

DUPLICATE

Wai 863 # 4.7

**SEVENTH HEARING
COPTHORNE SOLWAY PARK
26 OCTOBER 2004**

WAIRARAPA KI TARARUA INQUIRY

Tribunal: Judge Wainwright
Dame Margaret Bazley
Wharehuia Milroy
Ranginui Walker

Historian: Robyn Anderson

Tribunal Staff: Juanita Pearce-Thomson
Greer Kaio (Training)
Claire Mason
Fiona Small
Stephen Kerr

Claimant Counsel: Grant Powell
Angela Hansen
Kathy Ertel
Liz Cleary
Leonard Hemi
Yashveen Singh
Gina Rangi
Tracey Whare

David Ambler (from 27 Oct)
Prue Kapua (from 27 Oct)
Paul Harman (from 27 Oct)
Stephen Clark
Charl Hirschfeld (from 27 Oct)

Crown Counsel: Helen Carrad
David Laird
Hone Hurihanganui (Kaumatua)
Fergus Sinclair (from 27 Oct)

Fergus Sinclair examines Paul Goldstone

Sinclair Thank you Mr Goldstone. Your Honour, perhaps I should mention that some of the blocks that Mr Goldstone has referred to or are listed in his tables are to be found mapped in the second CFRT map book. But some only, I perhaps should have discussed this with Mr Goldstone this morning, but it may be just be worth asking him to explain what the discrepancy is and how it's arisen.

Wainwright Alright.

Sinclair Are you able to assist with that?

- Goldstone The CFRT map book does not show a number of blocks that pass through the Native Land Court. How I worked out where blocks was I got a 1-25,000 scale series of topographical maps and with coloured pencils and stickies I got from certificate of title maps worked out where those blocks were and made up my own map so I could work out where all the land was.
- ~~Wainwright We don't have any insight into how it came to pass that the maps don't show all the blocks?~~
- Sinclair No, we did speak to Mr Apiti about that and it arises, I think, from, if I can put it this way, I think he works backwards, whereas Mr Goldstone has started with the certificate and built up his map that he was referring to in that way. Unfortunately with the recent shift of the Crown Law Office that map has been lost. It's regrettable but I just thought I should mention that, to the extent that these blocks are mapped in the Trust map book, it's very useful but it's not a complete picture of all the blocks.
- Wainwright Well, does that mean that some of the blocks that Mr Goldstone refers to we won't be able to locate in any way?
- Sinclair Well, they're not currently mapped and we did speak to Mr Apiti about this, but that was around about the time that the Trust's mapping function was being closed down and I think there was just insufficient time to correct that.
- Wainwright Well, would it be possible for the Crown Law Office to contract Mr Apiti to include in his map the blocks that Mr Goldstone refers to that otherwise we will have no idea of their location?
- Sinclair Well, it seems a shame that they can't be fully represented. What Mr Goldstone is describing is a fairly approximate way of identifying the blocks and I know Mr Apiti's standards will be much higher, but I think he was telling me that there's a problem with the sequence of or the absence of the plans that he had relied on to get as far as he did in the second map book so we can ...
- Wainwright Can I ask you to just progress that, if you can, Dr Sinclair, and report back to us as to whether there might be a way forward?
- Sinclair Certainly Your Honour.
- Wainwright Kia Ora.
- Sinclair Mr Goldstone if you just remain for further questions.
- Wainwright Now, Ms Ertel sought leave, and was granted leave yesterday, to submit her questions to Mr Goldstone in writing. I'm assuming that that would be done after the transcripts of cross-examination having been made available, as otherwise undoubtedly there will be duplication of effort. Does that mean that the burden of the oral cross-examination falls to you Mr Clark?

- Clark Yes Ma'm. There was an agreement between myself and Ms Ertel that I was to be responsible for cross-examination of the first two parts of Mr Goldstone's report.
- Wainwright I see.
- Clark So, I understand that Ms Ertel questions in writing will be aimed primarily at the parts 3 and 4.
- Wainwright Right. All right then.
- Male(?) Ma'm if I could indicate, I had estimated about half an hour of cross-examination, given that Ms Ertel is not here today I would anticipate going a little bit longer, but it will depend on my learned friend as to how long I have to cross-examine.
- Wainwright Alright, well, let us proceed.
- Hemi Excuse me Ma'm Mr Hirschfield had some time allocated also, but ...
- Wainwright Yes I have I have that here.
- Hemi He has instructed me to seek leave to file his questions in writing within 14 days.
- Wainwright Well, I think, Mr Hemi, it would be sensible for Mr Hirschfield to await the production of the transcript of the cross-examination before he prepares his questions as the necessity for him to question may be obviated by the questions that others asked.
- Hemi I'm going to endeavour to try and record as much as I can with that in mind Ma'm.
- Wainwright Well, I would prefer that he waited for the transcript. I think it's a waste of time for him not to be here and to write questions in a vacuum and the transcript is usually not very long in production.
- Hemi Thank you.

Steven Clark cross-examines Paul Goldstone

- Clark Mr Goldstone, I'll direct my questions to your main report. The first question, series of questions I have relates to the time period that you studied. You talked about in your report studying the first two decades of the operation of the Native Land Court, don't you?
- Goldstone Yes. Yes. I take it up to 1882.
- Clark Within that two decades, however, as I understand the chronology of the events, you've studied the period 1866 through to 1872 and then there was a hiatus period, as you describe it, and then you studied a further three years, is that right?
- Goldstone Yes, that's correct.

- Clark So, in fact, your study is based upon ten years of the operation of the Native Land Court in the Wairarapa, is that right?
- Goldstone Yes.
- Clark Just to come back to that point you mentioned about the cut off of 1882. I got the sense from reading your report that you had wanted to extend your period of study and you had to choose, because of limitations of time, a cut off point. Is that fair?
- Goldstone Yes.
- Clark So, was the decision to cut off at 1882, that was an arbitrary choice that you made? Was there any particular rhyme or reason to it or?
- Goldstone Principally because of time.
- Clark Right. That means, doesn't it, that unfortunately, as I think you've referred to in your report, you didn't, you weren't able to study in-depth the investigation, for example the Nga Waka a Kupe Block?
- Goldstone Yes.
- Clark From what you are aware, though, of that investigation, do you understand it was one of the more bitterly contested blocks within the Wairarapa region?
- Goldstone I didn't read the minutes for that, so I can't comment.
- Clark Could I just ask a few questions about the physical area of your study? I get the impression that your study concentrated on those blocks which you referred to as the Wairarapa portion of this inquiry district, is that right?
- Goldstone Yes. What I often term as the Wairarapa valley, essentially the area lying south of, I guess if you could call that, the watershed from Mt Bruce.
- Clark So the, for example the 1871 investigations of the Tararua block, you haven't been, had an opportunity to look at those is that right?
- Goldstone No. No. No analysis was done of those.
- Clark Are you aware that those blocks, when they were investigated by the Native Land Court, the Court actually sat in Masterton, however?
- Goldstone Sat in Masterton, yes.
- Clark Just in terms of your approach to the report, you've highlighted three major themes - the court environment, individualisation and costs and then from time to time you have concentrated on specific issues which you've drawn from the statement of issues haven't you?
- Goldstone Yes.

- Clark The way in which you have approached the selection of issues that you have written about from the statement of issues, was that simply your choice or simply issues which you thought were particularly relevant to this inquiry? Because you certainly haven't commented on all of those issues that relate to the Native Land Court as recorded in the statement of issues have you?
- Goldstone These were the, I was trying to boil all the statements of issues regarding the Native Land Court down to just a few key points I thought which are as I expressed individualisation, court environment and costs.
- Clark You see, some of the issues which seem to have loomed large in this inquiry, such as the extent of the influence of the repudiation movement, for example, the attempts to boycott the Court you haven't written about those, have you?
- Goldstone No.
- Clark Can I just ask you to refer to paragraph 26 of your main report? You refer there to an area of 6% of the total inquiry area. Is that, you based that on, do you, the 150,000 acres that you have referred to in paragraph 24? Is that right?
- Goldstone Yes, that's possible. I can't recall exactly how I got that 6% figure. It sounds logical.
- Clark Now, that 150,000 acres, I'm just trying, just really checking your approach here. Now that's 150,000 acres that was investigated in the first two decades you've stated, is it?
- Goldstone Yes.
- Clark Because you'd be aware, in terms of by 1900, of course, there's a lot more acreage has been investigated by the Native Land Court in this inquiry area, hasn't it?
- Goldstone Yes.
- Clark Just on that, I'm just trying to figure out the acreage that was investigated. Bruce Stirling suggested a figure of some 700,000 acres. If we work off the Ellis and Small figures then I'm perhaps suggesting that there was close to an order of a million acres was actually investigated by the Native Land Court. Would you accept that?
- Goldstone I can't comment actually, I can't recall. I will have to go through Ellis and Smalls and how Stirling reached those figures.
- Clark Right. At footnote 8 on that page of your report you referred to Ellis and Small with respect to the total acreage of the inquiry area.
- Goldstone Oh okay.

- Clark 1.5 million acres sold by 1865. So that would seem to, we could draw from that, couldn't we, that the remaining area of the inquiry district must have been passed through the Native Land Court post-1865?
- Goldstone Yeah.
- Clark So, the scale of the involvement of the Native Land Court in the Wairarapa is much larger than and involves a far greater percentage of lands here than if we simply concentrated on your 6% figure, isn't it.
- Goldstone That's correct, but of course you also would be, as I've said I took as Wairarapa proper the area lying south of Mt Bruce, (inaudible). I didn't discuss or analyse the Tararua area which passes through the Court in, I think, 1870 and '71 and I felt that that really had a different, very different history from the Wairarapa proper. Most obviously it's an area of Crown purchase.
- Clark Following investigation in the, by the Native Land Court, though, wasn't it?
- Goldstone Yes following investigation.
- Clark Paragraph 28 of your main report, you refer to section 23 and the provision which allowed for tribal title. It's your evidence, isn't it, that there were no such tribal titles in the Wairarapa?
- Goldstone Yes.
- Clark Are you aware that Mr Stirling, in his evidence #A49, suggests that, with respect to one of the Mataikona Blocks Manawatu 3, there was an attempt to create a tribal title sought by the applicants?
- Goldstone Are you talking about Mataikona lying to the north?
- Clark Yes.
- Goldstone Of the Wairarapa. That's in the Tararua area.
- Clark So, have you not investigated that?
- Goldstone Well that's to the north. I hadn't analysed that.
- Clark Right.
- Goldstone Though I'd just like to point out that the term "tribal title" post-1867 is generally taken to mean that in section 17 under the 1867 Act which in fact was awarded.
- Clark I understand from your evidence that you gave in Gisborne and also in Kaipara that that particular provision, the awarding of tribal titles, was very infrequently done by the Native Land Court. Is that right?
- Goldstone The tribal titles under the 1865 Act ...

