TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

TE MANUTUKUTUKU

Whiringa-ā-nuku 1998 | Number 46 | October 1998

Te Ika Whenua Rivers Report *Released*

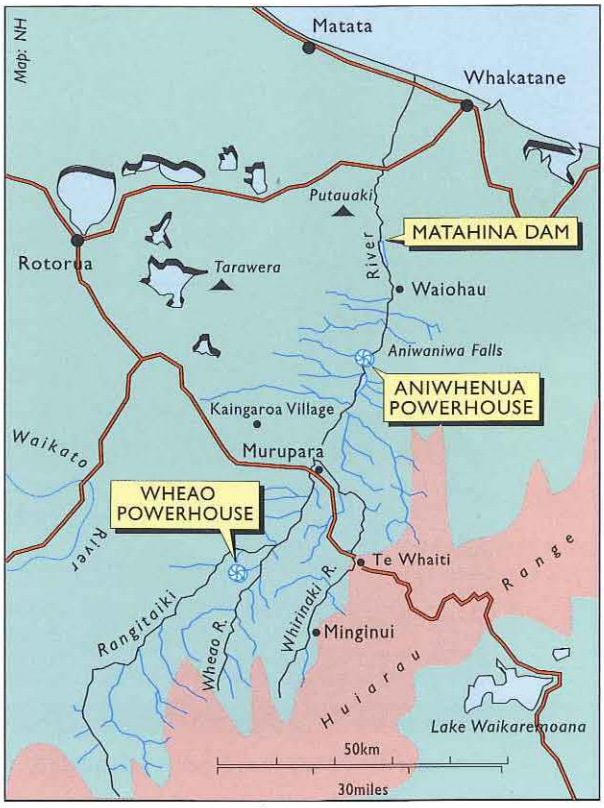
The Tribunal's most recent report – *Te Ika Whenua Rivers Report* – highlights 'a consistent lack of attention by the Crown to the guarantees under article two of the Treaty and its effects upon the properties of Te Ika Whenua.'

The report follows an inquiry that focussed on the parts of the Rangitaiki, Wheao and Whirinaki rivers, and their tributaries, which flow through Te Ika Whenua's traditional rohe. It covers the extent of Te Ika Whenua's customary rights over the rivers, the guarantees given by the Crown under the Treaty of Waitangi and the lack of any recognition of rights other than those provided under common law.

The Tribunal has found that the rivers are tūpuna awa and living taonga of Te Ika Whenua hapū, who regard them as whole and indivisible entities. By contrast, the Tribunal notes how the common law divides rivers into their separate and constituent parts – bank, bed and water.

According to the Tribunal, the common law rule *ad medium filum aquae*, which assumes the owner of land bordering a non-navigable river owns to the middle line of the riverbed, conflicts with the Māori view of ownership. In the Tribunal's view, it is 'inescapable' that the application of this rule was a major factor in Te Ika Whenua's loss of title and tino rangatiratanga over their rivers. The Tribunal states that the operation of this law is inconsistent with the principles and guarantees under the Treaty, a finding that was also made by the Tribunal in the *Mohaka River Report 1992*.

The Tribunal makes a number of recommendations to the Crown relating to the recognition of Te Ika Whenua's residual rights in the rivers, the management and control of the rivers, the vesting of certain parts of the riverbeds in the claimants and compensation to them for the loss of title resulting from the application of the *ad medium filum aquae* rule.



Ika Whenua river system and hydroelectric schemes

As with all Tribunal reports, copies of the *Te Ika Whenua Rivers Report* are available from selected bookshops and can be ordered through GP Publications Ltd., ph 04-496-5690, freefax 0800-804-454. Sections of the *Report* can also be accessed on the internet at the Tribunal's homepage: http://www.knowledge-basket.co.nz/waitangi/welcome.html.

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From the Director

Fractionated Claims

As the demand for the resolution of claims through Treaty settlements increases, so too will the pressure on the Tribunal process increase.

We have already seen an attempt to curtail the Tribunal process in the form of a Bill that proposes to stop the registration of new claims and set a fixed date for the completion of all claims. Although that draft Bill is unlikely to progress at this time, the pressure behind it will remain.

