TE MANUTUKUTUKU

Te Roopu Whakamana i te Tiriti o Waitangi Te Tari Ture

Waitangi Tribunal Division Department of Justice Newsletter

Tuawha Mei 1990

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DIRECTOR'S COLUMN

Tena koutou,

HUI MANAWHENUA

I was pleased to see many of our Tribunal members attending Hui Manawhenua held in Rotorua during the week before Easter, 9-12 April. It was an important hui – and the most prominent of the events marking the sesquicentennial of the Treaty that involved Waitangi Tribunal members.

Hui Manawhenua was hosted by the kaumatua of the Tribunal: Bishop Bennett, Sir Monita Delamere, Lena Manuel and Turi Te Kani. But also in attendance were Pare Hopa, Sir Hugh Kawharu, John Kneebone, Joanne Morris, Evelyn Stokes and Georgina Te Heuheu.

Chief Judge Durie, the Chairperson of the Tribunal, and the full bench of the Maori Land Court were also present; Judge Durie helping to set the tone for the conference with a stimulating address at the hui opening on the deeds of our forebears in treaty promotion over the past 150 years, and the new challenges now before us. A number of the other judges who attended have strong connections with the Tribunal through their work as Presiding Officers at claims hearings; Deputy Chief McHugh (Ngai Tahu) and Judges Hingston (Te Ngae), Russell (Pouakani), and Spencer (Te Roroa).

The hui provided a unique opportunity for Maori people to find out about overseas developments in areas such as tribal law and tribal development. But for reasons of possible application to the work of the Tribunal, it was in the area of tribal claims that a lot of interest was centred. Speakers from Canada and the United States, some of whom were of Indian descent, outlined how claims and grievances were addressed in those two countries.

As with all conferences, the real benefits flow from the free exchange of information, views and opinions, and from what I saw, Hui Manawhenua certainly provided the opportunity for that to occur.

I was greatly encouraged to hear how well the Tribunal's claims-handling process compares with those being used overseas. While there is a lot we can learn from what occurs in other countries, there is much we can offer them too.

I was also struck by the number of inquiries I fielded from Maori people about the work of the Tribunal – some of the information requested was of a very basic nature. It seems to me that the Tribunal Division has a lot of work to do in getting knowledge about the Tribunal and the claims process to the people and I look forward to organising information seminars later in the year as one way of doing this. Details will be made available in later issues of Te Manutukutuku.

Overseas interest in the Tribunal

Arising out of Hui Manawhenua, the Waitangi Tribunal Division has had a significant number of requests from overseas visitors for Tribunal reports and other associated material. There was a very strong interest, too, in the workings of the Tribunal and there have been a number of inquiries and visitors to the offices of the Tribunal seeking further information.

Recent visitors have been Andrew Nori, Leader of the Opposition in the Solomon Islands; Terry McCarthy, Minister for Aboriginal Affairs, Northern Territory; two representatives of the Cree Nation from northern Quebec in Canada and Margaret Savill, Desk Officer, British Foreign Affairs Office, London.

An observation made by all our visitors was their pleasant surprise at just how much goodwill the work of the Tribunal seemed to have generated and the apparent strong desire by all parties to make the Tribunal system work.

Local interest in overseas developments

A feature of Hui Manawhenua was exposure given to the increased awareness of the rights of indigenous peoples in the judicial and political forums of other national states and of various bodies of the United Nations. Overseas lawyers addressing these topics demonstrated that what is happening in New Zealand is neither radical nor novel but reflective of a world trend – and their audience at Rotorua was not restricted to Maori tribal leaders. Also attending the hui were the President of the New Zealand Court of Appeal, judges of the High Court and key personnel from central and local government.

Various of the overseas speakers were also to attend mini conferences arranged by the NZ Planning Council and Waikato University and to meet locally with representatives of the Taranaki and Tainui tribes and also with members of the Law Commission, Manatū Māori and Iwi Transition Agency in Auckland and Wellington. Most especially, however, eight of the Hui Manawhenua speakers were to dominate one of the most well attended full-day sessions of judges and lawyers at the 9th Commonwealth Law Conference in Auckland, covering such matters as the sources of indigenous people's rights through customary and common laws, state constitutions and international instruments, and options for the resolution of claims through courts, mediation and political negotiations.

The law conference session on indigenous peoples, which was opened and closed by the Tribunal's Chairperson, provided the most exhaustive treatment on indigenous people's law ever given at a law conference in New Zealand.