- Clark Under the 1865 Act.
- Goldstone ... was done once as far as I'm aware.
- Clark Once in Gisborne wasn't it?
- Goldstone Once in Northland.
- Clark With respect to your tables that precede paragraph 28, there are, aren't there, some blocks which are in excess of 5000 acres which would have permitted the creation of the tribal titles such as the Mataikona Blocks page 10 to Kawakawa and Okurapeti blocks listed at page 11?
- Goldstone Yes. In fact Mataikona, those blocks on the middle of page 10, that account for 8,000 acres are awarded under section 17 titles.
- Clark In terms of your investigation of the minute books for those particular blocks, that's Mataikona and Te Kawakawa and Okurapeti, did you see anything recorded from the applicants in which they sought tribal title?
- Goldstone Those they seek are section 17 titles.
- Clark Right. But not a section 23 title?
- Goldstone No. I think they seek a section 17 title.
- Clark Okay. Would it be fair to say, Mr Goldstone, that the judges of the Native Land Court were not keen on section 23 titles? It seems to be borne out from the fact that they were so infrequently used.
- Goldstone I don't agree with that. Certainly Fenton expressed reservations about section 17 titles.
- Clark In fact he didn't like awarding section 17 titles at all, did he?
- Goldstone Well, that's interesting that you raise that. Because while Fenton expressed to the government that he was opposed to section 17 titles, in reality how he applied the law was that he did award section 17 titles, I think, on 19 occasions. Similarly, other judges Munro, Smith and so on don't seem to have shown any disinclination for awarding section 17 titles.
- Clark Have you read the evidence of Bruce Stirling's when he refers to a quote from Munro in which he says he disliked the tribal titles, section 17 titles, do you recall that evidence?
- Goldstone I can't recall that.
- Clark Do you recall me putting an extract to you in the Kaipara inquiry, a letter in which Fenton indicated a clear dislike of section 17 titles?
- Goldstone I can't recall that. That was many years ago.
- Clark That was only three years ago.

- Goldstone A lifetime.
- Clark Okay. Can we move on then? Paragraph 29, you talk about the certificates being held in trust by ten or few owners. Now, you'd concede, wouldn't you, that in the section itself there is no reference to a trustee function?
- Goldstone I am sorry where's this again?
- Clark Paragraph 29.
- Goldstone Oh paragraph 29 sorry.
- Clark You're referring there to section 17.
- Goldstone Yes.
- Clark And you make the comment that the certificates, in effect, were held in trust.
- Goldstone Yeah.
- Clark But my question to you, you'd concede, wouldn't, you that in the legislation there's no ...
- Goldstone No, the legislation itself doesn't refer to that, but that is surely the effect of the title.
- Clark But it does mean, couldn't it, that grantees could still deal with the block?
- Goldstone Well, they could lease it, oh, I'm sorry, I can't recall the exact mechanisms of the section 17 title. I think the grantees on the face of the title could lease but they couldn't sell. No, there was, I'd have check.
- Clark Right.
- Goldstone I'd have to check that. There are serious restrictions on the ability of the grantees to deal with the land.
- Clark Now, one of the themes that seems to come through from your evidence is that a reason for the establishment of the Court at Wairarapa was this need for tenurial reform. Is that right?
- Goldstone Yes.
- Clark And one of the drivers you seemed to isolate in that is that some Maori were indicating a need for a body to settle disputes relating to boundaries and fencing and the like. Is that right?
- Goldstone Yes.
- Clark How does that sit with your thesis which you later develop that, in effect, Maori were sorting out disputes themselves before they came to Court?

- Goldstone Ultimately, I think there needed to be some kind of mechanism, or Maori felt there needed to be some kind of mechanism by which they could gain certainty of title.
- Clark Right. You don't downplay, do you, that drivers behind the establishment of the Native Land Court also included the ascertainment of ownership, which would result in titles which would enable Maori to deal with their lands? You'd accept those as drivers behind the establishment of the Court?
- Goldstone Yes.
- Clark I'd just ask you to refer back to paragraph 26 at page 9 of your main report. There's a quote there, isn't there, at the top part of the page from the *Wairarapa Mercury*?
- Goldstone Yes.
- Clark And it seems to suggest, doesn't it, that the Court would be welcome in the Wairarapa because it would allow the native owners to sell. And that was the object of the Native Lands Act.
- Goldstone It states, the quote actually states will be the leasing or sale by the native owners of such portions of their land which they do not require for their own use or occupation.
- Clark Would you accept that that's an accurate reflection of settler intentions or beliefs as to the role the Native Land Court should have played at that time? Is that encapsulated in that quote?
- Goldstone I think that for many settlers that encapsulates that. Of course, when you talk about settler opinion, it's no different to talking about New Zealand opinion today. It's wide and varied.
- Clark Appropriate time.

Morning adjournment

[seems to be cross examination missing in minute book].

- Clark (Inaudible) that hearing, didn't they?
- Goldstone I'd have to back to my section, possibly, yes I would accept what you've ...
- Clark Do you recall Te Manihera giving evidence in respect to his claim at Awaroa that he was afraid to proceed because of the Runanga?
- Goldstone Yes.
- Clark Do you think and Ngati Were as well later on too and Ahikoka, he too was critical of the Runanga as well, wasn't he? Or what he called the Hauhau Runanga.

- Goldstone The Hauhau Runanga, yes.
- Clark Do you think those runanga were an attempt, at all, by some Wairarapa Maori to control the actions of those who were bringing cases before the Court?
- Goldstone I would accept that's a possibility. Again, one of the problems is that the evidence is quite fragmentary over this.
- Clark Do you accept that there was an attempt at hearings in 1873, but it had to be abandoned?
- Goldstone Oh, oh, I know about this. Oh, it's slipped my mind.
- Clark December 1873.
- Goldstone Yup.
- Clark Sittings at Masterton and Greytown.
- Goldstone I'm sorry, it's just completely slipped my mind.
- Clark Do you recall that no blocks passed for investigation because the Court described Maori as being unmanageable?
- Goldstone I can't recall that exact term but, yeah, the very, I think there might have been block that passed in 1873 but was a fairly small one. Certainly in 1873 Maori ceased to take land before the Court. There's no doubt about that.
- Clark And then we've got what we call this, which you've called this hiatus period.
- Goldstone Yes.
- Clark And there were no blocks taken before the Court.
- Goldstone Yes until 1880.
- Clark Paragraphs 110 and 111, you briefly talk about chiefly leadership. And the role people like Karaitiana, Te Korou, Ngatuere and Te Manihera played. They were, of course, frequent applicants in the Native Land Court, weren't they?
- Goldstone Yes, they were often applicants.
- Clark And it was these three that also expressed their dislike for, concern of the operation of the Runanga.
- Goldstone Sorry, can you repeat the names again?
- Clark It was Ngatuere, Te Manihera and Karaitiana Te Korou.

- Goldstone They had all expressed opposition to what they called the Hauhau Runanga.
- Clark In effect, is it a clash between camps? It was a clash between loyal camps ...
- Goldstone I think you'll, I think it might be almost literal these I think in 1869 or '70 there's a reference to one of the Land Court hearings and the newspaper makes a comment that one group of natives have camped on one side of the town, the Hauhau natives have camped on the other side. Perhaps. So, it could be that there is a division within Wairarapa Maori society. But the evidence is just so fragmentary over this.
- Clark It's correct, isn't it Mr Goldstone, that one of the themes that permeates your report is that it was generally Wairarapa Maori who resolved or made the decisions themselves prior to the blocks going before the Court? Is that right?
- Goldstone Generally, yes.
- Clark And if a block was adjourned, that also gave Maori an opportunity to sort matters out for themselves?
- Goldstone Yes.
- Clark And certainly in the blocks that passed through the Court, that seems to have been the case, wasn't it, that they managed to sort out these disputes, with the rare exceptions you've mentioned?
- Goldstone Yes.
- Clark You see, the question I have is that if Wairarapa Maori were successful in arranging for titles outside or before the Court investigation, did they really need the Native Land Court at all?
- Goldstone It's interesting that when Wairarapa Maori are talking about, make comments about the Court, and they, there is, I think, an acceptance that there is ultimately some kind of impartial court that ultimately can issue title.
- Clark Did it ...
- Goldstone You also, it was also, I think you're putting forward a fairly vague proposition as well, when you're saying why couldn't, you know, Maori themselves work out title. Ultimately there had to be some kind of institution that could make legal titles.
- Clark Well, did it have to be an institution, or could it have been simply an administrative task?
- Goldstone Well, I think in most cases the Court does seem to have performed, it's an essentially administrative role which you describe.

- Clark That's certainly how you portrayed the Court operating in Kaipara and here in Wairarapa, haven't you? That Judges like Rogan almost rubber-stamped their decisions that had been reached by Maori.
- Goldstone Yes.
- Clark So, if the courts had with them attendant cost, they sat for a period of days etc, did Maori really need that when it seems, in the main, or your thesis is that they were capable of sorting out title themselves? Did they need the institution of the Native Land Court?
- Goldstone At some point, though, if legal title was to issue, you did require some kind of institution to award title, to compare survey maps, that kind of thing. Judging from Fenton's correspondence and my research of the Native Land Court, it seems that most of their work involved survey plans, making sure that survey plans weren't overlapping and that kind of thing. So, there did require that basic administrative function as well as the fact that, I think, from the evidence from my report is that Wairarapa Maori wanted the Court to be a neutral forum.
- Clark Okay, we've just been talking about Maori sorting out many investigate, many of the rudimentary matters that had to be attended to themselves, but there was also examples, weren't there, on the blocks you've studied, of the judges rejecting evidence, particularly when it came from the Maori committee or the runanga?
- Goldstone Sorry, can you give the, can you provide the paragraph number?
- Clark Yep, the particular example I'm thinking of is at paragraph 266 of your report.
- Goldstone Oh yes.
- Clark And that's the newspaper report, isn't it, of the 1871 hearing, isn't it?
- Goldstone No, it says "1872".
- Clark '72.
- Goldstone Over Ahikoka block.
- Clark Right. And during that case, Wi Mahupuku mentioned that the native committee had a, wanted to settle their own arrangements, didn't he, and he was told to hold his tongue?
- Goldstone No, I think it's Wi Mahupuku telling the judge to hold his tongue.
- Clark Ah yes. And then the judge sent for a policeman. Is that right?
- Goldstone Yes.
- Clark Okay. So isn't that, that's evidence, isn't it, of what Maori wanted to do but being told "no we're not going to ...