At draft stage, the Government's 'fiscal envelope' policy also sought to include a cut-off point for the registration of claims. Advice at that time was against that part being included. I understand that one of the reasons for not putting in a closing date for claims was that it could cause a rush of claims as parties sought to ensure their interests were included.

Morris Love

As each district comes into the hearing process, the Tribunal experiences a microcosm of this rush of claims. Late claims are hastily submitted, especially by groups who have split off from earlier claimant groups. We now have whānau claimants who have splintered into even smaller groups that have in turn submitted separate claims. Quite often, the late claims are submitted more for matters to do with representation and mandate than for reasons associated with the evidential presentation of a case.

The 'fractionated claims' usually have the same basis of claim against the Crown, yet the Tribunal must be sure that they have been adequately researched and must still then hear and report on them. All this consumes considerable resources and, in the end, such claims may not even be able to be settled individually. It is time for everyone to look carefully at this process.

Possible Solutions

How should fractionation be dealt with? One way would be to amend the Treaty of Waitangi Act so that the Tribunal could register a claim only after the claimants have demonstrated that they have a mandate to prosecute it. But unless the legislation was made retrospective, this proposal looks to be inherently unfair.

Another way of dealing with this issue is to simply have the Tribunal adjudicate firstly on some scheme of settlement in its recommendations and then on which party it saw as the appropriate group to settle with. I suspect this is not a role the present Tribunal would be comfortable with, and that it goes against the general role of the Tribunal as being a body that only makes recommendations.

Alternatively, a mandating process could be established to run alongside (or even prior to) the hearing process. This mandating process could be progressed both before hearings commence and while hearings are underway. The Tribunal, in the hearing process, could consider submissions that looked at proposed mandates. This process is more likely to be fair to all parties and recognize modern shifts in the balance of power within tribes or hapū. It could also save time.

The cost of running this mandating process would be no less, but no more, than the present cost of the mandating process required by the Office of Treaty Settlements. However, this alternative would neither reduce the numbers of claims being registered, nor reduce the initial fractionation, and so would not reduce the Tribunal's work in researching, hearing and reporting on claims.

Although the number of new claims registered each year is starting to drop, the accumulating total number of claims makes each inquiry harder to manage. I suspect that the number of additional claims registered is driving the need for research to be more and more specific. Researchers must look more intensely at smaller and smaller blocks to find the basis of claim. For instance, we now have some 46 claims in the Tauranga Moana inquiry district. Many of these are recently registered. It is unlikely that settlements could relate to that number of groups. The challenge in that inquiry will be to move from 46 registered claims to smaller groupings that can then secure and manage settlements for all.

The issue of getting mandated groups, with whom settlements can be negotiated, is probably the largest issue confronting the settlement process. This must change if we are to achieve settlements in reasonable time.

