE 17-18); *Tararua District Council* (1995) 138 Napier MB 104 (138 NA 104); *Ngāti Paoa Whānau Trust – Ngāti Paoa* (1995) 96A Hauraki MB 155 (96A H 155); *Ngāti Tama and Ngāti Maru* - 141 Aotea MB 29 (141 AOT 29); *McDonald – Pakiri Beach Rohe* [2005] Chief Judge's MB 130 (2005 CJ 130); *Walker – Tane-nui-a-Rangi* [2006] Chief Judge's MB 70 (2006 CJ 70); *Ngāti Paoa Whānau Trust and Ngāti Paoa Trust Board – Ngāti Paoa* (2009) 141 Waikato MB 271 (141 W 271); *Te Whānau o Rangiwhakaahu Hapu Charitable Trust* (2010) 9 Taitokerau MB 248-264 (9 TTK 248-264); *Manuirirangi v Ngā Hapu o Ngā Ruahine Iwi Inc – Ngā Ruahine* [2010] Chief Judge's MB 355 (2010 CJ 355); *McClutchie v Te Runanga o Ngāti Porou – Determine representatives of Ngāti Uepohatu, Ruawaipu and Te Aitanga a Hauiti* (2010) 12 Tairawhiti 278 (12 TRW 278); *Wano v Ngāti Hineuru Iwi Incorporated – Ngāti Hineuru Iwi* (2013) 24 Tākitimu MB 56 (24 TKT 56); *Te Toki – Hako Hauraki* [2013] Chief Judge's MB 456 (2013 CJ 456); *Baker – Ngāti Tuwharetoa Hapu Forum* [2015] Chief Judge's MB 900 (2015 CJ 900); *Shaw v Ngāti Huarere Ki Whangapoua – Ngāti Pu* (2016) 124 Waikato Maniapoto MB 3 (124 WMN 3); *Nee Harland v Prentice – Ahuriri Incorporated Society* (2017) 57 Tākitimu MB 1 (57 TKT 1); and *Bayne v Trustees of Ngāti Rehua Ngāti Wai ki Aotea Trust – Great Barrier Island* [2019] Chief Judge's MB 1432 (2019 CJ 1432).

11 Section 10 of the Legislation Act 2019 replaced s 5 of the Interpretation Act 1999, which was repealed on 28 October 2021 by s 6 of the Legislation (Repeals and Amendments) Act 2019.

12 *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 (footnotes omitted). Although this decision deals with s 5 of the Interpretation Act 1999, it continues to be a leading authority on s 10 of the Legislation Act 2019. See, for example, *Paul v Mead* [2021] NZCA 649; *Borrowdale v Director-General of Health* [2021] NZCA 520.

> [22] It is necessary to bear in mind that s 5 of the Interpretation Act 1999 makes text and purpose the key drivers of statutory interpretation. The meaning of an enactment must be ascertained from its text and in the light of its purpose. Even if the meaning of the text may appear plain in isolation of purpose, that meaning should always be cross checked against purpose in order to observe the dual requirements of s 5. In determining purpose the court must obviously have regard to both the immediate and the general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

Kōrerorero
Discussion

[15] Section 30 is aimed at identifying, whether by advice or determination, who are the most appropriate representatives of a class or group of Māori. The applicant kōmiti submits that the term "class or group of Māori" does not expressly require the membership of Te Hāhi Ratana to be exclusively Māori. The relevant question is, what is meant by the phrase "class or group of Māori"?

[16] We must obviously look carefully at the statutory language and the associated purpose and context. However, before doing so, it is useful to consider the ordinary meaning of this phrase. In my view, the ordinary meaning of the phrase "group of Māori" or "class of Māori" means a group made up solely of Māori, not an organisation which is mostly, but not exclusively, made up of Māori members. This is because, with no qualifiers, the reference to "Māori" suggests that all the people who comprise the class or group must be Māori.

Are any of the relevant words defined in the Act?

[17] The word "Māori" is defined in s 4 of the Act:

> **Maori** means a person of the Maori race of New Zealand; and includes a descendant of any such person.