- Goldstone No. No. It's referring back to this committee again, or the runanga and I think I've provided evidence in my report that shows that there are references to Matiaha Mokai's so-called Hauhau Runanga. There's also the runanga of the government natives of the Wairarapa, which I mentioned in my report. You know, so when you say Wairarapa Maori as in, as if it's meaning everybody I think the evidence of the Ahikoka case shows that this is clearly not the case.
- Clark But ...
- Goldstone There's a deep division.
- Clark But you'd agree, isn't it, that it's evidence of a committee which had sat at (inaudible) ...
- Goldstone Oh yes there's no doubt doubt there's a committee.
- Clark And that they had wanted to settle arrangements themselves. This particular committee, hadn't they?
- Goldstone Yes.
- Clark Well, why is it then that the Court would accept the evidence some of the evidence brought before it and then when committees say we want to resolve matters themselves they said hold no.
- Goldstone I, you're talking about the specific Ahikoka case here and the Court is, hold on, I'll just have a look at the report. Oh, this is the jury hearing. This is 1872 with the Ahikoka rehearing in which there is reference to Maori wanting a runanga or rather some Maori wanting a runanga. If you look on page 98 of my report, this goes, provides perhaps a little illumination into this. There is this desire for a runanga. It is also interestingly when they (inaudible), it's this runanga, it's also meant to occupy the role of a jury. Okay and these terms runanga and jury sometimes get sort of transposed almost and Wardell, appearing for Ngatuere, says that they don't want a jury to hear the Ahikoka case because they don't believe an impartial jury can be found for Ahikoka. Ultimately the jury is formed with four people. Now, of course, we know what the response of Ngatuere was to the jury verdict.
- Clark At the time there was this clash between Munro and Wi Mahupuku. Of course we have got attempts at withholding blocks in 1871 and then the 1872 hearings, haven't we? Well, we've just discussed those.
- Goldstone Oh yeah. Yes.
- Clark And then we've got Wi Mahupuku saying well we want to decide these things ourselves. My question to you is, do you think the judge saw this as a challenge to who the jurisdiction of the Court?
- Goldstone I, it's, all that it says is "during the hearing of one of these cases however a witness mentioned the name of the committee and was interrupted by Mr Munro who said the Court did not acknowledge the committee". The

Native Land Court minutes don't provide, illuminate any light upon this and that is the extent of the newspaper report on that.

Clark But the desire expressed earlier on in the clipping of a desire to settle their own arrangements about possession of the lands. Do you take that as a challenge to the Court?

Goldstone No, because it's interesting that if you read the quote, it says that and also in my section on juries when I discussed this there's this, a desire to, by many Wairarapa Maori, to have a runanga or a jury make decisions in the Court and for the judge and assessors to preside over it. So, in a sense when we're talking about this, they want a native committee or a runanga or a jury, it's actually almost within they are wanting if you like a greater input into the courts system.

Clark But it never quite worked that way did it, in Wairarapa?

Goldstone There are juries formed in the Wairarapa and I discuss that in my report.

Clark Yeah that was three cases, wasn't it?

Goldstone Yes.

Clark If we, just on this issue of Maori input and perhaps control of the process. Isn't there evidence, Mr Goldstone, that some Maori were afraid of the Court process and didn't understand it? They were afraid to speak up. Have you come across that?

Goldstone Only in one case.

Clark What case was that?

Goldstone I think it's Akura, where the jury find, the Land Court minutes give the jury verdict as splitting the Akura block equally between Peneamine and Ihaka Te Moe and this creates some protest and there's a meeting held. I'm sure you know the location, it escapes me, which protests against the verdict over Akura and one of the comments it is that the jury were, I can't remember the exact term, I'm sure you've got it.

Clark It's at para 179.

Goldstone Yeah.

Clark Page 64.

Goldstone Yes at the bottom of that. It's said yes and the reason why none of the jury spoke up at the time was that they were afraid of the Court.

Clark Well, if that's the case, then that goes a bit against the theme that you've developed at that ...

Goldstone Well, I found that a very ...

- Clark Well, can I just finish the question that the Court was not adversarial, sorry.
- Goldstone Sorry for interrupting. I found that a strange, because it just didn't match with the minutes of what happened in that case.
- Clark Would you expect it to though? Would you expect the minutes to reflect that the jury was afraid?
- Goldstone I don't know. Can I just have a look at the notes for the, the Native Land Court minutes on page 62, paragraph 176, give the juries' verdict. And it seems fairly straight forward. So, and then you have this statement that the jury, yes, the jury got it wrong because they were afraid of the Court. I cant explain that, why they were afraid of the Court, because it just doesn't really seem to match up with the minutes what the minutes state about the jury's verdict.
- Clark Are you aware that Te Whatahoro Jury, when later writing about the Native Land Court, also said that persons were afraid to speak up in Court? Are you aware of that?
- Goldstone I can't recall that.
- Clark It's in the Stirling report when he sets out Te Whatahoro's analysis of the Native Land Court. Do you recall reading that?
- Goldstone I read that back in September of last year.
- Clark Well, if that is the case, that people were afraid to speak up in the Court, notwithstanding the lack of that being recorded in the minutes, doesn't that indicate the Court was more adversarial than you would concede?
- Goldstone As to that Akura case, I can't, it just doesn't fit in with the entire Akura case, which is a disputed case and there is talk of violence between, after the jury's verdict, there's talk of violence between Peneamine and Ihaka Te Moe, but as to being afraid of the Court, I just can't explain that. It seems so out of, so unrelated to my impression of how the Court is operating on, in Akura.
- Clark Okay can we move onto another topic please of rehearings? You suggest, don't you, that grievances that were raised in the Wairarapa were dealt with in the context of rehearings? That's a thesis of yours, isn't it?
- Goldstone Yes. If Maori were aggrieved at a court decision, they could apply for a rehearing.
- Clark Can I just ask you to turn to paragraph 186 of your main report? You have set out there in the table, haven't you, six instances in which rehearings were sought, is that right?
- Goldstone Yes. That's from the register of rehearings of the Native Land Court.

- Clark The first question, do we know why the refusals? There were refusals to rehear.
- Goldstone I can't recall actually. In the register of rehearings it's normally just, it's a register of correspondence and it gives little indication as to why.
- Clark It's the case isn't it, Mr Goldstone, that there were actually more rehearings applied for during this period, weren't there, such as the Okurapeti block which you later mentioned in your evidence?
- Goldstone I think that's in the 1880s, isn't it?
- Clark Yeah that's the period which you studied though, isn't it? 1881, an application for a rehearing by Manihera Maka do you recall that?
- Goldstone Oh yes. Yes.
- Clark And, do you recall that there were applications for rehearing in respect of some of the Tamaki, or some of the Tarurua blocks as well?
- Goldstone I didn't study the Tarurua blocks.
- Clark Do you concede therefore that within the period you have studied there may actually have been more applications for rehearing?
- Goldstone I'm only aware of, I mean, I looked at the register of rehearings which unfortunately which I think only goes to 1873. Yeah.
- Clark Now, the most celebrated case for rehearing was Ahikoka, of course.
- Goldstone Yes.
- Clark And would you concede that the result of that perhaps led to a lack of confidence in the Native Land Court by Wairarapa Maori?
- Goldstone Yes.
- Clark And can I just ask you to refer to paragraph 195? Now, you're discussing the Akura case here, aren't you?
- Goldstone Yes.
- Clark The question that I have is, with respect to land being given up for, as payment for survey, did you uncover any more examples of that in the blocks you studied?
- Goldstone I can't, Akura is probably is the best example of that. I'd have to ...
- Clark Because that's obviously a clear example there, isn't it?
- Goldstone Oh yes, yes. The situation with Akura is that 52 acres is set out of, I think it's a 1000 acre block, to pay for a survey and court costs. I can't recall, sorry, I just can't recall any other examples of that at the moment.

- Clark Right. Do you recall there being other examples of land being ceded for survey costs?
- Goldstone Of land being ...
- Clark Ceded for survey costs. Do you recall other examples?
- Goldstone I can't recall off the top of my head, no. It's, it'll be in the section on survey costs, pages 197 to pages 207.
- Clark Okay. Can we move please to paragraph 285? Here we're talking about protest. Do you have that in front of you, Mr Goldstone?
- Goldstone Yes.
- Clark Okay, you say there was little obvious protest, but then almost immediately a year after the first sitting there's this petition, isn't there, by Wairarapa Maori? And that contains some protest about the operation of the Native Land Court, doesn't it?
- Goldstone Yes. It's interesting, isn't it? The protest is about the fact that Crown grants aren't issuing fast enough. But if you read down, they go onto say that "the law is a good law if properly administered by the government. It would not only benefit the people generally but by the judicious carrying out of its provisions would put a stop to the troubles of this country".
- Clark Yes, but there's also a complaint about surveyors, expenses ...
- Goldstone The expenses, yeah.
- Clark ... etc, isn't there? Crown grants not being issued quickly enough.
- Goldstone Yes.
- Clark So, you'd accept, wouldn't you, within a very short period of time, only one year, we've got some protest about the Native Land Court from Wairarapa Maori?
- Goldstone Yes, very particularised.
- Clark Are you aware that in 1868, the following year, Wardell passed on complaints from Wairarapa Maori about them unable to understand the Court as it was too complicated?
- Goldstone That's Wardell in 1868 and I think I provide the quote. Do you have the paragraph number for that quote?
- Clark Yeah. What I have is the Stirling reference #A50, page 5, but you're aware of that? That Wardell was ...
- Goldstone Yes, it's in my reports.
- Clark It was passing on those complaints the following year.

- Goldstone Yes.
- Clark Are you aware that at the same time, the same year, that Tareha Te Moananui, in his main speech in Parliament. was complaining about the Native Lands Act?
- Goldstone Sorry?
- Clark Are you aware at same time, 1868, Tareha Te Moananui, in his maiden speech in Parliament, expressed concern about the Native Lands Act?
- Goldstone I can't recall that. Maori members of Parliament say a number of things about the Native Lands Act. But, I can't, I'm not going to comment because I didn't analyse that as part of this project.
- Clark Wairarapa was one of the few places which juries were used weren't they?
- Goldstone Yes.
- Clark Do you think that was as a result of, maybe, a desire expressed by some Wairarapa Maori to have, I think the words used at one stage were to increase the native element in the Court?
- Goldstone Yes. The section on juries is from page 55 paragraph 153, where I discuss juries.
- Clark I think, when we were talking before about, can I take from your answers to about the 1871 and 1872 sittings, that you don't accept, or you haven't done enough analysis yet to call the attempts at adjournment a boycott? An attempt to boycott.
- Goldstone No.
- Clark Okay. Is that because you haven't actually analysed it?
- Goldstone It, oh, I gave two reasons why I'm unwilling to use the term boycott of the Native Land Court after 1872. And the first reason is because I think the evidence is such a fragmentary and contradictory nature and the second reason I just didn't have the time to just sift through it and really think hard about it.
- Clark Okay, but there was certainly a period of time, wasn't there, in which no blocks were brought before the Native Land Court in the Wairarapa for investigation?
- Goldstone Yes.
- Clark Eight year period effectively, wasn't it?
- Goldstone 1873 to 1880.
- Clark Because it coincides with the period some call the repudiation movement. You'd know that, wouldn't you?