TRIBUNAL REPORTS

I want to comment briefly on some of the recent criticism of Tribunal reports, one critic describing them, in relation to their use in courts of law, as being '... worthless except as history lessons'. I think that what that shows is a misunderstanding of recent court decisions.

For example, the recent decision of the Court of Appeal, which held that Tribunal findings are not binding on courts of law, only reaffirms the position the Tribunal has always had in the New Zealand legal system and changes nothing.

The findings of Commissions of Inquiry, which is essentially what the Tribunal is, have never had a binding effect on the courts, and again this is not news to the Tribunal.

In fact, the Court of Appeal decision is most significant because of the comments made that Tribunal reports, in particular the

Muriwhenua report, while not binding, could 'greatly diminish the length' of court hearings and, in particular, the pending High Court hearing on Maori fisheries.

The President of the Court of Appeal, Mr Justice Cooke, suggested that in hearing the case for Maori fisheries before it, the High Court may only be able to come to general rather than highly detailed findings about Maori fisheries. He then suggested strongly that the Tribunal's Muriwhenua fishing report may be enough to establish 'at least a prima facie case as to the general nature and extent of Muriwhenua fishing rights and practices before the Treaty.'

I suggest that for this reason, the Muriwhenua report could be very powerful evidence in the High Court.

That view, I think, is confirmed by a further Court of Appeal ruling where the court has ordered the vacation of a High Court fixture to hear evidence from Ngai Tahu about their fisheries. Mr Justice Cooke said the High Court should await the Waitangi Tribunal's report on the nature and extent of Ngai Tahu's fisheries. This would 'provide valuable evidence' and could also 'shorten a hearing in the High Court'.

Critics of Tribunal reports need to bear several things in mind. One is that no Tribunal report has yet been challenged. Another is that because of the nature of its work, i.e. provision of a forum where Maori can bring claims dealing directly with events back to 1840, the Tribunal must examine, in detail, the occurrences of the past. Lastly, because in the Maori world the past is always a part of the present and lies before us as a part of the future, history lessons are never, ever, 'worthless'.

Rather than aimlessly criticising the Tribunal process, which in our experience has a wide acceptance among Maori and Pakeha people, I suggest that critics could better spend their energy looking for creative resolutions to the grievances which the Tribunal deals with.

B. Mikaere

Na Buddy Mikaere
Director

Official powhiri, Ohinemutu Marae, Rotorua. Standing – from left: Sir Monita Delamere, Willie Coates, Turirangi Te Kani, Makarini Te Hemara

Morning tea at the wananga on tribal claims – from left: Judge Ashley McHugh, Turirangi Te Kani, John Kneebone

STAFF DEPARTURES

The Registrar **Karen Waterreus** has left the Waitangi Tribunal to take up her position as Senior Executive in the Treaty of Waitangi Policy Unit, Department of Justice.

Since she began working for the Waitangi Tribunal Division in September 1988, Karen has successfully set up an administration system which has greatly benefited the claims' smooth progression from registration through to hearing.

Karen will be missed for her thoughtful and thorough contribution to the work of the Waitangi Tribunal.

She insists that she is not really leaving the Tribunal at all because the kaupapa in her new position remains the same: the resolution of Treaty grievances. The Waitangi Tribunal members and staff wish her success and happiness.

John Koning, who has been working on contract for the Waitangi Tribunal since December 1988, has left to travel to Europe. John has been researching the Muriwhenua land claim.

For the last year the Raupatu (confiscation) claims have been managed by **David Young**. The claims cover areas in Taranaki, South Auckland/Waikato, Tauranga, the Bay of Plenty and the East Coast. Now that David is leaving the Waitangi Tribunal, the Director, Buddy Mikaere, will be handling all matters which concern the Raupatu conferences and hearings, and he will receive claimants' inquiries.

Karen Waterreus

Chief Judge Edward Durie Receives Honorary Doctorate in Law

The Waitangi Tribunal takes pride in congratulating its Chairperson, Chief Judge Edward Durie, for receiving his Doctorate in law. This qualification, which is given only to the most highly esteemed members of the law profession, recognises his contribution to the development of Maori land law and to the achievements of the Waitangi Tribunal.

TE ROROA CLAIM (WAI 38)

A hearing of the Te Roroa claim (Wai 38, formerly known as the Maunganui/Waipoua/Waimamaku claim) was held at the Kaihu Memorial Hall on 23-27 April 1990.