Morris Te Whiti Love
Director

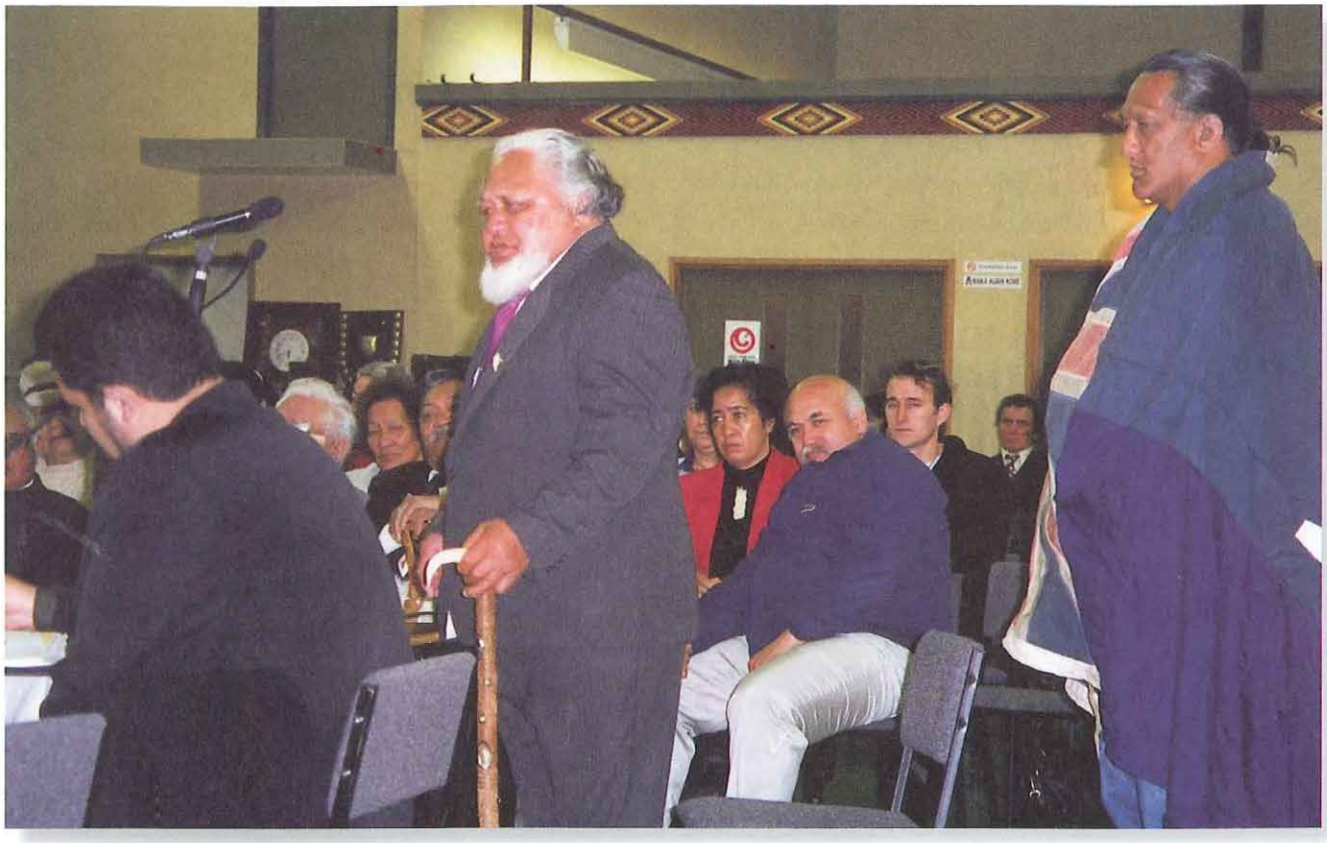
Wellington Tenths Hearings

Two hearings in the Wellington Tenths inquiry have been held recently at Pipitea Marae. The first, from 24-26 August, heard kaumātua and academic historical evidence. Iwakatea Nicholson gave Ngāti Toa kaumātua evidence, while Te Puoho Katene, Millie Solomon and Te Taku Parai gave Ngāti Tama kaumātua evidence. Ruth Harris gave Rangitāne kaumātua evidence, Hohepa Tukapua gave Muaupoko kaumātua evidence and Ngāti Mutunga were represented by kaumātua Toarangatira Pomare and Hamiora Raumati.

Richard Boast presented evidence relating to Ngāti Toa and the colonial State, and Duncan Moore shared his research into the Wellington Town Belt for the period 1839-1873.

A further hearing on 28 September heard historical evidence relating to the interests of Ngāti Mutunga and Ngāti Tama in the Wellington Tenths inquiry. A hearing of the Crown's evidence and remaining Tribunal research reports will be held in December. Final submissions are expected in the first part of 1999.

Muaupoko kaumātua Hohepa Tukapua gives evidence at Pipitea Marae.



Kaipara Inquiry Update

The conclusion of Stage One of the Kaipara inquiry was marked by the Kaipara Tribunal deciding that it would not make preliminary indications on the claims made by Te Uri o Hau.

In preparation for Stage Two the Tribunal will hold a conference in Auckland, on 3 November, of all parties involved in the inquiry, including the Crown and representatives of the approximately 20 claimant groups.

Stage One hearings started in August of 1997. Stage Two hearings are expected to begin in March 1999. The Tribunal may also discuss planning for the third and final stage at its November conference.

The Kaipara Tribunal includes Dame Augusta Wallace (presiding officer), Areta Koopu, Professor Evelyn Stokes, John Turei, Brian Corban and Hon Dr Michael Bassett.

Turangi Township Claim Settled

The Crown and Ngāti Turangitukua signed a settlement on September 26 that included an apology from the Crown, compensation in cash and property totalling $5 million, and the gifting of Turangitukua House, a culturally significant property.

