

**IN THE WAITANGI TRIBUNAL**

Wai 2560

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

an application for an urgent hearing by Jocelyn Pattison, Bruce Pattison, Maye Paki, Faye Irirangi Pattison, James Nikora, Janice Kaahurangi Leishman and Raymond Bruce Leishmand on behalf of the hapū of Ehetere Kawemata Rautahi

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**DECISION  
ON APPLICATION FOR AN URGENT HEARING**

20 September 2016

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## Introduction

1. The application for an urgent hearing was filed by Jocelyn Pattison, Bruce Pattison, Maye Paki, Faye Irirangi Pattison, James Nikora, Janice Kaahurangi Leishman and Raymond Bruce Leishman, on behalf of the hapū of Ehetere Kawemata Rautahi who are the claimants for the Wai 1950 historical claim.
2. The application concerns the Crown's recognition of the Rangitāne o Wairapapa and Rangitāne o Tāmaki Nui-ā-Rua historical Treaty claims, in particular the Crown's intention to settle Wai 1950 through its settlement with the Rangitāne Settlement Negotiations Trust (the RSNT).
3. The Crown has recognised Rangitāne o Wairapapa and Rangitāne o Tāmaki Nui-ā-Rua and Ngati Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua as large natural groupings for the purpose of settlement negotiations in the Wairapapa and Tāmaki Nui-ā-Rua regions. The RSNT is the mandated group to settle the historical claims of Rangitāne ki Wairapapa and Rangitāne Tāmaki Nui-ā-Rua.

## Wai 2560 claim

4. The applicants, the Ehetere Kawemata Rautahi hapū, descend from Te Rangiwakaewa and Aperehama Rautahi and assert rights to the following territories and settlements located in Tāmaki Nui-ā-Rua: Tahoraiti, Otawhao, Kaitoki, Oringiwaiaruhe, Tiratu, Mangatoro, Tāmaki, Te Ahūaturanga, Maharara, Manawatū, Puketoi, and Tipapakuku. It is said that around 1,000 individuals currently affiliate with the hapū. The applicants assert that they continue to exercise mana whenua, including placing rahui, undertaking mana ceremonies, and holding hui to make collective decisions relevant to the hapū. The applicants also assert that, by definition, they are not exclusively of Rangitāne, and have retained a distinct identity and body politic.
5. The applicants allege that the Crown's recognition of the RSNT's mandate and the process the Crown followed in settlement negotiations has caused them prejudice, thereby breaching the principles of the Treaty of Waitangi (the Treaty). In particular, they have been delegitimised vis-à-vis the Crown and other hapū; their whakapapa, history, and traditions have been rewritten; and they have faced substantial inter-tribal conflict.
6. The applicants further allege they have been deprived of a full and robust Waitangi Tribunal hearing, and that Wai 1950 has effectively been rendered null and void. The applicants maintain their hapū rangatiratanga has been usurped because they have been forced to surrender it to the RSNT.
7. The applicants seek findings in their favour and recommendations that:
  - a) The Crown takes all necessary steps to effect the withdrawal of the claimants from the RSNT's mandate;
  - b) The Crown reviews its base line assumptions about the hapū of Ehetere Kawemata Rautahi;

- c) The Crown acknowledges that including Wai 1950 and Ehetere Kawemata Rautahi hapū in a settlement mandate for Rangitāne would breach the Treaty; and
- d) The Crown assures the claimants that its lands, territories and resources will be explicitly excluded from negotiations between the RSNT and the Crown.

### **Wai 1950 Claim**

- 8. Wai 1950 was lodged on 30 August 2008 by Jocelyn Pattison, Bruce Pattison, Maye Pakai, Faye Irirangi, James Nikora, Janice Kāhurangi Leishman, and Raymond Bruce Leishman on behalf of the Ehetere Kawemata Rautahi whānau. Wai 1950 is the only historical claim filed on behalf of the Ehetere Kawemata Rautahi whānau currently before the Waitangi Tribunal.
- 9. The claim concerns various Crown actions and policies alleged to have breached the Treaty, including; the Lands Claims Ordinance, the Native Trust Ordinance, the Native Purchase Ordinance, the New Zealand Government Act, the New Zealand Constitution Act, the Native Lands Act, the Suppression of Rebellion Act, the New Zealand Settlers Act, the Native Reserve Act, the Māori Representation Act, the Māori Prisoners Trial Act, the Crown and Native Lands Rating Act, the Land Settlement Act, the Suppression of Tohunga Act, and the Māori Affairs Act.
- 10. Substantive hearings for the Wairarapa ki Tararua district inquiry (Wai 863) were completed before Wai 1950 was lodged with the Tribunal. As a result, neither Wai 1950 nor the Ehetere Kawemata Rautahi whānau were heard as part of that hearing process.
- 11. The Wairarapa ki Tararua report recognised that some new claims filed after its hearings had concluded could not be incorporated into the inquiry. The Tribunal listed seven such new historical claims that fell within the Wairarapa ki Tararua district but which the Tribunal had not inquired into in an appendix to its report. Wai 1950 was not included in that list because the claim had been incorrectly registered as falling within the Auckland area.<sup>1</sup>

### **Position of the Crown and Rangitāne Settlement Negotiations Trust (RSNT) in relation to WAI 2560**

- 12. Both the Crown and RSNT oppose Wai 2560 and do not accept the claimants' assertion of fact and opinion. For the reasons that follow, I do not need to fully set out their submissions for the purpose of this decision.

