OFFICIAL

APPENDIX "A"

RESPONSES OF PROFESSOR PATU HOHEPA

TO QUESTIONS IN WRITING

10 DECEMBER 2010

RECEIVED
Waitangi Tribunal
10 DEC 2010
Ministry of Justice
WELLINGTON

1. Questions in writing from the Crown (Wai 1040, #) dated 5 November 2010.

1. Would you agree that Henry Williams translated the English draft of He Whakaputanga into Māori, given the following evidence:

> "The Declaration of Independence, was transmitted to the Revd. Henry Williams to be translated, with a request that he and his colleagues would offer any suggestions for its improvement which might occur to them, but no suggestion was offered, not had I any reason to doubt that the declaration was entirely approved by all the Missionaries who had an opportunity of examining it." (Despatch #91 of 16 March 1836, from Busby to the Colonial secretary of New South Wales; CO 209/2 pp.210b-214a. Cited by Dr Donald Loveridge, #A18, page 66, footnote 199 and Mr Samuel Carpenter, #A17, page 72).

> "Busby drafted the Declaration of Independence in English; it was then translated into te reo Māori by Henry Williams." (Mr Ralph Johnson, #A5(b), paragraph 17).

> "In paragraph 91 Dr Hohepa says that Busby's draft of the declaration was written into Maori by Eruera Pare Hongi. It was not. Busby wrote the document in English, gave it to Henry Williams to translate and the Maori text by Williams is illustrated in my document bank (#D1(b) at item 10) from the holograph with Busby himself adding the last paragraph to William's text. That document was then *transcribed* by Edward Parry Hongi as a simple copyist." (Dr Phil Parkinson, #D1(d), paragraph 14).

I cannot totally agree. Notwithstanding his 12 years of learning Māori for biblical purposes, Henry Williams was not an expert translator. My evidence pinpoints that his status was as a compound bilingual. The presence of hidden elements, such as the corrections which are in the handwriting of Eruera Pare, supports my position. Eruera Pare then transcribed the document, with the added corrections (see Manuka Henare BOE/transcripts).

2. In your evidence you state:

> "The culture of Ngāpuhi did not create supreme Leaders or Ariki after Rāhiri, also, their stories sometimes defined Gods as Ariki, and the presence of missionaries who taught that only Jesus or Jehovah were Ariki in their belief, would create a diffidence among chiefs to put themselves up to the level of Gods, of Rāhiri, of their Guardians of the Universe, Jesus and Jehavah." (Paragraph 92).
>
> "Ariki was not a term used often for highest level chiefs in the north, but it was known. The transfer of that title to Jesus and God the father had been done by missionaries." (Page 50, paragraph 23).

Given these statements, would you agree that it would have been appropriate to translate the word 'sovereignty' in Article One of the Treaty as 'arikitanga'?

My response is twofold. Firstly, the terms rangatiratanga and arikitanga were missionary constructs that had biblical or Christian semantic extensions. That rangatiratanga and not arikitanga was chosen was Williams' choice and his reasons are lost in the mists of time. The exclusion of mana or mana motuhake is a topic that has received wide and broad discussion which I will not try to resurrect here.

Perhaps more importantly, however, is that I regard the whole question as being somewhat hypothetical and irrelevant as the chiefs were only discussing what was already written in Te Tiriti.

3. Would you agree that Te Tiriti places the following limitations on "te rangatiratanga':

> *3.1 It does not apply to all things; it applies only to "o ratou wenua, o ratou kainga me o ratou taonga katoa*

My response is that re 3.1, there are no limitations because 'o ratou taonga katoa' covers everything else that was part of the Māori world, whether seen, unseen, physical or spiritual.

> *3.2 It is subject to the proviso in the second sentence of Te Tuarua, which you translate as "On the other hand, the chiefs of the Confederation and all others will give the Queen the right to have those land the owner agrees to exchange at a price agreed to between*

the seller and the person buying it appointed by the Queen as her purchase agent"?

My response re 3.2, is that the Queen is being given the right to have land but the tikanga or laws of this land will still prevail just as the laws of England or the Queen will still prevail if Māori chiefs and others bought land or homes in England. There are therefore no limitations to tino rangatiratanga in 3.2.

3.3 Te Tuatoru of Te Tiriti places on "all the maori people of New Zealand" "all the rights, duties laws obligations (21) exactly the same) as those she [the Queen] gives the people of England", which must mean that "te tino rangatiratanga o o ratou wenua, o ratou kainga me o ratou taonga katoa" is subject to the laws of Britain?

