Te Rōpū Whakamana i te Tiriti o Waitangi

Te Manutukutuku

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Wānanga Report Due Soon

From left, Francis Winiata (Te Wānanga o Raukawa), Te Ururoa Flavell, Professor Hirini Mead, Professor Graeme Smith (Te Wānanga o Awanuiarangi) and Rongo Wetere (Te Whare Wānanga o Aotearoa) listen to Crown evidence.

The Tribunal has concluded its inquiry into the Wānanga Māori Education Funding claim (Wai 718) with a one-day sitting in December, which heard the closing submissions of Te Whare Wānanga o Awanuiarangi, Te Wānanga o Raukawa, Te Wānanga o Aotearoa, and the Crown.

The Tribunal granted the claim urgency on the basis that there appeared to be 'grave risks that the wānanga programme might suffer significant, and possibly irreparable, loss if capital funding is not provided by the Crown'. In the statement of claim, Ngā Tauihu o Ngā Wānanga representative, Rongo Wetere, says:

'Wānanga believe they have been misled and marginalised by government inaction and indifference. They believe the Crown is in clear breach of the Treaty of Waitangi. Māoridom cannot afford to stand still whilst ineffective Crown policies continue to proliferate statistics for Māori in Aotearoa.'

At the earlier hearings of the claim in October and November, the Tribunal heard evidence from wānanga students and graduates, former and current wānanga staff, and from the Crown. The graduates and current students sought to demonstrate the depth of mātauranga Māori that they had gained at the Wānanga. One witness was 70 years old and another was a Pākehā who presented his evidence in Māori. Further, an independent financial expert provided the Tribunal with financial analysis of Crown and claimant evidence. The Tribunal and parties also visited Te Wānanga o Raukawa to view its facilities.

The Wānanga Tribunal comprises Judge Richard Kearney (presiding officer), Mrs Keita Walker and Ms Josie Anderson. The members are now writing their report.

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From the Director

Those disputes – how to deal with them

Alternative dispute resolution has become an almost fad-like occupation now, especially for a number of lawyers. Don't get me wrong, I see no harm in the growing interest in the subject; in my view it's very healthy. The Treaty claims area has more than its share of disputes, which at present almost invariably end up in one form of court or other. Litigation, it seems, has to prevail where good communication may well have sufficed, and in the end the only winners are the lawyers.

It is time for an independent, well-resourced, culturally appropriate service to deal with Treaty claim settlement disputes, especially within and between tribal groups. The Treaty of Waitangi Act provides the Tribunal with the ability to refer a matter to mediation to 'bring about the settlement of a claim'. To date, there have been some mediation processes involving claimants and the Crown (Waitomo), others between competing claimant groups (Ngāti Pikiao and Ngāti Makino) and some within tribal groups. Some have been successful, others not. Many more disputes within tribal groups go on with no effective process for resolution. Many disputes break out and gain high public profiles, such as the Waitaha and Ngāi Tahu dispute, or the tensions within the Muriwhenua and Taranaki tribal groups. Mediation, and other dispute resolution processes, have been tried in a number of these circumstances with limited success. These situations seem to point to a need for a good dispute resolution process that is robust enough to deal with such conflicts. The Waitangi Tribunal Business Unit is proposing the establishment of a dispute resolution service to target this need.

In proposing a process for resolving intra- and inter-tribal disputes, it is necessary to look carefully at what has and has not worked in Treaty claim dispute resolution, and why. In doing this type of analysis, one can identify what is needed for such a dispute resolution service to succeed. Primarily, the requirements are as follows:

Morris Love

- While being independent of the Crown and the claimants, it should be equipped to operate in a fully bicultural manner. That will usually mean co-mediators or co-facilitators or small teams, rather than single mediators or facilitators.
- The mediators and facilitators need to operate bilingually.
- The service needs to be mobile, moving to the areas where disputes exist, but may, for neutrality, need to select venues other than marae.
- The service should be up to date with what is happening in the Waitangi Tribunal and the Office of Treaty Settlements and have an understanding of both processes and institutions.

The proposed dispute resolution service would have two main ways of working. The first and most difficult part of the service I will call facilitation. The aim of the facilitator would be to work with multiple claimants to seek to bring them into more broadly representative groups, or even into a single group, for the purpose of negotiating a claim settlement. The Tribunal's hearing process can assist claimants along this path and Tribunal reports may well give further guidance. A dedicated service could then work with individual claimant groups to sort through their representation issues. It should be noted that the service would not determine or adjudicate on representation matters, but would work with claimants so they can resolve these things for themselves. These facilitators would need to be highly skilled mediators able to work comfortably with Māori groups.