The Tribunal heard firstly from those people who own private land within the claim area. Because of the number of landowners involved and the complexity of the issues within this particular claim, the Tribunal had appointed a lawyer, Kit Toogood, to assist with the process by talking to the landowners and helping them to present their evidence. Concern was expressed by these people regarding the uncertainty of their situation and the tension that this was creating in their communities. Tribunal staff are looking at ways in which these concerns may be eased in future claims.

This was followed by submissions from the Crown. The Crown response to historical issues began with the 1876 sale of the Maunganui and Waipoua blocks and included the presentation of papers on the subsequent non-reservation of Manuwhetai and Whangaiariki, two areas within the Maunganui block. The submissions also covered Crown acts and omissions after 1876 which relate to the areas within the Waipoua block which had been reserved from sale.

Of particular note is that the Crown has stated that Manuwhetai and Whangaiariki should have been reserved from sale. These two blocks are presently held by two private landowners: Mr Alan Titford and Mr Don Harrison. In a memorandum to the Tribunal, claimant and Crown counsel will set out the points they agree on with respect to this issue before further steps are considered by the Tribunal.

The Tribunal is to hear further Crown evidence which relates to the Waipoua aspects of the claim and the Crown's response to the Waimamaku aspects of the claim on 21-25 May and 6-10 August.

Muriwhenua (land) Conference of Parties 19 April 1990 at Takapuna

Chief Judge Edward Durie chaired a Conference of Parties at Takapuna on 19 April to prepare the ground for the first Muriwhenua land hearings. Representatives of eight separate Muriwhenua-related claimant groups attended. These claimant representatives included the Hon Matiu Rata for the Runanga o Muriwhenua, MacCully Matiu for Ngati Kahu, Tuini Murupaenga for Ngati Kuri, Rima Edwards for Te Rarawa, Peter Pangari for Ngati Kahu, and Margaret Mutu for Ngati Kahu. Sir Graham Latimer and Haami Piripi conveyed their apologies.

It is hoped that all of these claims will be grouped for the purposes of legal representation, research and hearing. Mr Joe Williams was appointed as junior counsel for claimants, with provision for the appointment of a senior counsel later on. The Muriwhenua Research Committee, chaired by Waerete Norman, will complete claimant research as specified in a Tribunal commission. The chairperson directed that the Tribunal first hear kaumatua evidence at Te Kao before hearing other historical evidence at Kaitaia.

Peter Pangari requested that the Tribunal refer his Taemaro claim to mediation; the chairperson directed that it be referred as requested.

Mrs Shonagh Kenderdine, who represented the Crown in the Muriwhenua fishing claim (Wai 22), spoke for the Crown at the conference. Since she also represented claimants in the Mangonui sewage claim (Wai 17), and since some aspects of that claim will be heard as part of the Muriwhenua land claim, Mrs Kenderdine sought leave to withdraw as Crown counsel. In the Muriwhenua land claim, Ms Ailsa Duffy (senior counsel) and Ms Ainsley Kerr (junior counsel) will represent the Crown.

Finally, the chairperson advised that a small three- or four-person tribunal would hear the Muriwhenua land claim. Both claimants and Crown accepted this.

John Kneebone Goes to South Otago

A major responsibility of the Waitangi Tribunal Division is to keep the public informed about the work of the Tribunal, and to contribute towards public understanding of the Treaty of Waitangi. In the last 18 months Tribunal members and staff have addressed numerous groups in an effort to educate where there are gaps in knowledge and understanding.

Tribunal member John Kneebone (former President of NZ Federated Farmers) spent the last week of March in South Otago at the invitation of the Community Learning Programme. During his visit he spent 20 hours on his feet speaking to community groups, secondary school students, and the Clutha District Council – and many more hours sitting down speaking informally to individuals in between timetabled engagements.

That the perceived threat to private property from Maori land claims was the most frequently raised issue, highlights a widespread confusion over New Zealand's land title system. A number of young people had confused the Waitangi Tribunal with a separate Maori justice system.

Questions were asked about differences of opinion between Maori and Pakeha members of the Tribunal. Mr Kneebone replied that this was not a problem, as the members are used to handling controversy and work well together as a team.

Mr Kneebone was shocked by many of the negative attitudes. He believes that they reflect the lack of personal contact in the region between Maori and Pakeha, as very few Maori live in South Otago. John Kneebone feels that this negativity is a result of television's and newspapers' concentration on controversy and drama in Maoridom. The need for newsworthiness, short time-scales and people's tendency only to read headlines – all contribute to a distorted image of reality and an ignorance of everyday Maori life.