Re 3.3, my view is that we are looking at mutuality among tino rangatira that they will extend their protection to each other's people and the Queen's people will be granted the right to live and travel in Aotearoa under the protection of tino rangatira in the same way the Queen will give Māori that same protection that she gives her people in her domains. Tino rangatiratanga is therefore in no way limited.

3.4 It is located in a treaty that gives "absolutely to the Queen of England forever" te Kawanatanga katoa o o ratou wenua?

My response is that this permanent right as governorship is not linked to tino rangatiratanga which is still totally and absolutely in the control of *"ngā rangatira, ngā hapū, ngā tāngata katoa o Nu Tirani"* in KO TE TUARUA, and only allows the governor to have freedom of access over all of Aotearoa New Zealand to exercise his limited governorship or kawanatanga over his own British subjects.

While I have tried to answer the string of questions posed by the Crown in the way in which they were asked, I think it is important to highlight the concerns I have with the dissective way in which they seek to have Te Tiriti interpreted. Essentially these questions have separated out certain strands from the covenant in an effort to place them in conflict with each other. In this way, the exercise of tino rangatiratanga is conceptualised as separate and in opposition to the exercise of kawanatanga. The Crown's search for conflict

within the document negates its overall context which was the desire to create a relationship.

Relationships are not created so that inherent freedoms can be enhanced not limited or subsumed. In these respects, the Chiefs understood that the relationship would not only assist them in the exercise of rangatiratanga, but increase their capacity to do so.

The way in which the Crown has asked its questions is indicative of a continual tendency to depict Maori and Maori aspiration as being in opposition to the general public to justify past and ongoing discrimination.

2.. Questions in writing from Wai 654 counsel Gerald Sharrock (Wai 1040, #3.1.396)

Would Dr Hohepa wish to comment on the efficacy of other translations of Article 3

> *Richard Davis[1]: III. In return for their acknowledging the Government of the Queen, the Queen of England will protect the natives of New Zealand, and will allow them the same rights as the people of England*
>
> *Gordon Brown: 3dly This is the consent to the government of the Queen. The Queen will protect all the natives of New Zealand and secure to them all the rights and privileges of the people of England.*
>
> *S Matin* [sic][2]
> *Now the third – This is the arrangement come to for the consenting of the Kawanatanga of the Queen, and the Queen of England protect will [sic????] all the aborigines of New Zealand and give them the whole laws exactly like her things to the people of England.*
>
> *Williams[3] 1847*
> *Thirdly, - that the Queen, in consideration of the above, will protect the natives of New Zealand, and will impart to them all the rights and privileges of British subjects.*
>
> *Brown[4] 1845*
> *117. Here's the third: This too, is an arrangement in return for the assent of the Governorship of the Queen. The Queen of England will protect all the native men of New Zealand. She yields to them all the rights, one and the same as her doings to the men of England.*

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[1] I note that this translation is that of is Revd. R Davis in Orange, *The Treaty of Waitangi*, Wellington, 1987, pp261-2.
[2] I note that this translation is actually that of Samuel Martin, not 'Matin' as Sharrock has indicated. The section quoted is from the appendices of S.M.D. Martin's, New Zealand in a Series of Letters, 1845 available at the Early New Zealand Books website www.enzb.auckland.ac.nz.
[3] I note that this section can also be found at pp.153-157 of Volume II of Hugh Carleton's, *The Life of Henry Williams, Archdeacon of Waimate*, Auckland, 1877.
[4] I note that this is the official translation available at a number of sites on the worldwide web. I am unable to find out the relevance of 'Brown 1845' however. It would have been helpful if a reference to the primary or official source could have been provided. Even more helpful would have been a copy of the original.

Young[5] *1865*
118. This is an arrangement for the.consent to the government of the Queen. The Queen of England will protect all the Maoris of New Zealand. All the rights will be given to them the same as her doings to the people of England.

My reply is that I can see aspects of the meaning of Article 3 in each of the above, however, while they were written for the efficacy of the writer and his or her readers, I do not see the point of doing a many paged technical report on their many merits and demerits. Translating to English brings to each word unwanted allusions and cultural aspects from the English world. *He Whakaputanga and Te Tiriti* was what our ancestors discussed and understood. Their meanings and nuances and possible consequences were all discussed in Māori.

[5] I note that this translation is that of is T.E. Young in Orange, *The Treaty of Waitangi*, Wellington, 1987, pp265-6 however I am unable to confirm the date of the translation as 1865 without the primary document.