When there is a breakdown or dispute between two parties, it may be more appropriate to refer the matter to mediation, which is the second part of the service. The mediation process would have the same parameters as facilitation, being a co-mediation process following a bicultural model.

Te Awa o Wairoa

He ora te whakapiri, he mate te whakatakariri
Ka pā mai te aroha ki taku whānau hei oranga tinana me te wairua.

Antoine Coffin, of Ngāti Kahu, said his recent report to the Waitangi Tribunal, the majority of which concentrated on the Wairoa River, was an opportunity to tell the story of the Wairoa hapū. He sees it as a chance for 'future generations to heal the wounds of last century so the people can move into the next century, strong and noble, proud and free'.

Wairoa River: 'physical and spiritual identity' to Wairoa hapū

Mr Coffin stated that, 'The river is the physical and spiritual identity common with all [Wairoa] hapū. Te awa Te Wairoa is tapu to the river people whose settlements have consistently been located along the margins of the river and valley. Ngāti Kahu is recognised in Tauranga Moana as being the kaitiaki of the river. Ngāti Pango share this role on their side of the river.'

Issues raised in the report include concerns over ownership and management, pollution, depletion of fish stocks and healing. Tribunal Researcher, Rachael Willan, said Coffin's evidence, and that of other witnesses, gave the Tribunal a greater insight into the relationship between the hapū and the river.

The report was presented at the third hearing in the Tauranga Moana (Wai 215) inquiry, held from 9-13 November at Wairoa Marae. The inquiry involves over 40 individual claims. The hearing also included a site visit to the Kaimai Ranges to show the contrast between the rural and urban lands of the Wairoa hapū.

Raupatu or confiscation was another major focus of the evidence presented at this hearing. Claimant counsel, Joe Williams, described the raupatu as 'the defining moment in Ngāti Kahu, Ngāti Rangi, and Ngāti Pango history', adding that the consequences of it continue today. Kaumātua, kuia and rangatahi supported this by presenting their perspectives on the contemporary challenges and pressures each generation has had to contend with, as well as offering a vision for the future.

The claimants are asking the Crown for redress that includes the return of Crown-owned lands, compensation, costs associated with bringing the claim, an apology, and transfer of the ownership and management of the Wairoa River to the Wairoa hapū.

Tribunal Presence at Raupatu Hui

Tribunal Registrar, Geoff Melvin, and Researcher, Rachael Willan, provided information to claimants at Te Hui Raupatu o Tauranga Moana recently.

Ms Willan spoke on the research process and the responsibilities of a Tribunal Research Officer. She discussed how she goes about doing research and her involvement with claimants and independent researchers. Ms Willan said the hui also gave her a chance to 'touch base' with many claimants.

Mr Melvin spoke generally about the claim process, from the submission of a claim to the Waitangi Tribunal to the settlement of claims through negotiations with the Crown.

Tribunal Registrar, Geoff Melvin, answers a query at the Crown Forestry Rental Trust hui. Photo: Margaret Kawharu

The hui, hosted by the Crown Forestry Rental Trust and held at Hairini Marae, presented a wide range of activities and resources to local people involved, or interested, in the Tauranga Moana inquiry.

Researching Claims for District Inquiries

by Grant Phillipson, Chief Historian

In order to prevent the duplication of research and hearing time, and to ensure that all claims that relate to each other are heard at the same time, the Tribunal has grouped all claims into geographical (not tribal) inquiry districts. These claims normally fall into one of two categories: large iwi or hapū claims relating to many Crown actions over a wide geographical area; and small specific claims relating to particular blocks of land or particular whānau grievances. The Tribunal tries to ensure that all such claims relating to a particular district are researched before the hearings start. The research is gathered into a single collection of reports, called the casebook. The casebook includes both historical claims (regarding actions of the Crown prior to 1985) and contemporary claims (regarding actions of the Crown after 1985).

The Tribunal has now assisted claimants with the preparation of casebooks for four district inquiries: Mohaka ki Ahuriri; Tauranga Moana; Kaipara Stage One and Hauraki. As these inquiries are now in hearing, it is appropriate to look at some of the issues that have arisen during their preparation. Firstly, there has been a tendency to concentrate research on the large, broad claims that cover many issues. This often involves the use of particular land blocks as case studies illustrating the process of key Crown actions, such as the Native Land Acts, raupatu, or Crown purchases of Māori land. More and more, the Tribunal is contemplating how far it must go from the general to the particular, as the big district inquiries progress towards completion. Does it need to know what happened to every land block? Does it need to identify outcomes for every whānau and hapū? Does it need to determine whether every action of the Crown over the last 150 years has or has not been in breach of the Treaty of Waitangi? How much is enough?