- Goldstone Yes.
- Clark Have, now you haven't commented on the repudiation movement have you?
- Goldstone No I didn't.
- Clark Lack of ...
- Goldstone Now ...
- Clark Sorry.
- Goldstone I would have, again, the problems of time, as you know, I had effectively three months to research and write this report. I would've liked to have gone into that. I think that the so called repudiation movement, and it's important to note that the I think the repudiation movement is a European term almost a pejorative term I think. It really does, I would have really liked to have gone through, particularly Te Wananga, the repudiation movement's newspaper, and do a lot of research into this. It just would take a lot of time and a lot of work and in particular the historian who I think should do that task would also need to be fluent in Maori because, of course, half of the Te Wananga is written in Maori. I think there is a need for further research on that. Yeah I just didn't have the time do that.
- Clark Okay. Do you agree it provides very or possibly provides very important context and trying to understand how Wairarapa Maori viewed the Native Land Court in that period?
- Goldstone I can't comment on that. I don't know. I just wasn't able to do that kind of analysis, for example, answering some basic questions, the extent that Wairarapa were involved in the repudiation movement are pretty basic questions and I just didn't have the time to look at that.
- Clark Are you aware, just from your own general knowledge, that Wairarapa Maori like Henare Matua and Karaitiana Te Korou were evolved in the repudiation movement?
- Goldstone Ah, look this is, I can't.
- Clark Oh, well, don't answer it if it is outside ...
- Goldstone I just, yes, some Wairarapa do write letters to Te Wananga.
- Clark Mr Stirling, in his report, #A50, categorises the 1871/72 period as attempts at boycotting the Native Land Court. 1872 through to 1880 is the repudiation movement and then he talks about the development of the Komiti, the Wairarapa Komiti, in late 1870s. You haven't studied the Komiti movement either, have you?
- Goldstone Again, the evidence on the, that I've looked at on komiti in the Wairarapa in the 1880s is very difficult. There seem to be a number of komiti formed from, judging from Native Land Court minutes they refer to

different komitis forming at different times to discuss land matters. Again, I just didn't have the time and or the evidence to reach any conclusions.

Clark Okay, just a couple of final final questions really just by clarification, Mr Goldstone. Do you have a document bank?

Goldstone No.

Clark Okay. And, sorry ...

Goldstone Much of my report was constructed, first from a search through all the certificates of title which are available at National Archives and I compiled a database from those, just to get an idea of the skeleton, if you like, the skeleton of the land, you know, what's happening, where the blocks are that kind of thing. And then I went through the Native Land Court minutes, which takes quite a while. So those are all my two primary sources.

Clark And is that the reason why there's no bibliography as well?

Goldstone But, yes. And my sources are discussed ...

Clark At the start of your report.

Goldstone At the start of my report. I don't know what a bibliography would serve. But there is the Gawith document bank, which lists, which has block histories. It's pretty hard to read parts of it because of photocopying Victorian handwriting, but that should be able to help you.

Clark Ma'am, may I just confer with my friend? I have no further questions, Ma'am.

Wainwright (Inaudible). Mr Powell, I think it's you next. Just to confirm. Mr Hemi said that Mr Hirschfeld wishes to tender his questions in writing. Mr Ambler, you're taking your 10 minutes.

Ambler I'm likely to be two minutes Ma'am.

Wainwright Kia ora.

Harman I wonder Ma'm if I could have just one minute of one question?

Wainwright We'll see whether we get to one o'clock, Mr Harman.

Grant Powell cross-examines Paul Goldstone

Powell Mr Goldstone, you were just talking about sources with my learned friend Mr Clark. The database that you referred to from the certificates of title has a copy of that been put on the record of inquiry?

Goldstone The database, a reasonably readable part of the database, is on pages 9 to 12. What I did was I went through all the certificates of title, picking out all the Wairarapa certificates that were issued and I put down the

- certificate number, minute book reference for when the title was awarded by the Court so you could check back to the minute books. Of course the name of the block, the date ...
- Goldstone Order in my database, it was, I gave the actual specific dates, you know 30th of September or whatever. Just for this report I have produced just for one year. The acreage, court fees, surveyor liens that were attached to the title. What else? The date that the title was issued, which is different from when it was awarded. And any special notes.
- Powell So, what you are saying is the various tables in your report take out extracts from your database?
- Goldstone From that database, yes.
- Powell Are you able to file a copy of your database for the Tribunal?
- Goldstone I think the database is on one of the Crown Law computers and I hope that it's on that. The database is not now on my computer, as my computer had a disaster two days from filing.
- Powell Now, you briefly discussed with Mr Clark about the boundaries that you had adopted for your study of the Wairarapa Native Land Court. Did you actually estimate the total acreage of that Wairarapa boundary?
- Goldstone South of the, I can't recall actually.
- Powell It's not in your report.
- Goldstone No.
- Powell So really, you had, were almost working blind as to what extent, in terms of acreage, the extent of the Native Land Court blocks going through before 1882 comprised of the total Native Land Court blocks in your Wairarapa boundary?
- Goldstone I think if you read my report, it wasn't so much blind. I was referring to Ellis and Small's estimates of title acreage.
- Powell But they were working from different estimates than you are, in terms of ...
- Goldstone They were providing, I think, a global figure of the entire Wairarapa area, whereas I was looking at the area south of the, if you like, the Mt Bruce watershed.
- Powell But if you ...
- Goldstone But really the Wairarapa valley.
- Powell If you didn't use, weren't able to utilise the Small and Ellis tables to get a feel for what the total acreage in the Native Land Court, it's pretty hard for you to draw the conclusion that there's relatively few title

investigations after the early 1880s. I mean, there's quite clearly a considerable amount of land that still goes through.

- Goldstone After the 1880s I had looked at just very briefly sort of certificates of title issued after 1882 and just trying to get a picture, a very broad picture, after 1882. And it seemed to me that there were this is now when I was just starting out my report that while there were relatively few title investigations I think one of them was for the Nga Waka a Kupe block which was, I think, an enormous area which probably inflates the figure for the post-1882.
- Powell I went through your tables and had a quick look at the acreages in Small and Ellis. Would you, by my calculations it's, there seems to be about 410 acres of Native Land Court roughly in the area that you are covering. Would you dispute that?
- Goldstone This is at the area ...
- Powell The, south of ...
- Goldstone ... if you like, the Wairarapa proper. Rather than the Tararua area.
- Powell Yeah, that you've referred to in your report?
- Goldstone Yeah. You say how much? 400 ...
- Powell About 410,000.
- Goldstone I can't recall, I'll accept ...
- Powell So, if that's the case, you're just over a third of the acreage is dealt with in your report?
- Goldstone Yeah. I'll just add to that. I think that, I can't recall, but I wonder if the Ellis and Small estimate going through the Native Land Court, includes some very large blocks such as Nga Waka a Kupe which I think, I can't remember, is a quarter of a million acres.
- Powell It certainly, the Ellis and Small includes all the figures all the areas within that Wairarapa, including Nga Waka a Kupe but it's not, I don't think it's that big, but the point I'm trying to get you to is you have dealt with perhaps a third of the Native Land Court blocks.
- Goldstone Ah not blocks.
- Powell Sorry, areas. Now, you've said at paragraph 26 that the acreage that went through the Native Land Court in the period that you were looking at belies the importance of the location of that land passed through. That passed through the Native Land Court. And you particularly refer to the, sort of, the river blocks along the Ruamahanga. Now, it's really those blocks that are the best land that's left to Maori at that time isn't it within the Wairarapa area?

- Goldstone Probably, yes.
- Powell And they're actually a relatively small part of the acreage that goes through the Native Land Court.
- Goldstone Yes.
- Powell And it all goes quite quickly too, doesn't it.
- Goldstone It passes through the Native Land Court, yes.
- Powell Land Court and then is alienated generally quite quickly as well.
- Goldstone Leased and sold, or much of it is, yes. About three quarters.
- Powell Now, my learned friend, Mr Clark, referred you to the quote on, at paragraph 26, just on the top of page 9. And that states "the next step to be taken for the complete accomplishment of this most important end will be the leasing or sale by the Native owners of such portions of their land which they do not require for their own use and occupation. This was the object of the Native Lands Act". Now, in terms of this quote, they do qualify the acquisition of Maori land or whoever is writing this qualifies the acquisition of Maori land in terms of the land for which they do not require for their own use and occupation but surely for those acquiring the land, wouldn't it require some form of objective assessment about what might have been needed for that use and occupation before they could start acquiring as much land as they could possibly get?
- Goldstone Who's is this you're talking about?
- Powell About the person who, in terms of a general proposition, you've got in this quote that, basically a desire to extinguish as much native land as possible, get it released for leasing or sale, or there's an important qualification that being the land that they don't require for their own use and occupation. To know how much land would potentially be available, surely those doing the purchasing would have to undertake some form of objective assessment as how much land that Maori would need?
- Goldstone Ah no, I think you're looking, I think that you're referring to two things. The first is that the Native Land Court had to report when Maori took land before the Court on whether the land should be, have restrictions on alienation. Right, so that was the first thing. And after 1873 Act that, oh I'm sorry, I can't recall the exact ...
- Powell Well, this is a newspaper report
- Goldstone But, you're talking about purchases. If Maori had acquired title, that there was no restriction on alienation over then no, Maori owners could deal in that land as they saw fit.
- Powell I'm dealing with the intention expressed in the *Wairarapa Mercury* to acquire as much land as possible and open it up for settlement. I'm saying

you couldn't go through with that intention unless those doing the purchasing were also aware of how much land Maori might need.

Goldstone I think you're, I don't think that quote is really saying that.

Powell I won't take that any further. Paragraph 33, you talk about the importance of, really, land in the Wairarapa economy and you note the rapid expansion and the amount of land put into pasture.

Goldstone Yes.

Powell And quite clearly in terms of the Wairarapa, this was a big sheep area and that was perhaps the dominant agricultural activity for quite some considerable time.

Goldstone Yes.

Powell Did you do any research as to the average size of a sheep station during this period that you were looking at in your report?

Goldstone No I didn't. Such an exercise is possible from the annual sheep returns which are filed in the Appendices to the Journals of the House of Representatives. But, no, I didn't look at that.

Powell And I note in your footnote 11, across the page you're sort of talking about how there was censuses started to record the amount of mechanisation. Did you look at that for the Wairarapa as well?

Goldstone Yes I did. The censuses from the 1880s begin to record things like how many steam harrows and how many, or the various other, was it steam harrows and so on which are now in the Wairarapa. And that's quite significant, of course, this is the application of modern technology - modern in Victorian terms - to agriculture.

Powell And that really shows the importance of having enough capital to be able to participate in the agricultural activities in the sheep farming in the area.

Goldstone Yes.

Powell Now, Mr Clark raised with you the issue of the point that you raised at paragraph 51 about the distribution of copies of the Native Land Act 1965. When was the Native Land Act first amended following the introduction of the 1865 Act?

Goldstone Well, there are, the first significant amendment occurs in 1867 with the introduction of section 17 titles.

Powell There is an earlier amendment than that though, isn't there?

Goldstone Yes. There are a number of amendments.

Powell So there is one in 1866, isn't there?