In his trip to South Otago, John Kneebone spoke to over 550 people, mainly in small groups, which stimulated constructive discussion. The South Otago Community Learning Programme believe that as a result of John Kneebone's visit many people in the district now view the work of the Tribunal and Treaty issues in a more positive light.

HEARING DATES

May-July 1990

WAI 38 TE ROROA

Monday 21 May – Friday 25 May
Matatina Marae, Waipoua
Continuation of Crown's reply to Waipoua aspects.

WAI 32 TE NGAE

Monday 16 July – Tuesday 17 July
Mataikotare Marae, Te Ngae Junction
The Tribunal has received an amended claim on 3 April 1990 concerning thermal resources associated with the Tikitere B block and surrounding lands.
This hearing will include the presentation of Crown evidence and submissions.

RAUPATU (CONFISCATION) CLAIMS

June – Pre hearing conference
July – Chambers meeting
Specific dates and venue not yet finalised.

THE SALE OF CROWN LANDS

The Crown is currently selling off many of its lands. This is occurring in several ways through:

- the transfer to and on-sale of lands by state-owned enterprises,
- sales by existing government departments such as the Justice and Defence Departments,
- new agencies that now do the tasks that government departments used to do, in areas like health and education,
- large asset sales such as the proposed sale of Railways Corporation and Telecom lands.

This is causing concern and sometimes confusion with claimants before the Tribunal. It is important to understand, however, that the lands being sold fall into several different categories, and that different rules may apply to each. The different rules mean that claimants' interests may be protected by legislation in some cases, but not in others.

State-owned enterprise lands

Lands which the Crown formerly owned but which have been transferred to the state-owned enterprises created in 1986 are subject to a memorial or notice on the title which warns future owners that the lands may be returned to Maori ownership if the Tribunal requires this after hearing a claim which affects the land.

This means, for example, that if the sale of Telecom Corporation proceeds, all lands that Telecom now owns will have this memorial on the title.

The same applies to all the lands that NZ Post, Landcorp, Electricity Corporation, Coalcorp or Government Property Services have had transferred to them by the Crown.

Note that this does not apply to Railways Corporation, however, which was a corporation before 1986.

Lands taken under the Public Works Act

Some of the lands that the Crown is selling have been taken from Maori under the Public Works Act for schools, communications, defence, railways, or other public purposes.

When it is selling these particular lands the Crown is obliged by sections 40 and 41 of the Public Works Act to offer to sell the land back to the original Maori owners or their successors.

There is also a provision in the Maori Affairs Act 1953 (section 436) which allows the Maori Land Court to be involved in deciding who should get the land back.

The Tribunal has received and is currently receiving further claims about lands which fall into this category. It may be that some of the issues raised in these claims can be resolved using the provisions in the Public Works Act and Maori Affairs Act 1953.

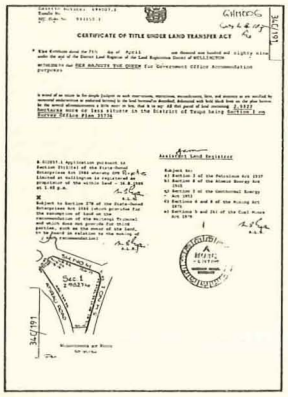
Forest lands

The Crown is also selling the exotic forests. Claims to the Tribunal concerning these forest lands are also 'protected' in a similar way to lands in the ownership of state-owned enterprises. The Crown will only sell a licence to cut trees to the buyers of the forests, but the land under the forest may still be returned to Maori claimants if the Tribunal orders this. If the Tribunal orders the return of the land under a forest licence, this return will take place over a period of between 35 and 45 years – to allow the trees on the land to be harvested and the licence holder to depart. The Crown Forest Assets Act 1989 is the law governing this area.

Other Crown lands

Crown lands which do not fall into any of the categories above are not protected for Maori claimants by any legislation. If a claim concerns these type of lands then claimants may wish to talk to the Crown directly through the Crown Taskforce on Treaty Issues which has recently been set up. The Taskforce can be contacted c/- the Department of Justice in Wellington.

If you are concerned that the Crown may sell land which you have already made a claim about, or if you want to make a claim to the Tribunal about land which the Crown is about to sell, please do not hesitate to contact the Tribunal for further information.



CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT

× Subject to Section 27B of the State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of such recommendation).

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