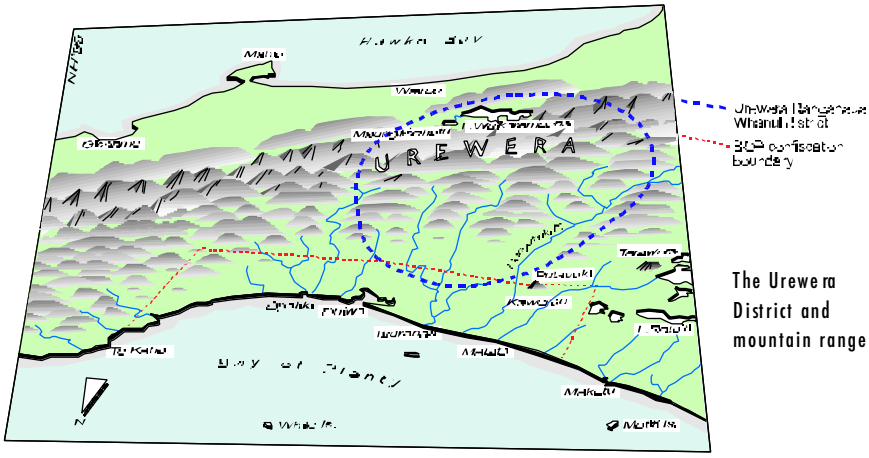
Claimants wish to be heard. They want their voice, long suppressed in public fora, to ring out loud and clear. But in seeking to have their grievances heard and confirmed by the Tribunal, to what extent should claimants consider their strategy? Small claims dealing with individual pieces of land are sometimes impossible to prove. Either the documents no longer exist or tribal memory of what happened has been lost. Also, small claims are sometimes weak; the outcome does not seem so bad, except when it is seen as part of the wider picture of Crown actions shown in the bigger claims. So why are so many claimants breaking away from larger groups and presenting separate whānau claims? Partly it is a result of the hearing process; people realise that the Tribunal is coming and that they are out of time, and fear that their particular concerns will not be heard unless they file a separate claim. This suggests the need for more mediation between Māori groups. There is also a lack of good strategic advice being provided to claimants.

As more and more small claims are registered in each district, time spent on research increases. Districts will take longer and longer to get ready if claims are going to be submitted about every small block. Claimants need to think very carefully about whether a larger claim can be made to include them to the proper degree, and whether their grievances can be heard through more general research. If there are whānau blocks that involve strong feelings, perhaps these can be made case studies for the larger claims. Big claimant groups need to ask themselves whether they are doing enough to cover the issues of their whānau constituents. A way needs to be found to incorporate all grievances fairly within the larger, more researchable claims.

Looked at from another angle, there have been recent calls for research to be more 'forensic'. This seems to be a call for the process to go the other way, and for history to be proven in the same way that a crime is, with every minute detail uncovered, recorded, cross-examined, and either proven or not proven. This is not how history works, and it is impractical to expect this to be how the Tribunal works. The Crown accepts that there are legitimate claims. The Tribunal accepts that it does not need to know what happened to every piece of land. Also, some of the general context and principles have been researched in previous Tribunal inquiries and the Rangahaua Whānui project; there is no need to reinvent the wheel. A way forward must be found, so that less block-specific claims are submitted, and research is undertaken without the expectation that it will be to the 'nth degree'. Without the desire to achieve these two things, the Tribunal's research process will get slower instead of faster. The casebook method has sped things up and allowed the rational planning of research so that important issues are not missed out and are researched to the Tribunal's standard. A way forward needs to be found from there.

New Report Focuses on Urewera

The Urewera District Native Reserve Act 1896 is the main focus of the soon to be released Urewera Rangahaua Whānui district draft report. Tribunal Senior Research Officer, Anita Miles, completed the 500 plus page draft in December, and it is due to be released soon. Ms Miles says the most interesting aspect of the research was the Urewera Commission. It investigated title to approximately 650,000 acres of Urewera land, much of which is now known as the Urewera National Park. She also says that the impact of Te Kooti upon the political inclinations and aspirations of Tūhoe is another of the many features of the Urewera report.



