IN THE WAITANGI TRIBUNAL **Wai 2615**

UNDER The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Māori children placed into the care of the State of New Zealand

AND

IN THE MATTER OF a claim by Ian Shadrock of Ngati Te Wehi and Ngatiwai, Marilyn Stephens of Ngatiwai and Tyrone Marks of Ngati Raukawa

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BRIEF OF EVIDENCE OF OLIVER ROBERT WEBBER SUTHERLAND IN SUPPORT OF AN APPLICATION FOR AN URGENT HEARING CONCERNING THE SETTLEMENT OF HISTORICAL GRIEVANCES OF MAORI CHILDREN PUT INTO STATE CARE

DATED 15 MAY 2017

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MAY IT PLEASE THE TRIBUNAL

1. My name is Oliver Robert Webber Sutherland, I am a retired scientist from Nelson.

2. In 1970 I was the secretary of the Nelson Maori Committee formed under the New Zealand Maori Council, which was chaired at the time by my whanaunga John Hippolite (Ngati Koata).

3. John and I had become aware that Maori, including children were getting into trouble in Nelson and were appearing in Court and some were being remanded in the police cells. It soon became clear to us that they had no legal representation or help and were simply pleading guilty and then in many cases were sent off to some form of detention. There were no duty solicitors in those days and yet there was considerable potential for them to be sentenced to borstal training or prison. So the matter was very serious.

4. The Nelson superintendent of police permitted John or me to go into the cells and speak with Maori held in custody. We didn't like what we saw. We knew something had to be done, so we tried to arrange for a lawyer to do pro bono work, and thankfully Warwick Reid and Bryan Smythe agreed to help.

5. At the time we had the aim of making sure that no Maori (child or adult) appeared before the Nelson court without legal representation. After a year of providing legal help we decided to do a 'before and after' analysis to see if we had made a difference or not, so we joined with Ross Galbreath, a work colleague of mine with expertise in statistics and data analysis. Nelson Court managers gave us permission to go through the files for all cases coming before the Nelson Magistrate's Court. We were able to get data on the charge faced, the outcome and the race of the person charged.

6. By collating these for the years before and after our scheme we were able to statistically show that there was a dramatic reduction in those Maori put into one form of detention or another. We wrote up a paper summarising and analysing the results of our legal aid scheme, entitled "Justice and race: a monocultural system in a multicultural society". The nub of the paper is in table 4 which shows that before the scheme 34.4% of Maori appearing in the Nelson magistrate's court were sent to

prison. After the scheme 19.8% were sent to prison. That's nearly a 50% reduction. This paper was first presented to a conference of the New Zealand Race Relations Council in February 1973 and received wide publicity. It was also published in the New Zealand Law Journal in May 1973 (pp. 175 – 181). A copy of this is attached as appendix "A".

7. The paper also explored what racism was, in particular institutional racism. The opening sentence was "Together with venereal disease and measles the judicial system of New Zealand was brought to this country by pakeha colonists". The Minister of Justice, Dr Martyn Finlay was deeply upset about such criticism of the judicial system.

8. The paper caused massive ructions and there were numerous newspaper articles about it. Some of these newspaper articles are attached as appendix "B".

9. At the time we had clearly shown that the Courts or at least the process, was clearly discriminating against Maori children; they had no legal representation, state welfare were not helping them, and they were going into care or custody at a far greater rate than non-Maori. Everyone knew what the Maori children looked like in Court: head down, not saying a word, looking ashamed. Because of what we were doing we argued for a nationwide legal aid scheme and eventually it happened. So that was a good outcome, but what about those children who were already in state care? It was unfortunately too late for them.

10. Our focus was principally on children caught up in the judicial/welfare system, and to find out just what was happening nationally, we analysed the official N.Z. Justice Statistics. The data for the Children's Court in 1970 showed that: (i) Maori children made up 41.8% of the total cases, (ii) of those children sent to penal institutions by the court 54.3% were Maori, (iii) of those sent to borstal 58.5% were Maori and (iv) of those sent to detention centres 53.7% were Maori. These statistics are attached as appendix "C". The statistics showed that the offences Maori children were charged with were not more serious than the offences non-Maori children were charged with, but the Maori children were more likely to be sentenced to some form of detention.