There has also been agreement to return ownership of reserves (without any change in management or public access) and commitments covering wāhi tapu, conservation values, environmental management and possible name changes for certain streets and reserves in Turangi.

Ngāti Turangitukua grievances arose from Crown breaches of the Treaty of Waitangi during construction of the Turangi Township following the decision to proceed with the Tongariro power scheme in the mid-1960s.

Ngāti Turangitukua submitted their claim to the Waitangi Tribunal in 1990. The claim was heard under urgency in 1994 and the Tribunal's report was issued in September 1995.

The negotiated settlement follows the Waitangi Tribunal's remedies report on the claim which, for the first time, made interim binding recommendations for the resumption of properties subject to section 27B of the State-Owned Enterprises Act 1986.

The Crown and Ngāti Turangitukua had 90 days to negotiate a settlement and avoid the interim recommendations taking effect. As a result of the settlement, all but one of the interim recommendations are to be cancelled.

Minister in Charge of Treaty Negotiations, Rt Hon Doug Graham, said he was delighted with the outcome to resolve this Treaty claim. 'The Deed, which contains a mix of fiscal and non-fiscal redress, together with a clear acknowledgment of the Crown's Treaty breaches, will help restore Ngāti Turangitukua's mana and rangatiratanga.'

International Visitor

Cree Indian Tracy Lavallee visited the Tribunal offices recently to find out about our Treaty as well as offering some information on the similarities and struggles of Canadian Indians.

Her visit was part of an International Internship Programme in conjunction with the South East Treaty Four Tribal Council in Saskatchewan, Canada, and Te Puni Kōkiri.

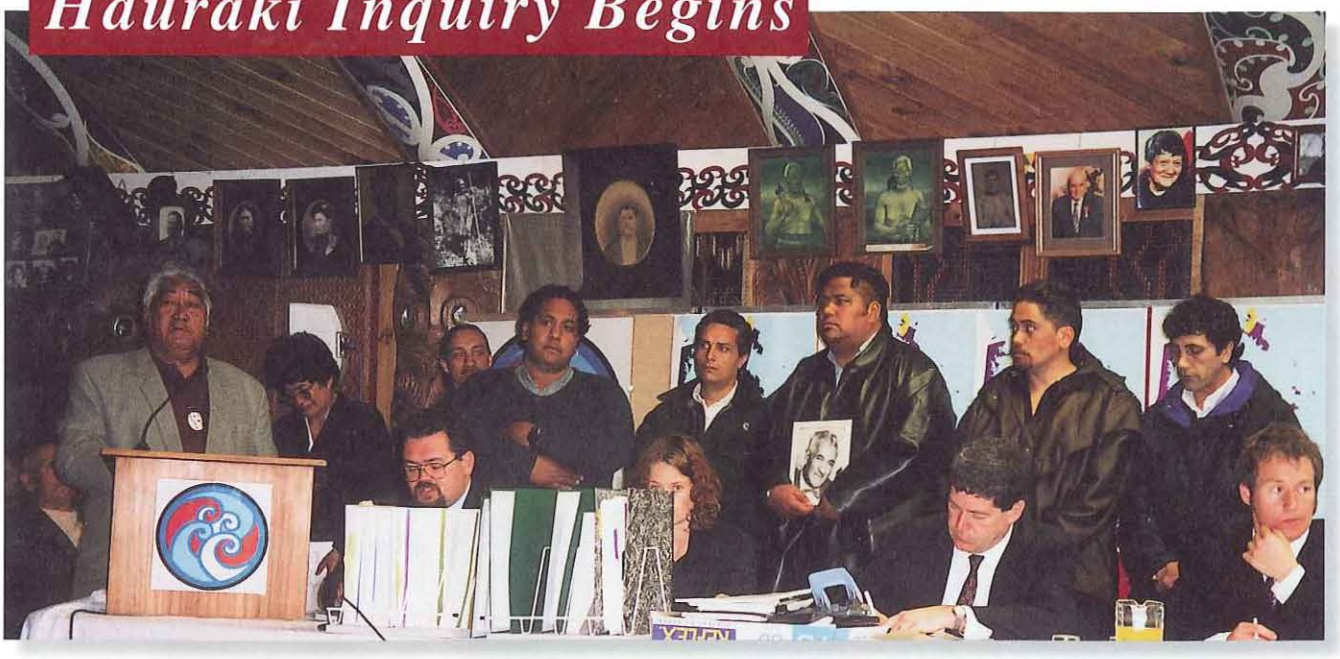
Tracy talked about the many parallels between Māori and Canadian Indian issues. 'Subsequent to and inconsistent with our Treaty, much of our land was appropriated. However, currently in Saskatchewan and other provinces, several reserves have been heavily compensated and are able to buy up a lot of land taken.'