Goldstone Yes.

- Powell And so, Wairarapa Maori would have had one, perhaps two, hearings in the Native Land Court before these changes to the legislation?
- Goldstone Possible, but I think we have to look at just, well, the significance of those amendments. The person who is probably best put those questions to about whether those amendments to the Act are of great significance is probably Bob Hayes.
- Powell But were you the one who raised in your report that copies were distributed. I'm just saying, and I think you'd have to agree with me, that it wasn't long before that particular Act had at least been amended to some extent.
- Goldstone Yeah.
- Powell And are you aware of whether the amendments were then distributed?
- Goldstone I'm not aware of that.
- Powell Just on the same topic, are you aware of how many legislative changes were made to the Native Land legislation in the period that you considered between 1865 and 1882?
- Goldstone There are a large number of amendment acts, but really I think what's important is to look at the significant amendments which are in, obviously, the 1865 Act, the 1867 Act which introduces section 17 forms of title and the really big reform which was in 1873 which introduces memorials of ownership.
- Powell But would you disagree with me if I put to you that there were actually in fact 14 amendments or appeals in the 17 years that you cover?
- Goldstone That's possible. I can't recall the exact number.
- Powell Given the extent of the amendments, and my learned friend put some examples to you of people who weren't aware of different state of the law. It would have been very difficult for any lay person to keep abreast of the changes that were taking place.
- Goldstone Probably yes, but again, it's a very difficult thing to prove or disprove people's ignorance of the law. I think what matters is, did Maori have a reasonable understanding of how titles worked and the basic forms of title?
- Powell Well, you've given the example, I think at paragraph 430 of your report, about, I think it's in the restrictions on alienation section, and you point out that in 1869 Hori Taka and others wrote to the Native Minister saying that the restrictions clause and Crown grant should be removed because there was a fear that the government had some ulterior object in view in placing restrictions on native lands. Quite clearly they just don't get what the point of those restrictions were. I put it to you it's not altogether surprising.

- Goldstone There is little evidence on why Maori apply to have restrictions placed on their land. It seems to have taken, in most areas, the Court simply making an inquiry of Maori as to whether they possessed enough land and whether they wished for there to be restrictions, however, and so we don't really know the reasonings or anything like that behind why restrictions are wanted or not wanted. I try and provide examples in my report.
- Powell Well, what I put to you was that quite clearly these people don't understand the nature of the restrictions contained in the legislation, do they, from this quote that you have set out?
- Goldstone I can't really comment. I mean, all they say is that they fear that the government has some ulterior object in placing restrictions on native lands.
- Powell Likewise, you quote Haultain, his comments on section 17 that Maori do not understand the purpose of section 17.
- Goldstone And on section 17, yes. Haultain does make that comment.
- Powell Now, turning to your section 2.2 which begins at paragraph 56 where you're talking about judges. I put it to you it's fair to say that in the period at least up until 1872 and so called hiatus that you talk about, there seems to be a marked reluctance of the Native Land Court judges to make any contentious decisions. Would that be fair?
- Goldstone There is certainly a tendency of the Court to adjourn cases that show signs of objection or dispute, so, yes.
- Powell But by not dealing with contentious issues, wasn't it the case that the judges were, in fact, placing considerable pressure on Wairarapa Maori to, in fact, reach a pragmatic decision?
- Goldstone Yes, I think that's correct.
- Powell Because, one of the examples that you give, at paragraph 450, is Uruokakite and that first comes before the Land Court in 1866, in July 1866. There's a five-day sitting and one presumes that when you came to the Land Court you had to stay there for the period of the hearing just in case your case got called again. So they're there for five days. It's adjourned. They come back in August 1867. There's a 14-day hearing. They come back again in October 1868 and there's an 18-day hearing. And finally they come back in May 1870 for a 15-day hearing.
- Goldstone When you're talking about 15-day hearings are you talking about the whole ...
- Powell The whole ...
- Goldstone You're talking about the entire court sitting.
- Powell Which they might not, they might not necessarily be there the whole time, but they may have to be there for a large part of that time.

- Goldstone Well, possibly, possibly not, but, yeah, when you're talking about hearing, 15-day hearings, it's actually a 15-day sitting which is quite a bit different.
- Powell Right. So you've got well, they're talking 15 days.
- Goldstone But, yes, I do accept your point that with the Uruokakite block, Maori are taking the claim to the Court and it's being adjourned and, essentially, Maori are being told to organise it, arrange, make arrangements for themselves. Yes, I accept that.
- Powell So, ultimately, I mean, potentially, they've had 52 days of hearings over a four year period and all the costs that that entails and presumably they would have had to have surveyors through that period as well. Attending the court through those sittings.
- Goldstone You're talking about potentials. I'd be interested to know, I'd have to check that database to actually see how many days Uruokakite actually did sit.
- Powell The, but certainly it is a, it becomes a long drawn out process and the only real way of combating that ...
- Goldstone Yes.
- Powell ... is to try and reach your own decisions outside of the Court. But then, as Mr Clark pointed out, Maori are then stopped from actually making the final decision because you've still got to wait for the Court to come along and rubber stamp it a year later or however long the next hearing is away.
- Goldstone Is there, I do agree that the Court did have trouble making the decisions in contested or intractable cases.
- Powell I think you make the point, it might have been in relation to Ahikoka, that, and the response, I think it was to Ngatuere, that their response, the Crown response was polite procrastination and dithering. I put it to you, perhaps, that a reasonable phrase to apply to really the approach of the Native Land Court judges in the first part of the period you're looking at?
- Goldstone I wouldn't go, I think that you're talking about Ahikoka, which ...
- Powell I was not talking about, that was your just your phrase that you used.
- Goldstone Yes. Yes. Yes.
- Powell I'm just saying that that phrase is perhaps able to be applied to the whole of the Native Land Court in that early period.
- Goldstone I wouldn't go that far. No. I think the evidence shows that while the Court clearly prefers Maori to have reached decisions for themselves, I don't think there's any doubt about that I think you might have accepted, hopefully accepted that. But nevertheless the Court does hear disputed cases and it does hear evidence and reach verdicts.

- Powell They don't really do it in that first part, do they?
- Goldstone What was that?
- Powell They don't, when do they start hearing disputed cases and until 1871 or something like that?
- Goldstone I can't actually yeah, I can't actually recall when they started hearing disputed cases.
- Powell Now, from about paragraph 361, you move onto a theme with reoccurs throughout the next part of your report about only, you know, a few people claiming customary rights in relation to particular blocks. Now, I think you accept, and elsewhere in your report, that it's not necessarily correct that they were the only ones with customary rights in the blocks. They were the only ones applying to have them recognised through the Court?
- Goldstone Their, I've tried to identify those cases from the Land Court minutes and I discuss that on pages 149 to pages 154, I discuss the extent that grantees are being appointed as perhaps representatives of a wider grouping.
- Powell I mean, the key thing is really, to a large extent, the Native Land Court accepts what is put before it uncritically.
- Goldstone Well, I think I should just explain how generally cases are brought before the Court, so we can perhaps understand about this aspect of whether the Court is being uncritical. Generally, the claim would be brought before the Court and a survey plan would be presented and this was regarded very important within the Court, because if there was, for any for, first of all, who was getting the survey done and whether there was any objection or opposition to the survey. So that was, if you like, the first hurdle that had to be crossed. And then the claimant would put forward a list of who he or she thought were believed to have the customary rights to the land and would make a brief statement about how those rights are expressed almost entirely ancestry. And then there would be a second person who would give evidence confirming that first person's. And then the Court would ask if there are any further objections and if there were none, the Court would proceed to award to the claimant and then ask for a list of names to be put forward. The Court would again ask for if there were any objection to that list of names and proceed to award title. It was, the Court there is a comment, I think by Fenton, about this and he says that it's very hard for the Court to go behind what Maori are telling the Court. And if there was a case where a claim had been made and the person had stated their customary rights and there was no opposition to it, it's hard to see what more the Court could have done.
- Powell Well you yourself make the point in paragraph 398 that, thank you, to quote "in reality though, the Native Land Court appears to have been prepared to accept arrangements among Wairarapa Maori to have fewer than 10 owners upon the title even when it knew that there were more interested".

- Goldstone Yes.
- Powell So, and of course, the problem with that is that once those titles had gone through, those on the title were able to exercise their rights as legal owners, weren't they?
- Goldstone Yes, and if you go further down to paragraphs 399 and 401, I give an example of one of those cases which is quite interesting because the Judge actually explains that this is the effect and yet the Maori claimants and those insist that this is the kind of title that they want.
- Wainwright Mr Powell. I'm just conscious that we're coming up to five to one. Mr Ambler has said that he will be brief. Mr Harman wants to ask one question. And the Tribunal has yet to ask questions of Mr Goldstone. Can you give me a projection as to how much more you've got and how we're looking for the balance of the day and I'd just like to signal that we're not going to sit late today so we do not need to keep an eye on the clock?
- Powell Yes, as I indicated to the Crown in the Tribunal before the day started today, I actually think we're in good shape.
- Wainwright Right.
- Powell I probably, depending on the length of my questions and the length of Mr Goldstone's answers, we've probably got another 10-15 minutes together. And then after, I would imagine that, subject to unforeseen events happening, none of us will have much for Mr Hayes and a lot of, a number of counsel have indicated that their questions for Mr Hayes can be put into writing. So, I actually am relatively confident that we'll be onto Dr Loveridge before the end of the day, reading his report.
- Wainwright Alright. Well I'm sure we can have confidence in your competence. So,
...
- Powell It all depends, of course, on the lengthy questioning that the Tribunal will
...
- Wainwright No don't try and get out of it now Mr Powell. Alright, well, we'll continue until 1.00 and then we'll proceed on the basis that we'll have about another half an hour with Mr Goldstone when we resume at 2.00.
- Powell Thank you Ma'am. Just to complete that point, they were able to act, those on the title were able to act as owners, and I think you confirm that paragraph 512 that there was little chance of the Native Equitable Owners Act 1886 applying to most of these blocks to allow other owners subsequently onto the title because most of the blocks would have been sold by the time that Act came into force.
- Goldstone Yes that's a ...
- Powell Just one thing I was interested in and from the sound of, from various discussions you've had with Mr Clark, you may not be able to comment

on it, but did the pattern of a low number of owners on the titles continue in the period after 1882?

Goldstone I can't comment on that. I ...

Powell Could I ask you to go to paragraph 377 and you were talking about Wakapaua and Jury's Island there. Would it be fair to say on the basis of your research that on the face of it some form of mistake appears to have been made to have left Whatahoro off the title?