### **The Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Bill**

- 13. On 1 September 2016, as I was about to finalise a decision on urgency, I was notified that the Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Bill had been introduced to the House on 25 August 2016.<sup>2</sup> The Bill seeks to settle historical claims relating to Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua. The finality of

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<sup>1</sup> Wai 1950, #2.1.1.

<sup>2</sup> Rangitāne Tū Mai Rā (Wairarapa Tāmaki nui-ā-Rua) Claims Settlement Bill 2016 (162-1).

settlement would release and discharge the Crown from all obligations and liabilities in respect of those claims.<sup>3</sup> Clause 14 lists the historical claims covered by the Bill, including Wai 1950 – Ehetere Kawemata Rautahi Whānau Claim.<sup>4</sup>

14. The Bill's introduction shifts the focus of this decision towards the Tribunal's ability to hear the Wai 2560 claim. Section 6(6) of the Treaty of Waitangi Act 1975, which relates to the Tribunal's jurisdiction to consider claims, provides:

Nothing in this section shall confer any jurisdiction on the Tribunal in respect of any Bill that has been introduced into the House of Representatives unless the Bill has been referred to the Tribunal pursuant to section 8.

The section is constitutionally conventional, reflecting the general position at law that Courts will not inquire into parliamentary proceedings. Article 9 of the Bill of Rights 1688 provides:

That freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament.

15. While the Tribunal is accordingly jurisdictionally barred from considering a Bill that is before Parliament, there may be occasions where it is possible to sever from a claim those issues which are before the House, and therefore cannot be either inquired into or commented on, and those that may have only indirect relevance to the Bill, and can accordingly be inquired into. In other cases, the issues into which the claimants seek inquiry may be so inextricably intertwined with the Bill that to sever them without running contrary to s 6(6) would be impossible.
16. Decisions on whether an issue may be severed will inevitably be fact-specific. However, the Tribunal has previously found that lines of inquiry that require analysis of a Deed of Settlement are tantamount to considering the content of a Settlement Bill. In a direction on the outcome of an application for urgency under Wai 706, Judge Kearney considered that s 6(6) left no room for the Tribunal to consider the claimants' concerns.<sup>5</sup>

by the artifice of doing so under the guise of reference to the Deed of Settlement, for such an exercise would clearly require a consideration of the Bill before Parliament.

## Decision

17. Section 6(6) of the Treaty of Waitangi Act 1975 clearly establishes that the Tribunal has no jurisdiction to inquire into a claim that is the subject of a Bill currently before the House. This is especially clear when the section is interpreted in light of article 9 of the Bill of Rights 1688.
18. As noted above, the Rangitāne Tū Mai Rā (Wairarapa Tamaki nui-ā-Rua) Claims Settlement Bill lists the Wai 1950 historical claim as one of the claims it purports to settle, thereby putting this matter before the House. Insofar as the Wai 2560 claim seeks inquiry

<sup>3</sup> Clause 15(2).

<sup>4</sup> Clause 14(3)(a)(vii).

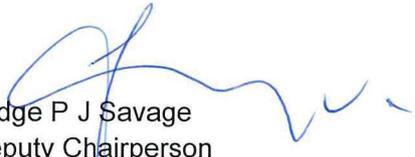
<sup>5</sup> Wai 706, #2.15, 22 April 1998.

into the removal of Wai 1950 from the Rangitāne negotiations and settlement, the Tribunal no longer has jurisdiction to consider this matter as it would be impossible to do so without referring to the Bill before the House.

19. Wai 2560 also challenges the Crown's recognition of RSNT's mandate to settle on behalf of Ehetere Kawemata Rautahi hapū. The Crown's decision about mandate is mentioned in the Bill's explanatory note, but not in the Bill itself. While one might argue that the mandate question could thereby be severed from other aspects of the Wai 2560 claim because it is not directly before the House, the reality is that an inquiry into the Crown's decision on mandate would require close analysis of the Deed of Settlement. Essentially, this would facilitate an analysis of the Bill by proxy, which falls foul of s 6(6) of the Treaty of Waitangi Act 1975.
20. It goes without saying that if the Tribunal cannot consider the matter, there is no point in granting urgency. The application will be dismissed if I have not received submissions from counsel contesting the above view of the matter within 7 days.
21. It may help counsel to know that the judgment that I was about to give declined the grant of urgency for reasons that are not now important.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel and those on the notification list for Wai 2560, the Rangitāne Settlement Negotiations Trust (Pattison) Claim.

**DATED** at *Wellington* this *20th* day of *September* 2016

  
Judge P J Savage  
Deputy Chairperson

**WAITANGI TRIBUNAL**