In Canada, the Specific Claims Commission looks at a special category of land claims against the Crown. The Crown is not required to comply with the recommendations, but is required to respond.

A recent advance in Canada is that the courts have just started to accept oral history. 'History, as the Indians have passed it on, is now being taken into account.'

Tracy Lavallee and Tribunal staff. l-r: Te reo tutor Niwa Short, Tracy Lavallee, manager Dr the Hon Ian Shearer, senior research officer Dr Barry Rigby and mapping officer Noel Harris

Hauraki Inquiry Begins



Wai 100 claimant Toko Te Taniwha (standing, left) is supported by whānau as he gives evidence.

When Dame Te Atairangi Kaahu attended the opening of the Hauraki inquiry in September, it was the first time in the Waitangi Tribunal's 23-year history that the Māori Queen had attended a Tribunal hearing.

Her presence at the first hearing of the Hauraki inquiry is an example of the close ties between Hauraki iwi and Tainui.

The inquiry started last month at Ngahutoitoi Marae, Paeroa, from 14–18 September. The week was dedicated to providing the Tribunal with an overview of Wai 100, the claim brought on behalf of the Hauraki Maori Trust Board.

The Tribunal heard well-prepared evidence from kaumātua of the 12 iwi represented on the Board (Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Patukirikiri, Ngāti Porou ki Harataunga ki Mataora, Ngāti Pukenga ki Waiau, Ngāti Rahiri-Tumutumu, Ngai Tai, Ngāti Tamatera, Ngāti Tara Tokanui, and Ngāti Whanaunga), in addition to representatives from some of the specific hapū and whānau claims involved in the inquiry.

As well as providing personal accounts of the impact of past Crown actions (such as pollution of the Ohinemuri River as a result of gold mining), these witnesses served to emphasise to the Tribunal the close connections and relationships between the various peoples that make up Hauraki whānui.

Gold – its ownership and the role it played in motivating the Crown purchase of Hauraki lands – was one of the major themes in the evidence of the claimant historians who presented overviews to the Tribunal during the first hearing. Other important themes that emerged were raupatu, the Native Land Court, ownership of the foreshore, and social and economic deprivation. More detailed evidence relating to all these themes will be presented in the course of future hearings.

The next Hauraki hearing is scheduled for the week beginning 27 October 1998. It will be dedicated to issues relating to gold. The Tribunal will visit gold mining sites scattered around Thames, Paeroa, Te Aroha, and Waihi.

Hauraki Tribunal Members are Dame Augusta Wallace (presiding officer), Professor Wharehuia Milroy, Professor Evelyn Stokes and John Kneebone.

'In addition to other Treaty rights and benefits, we have a Treaty right to hunt and harvest. Although the right exists, litigation has tended to narrow and marginalise these rights. Where the courts find in favour of someone claiming their Treaty right to hunt, there is always a legal test to be met. The marginalisation or narrowing of our rights is ironic given the fact that our Treaty rights are entrenched and protected by the Constitution Act of Canada.

'Although our indigenous people treated with the same Crown, our Treaties, in their interpretations, have evolved very differently.'

When she returns to Canada, Tracy intends to work for and with her people in the area of Treaty defence and development, taking with her some of the understanding she has gained from her experiences with Māori.

Members' Conference 1998

Waitangi Tribunal Members and Maori Land Court Judges at the conference dinner.
Back row l-r: John Kneebone, Judge Andrew Spencer, Roger Maaka.
Third row: John Clarke, Professor Keith Sorrenson, Bishop Manuhuia Bennett, Chief Judge Edward Taihakurei Durie.
Second row: Keita Walker, Professor Wharehuia Milroy, Judge Glendyn Carter, Josephine Anderson, Areta Koopu.
Front row: Judge Richard Kearney, Pamela Ringwood, Te AhiKaiata John Turei, Professor Evelyn Stokes, Dame Augusta Wallace

Each year Tribunal Members hold a conference to discuss issues relating to their work and the claims process generally. Judges of the Maori Land Court, who can preside over Tribunal inquiries, also attend the conference.