Goldstone I don't know. At the beginning of the claim, Tiaki Turi gave a list of the people who he thought were interested, had interests in the title in the land. But when the Court made its award, it was to two people, Eliza Jury and Charles Jury. Tiaki Turi's name didn't appear on the title, neither did Wi Kingi or Te Manihera. During the course of the hearing, there was evidence from both Te Manihera and Wi Kingi, who are chiefs of the area, that they did not want, that they had gifted the land and perhaps they didn't have, they felt that their rights had perhaps been extinguished to the Tiaki Turi whanau. Why Tiaki Turi didn't appear on the list. The usual thing was for the Court having, you know, given the verdict in favour of the claimant party, in this case Tiaki Turi whanau, was then to ask for a list of owners from the applicants which, if you look in the Smith correspondence which is entirely illegible, but Smith actually pasted in the little pieces of paper which the Maori claimants would hand into the Court which had their lists of names and that would be read out and there would be objections or whatever. Tiaki Turi wasn't on that list. Why? There's just no evidence to say why his name was not on the list of owners.

Powell Perhaps that's a good place to break, Ma'am. By my watch it's 1.00, so ...

Wainwright Alright thank you Mr Powell. We'll resume at 2.00.

Powell Thank you, Ma'am.

Luncheon adjournment

Wainwright ... proceed.

Carrad ... proceed anyway.

Wainwright Alright.

Powell Thank you Ma'am. Mr Goldstone, if you'd turn to paragraph 425 in your main report, on page 160, and this is in the section on restrictions on alienation. Now, you note in paragraph 425 that, I think you say out of 84 blocks which passed to the Court under section 23, 20 had restrictions placed on alienation by the Native Land Court. Now, you don't give a list of those blocks, or you don't give a list of it at 84 or which, there's no way of telling which of the 20 blocks you are talking about, is there, from your report anyway?

Goldstone No, not from my report.

- Powell But I went back and had a look at, well what you say is that the 20 that you looked at tended to be smaller blocks and 11,500 acres of Maori land, out of just over 100,000 acres which was awarded under section 23 of the 1865 Act. Now, I went and had a look at the table that you've got in, on pages 9, 10 and 11 of your report which you advised us earlier you got from your database that you'd set up and that list of, course, 118 blocks that have gone through the Court. The, I then had a look at Gawith and Hartley and went through and had a look at which blocks on your list had restrictions on alienation against them and what I came up with was that there was a total of 28 of your 118 were listed as having restrictions on alienation. Are you able to comment on that?
- Goldstone You're talking about 118, which includes blocks passed under memorial of ownership.
- Powell So, but would you accept that ...
- Goldstone Now, I haven't, in terms of blocks passed under the 1875 Act, it's 84 blocks, now just how you're defining restrictions on alienation, I've here talked about restrictions on alienation on blocks under the 1865 Act and it's 20 out of 84.
- Powell But you'd accept, or would you accept, that there is actually, that it's sort of a little bit hard to compare apples with apples and I think that's the point that you're making to me, but there is certainly it seems to be a lot more blocks which contain some forms of restrictions and alienation than is immediately apparent from your paragraph 425?
- Goldstone Well, I'd just, I can't recall how Barbara Gawith determined what kind of restrictions there were. In reaching this figure here, I looked at certificates of title, that first step that I took in this project and on certificates of title there would be glued on a restriction on alienation and I used those.
- Powell If I'm correct in my reading of the Gawith and Hartley report, it would indicate that restrictions on alienation were more important than you've indicated in your report.
- Goldstone Again, I'd have to look at what Barbara Gawith had written and how she determined what sort of criteria she was using for restrictions on alienation. But, again, the way that I determined restrictions on alienation was from the certificates of title that were issued.
- Powell The, just in Mr Stirling's evidence in his volume 3, which is the #A49 document, page 173, he notes that in an overall sense there's 86 blocks have restrictions on alienation, amounting to some 160,000 acres. Would you be surprised by the size of, the amount of blocks that ...
- Goldstone I don't know how he would have arrived at that figure. Perhaps he's counting total blocks over the entire 19th century that have some kind of ...
- Powell No, it was up to 1900.

- Goldstone 1900. Perhaps he's counting all blocks, including blocks that perhaps pass through the Court without restriction and then after partitioning, may have a restriction placed after them or anything. I don't know how he arrived at that figure.
- Powell But if that is the case and indeed there were 86 blocks and from what you've said, you've got no reason to doubt it. If there were 86 blocks ~~with restrictions on alienation and there's obviously different types of~~ restrictions that apply at different times, would you agree that that's actually a significant number of blocks containing restrictions on alienation?
- Goldstone I can't comment because I haven't seen how Stirling compiled that figure.
- Powell When you did your Kaipara evidence, you'll recall that there were only 18 blocks in the Kaipara for which restrictions on alienation were requested. Remember that?
- Goldstone Nope. That's some time ago. I can't recall that.
- Powell And I guess you would also be unable to comment on whether or not Maori sought more restrictions on alienation as the 19th century unfolded, as the scarcity on land became more apparent?
- Goldstone My report only goes up to 1882.
- Powell Now, you've got, part of your report from page 181 onwards, is dealing with succession and you note that there was 135 succession applications to 1882. Now, ...
- Goldstone Sorry, 100 and?
- Powell Page 497.
- Goldstone Oh yeah, sorry. Yes.
- Powell And you note that, in 1882, the business of the Court was to a great extent taken up with the hearing and processing of succession claims. Would it be fair to say that the time Maori were required to spend in Court on succession claims is really, in many ways, an integral part of the costs inherent in the Native Land Court process itself and once you've got a title, you've then got to go through all the subsequent steps, like getting succession and so the time that Maori spend in the Court dealing with these succession applications, is yet another costs element of the Native Land Court process?
- Goldstone In my report I point out the costs of a succession order which is £1. In terms of time taken in the Court.
- Powell Yes, the indirect costs.
- Goldstone The indirect costs. That's very hard to workout. My impression in the succession cases is that they're all put together as single groups of

- succession cases and it's, very often you'll get a pattern of one person is applying for a succession order, then that person will be dealt with their claims as, in other blocks at the same time. So that's a factor to bear in mind. Also, the succession cases are almost never disputed and the impression I get is that not many people are involved in these succession orders. It is apparent, to Maori at least, who the person is, or persons who should succeed to the title and the person goes to the Court and has the order made. It doesn't, I'm not sure that it can be seen as an incredibly long time-consuming process.
- Powell I'm not suggesting, I'm not suggesting to you that it's incredibly long. I'm just saying that it's an integral part of the whole, once you've got the title, you've then got to deal with everything else that comes after, including succession.
- Goldstone Yes.
- Powell And that wouldn't have necessarily been apparent to Maori at the onset of the Court process that there would be this ongoing need to keep going back to the Court.
- Goldstone I don't know what they would have thought of that.
- Powell On page 197 you've got survey costs, a section on survey costs. And you've got a table which goes on for two and a half pages. Now, you're not suggesting that this table is comprehensive. I think you said in your summary that it was a very rough calculation.
- Goldstone The table is composed from the certificates of title. On the back of the certificates of title they would put a blue form which had the survey liens that applied to the land and this is what this table is compiled from.
- Powell But you're not suggesting that all the details of all the blocks for which information is known is contained in this table? It's a sort of a selection.
- Goldstone Well. It's the survey liens that were placed on the title.
- Powell It's just that there seems to be a number of blocks not in the table. Like, Akura for example.
- Goldstone Yeah Akura is, there's a prior agreement rather than a survey lien to set aside 52 acres to meet survey costs and court costs but it doesn't appear in the certificates of title or I can't remember whether it appears in the Land Court minutes or not.
- Powell And there seem to be various other survey liens, I think, set out in Gawith and Hartley that, again, don't seem to find its way onto this table. Things like Okawa Block and things like that.
- Goldstone Yeah Okawa that was I think part of the Potakakuratawhiti Block which I think passes the Court in 1882. Correct me if I'm wrong.
- Powell I think that was right. Oh 1869 I've got.

- Goldstone But yeah but does Gawith, what time does she give the ...
- Powell 1869.
- Goldstone 1869? But the block passes to the Court in 1882, so I can't explain why there has been a, where Gawith got that.
- Powell Just looking at the table, you've noted that the lesser costs were for the smaller blocks along the river and the greater costs were for the hill country, large hill country. Can I just perhaps see if you'd agree, just having a quick glance at it. That if you're looking at those blocks where the survey costs are really less than 5%, they are all small blocks of the type that you describe and where the costs are over 5% is, almost without exception, the larger blocks.
- Goldstone Oh.
- Powell I think Taumatararaia is probably an exception to that, but it seems to me there seems to be a bit of a pattern to back up what you said earlier.
- Goldstone Yeah Taumatararaia looks like an exception but possibly, yes, I'd agree with that.
- Powell You've acknowledged, in your report, that the survey costs themselves were not the only charges associated with surveying. I think in paragraph 548 you note that there was a lien for the purpose of paying costs of survey and other costs which you assume was the cost of having the surveyors there at the Court for as long as they were needed and obviously in the case of Uruokakite that we had talked about earlier there is potentially quite a lengthy period that the surveyors would be required to be in attendance. The other thing I just wanted to explore with you on surveys was where there's a lien, is it possible that the lien doesn't necessarily reflect the actual cost of surveys, but rather the balance of any monies owing to the surveyor at that point in time?
- Goldstone Yes. That's a possibility. There are also some other possibilities as well. It could be that this is mentioned by Haultain in 1871 that liens may be inflated in price by the surveyors because the lien provides relatively poor security for a surveyor. So, if you like, a lien may be inflated as almost perhaps a, to use a crude tem, a risk premium beyond what the actual cost is. So there's a possible explanation for why things may, in fact, be, these costs may be inflated, perhaps.
- Powell But if they, I mean, that's not something that Maori would have any control over at all, would it? Because if the surveyors are inflating their costs then, on the face of it, that's a debt that the owners then have to deal with.
- Goldstone Well, there's always the, if Maori don't have, can't have paid the money prior to the Court hearing and then survey cost is placed as a lien, yeah that's a cost to Maori.
- Powell Thank you Mr Goldstone I have no further questions.

David Ambler cross-examines Paul Goldstone

- Ambler Thank you Mr Goldstone. My name is David Ambler. I represent the Ngati Hinewaka claimants and associated hapu whose area of the district is the south east part of the Wairarapa district. Firstly I just wanted to be clear in terms of the other reports you have read in this inquiry in preparation for completing your evidence, did you read Mr Bruce Stirling's report "Ngati Hinewaka lands 1840-2000" which is document #A59?
- Goldstone Yes I did. That was back in September but my report was written, as I've explained before, using the primary sources.
- Ambler I appreciate that. Alright can I take you to paragraph 97 of your summary and this also relates to around page 204 of your report. At the bottom of paragraph 97 of your summary, you refer to the Te Kawakawa and Matakītaki blocks as one example of higher survey charges. You see that?
- Goldstone Yes.
- Ambler Alright. And then at paragraph 98 you go on to make the statement "If survey costs were being employed as a means to extract land from Maori, then one would expect survey liens to certain settlers and subsequent sales of land to the same settler shortly after. This was generally not the case." And then you referred to the Taumatarāia Block as an example in your summary. You confirm though that the Te Kawakawa, Matakītaki blocks are another example, aren't they, where there was money lent by settlers?
- Goldstone Settler.
- Ambler Oh settler, that's Pharazyn.
- Goldstone Charles Pharazyn. I discuss this matter in my report.
- Ambler Yep. Paragraph 564.
- Goldstone Yes.
- Ambler Alright. And, in terms of the amount advanced, that's probably, that the Pharazyn situation is an example of a greater sum having been advanced. You'd accept that?
- Goldstone Sorry?
- Ambler The Pharazyn example was one where approximately £378 was advanced and secured by mortgage. Correct?
- Goldstone Mortgage or a survey lien?
- Ambler My understanding is that it was secured by mortgage. Pharazyn was the lessee.
- Goldstone Yes.