[18] Three immediate observations can be made about this definition:

(a) First, there are two parts to it. The first part is truly definitional, in that it defines who is Māori. It is, however, somewhat circular. The second part is supplementary to the true definition, in that it includes a descendant of anyone who satisfies the true definition.

(b) Second, is it is defined in the singular. It applies to a particular person, including a descendant (singular) of that person. It is not defined in the plural. Put another way, it does not itself define a class or group.

(c) Third, a person satisfies the definition simply by descent. It is whakapapa based.

[19] Because the term "Māori" is whakapapa based, the phrase "class or group of Māori" must also be whakapapa based. This is because a descendant of any Māori is included, by definition, in the associated class or group. This descent-based framework points strongly to the interpretation that s 30 is aimed at descent-based classes or groups.

[20] Moreover, this whakapapa-based premise fits uncomfortably with a faith-based class or group such as Te Hāhi Rātana. If Te Hāhi Rātana is a class or group of Māori, the statutory definition of "Māori" would deem every descendant of every morehu to be a member of that class or group. It seems contrary to the notion of a faith-based class or group for members to become such by birth, without having to first accept the faith on which the group is based. There is nothing in the evidence before the Court to suggest that a person becomes a morehu simply by being a descendent of a morehu. This favours the interpretation that s 30 is not aimed at faith-based classes or groups.

What is meant by "class or group"?

[21] The phrase "class or group of Māori" is not defined in the Act. Nor are the words "class" or "group". However, three observations can be made regarding the interrelationship between the undefined phrase "class or group of Māori" and the definition of "Māori" in s 4 of the Act:

(a) First, because the term "Māori" is defined in the singular, the words "class or group" are required to extend that definition to the plural.

(b) Second, the plain wording of the phrase "class or group" indicates that a class or group must comprise more than one Māori.

(c) There are no other qualifiers as to what constitutes a "class or group" of Māori. While the wording does not expressly require such a class or group to comprise Māori exclusively, nor does the wording expressly allow or anticipate that such a class or group could include non-Māori.

[22] The term "class" or "classes" is used relatively extensively elsewhere in the Act. It is used in respect of persons (that is, whether a person is of a particular class), applications (that is, whether a court application is of a particular class) and other contexts (for example, classes of assets in relation to leases or improvements).[13] The references to classes in the context of persons are most relevant for present purposes.

[23] The most common use in the Act of the word "class" is in the phrase "class(es) of persons". This phrase occurs approximately 34 times in the Act. The phrase "class(es) of Māori" (or variants of it) is used only three times.[14] Two observations can be made here:

(a) Because these two differing phrases are used, the Act seems to distinguish between "classes of persons" and "classes of Māori".

(b) The Act most often refers to "class(es) of persons" and the phrase "classes of Maori" is used in specific and limited circumstances.

[24] The references in the Act to "class of persons" appear in many of the fundamental parts of the Act, including succession, land status and alienations. Many of these references are new, having been incorporated into the Act through Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020. I return to this point later.

[25] So, what distinction, if any, is to be drawn between the phrases "class of persons" and "class of Māori", as used in the Act? Are they interchangeable, or do they each have a different meaning? If they have different meanings, what are they?

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13 For examples of classes of persons, see Te Ture Whenua Māori Act 1993, ss 4, 147A, 148 and 288 (in relation to the preferred classes of alienees), s 70(3) (representation of parties by a barrister or solicitor), ss 107A, 108 and 113A (in relation to classes of persons for succession), ss 131 to 134 (classes of persons in relation to land status) and s 218 (classes of persons in relation to Māori community purposes). See also ss 241, 290, 297, 307, 308, 318 and 338. For examples of classes of applications, see ss 67, 95 and 97. For examples of classes of assets or improvements, see ss 201 and 207.