The Urewera District and mountain range

Other issues discussed in the report are:

- the 1866 confiscation of Tūhoe land in the eastern Bay of Plenty;
- Tūhoe appearances in the Compensation Court;
- invasion of the Urewera by colonial forces;
- the Native Land Court;
- investigations on blocks of land surrounding the Urewera in which Tūhoe asserted an interest;
- the formation of Te Whitu Tekau, which was a political union of Tūhoe leaders formed to protect Tūhoe land; and
- the Urewera consolidation scheme.

Others researchers involved were Sian Daly and Nicola Bright. Tribunal Mapping Officer, Noel Harris, created 18 maps for the report. He says he has attempted to illustrate the Māori milieu and way of life through the maps, and also to portray what he describes as the systematic loss of lands over time. The maps cover the area from the Bay of Plenty through to Lake Waikaremoana, which sits atop the Huiarau (Urewera) Mountain Range.

Wai 262: International Witnesses Present Evidence

Four international witnesses presented evidence at the sixth hearing of the Indigenous Flora and Fauna and Māori Intellectual and Cultural Property claim (Wai 262) in Rotorua last November.

Dr Darrell Posey, David Stephenson (Jnr), Sephan Schinerer and Alejandro Argumedo provided an overview of the context and relevance of the claim to the international community, and referred to various international agreements that relate to New Zealand. These included the Convention on Biological Diversity, the Draft Declaration on the Rights of Indigenous Peoples,

Dr Darrel Posey at the sixth hearing for the Wai 262 claim

and the Mataatua Declaration. Each witness has at least 15 years experience in his field of expertise at a local or international level. As one commented, the Tribunal hearing was 'one of the most advanced discussions on these issues' that he was aware of. The Tribunal's report on the Wai 262 claim is likely to be viewed with great interest by other indigenous peoples and those working internationally in the field of indigenous peoples' rights.

Representatives of six iwi filed the Wai 262 claim in 1991. They are from Ngāti Kurī, Te Rarawa and Ngāti Wai in Te Tai Tokerau, and from Ngāti Porou, Ngāti Kahungungu and Ngāti Koata. The Tribunal hopes to hear all traditional evidence by the end of this year, followed by hearings from professional and expert witnesses.

New Resource for Schools

Newtown School children give the resource kit, 'Treaty of Waitangi Past and Present', the thumbs up.

'Treaty of Waitangi Past and Present', a resource for primary schools, will be launched at Waitangi on 6 February this year.

Tribunal Director, Morrie Love, said the kit was specifically designed with primary school children in mind. 'Our previous resource kits have been targeted at secondary students. With this new kit we hope to introduce the Treaty to all primary and intermediate school children.

'A grant from the Legal Services Board has enabled us to produce this new resource, which contains information, illustrations and ideas for hands-on activities relating to the Treaty. It covers the origins of the Treaty and some of the key events of the past and present. The kit contains information on life in Aotearoa before the arrival of Pākehā, the first Māori – non-Māori contact, land sales, the Treaty signing, including the women who signed, its two versions, a case study of Taranaki, the Waitangi Tribunal and what the Treaty means today.'

Primary and intermediate schools will be sent one free copy each.

Children Get a Taste of the Treaty

Almost 300 children took home posters and other information about the Treaty of Waitangi after visiting the supporters' exhibition at the Māori Sports Awards in November. Most of the children said they did not know what the Treaty was, and it is hoped that the information given out will help raise their awareness.

As the Department for Courts was one of many of the Awards' sponsors, the Waitangi Tribunal and Māori Land Court were able to share a site at the exhibition. This provided an opportunity for the two organisations to display and promote their work to the wider public, supporting the Awards' theme of excellence, achievement and Māori development.

Communications Officer Lana Simmons-Donaldson talks about the Treaty with primary students

Tribunal Communications Officer, Lana Simmons-Donaldson, said, 'It was a fantastic opportunity for younger New Zealanders to find out about the Treaty and a chance for teachers to gather resources for use in their classrooms.'

New Justice Sworn In

Appointed as a Māori Land Court Judge in 1974, the country's newest High Court judge is the longest serving judge on any bench in the country.

At his swearing-in ceremony on 23 October, Justice Edward Taihakurei Durie recalled how, when he was once welcomed to the small courthouse at Tokaanu, Tūwharetoa rangatira present were taken aback at his becoming a judge at the age of 34. 'It was said, on that occasion, that Tūwharetoa probably respected the mountain because of the grey hairs on its head, but for me, respect would have to be earned.'

Justice Durie took his oath amidst a day of much celebration for Māori people, but he appeared to be unaffected by the pomp and ceremony that surrounded him, and delivered a witty but all encompassing speech of thanks. 'Chief Justice, Mr Attorney, Madam President, Mr Billington and Ms Rudland, thank you for your kind comments, your thoughts and hopes for the development of law and justice for our communities.