- Ambler Yes. Now ...
- Goldstone Oh, sorry, carry on. I was just going to add a comment but don't worry.
- Ambler In terms of the figure that you've identified of £378, as I understood from the discussion with Mr Powell, you took that from the certificate of title or some sort of ...
-
- Goldstone Yeah, I think that was ...
- Ambler ... Land Court record.
- Goldstone Yeah. I think that was from the lien on the certificate.
- Ambler Alright. I'm just going to refer you to what Mr Stirling says in his report, and for the benefit of the Tribunal, this is document #A59, page 223, because he refers to and ...
- Wainwright (Inaudible) paragraph 22?
- Ambler Sorry, page 223. Because he refers to an additional figure and what he says is "The day the hearing commenced Hemi Te Miha completed a declaration before Wardell and Maunsell confirming that he had borrowed £378.6.8 from Pharazyn to pay for survey and attendance costs relating to Te Kopi, Whatarangi and Kawakawa. A further £296.9 in survey costs for Kawakawa were also paid by Pharazyn prior to the grantee signing a lease with him for the block in July 1870". I just wondered if you could explain why it is that you would have missed that second amount incurred for survey costs?
- Goldstone I can't. It probably wasn't on the survey lien. I can't explain why that, that comment.
- Ambler And at page 224 of Mr Stirling's report, he refers to the fact that those owners sold the Whatarangi block of 1510 acres for the sum of £488 in order to meet part of those survey costs. Were you aware of that?
- Goldstone No, I can't recall those details.
- Ambler Thank you Mr Goldstone.
- Wainwright (Inaudible) Mr Harman?

Paul Harman cross-examines Paul Goldstone

- Harman Tena Koe Mr Goldstone [**possibly a bit missing here with cross-over with sound files**] and the descendents of Henare Matua in this forum and just a couple of queries really of clarification. You had some discussion of the Hawkes Bay Native Lands Alienation Commission. I can give you a paragraph reference in that, but my mind is, is did you actually look at just the AJHR report as you footnoted, or did you go further and look at the primary source documents in the archives in terms of the peoples who filed petitions and letters and appeared before that Commission?

- Goldstone No I read the AJHRs.
- Harman You just read the AJHR copy. Okay. And did you have a look at all at the 1891 Native Land Laws Commission. Did you have a look at that?
- Goldstone I'm familiar with that.
- Harman You're familiar with it.
- Goldstone But I didn't refer to it in my report.
- Harman Right. Okay now my questions were directed towards the actual primary source documents that show a history of complaint about the native land laws and I just found it interesting if you're examining 1865 through to 1872 in this region that you didn't go to the primary source documentation, you know, to analyse ...
- Goldstone You're referring to the Hawkes Bay Commission.
- Harman Yeah.
- Goldstone That's in Hawkes Bay.
- Harman And it dealt with lands and complaints. You didn't examine them to see where which lands they complained about, which Court sittings?
- Goldstone I've gone through it some time ago, but not specifically for this inquiry.
- Harman Right. I've no further questions. Thank you very much.
- Wainwright Mr Harman. Mr Goldstone, members of the Tribunal will now ask you questions of clarification about your report.

Robyn Anderson questions Paul Goldstone

- Anderson Kia Ora Paul. I want to start with more of a comment which you're welcome to comment on, but I have to say, reading your report, I'm very anxious about the nature of it and it's less what you have looked at as what you have haven't looked at it and, I mean, I appreciate the lack of time but when I look at it, you haven't looked at the repudiation movement, you haven't looked at where, you know, you arguably would modify your conclusions about the degree of acceptance amongst Wairarapa people. You haven't looked at Tararua, where you could argue that the nature of the land and customary rightholding is different than from the area you have looked at and you haven't looked at the later period where, arguably, the Court and the way it operates in tress(?). Maori is different from an early period. So I think, you know, the Tribunal, in a way, is left with a problem of knowing how far, how much weight we can put on the conclusions that you've reached in your report. So do you want to comment on that or ...?
- Goldstone Oh for more time to have done that research. The sheer amount of material to have to go through is quite daunting. Yes, it would be

wonderful if I had taken it up to 1900 or, ideally up to 1920, but there's just, I just didn't have the time to do that. So, instead of, similarly with repudiation movement, I've already explained that I think that the repudiation movement should be examined. When I, I just had a glance at Te Wananga and some of the things that struck me I just didn't know about. The amount of commentary on temperance. I didn't know the repudiation movement was very much a temperance movement. This all, I think, would be wonderful if someone all had the time and the expertise to examine that, but I just didn't have that. I agree that that is a problem. So what I have instead tried to set out to do is looking at some of what I think are some of the core issues that have been raised in the statements of issues about costs of the Court, for example. Well, let's try and quantify just what the costs of the Court in the Wairarapa were. And I've tried to do that.

- Anderson No, I appreciate that, but I'm still left with the problem of how far we can take what you, the conclusions you reach here and apply it throughout the district and throughout the period that we're looking at. But anyhow, I'll just, you know I want to say that and it's partly for Crown Law Office to know what I think of the parameters of this study. And we'll just leave it there maybe or pick up maybe a little bit on some of the issues. If you took the sort of standard interpretation of repudiation movement within the historiography as it stands now, would that counter some of their conclusions that you have reached in your report about the acceptability of the Court in the Wairarapa? Especially considering that the primary founder of repudiation was a Wairarapa chief.
- Goldstone I've always, I mean, I guess it's when you talk about historiographics, it's very much a historian's view of what the material is, but I've always thought of the repudiation movement as being essentially Hawkes Bay phenomena. And I would be interested to know just the extent that Wairarapa Maori are involved in the repudiation movement. Again, I just, these were questions that I just didn't have the time to examine.
- Anderson My recollection is that Mr Stirling did discuss the repudiation movement, so have I any reason to doubt the conclusions that he reached in his report?
- Goldstone For myself I just would want to see just the extent that Wairarapa Maori involved in the involvement by going through Te Wananga, in particular, and just seeing who the core people are on a regular basis, that kind of thing. But again, I haven't done the research on that.
- Anderson Right. Thank you. When you look at the blocks that you've examined going through this period, can you characterise them as being a particular nature of land, likely to have a particular form of usage? I mean are they, they're not really hunting and gathering blocks, are they?
- Goldstone No. As far as I can tell, these blocks are being used for pastoral agriculture.

- Anderson So, which, I'm going to jump around a bit, on, in paragraph 5 of your summary where you talk about the transformed economy, did you look at how much Maori participation there is in that transformation of the economy?
- Goldstone I did look at the 1881, I did look at sheep returns of the 1880s and 1890s which appear in the AJHRs and there are Maori who are farming sheep, but I couldn't really reach any strong conclusions. There're just, I just didn't have evidence available to see the extent that Maori are involved in the pastoral economy. I agree it's a, I think it's a very important aspect is just how Maori engage in the new economy.
- Anderson But, I suppose what I'm trying to, where I'm going with it is if you look at a valley like the Ruamahanga Valley, the nature of customary tenure there might be unique to the nature of that land as opposed to other areas that, within the district for example, I know you haven't looked at it, but Tararua for example.
- Goldstone It, the Maori experience in the Wairarapa may be different from Tararua. Yeah. The nature of customary ownership of land may be quite different in Tararua.
- Anderson When, did you look at who was going into the title of those blocks? Not at Tararua, in the Ruamahanga Valley and the Wairarapa district?
- Goldstone Yes. I was keeping an eye out on that. Yes.
- Anderson And, do you see the same people coming up in many titles or?
- Goldstone Well, that's one of the interesting things is you get the same people turning up in Court as, and presenting claims and I've Te Manihera, Ngatuere, those people. But in terms of the people who are appearing on titles it's, I think I counted approximately 300 different people were appearing on titles and it seemed to be quite, if you like, a democratic spread of names appearing on titles for example Matiaha Mokai, Ngatuere, these people I think they only appeared on I can't remember the number, this was some time ago. But they didn't, if you like, they didn't dominate the land ownership, even though they're turning up in Court presenting claims and so on, they're not necessarily going onto the titles.
- Anderson And I think your conclusion is that this is a reflection, the way those Court, they'd been brought in and who they're going to is a reflection of a longstanding arrangement. Have I interpreted you correctly?
- Goldstone I think in most cases I think that there's expressions that these are longstanding arrangements. Yes.
- Anderson So, it's not a case, in your opinion, that they are meeting outside the Court, coming to an arrangements knowing that they have to sort it out to put 10 people here, 10 people there.
- Goldstone Oh sorry. I've misunderstood your, the way that customary interests are being expressed in the Native Land Court indicate that these were

longstanding arrangements or ownership rights being expressed, but Maori would work out those issues and agreements made before the Court.

Anderson Sorry, before?

Goldstone Sorry prior to the Court hearing.

Anderson So do you think that when they make those arrangements, are they looking at that whole area rather than piece by piece?

Goldstone I wish I could, that was something I was specifically watching out for, was that kind of question of how Maori are organising themselves and their land interests. I was keeping an eye out for that. And the answer was, I couldn't see very much evidence of, if you like, there are references to meetings for, if you like, a large meetings before Land Court hearings to discuss land issues and a good example is the Cape Palliser area where there was a meeting at Farefare(?) the week before the Court hearing. But, it's only fragmentary mentions of it in the Land Court minutes.

Anderson Just, in your, I don't, I'm not aware of, I mean clearly you've given evidence in other areas. In your studies in those areas, did you look at the Court in the later period?

Goldstone I think in my inquiry in Gisborne went up to I think 1890. I can't actually remember.

Anderson So you wouldn't, just say no, but would you feel confident in talking about changes in the way that the Native Land Court operated between when it first opens and by the end of the century or the end of the 1880s?

Goldstone Certainly by the end of the 1880s.

Anderson And do you perceive any change?

Goldstone There is a change in the Native Land Court in the early 1880s. Just in terms of the change in judges. A lot of new judges are appointed in 1881 and 1882 and I think that I can't remember which year Fenton retires. I think it's 1881. Possibly. So there is a change, if you like, in that, sort of, in the Court in that respect. But up to 1882 I can't see much change in that basic way that the Court is operating in terms of preferring Maori to have arrangements made prior to the Court hearing. Though in the 1880-1882 period in Wairarapa, there is reference to committees being made reaching decisions prior to Court hearings which didn't occur in the 1860s and early 1870s.