14 In addition to Te Ture Whenua Māori Act 1993 s 30, see ss 134 and 338.

[26] It is illustrative to assess the provisions that included the phrase "class of persons" before the Act was amended in 2020. In each of those provisions, it is contemplated that the class of persons referred to could include non-Māori.[15] For example:

(a) Section 70 allows the Court to appoint a barrister or solicitor to represent any class of person. It is clear that this class need not be exclusively Māori.

(b) Section 95(3) allows the rules made under s 95 to prescribe classes of person before whom affidavits, declarations or affirmations may be sworn or made. Again, clearly these classes need not be exclusively Māori.

(c) Section 131 does not limit the class of persons who may apply to the court, which must surely be a reference to a class that includes persons who are not Māori.

[27] We must also assess the provisions of the Act that include the phrase "class or group of Māori" or variations of it. In addition to s 30, the phrase "group or class of Māori" appears in s 134 and the phrase "Māori of the class or classes" appears in s 338. The references in s 134 are equivocal and could be read to imply both that the class is exclusively Māori or that non-Māori can be included. These references are therefore neutral for our analysis. Section 338 is unusual, in that includes the phrases "Māori of the class or classes" and "class of persons" in the same section. I do not think that the use of the phrase "Māori of the class or classes" in s 338(3) and the use of the phrase "class of persons" in s 338(5) means those phrases are interchangeable. Having regard to the other references in the Act to these terms, the better interpretation is that the reference to "class of persons" in s 338(5)(d) is an anomaly and cannot itself support a conclusion that the terms "class of Māori" and "class of persons" are interchangeable.

[28] We must also assess the Act as now drafted. As noted earlier, the 2020 amendments to the Act have resulted in the phrase "class of persons" being used in many sections of the Act. All of these references are consequential to the amendments to s 132. That section now allows the Court to determine title to and interest in Māori customary land and define the owners as a "class of persons". As a result, the phrase "class of persons" is now used in

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15 See Te Ture Whenua Māori Act 1993, ss 70, 95(3)(p), 98, 131(2), 218, 318 and 338.

instances where it is almost certain that all persons within the class are Māori. If there was a distinction in the Act before the 2020 amendments between a class of persons (which could include non-Māori) and a class of Māori (which is exclusively Māori), that distinction is now blurred.

[29] I do not consider that the 2020 amendments to the Act were intended to alter the interpretation to be given to the phrase "class of persons" as used elsewhere in the Act, for the following reasons:

(a) All of the new references to the phrase "class of persons" stem from the amendment to s 132. I do not consider that an amendment to one section of the Act was intended to affect the interpretation of every other section of the Act in which the phrase "class of person" appears.

(b) The amendment to s 132 is targeted and specific. This supports the conclusion that it was not intended to inadvertently change the interpretation of other sections of the Act.

[30] Accordingly, when s 30 was first enacted in 1993 and then amended substantially in 2002, the phrase "class of persons" was used elsewhere in the Act. At that stage, the phrase was used to describe classes that would likely include non-Māori. Rather than use that phrase in s 30, Parliament used a different phrase. It used the phrase "class or groups of Māori". In my view, the distinction between these phrases is that one could include non-Māori and the other could not. Accordingly, in assessing the phrases used in the Act that refer to classes or groups of people, I consider that the phrase "class or group of Māori" means a class or group that is exclusively Māori. This conclusion is consistent with and reinforces my earlier observations regarding the whakapapa-based definitional framework, which points strongly to the view that s 30 is aimed at whakapapa-based Māori groups and not faith-based groups.

What is the broader context of the Act?

[31] There are some other statutory references in the Act that indirectly support the position that s 30 is aimed at classes or groups that are exclusively Māori:

(a) The definition of "General land owned by Māori" specifically refers to "a group of persons of whom a majority are Māori". This is an example of the Act, when using the defined term "Māori", expressly not requiring the group of persons to be exclusively Māori. By analogy, if Parliament intended that s 30 could be invoked for a group of persons of whom a majority are Māori, it would have used those exact words in s 30. It did not.