11. In 1973 my job moved to Auckland and when we arrived we set up ACORD: the Auckland Committee on Racism and Discrimination. We started doing the same thing

that we had been doing in Nelson and the issues were the same, but the need in Auckland was far greater. For a start there were more social welfare homes in Auckland. More homes mean more children in need. We then found out that there were children being remanded in custody by the Courts, but who the Social Welfare homes would not take and these boys went to Mt Eden prison.

12. In Auckland there was case after case after case and parents and staff were coming to us for help. Our main lawyer at the time was David Lange who worked at Lange Elliot and Brown. He went to Court for the children. We were publishing case after case after case of children being sent to Mt Eden prison or being mistreated in children's homes and we had trouble keeping up.

13. At the same time, staff working in social welfare homes were coming to us about the policies and procedures followed in the homes - including individual cases from all over the country - telling us their concerns about how the children were being treated. These were the actual caregivers who were working in these institutions. They were coming to us because they didn't feel safe making complaints to the department and because they knew what was happening and that it was wrong, but were powerless to do anything about it. They came to us in the hope that we'd do something about what was going on. These testimonies from staff vindicated what the children were saying. It made us more determined to carry on fighting for the children.

14. Meanwhile we were also taking up the matter of the remanding of children to adult prisons. For example, in 1973 we raised the cases of three boys remanded to Mt Eden Prison and as a result of our complaint to the Minister of Justice there was an inquiry. There is a news article about it and it is attached as appendix "D". There were many other such cases and we mounted a campaign to see the practice stopped. We wrote a report on the issue "Children in Prison: Where's the Justice? Who's the Criminal" attached as appendix "E" and an associated leaflet attached as appendix "F".

15. In 1974 when the social welfare legislation was amended we presented a submission on the new Children and Young Persons Bill. We used real cases to show how bad things were, and aimed to critically analyse the institutions of Police, Justice and Social Welfare and their various roles in the treatment of children in trouble. Our submission is attached as appendix "G".

16. Every time there was a new case regarding the abuse of children in welfare homes, or their remand to prison we sent the details to the Ministers. At no stage could the Crown say that they had no idea what was going on because we made sure they did. In 1977 our complaints regarding the remanding of children to adult prisons led to an Ombudsman's report "Children on remand in penal institutions", but it was left in draft form when the Ombudsman, Sir Guy Powles, retired. However, contrary to the wishes of the Minister of Justice, we released the draft report and it is attached as appendix "H". The Ministry then compiled its own report on children in penal institutions which justified their position, and this is attached as appendix "H(i)".

17. By 1977 we had amassed a large number of complaints regarding the childrens homes and had asked many times for an inquiry without any response from the government. So in 1978 we along with Arohanui Incorporated and Nga Tamatoa decided to hold our own public inquiry. It was held on 11 June 1978 at the Auckland Trades Hall. John Hippolite, Ripeka Evans, Donna Awatere and Poe Tuiasau were the panel members on the Inquiry. Children, their parents, ex-staff, psychologists and others all gave evidence.

18. We gave a full report on the evidence given at this inquiry in: "Social welfare childrens home: report of an Inquiry held on June 11 1978", and also wrote a shorter summary and analysis; copies of these are attached as Appendices "I(i)" and "I(ii)". During the Inquiry several staff members of children's homes spoke about their observations and experiences (see pages 11, 12, 13, 14 and 18 of the main report). The Inquiry brought out considerable evidence about the treatment the children were receiving including:

    a. The use of solitary confinement
    b. Compulsory internal examinations of girls for venereal disease
    c. Abusive punishments
    d. Degrading and culturally inappropriate practices

19. In 1979 the Human Rights Commission had just been formed and we wrote to the Chief Human Rights Commissioner in February and March 1979 seeking an inquiry. These letters are attached and marked as appendices "J(i)" and "J(ii)". In the letters

we spoke in particular about overcrowding, physical assaults, compulsory stripping and venereal disease examinations.

20. Three years after we first requested an inquiry, in September 1982, the report from the Human Rights Commission came out. The report is attached and marked as appendix "K".