High Court Judge and Tribunal Chairperson Justice Durie Photo: Marcus Weight

'I pay tribute to those who have gathered here today, the Bishops, Knights, Dames, the tribal leaders, and their accompanying parties, of Ngatokimatawhaurua, Tainui, Te Arawa, Tokomaru, Mataatua, Aotea, and Kurahaupo.' He also acknowledged those that could not attend.

Justice Durie's new appointment means he will alternate his work between the High Court and the Waitangi Tribunal. He says he is enjoying his time at the High Court. 'However,' he comments, 'I look forward to returning my attention to the Tribunal and progressing the claims process.'

New Communications Officer

Lana Simmons-Donaldson

Lana Simmons-Donaldson is the new Communications Officer for the Waitangi Tribunal. Her job is to promote an understanding of the principles of the Treaty of Waitangi and the role of the Tribunal. This involves communicating with claimants, the media, schools, Treaty-related agencies and other interested individuals and organisations.

Ms Simmons-Donaldson says she values being a part of the important process of resolving Treaty grievances. She has only recently rejoined the workforce after spending the last few years raising her two young children. They now attend a total immersion Māori language pre-school, where Ms Simmons-Donaldson currently chairs the board of trustees. She is also reasonably fluent in Māori, and is enjoying the opportunity of improving her proficiency through the Tribunal's Te Reo Māori programme. She is affiliated to Te Atihaunui a Pāpārangi, Ngāti Porou and Tūwharetoa iwi.

Resources Available

http://www.knowledge-basket.co.nz/waitangi/welcome.html

Speeches delivered by Tribunal Chairperson, Justice Durie, since 1990 can now be accessed on the Internet at:

Copies can also be acquired from the Information Services Co-ordinator, Waitangi Tribunal, PO Box 5022, Wellington.

Copies of the Urewera Rangahaua Whānui Draft Report can be obtained from Jo Ara at the Waitangi Tribunal.

NEW CLAIMS REGISTERED

Wai No.	Claimant	Claim
746	Agnes Katene Himiona and others	Rakaumanga School West Huntly
747	Henepere Waitai and others	Ngati Kuri Tribal Lands
748	Barry Barclay and others	New Zealand Film Commission
749	Morris Meha and others	Rotoiti Native Township
750	R D Sandy Hovell	Tapatu Waitangirua Two Block, Te Araroa
751	Te Awanuiarangi Black	Ngapeke Block (Tauranga)
752	Charles Tong and others	Otuhi 1C1 Block (Kaikohe)
753	Puhi Paparaahi and others	Ngati Kinohaku Lands, Forests and Fisheries
754	Garrick W Cooper and others	Tairua and other Blocks
755	Tureiti Ihaka Stockman and others	Rangiwaea Island Blocks (Tauranga)
756	Lou Paul (Paora)	Southern Kaipara Lands and Resources
757	Whamaro Mark Kiriona and others	Kaimoana (Maori Customary Non-Commercial Fishing) Regulations 1998
758	Huia Rei Hayes and others	Te Pakakohi Mandate and Negotiations
759	Meterei Tinirau and others	Whanganui Vested Lands
760	Whititera Kaihau and others	Waipipi 310B4 Block (Waiuku)
761	Peter Keepa	Urewera Lands and Waters claim
762	Rangi Harry Kereopa	Waimiha River Eel Fisheries (King Country) claim
763	Margaret Mutu	Kapehu Blocks Rating claim
764	Cedric Powhiriwhiri Tanoa and others	Piriaka School Land (Taumarunui) claim
765	John Peters and another	Muriwhenua South Block and Part Wharemaru Block claim
766	Wiremu Pera and others	Roading Reform claim
767	Te Awanuiarangi Black	Moutere Tahuna No 2 Block and Other Otaki Lands claim

HEARING SCHEDULE as at 16 December 1998 (These dates may change)

Hauraki claims **15-19 February 1999**	Kaipara (Stage Two) claims **12-16 April 1999**
Wellington Tenths claims **1-3 March 1999**	Mohaka ki Ahuriri claims **26-30 April 1999**
Kaipara (Stage Two) claims **8-12 March 1999**	Wellington Tenths claims **5-7 May 1999**
Tauranga Moana **22-26 March 1999**	Kaipara (Stage Two) claims **8-11 June 1999**
Wellington Tenths claim **29 March-1 April 1999**	

DEPARTMENT FOR COURTS TE TARI KOOTI

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