

MĀORI LAND COURT OF NEW ZEALAND

PRACTICE NOTE – SPECIAL AID FUND – APPOINTMENT OF A BARRISTER OR SOLICITOR

31 May 2012

1. This practice note applies to the use of the Māori Land Court Special Aid Fund established pursuant to section 98 of Te Ture Whenua Māori Act 1993 (“the Act”). In particular this practice note applies to the appointment, engagement and payment of the fees of any barrister or solicitor appointed under sections 70(3), 98(3) and 98(9)(c) of Te Ture Whenua Māori Act 1993.
2. This practice note should be read in conjunction with Part 16 of the Māori Land Court Rules 2011 (“Rules”). It is not intended to provide an inflexible set of rules but will be followed unless there is good reason to do otherwise.

General Principles

3. The following principles derived from *Mokomoko – Part Hiwiraui C*¹ and *Pomare v Rangihaeata and Anor – Hongoeka 7 Lots 2 and 3*² are used by the Court³ as general guiding principles in relation to the use of the Special Aid Fund:
 - The Māori Land Court Special Aid fund is not a general legal aid fund;
 - The use of the word “special” in section 98 is a qualifying indicator of how the fund is to be applied, and denotes something distinguished from others of its kind; for a specific purpose; exceptional; particular;
 - Any applications for grants from the Fund should if possible be filed and determined before a hearing is commenced;
 - Once an order is made under section 98(3) or 98(9) for payment from the Fund, orders under section 98(6) for a charging order should normally be made unless the circumstances of a particular case render it inappropriate once the principles and objectives of the Act have been duly considered;
 - The Court will exercise its discretions and powers under the Act in a manner consistent with the scheme, principles and objects of Te Ture Whenua Māori Act 1993, including in particular, the principles, objects and provisions contained in the Preamble and sections 2 and 17, and will consider such matters in light of the circumstances of a particular case;
 - Where the application for aid is for the purpose of assisting a party to proceedings or person or persons who may be affected by an order of the Court, the Special Aid Fund is generally only available for those who would otherwise not be able to prosecute cases because of the special circumstances of their case.

¹ (2001) 10 Waiariki Appellate Court MB 32 (10 APRO 32)

² (2009) 16 Whanganui Appellate MB 108 (16 APWG 108)

³ Means as the case may require, the Māori Land Court or the Māori Appellate Court or both.

Material to Accompany an Application for Order for Payment from Special Aid Fund

4. In addition to the material required pursuant to Rules 16.2, 16.6 and 16.7 an application for an order for payment from the Special Aid Fund should also be accompanied by the following material:
 - (a) An explanation of the financial circumstances of the applicant;
 - (b) Whether the applicant/s are acting in a representative capacity, for example a trust board, trustees or incorporation. If so, the applicant should provide a copy of the most recent set of annual financial statements for that trust board, trust or incorporation;
 - (c) The nature of the proceedings including their legal or factual complexity;
 - (d) The degree of need for legal representation;
 - (e) The amount of aid sought relative to the possible impacts of a Court order on that person;
 - (f) Whether financial assistance is available to the applicant from other sources, for example the Legal Services Agency;
 - (g) The degree of hardship that would be suffered if aid is not granted including, but not limited to, whether or not the applicant would otherwise be able to prosecute their case;
 - (h) The particular circumstances of the applicant's case, including whether these can be characterised as distinctive or special;
 - (i) Whether there is any real or personal property owned by the person or class of person in whose favour an order has been made, over which the Court may make a charging order; and
 - (j) Any overlapping and further considerations set out in *Mokomoko* and subsequent case law.

Rates of Pay for Barristers and Solicitors Appointed Pursuant to Sections 70(3)(a) and 98

5. The Special Aid Fund is not a general legal aid fund, it is subject to judicial discretion and is provided to assist parties to deal with complex issues brought before the Court. Money made available to the Special Aid Fund is by way of public funding.
6. In order to promote a consistent approach, when setting the charge out rate for barristers and solicitors, the Judges will ordinarily adopt a rate of payment equivalent to that which the barrister and solicitor would receive if legal aid was granted for that person to appear before the Waitangi Tribunal.
7. The current hourly rates which apply to Legal Aid Services for appearances before the Waitangi Tribunal are set out below. The rates are effective as at 1 July 2009 and are on a GST exclusive basis.

		Level of Experience		
		Level 1 ⁴ (\$/hr)	Level 2 ⁵ (\$/hr)	Level 3 ⁶ (\$/hr)
	Waitangi Tribunal	\$120.00	\$134.00	\$149.00
	Travel Time	\$ 48.00	\$ 58.00	\$ 68.00

8. Judges will retain a discretion to approve a rate of payment greater than that set out at paragraph 7. There may well be circumstances such as, but not necessarily limited to, the complexity of the case, the specialised assistance required and/or the seniority of counsel involved, in which a Judge is justified in setting a higher rate of payment than that set out in the table above.

Costs Against a Person or Class of Persons in Receipt of Special Aid

9. The mere fact that a party to proceedings before the Māori Land Court is in receipt of special aid is not a barrier to costs being awarded against them.
10. However a Judge will generally only award costs against persons who are in receipt of special aid if he or she is satisfied that there are exceptional circumstances.⁷

Notifying Other Parties of the Appointment of a Barrister or Solicitor

11. When a Barrister or Solicitor is appointed and engaged pursuant to sections 70(3) or 98(3), they must at once give written notice of that fact to every other party to the proceedings.
12. If any other person subsequently becomes a party to the proceedings, the Barrister or Solicitor appointed and engaged must give an equivalent notice to the new party.


Chief Judge Wilson Isaac


Deputy Chief Judge Caren Fox


Judge Stephen Clark

⁴ Level 1 is defined by the Legal Services Agency as a person with up to four complete years of litigation experience.

⁵ Level 2 is defined by the Legal Services Agency as a person with at least four and up to nine complete years of litigation experience.

⁶ Level 3 is defined by the Legal Services Agency as a person with at least nine complete years of litigation experience.

⁷ See *Wairoa District Council v Wairau-Kaiwaitau* 7C2B (2009) 128 Wairoa MB 168 (128 WR 168)