21. In late 1982, a few months after the Human Rights Commission report was released, Archbishop A. H. Johnston was commissioned by the government to report on how the Commission's findings might be implemented and put into practice. The Johnson report is attached and marked as appendix "L".

22. The inquiry by the Human Rights Commission did not include the detention and treatment of children in the Adolescent Unit of the Lake Alice Psychiatric institution for the criminally insane, which was not a social welfare home but a psychiatric hospital run by the Health Department. The incarceration of children at Lake Alice first came to our attention in 1977 when we were investigating the case of a Niuean boy who had been sent there from a social welfare home. Other cases came to our attention and it became clear to us just how bad the treatment was that they received. Particularly bad was the use of electroconvulsive therapy (ECT) - shock treatment. The resident psychiatrist who ran the adolescent unit was Dr Selwyn Leeks. Under Dr Leeks direction the ECT machine was not only applied to the children's heads as 'therapy' but was also applied to other parts of the body as punishment. The Health Department ran Lake Alice but the children who went there were from the social welfare homes. As they were under state care, with the Department of Social Welfare theoretically acting in loco parentis, the Health authorities and particularly Dr Leeks felt he had no need to seek anyone's permission before 'treating' the children any way he wanted.

23. There were two boys who came to me and I interviewed them and their parents. They both testified that they had had the ECT electrodes applied to their knees as punishment. As a result of our public complaints about these children's treatment which we regarded as torture, a police inquiry was undertaken but came to nothing. The Health Department rejected our criticisms. Eventually in 2001, after legal steps were taken by some of the children, retired High Court Judge Sir Rodney Gallen was

commissioned by the government to inquire into the complaints and to determine compensation to be paid. He found that "The ECT was plainly delivered as a means of inflicting pain in order to coerce behaviour. ECT delivered in circumstances such as those I have described could not possibly be referred to as therapy, and when administered to defenceless children can only be described as outrageous in the extreme". This report is attached as appendix "M".

24. The Government issued a formal apology to the Lake Alice children and paid compensation.

25. Meanwhile, with the shelving of the Ombudsman's report into the remanding of children to adult prisons, nothing had changed regarding that matter – children were still ending up in Mt Eden Prison. In 1979 we published a report "Children in State Custody" (which was later revised in 1981), which was a summary of the cases against the remanding of children in adult prisons. This report put together 10 years of statistics and all the data is in that document which is attached as appendix "N".

26. Pages 1 and 2 of this report have crucial figures based on the 10 years of cases. It should be noted these figures all come from official statistics. Every year the statistics came out and they were very revealing. All we did was put them together and make the comparisons between Maori and non-Maori. It showed that in the ten years up to 1976, the childrens courts had processed 116,595 children of whom 41% were Maori. As we said "this means that any Maori child is about four times more likely to be brought before the childrens court than any non-Maori child". In the youngest age group (under 10 year-olds) the proportion of Maori was even higher – 56%.

27. In 1984 the government commissioned Judge G. C. P. A. Wallace to inquire into three complaints laid by ACORD regarding boys remanded to Mt Eden prison. The practice was still occurring. The report was issued in November 1984 and was entitled "Report for the secretary of justice on the Enquiry into ACORD complaints concerning detention of young persons". This report is attached as appendix "O". Judge Wallace's findings vindicated ACORD's concerns: she concluded "As a result of the inquiries I have made I am convinced that youths up to 17 years old ought not to be placed on remand in Mt Eden prison". Regrettably, the remanding of children to adult prisons and police cells still continues to this day.

28. I am dismayed that after all these decades there has still not been a proper official inquiry into the treatment of children in the care of the state and, particularly into the incarceration of the disproportionate number of Maori children involved, and into the historic abuse, ill-treatment and institutional racism that they have suffered.

29. When I first heard on National radio that this claim had been filed I was determined to support it and to press for urgency because of the historic nature of the cases and the increasing age of the victims and those like myself who were involved right from the 1970s. The exact same issues are still there decades after we started the mahi in Nelson. I was thrilled to hear about the claim because it could provide the first opportunity for the truth to come out about what happened to those children. The truth must come out and those responsible need to be held to account. Do I think urgency should be granted? Absolutely.

DATED this 15th day of May 2017

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OLIVER ROBERT WEBBER SUTHERLAND