This year's conference took place in Wellington over two days in late September. The conference agenda included a discussion of a forward plan for the completion of inquiries into historical claims, a report from the Māori Members' hui in June, and a look at the application of the Tribunal's casebook method in district inquiries.

As part of the conference, the Tribunal held a presentation dinner to recognise the work of six former Tribunal Members. New Minister for Courts, Hon Georgina Te Heuheu, Bill Wilson QC and the family of the late Hepora Young were able to attend the dinner. On accepting her certificate, Georgina said her success was largely due to the people she had had the opportunity to work with and learn from, especially Tribunal Members. 'It's been a long time since I've received a certificate. Lately, I have been on the other end, giving them out.' Former Members not present at the dinner who also received certificates were Sir John Ingram, Sir Hugh Kawharu and Judge Ashley McHugh.

Woven by Water

The conference was also treated to an insightful presentation by David Young, author of the recently published book about the Whanganui river and its people, *Woven by Water: Histories from the Whanganui River* (Huia Publishers, 1998). David talked about wairuatanga, or spirituality. 'The past and the present are inseparable to Māori, and you come to that view yourself after a while. There's no other way of seeing it; it's behind everything that happens on that river. It was a real privilege to get alongside these people and explore a history almost completely shrouded and so unusual.'

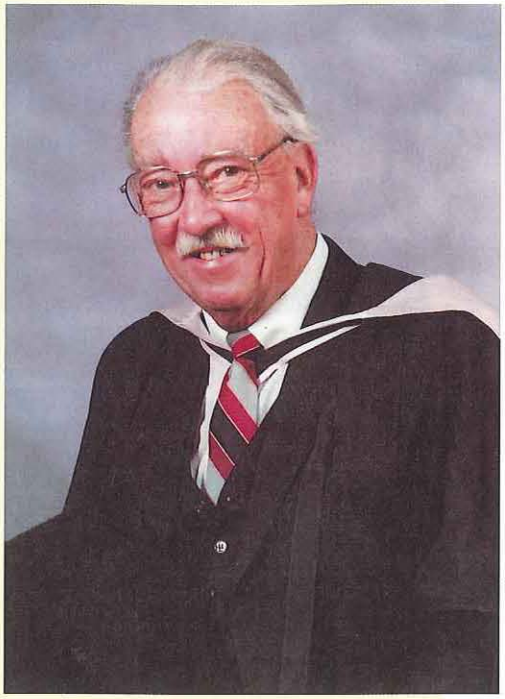
Administration officer Marina Laby stands by as David Young signs the Tribunal copy of *Woven by Water*.

Poroporoaki

Haere atu rā ki Hawaiki nui, ki Hawaiki roa, ki Hawaiki pāmamao te uri o te kāhui maunga a Matiu Mareikura, kōrua ko te pou mutunga kuia a Sophie (Te Paea) Albert o Te Wainui-a-Rua. Koianei ētahi o ngā kaumātua nā rāua i homai ki te Taraipiunara ētahi o ngā tino kōrero e pā ana ki te awa o Whanganui. Ko te hui i tū ai i te marae o Putiki-Wharanui i te tau kotahi mano, iwa rau, iwa tekau mā whā.

He poroporoaki anō tēnei ki a Wiki McMath o Ngāti Wai. Ko Wiki tētahi o ngā kaitono, otirā tētahi kaikawe kōrero hoki mō te kaupapa e kiia nei ko te 'Indigenous Flora and Fauna'.

Nō reira haere atu rā koutou ki te au tē rena, te urunga tē taka, te moenga tē whakaarahia.



Maurice Alemann after completing a MA (Māori Studies) supervised by Sir Hugh Kawharu at the University of Auckland in 1992. He also completed a PhD in Māori Studies in 1998.

Mahurangi Report Dedicated

Senior research officer Dr Barry Rigby has dedicated the report entitled 'The Crown, Maori, and Mahurangi 1840–1881' to the memory of Maurice Alemann, whom he describes as 'a remarkable Treaty scholar in every sense.'