(b) Section 218(3) of the Act uses the phrase "group of class of persons" and allows money to be applied for the benefit of such a group or class even if it includes non-beneficiaries of a trust constituted under Part 12 of the Act. This is an example in the Act where Parliament expressly provided for members outside of a defined group to be included in the group. By analogy, if Parliament intended for the reference to class or group of Māori in s 30 to capture a class or group that includes non-Māori, it could have used the same approach as in s 218(3) by expressly stating that s 30 applies even if the class or group includes non-Māori. It did not.

[32] The definition of General land owned by Māori and s 218(3) do not themselves justify a conclusion that s 30 is limited to groups that are exclusively Māori. However, they support such a conclusion.

What is the broader purpose of s 30?

[33] The applicant kōmiti submits that the broader purpose of s 30 is to enable representation disputes among Māori to be resolved and it is inconsistent with that purpose to limit its application to groups that are exclusively Māori. There is some appeal in this submission. Parliament has recognised that the Māori Land Court is likely to be the most appropriate forum, with the required expertise, to determine these types of representation disputes and has not expressly limited that jurisdiction to groups that are exclusively Māori. The applicant kōmiti therefore says that the phrase "class or group of Māori" per s 30 must refer to "a majority of members of a class or group who are Māori", who are organised according to Māori values and/or kaupapa, and who are recognised within te ao Māori as being a Māori group.

[34] The initial lustre of the submission dulls on further analysis, for the following reasons:

(a) The interpretation proposed by the applicant kōmiti requires a number of concepts to be read into s 30. One concept is that it is enough for a majority of the members of the class or group to be Māori. But as noted earlier, it would be difficult to read this concept into s 30 when it is provided for expressly in the definition of "General land owned by Māori". In addition, the threshold of a majority of Māori is necessarily arbitrary. So would any threshold requirement that is less than exclusivity, for that matter. This arbitrariness, and the associated issue of determining what percentage of non-Māori members would take a class or group beyond the scope of s 30, is a significant hurdle to any interpretation that does not require exclusivity.

(b) Further, the concept that the group is organised according to Māori kaupapa is not supported by the plain language of s 30 or any other provision of the Act. There is no other provision of the Act that requires an assessment of the kaupapa or values of a group to determine whether the Court has jurisdiction over it.

(c) Similarly, there is no other provision in the Act that requires an assessment of how other Māori organisations view or perceive a group to determine whether the Court has jurisdiction over it.

[35] Fundamentally, each of the proposed concepts proffered by the applicant kōmiti to assess whether a group falls within s 30 require a gloss on the section that its plain words cannot maintain.

[36] It is also relevant that all of the applications that have been determined under s 30 have related to whakapapa-based Māori groups.[16] Although this does not itself prove that s 30 only applies to such groups, the fact that it has only ever been applied to such groups is illustrative of its purpose.

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[16] Above n 10. Three of these decisions related to Māori land blocks and the remainder related to representation of iwi or hapū. None of the applications related to pan-Māori or faith-based organisations.

[37] It was argued that the Māori Land Court is the most appropriate forum to facilitate the resolution of this representation dispute, because it has tools that can be used to encourage the parties to reach their own solution and it has the expertise to use those tools most effectively in these contexts.[17] It was further argued that this Court is a better alternative to the High Court, which does not necessarily possess these tools. Even if this is correct, it does not allow the Court to go where it is not permitted. Even if the Māori Land Court is the most appropriate forum to resolve this dispute, it can only do so if it has jurisdiction.

Whakataunga
Decision

[38] For these reasons, the Court does not have jurisdiction to determine the most appropriate representatives of Te Hāhi Rātana per s 30 of the Act.

[39] The application is dismissed.

I whakapuaki i te 2.00 pm i Te Whanganui-a-Tara, tekau mā tahi o ngā rā o Paenga-whāwhā i te tau 2022.

D H Stone
JUDGE

[17] The express intent of ss 30 and 30B to 30I is to enable parties to resolve their disputes without adjudication and the provisions expressly provide for mediation as an alternative to adjudication. Further, Part 3A of the Act allows applications to be referred to mediation.