Maurice was born in Switzerland and became Minister of Agriculture in Argentina's Misiones province before coming to New Zealand in 1973. 'Maurice and I worked together for eight years on the path-breaking Muriwhenua inquiry. He also did a sterling job in presenting evidence for Te Uri o Hau ki Otamatea in Stage One of the Kaipara inquiry. Just three days before his death, on 2 August 1998, I was able to tell Maurice how useful his work had been in the preparation of this report. Maurice was not just a fellow Treaty scholar, he was also a warm friend with wonderful 'Old World' charm. For all of these reasons, I dedicated this report to his memory.'

New Staff Members

Clementine Fraser (left) started at the Tribunal as a contract researcher in July. She graduated MA with first class honours in May. Her thesis is entitled '"Incorrigible Rogues" and other Female Felons: Women and Crime in Auckland 1870–1885'. Clementine has been providing research assistance for the Wellington Tenths claim (Wai 145) and will soon begin a research commission for two claims in the Muriwhenua area.

Elizabeth Cox (right) was recently appointed as a researcher. She grew up in Taranaki and graduated from Victoria University in 1997 with an MA (History). Her thesis looks at the relationship between women and the Plunket Society 1940-60. After graduating, Elizabeth worked in Hong Kong as a researcher and editor for a publishing company. She also worked on women's biographies for the *Dictionary of New Zealand Biography*. Elizabeth has provided research assistance for the Wellington Tenths claim and from January next year will be the claimant facilitator for the northern South Island. She is currently the facilitator for the generic claims.

Business Strategy 1998

Enclosed with this issue of *Te Manutukutuku* is the *Business Strategy 1998*. It puts forward the programme of the Waitangi Tribunal for the next 2 1/2 years, outlines the strategic issues and directions for the Waitangi Tribunal Business Unit and gives guidance as to how the unit's operating budget is managed and allocated.

For further copies, please contact our communications officer, Lana Simmons-Donaldson, tel: 04-499-3666.

NEW CLAIMS REGISTERED

Wai No.	Claimant	Concerning
728	Toko Renata Te Taniwha and others	Tikapa Moana (Hauraki Gulf) National Marine Park
729	Hardie Peni and others	Rangitoto Tuhua Rohe
730	Rima Edwards	Te Rarawa Ki Muriwhenua
731	Kevin Te Taka Kupa and another	Land Consolidation under the Mohaka Consolidation Scheme
732	Albert Edward Eden	Petane Block
733	Tauhia Lewis Hill	Otakanini Lands and Resources (Kaipara)
734	Toarangatira Pomare	Whanganui-a-Tara (Ngati Mutunga)
735	Te Puoho Katene and another	Whanganui-a-Tara (Ngati Tama)
736	Riana Pai	Pikaahu Hapu Lands, Forests and Resources
737	Aata Kapa and another	Land and Resources of Te Aupouri
738	Colin Clark	Arahura and other Blocks
739	Sam Pomare and another	Rewiri Hongi Whanau Trust
740	Frederick C Allen	Protection of Flora and Fauna
741	Thomas F J Paku	Wairarapa Local Government and Resource Management
742	Robert John Scullin and others	Stirling Point (Bluff)
743	Harawira David Morris	Castlepoint Purchase
744	Bernard Patrick Manaena	Wairarapa Five Percents
745	Luana Pirihi and others	Lands and Resources of the Patuharakeke hapu

HEARING SCHEDULE as at 1 October 1998 (These dates may change)

Hauraki claims **12-16 October 1998**	Mohaka ki Ahuriri claims **17-20 November 1998**
Wananga Maori Funding claim **19-23 October 1998**	Indigenous Flora & Fauna claim **23-27 November 1998**
Hauraki claims **27-30 October 1998**	Hauraki claims **30 November-4 December 1998**
Tauranga claims **9-13 November 1998**	Wellington Tenths claims **7-11 December 1998**

Errata from *Te Manutukutuku* 45

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Chief Judge Durie, not Chief Justice Durie. Chief Judge Durie has now taken up his High Court appointment and becomes Justice Durie.

Justice Gallen was in fact the first person of Māori descent to be appointed to the High Court.

DEPARTMENT FOR COURTS TE TARI KOOTI

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