Anderson Just going, oh, sorry.

Goldstone No, carry on.

Anderson Oh just going back to this question of change of personnel. What effect does that have? Do you perceive that as having an adverse effect maybe?

- Goldstone I couldn't see any, if you like, adverse effect myself in the study of Wairarapa when the judges changed from people like Rogan, Munro, Smith to Puckey and McKay is the principal Land Court Judge in the Wairarapa from the mid 1880s on. I personally couldn't see any shift in that. But I think these are, in some ways are very much impressions, but I couldn't really see a significant change.
- Anderson Thank you.
- Goldstone Actually, in response to your question, there is a significant change in the Native Land Court in the 1880s which is that the number of succession cases increases enormously. The Court, in that respect there is, I suppose, a change in that the Court in some ways becomes more of a, less concerned with the ascertainment of title and more concerned with, if you like, a more bureaucratic process of hearing succession claims and approving them.
- Anderson I think partly my question is being elicited by evidence we heard from Tom White about Pukengaki for example where, in the 1890s, you see the Judge just completely rejecting out of hand the out of court arrangements that have been made and which made me wonder whether, you know, it has become a more, a much more European-run institution.
- Goldstone Ah, bureaucratic. Well I think my evidence, which goes up to 1882, I think the Court is quite, prefers Maori to have reached decisions for themselves and, in fact, I think there's a good case, I think it's Potakakuratawhiti, where the Court, there's an arrangement presented and the Court, for whatever reason, suspects that there may be some objections to it and so it instructs Maori to make an arrangement outside the Court and the next day they come back and there's a reference to a committee that's being formed by Maori to discuss this land and that there are now no objections. And the Court's quite happy about this. So, perhaps if there is a change occurring there where the Court, if you like, becomes more European or legalistic forum is perhaps in the more 1890s.
- Anderson When you, going right back to the beginning of the period, when you talk about the desire for tenurial reform expressed by Maori in the Wairarapa, is there any evidence of discussion with Maori about what form that reform should take?
- Goldstone I, again, I was keeping an eye out for that as I thought it would be an important issue and I couldn't find any evidence of that. I think my report refers to the fact that Smith is in the Wairarapa in March I can't remember the exact date but before the Native Land Court comes to Wairarapa Judge Smith visits the Wairarapa. But I don't know what he said or anything like that. So I just haven't found much evidence of what you're talking about.
- Anderson Did you look at the Kohimarama Conference and what was said there?
- Goldstone Yes. Of course there's the Kohimarama. Yes. Sorry. In 1860.
- Anderson And was that helpful at all, or?

- Goldstone Whats that?
- Anderson Was it helpful?
- Goldstone I can't actually. I've read about Kohimarama about three or four years ago. I can't actually recall. I was trying to keep focused on how Wairarapa Maori were reacting to the Court in the introduction of the Court.
- Anderson When you talk about lack of opposition to awards, could you argue that there wasn't opposition because it was assumed that those people that were put in the title were going to represent the interests of a wider community, if you like?
- Goldstone Yes. I was aware of that and that's why my in report there's that material I provide on, from pages 135 through and it's interested me that even that Maori in the Native Land Court were making quite specific claims about ownership that we are the uri of the ancestor and that there are none others. And it was a fairly common phrase, if you like. So, either Wairarapa Maori were systematically lying on an astonishing level, or else these were they were telling the truth.
- Anderson It be the phrase none others that would be significant though wouldn't it because you can well you could say I'm the representative I think you in Te Whaiti block for example you mentioned we are representatives of the descendents of that particular ancestor so is it possible that you're reading too much weight into what is the particular wording in the minutes?
- Goldstone I've divided that section into four parts and the first part is looking at when Maori are really claiming fairly exclusive rights for those owners. And when there is evidence of Maori presenting a claim where there are other interests and they are acting as representatives for a wider group, I've tried to isolate that and analyse it separately.
- Anderson Alright, thank you very much.

Judge Wainwright questions Paul Goldstone

- Wainwright Kia ora Mr Goldstone. I have only a few questions and they're directed to the issue of the costs of the Court process in the period that you are examining. Its fair to say that my impression from the evidence on the Native Land Court that was presented to the Tribunal prior to your evidence, the impression I got was that there are, one can separate the question of whether people were satisfied with the awards that were given as to title, from the issue of whether people were satisfied with the process itself. That is the obligation to engage with the process with respect to cost of survey, cost of attending the Court and obviously the speed with which titles were granted and there seems well the impression that I have got from the work that has been done is that there was a fair degree of dissatisfaction with the latter category of factors connected with the Court. And I was interested in the information that you provided with respect to costs. You and Mr Powell had an interchange about the Uruokakaite Kakete Block and he said well between you agreed that there were 52

- potential hearing days connected with that enquiry by the Court over a period of years. And I wanted to check with you did applicants know in advance of the Court arriving on what days they would be required. It seems that the order that the Court took heard cases was the same order that they appeared in the panuis. People would receive a Panui that would have a list of the blocks that were going to be considered by the Court over the period of the sitting and arguably they could infer from that say that their block wouldn't be heard in the first couple of days but they wouldn't know for certain how long the consideration by the court of any particular block would take.
- Goldstone Yes.
- Wainwright So for instance if there was a situation where a number of blocks came up at the beginning where the hearing was adjourned for a lack of survey which seemed to have been quite a common occurrence your block would come on unexpectedly early.
- Goldstone Possibly yes.
- Wainwright Because it does seem to have been accepted by Maori was a circumstance of the Court that you needed to be there to protect your interests if your block was going to be before the Judge at any particular time.
- Goldstone Right.
- Wainwright So potentially the applicants in relation to Uruokakite might have had to bear the costs of being in town for the Court on 52 days.
- Goldstone Yeah that's potentially you know but again I don't know the exact days of Uruokakite actually sat.
- Wainwright And one of the interesting issues that was raised in consideration of your work is this question of the judge preferring to have contentious matters resolved by the people themselves which on the one hand will its sort of a double edged sword isn't it because on the one hand it seems to be well pragmatic in that the people themselves know the lie of the land and the peoples' relationship to it in a way that the judge can't possibly hope to but on the other hand as Mr Powell suggested to you the result of that for people was that there was dilly dallying around that they never really knew when they were going to get an answer because although they could turn up to court and hang around they may nor may not have their issues resolved for them and that there was significant costs associated with that.
- Goldstone Well in terms of the fact that if a block well for a start I think most of the blocks were without opposition so that's an important ..
- Wainwright Yes.
- Goldstone But if there was objection yeah the Court would generally adjourn and instruct the claimants to try and seek arrangements themselves outside the Court and that unwillingness of the Court to if you like investigate or interrogate witnesses whatever could be seen as a failing.

- Wainwright Do you think it is a potential failing connected with the lack of training of the judges in that they weren't legally trained and therefore didn't have the quick incisive minds of judges of present day and their ability to be decisive on matters of dispute because it would seem to me would be one of the core skills that you would hope that a person in a judicial role would have.
- Goldstone ~~I think there was a different perception in the 1860s and 1870s of what a Native Land Court judge should be and the first criteria seems to have been that they were experienced in working with Maori.~~
- Wainwright Yes but having that skill is not, does not necessarily exclude the possibility that one would also have the ability to make judgments about matters in dispute.
- Goldstone Which I think is perhaps one of the reasons why there is this tendency to return matters back to Maori.
- Wainwright With respect to the survey costs and how onerous they may have been you assessed them in relation to the total receipts for the blocks against which the survey liens were charged so as a percentage of the value of the land.
- Goldstone Yes.
- Wainwright It occurred to me that that in terms of assessing the real cost to people who were using the receipts of land to live on which is what we have been told Maori were doing one would want to know how much people earned at that time in order to have a real appreciation of what the value of the money was to people for whom it provided in fact often a living. Did you have any idea of what the average wage might have been in the period in your study?
- Goldstone Yeah. When I was going doing the research for this the annual so called blue books the annual sort of returns on the government of New Zealand did have quite a lot of material on what the average wages were for labour is and blacksmiths and that kind of thing but I didn't take any notes from it I am afraid so I haven't done that kind of inquiry. But if ...
- Wainwright My impressionistic feeling is that people didn't actually earn very much per year expressed in terms of pounds did they? I mean we are not ... people didn't earn hundreds of pounds a year did they? Ordinary people.
- Goldstone Ordinary people I can't.
- Wainwright No you don't know.
- Goldstone If you had asked me six months ago I would have been able to tell you.
- Wainwright What a shame.
- Goldstone Sorry I just can't recall but there is a very ... the acceptable sources is the blue books.

Wainwright Well perhaps that information that might come forward in some form or in the balance of our inquiry. I would find that helpful conceptually I think I confess. Alright well those are the only questions that the Tribunal has for you Mr Goldstone so thank you for your responses to those and for the work that you have done.

Goldstone Thank you very much.

Wainwright Mr Sinclair you have got some re-examination.

Fergus Sinclair re-examines Paul Goldstone

Sinclair Just some brief re-examination Your Honour and may I say just in relation to one of Dr Anderson's questions that the issue of who got into titles and what pattern is thrown up there is one of the exercises that we are working on at the moment for the December hearing so data of that kind is we think important and we will try and provide that further analysis. Mr Goldstone you have received a number of questions about the hiatus or the boycott and the period in which Maori ceased bringing original applications before the Court and I know it's not something that you have written about in your report but do you have any views on why it is that Maori did start using the Court again in the 1880s.

Goldstone I haven't really analysed that but I would put forward two possible explanations. The first is that the conflict between Matiaha Mokai and Ngatuere I suspect is starting to calm down die down by the early 1880s. The second reason is that the land that is taken before the Court in the 1880s there is often mention of leasing that this land is being leased and that there have been problems over fencelines, problems over who should receive rentals that kind of thing and that ultimately the Native Land Court is Maori seek a title through the Native Land Court to resolve these problems over leasing.

Sinclair Yes thank you and there was discussion also about the clash between Wi Mahupuku and I think Judge Munro.

Goldstone On 1871.

Sinclair Yes something like that yes. What was Wi Mahupuku's attitude to the Court once it resumed its hearing of cases.

Goldstone Oh he was very active in the Court. He was one of the ... by the early 1880s you start to see the people such as Ngautere, Te Manihera they ceased to have such a obvious role in the Court and Ngatuere by the 1880s is very old. And Hamuera Mahupuku takes ... starts to take quite an important role as the person that presents the cases that speaks before the Court and so on . And of course there's that quote of his that I provide in the report where the court congratulates Maori I think in the 1881 hearing for the organisation of their claims and Hamuera Mahupuku thanks the Court and expresses his great satisfaction with it.

Sinclair Yes. Thank you and Dr Anderson discussed with you your cut-off of about 1882 and you were talking with her about the desirability of

extending research say to the end of the century. Can you give us an idea of the scale of the work that would involve.

- Goldstone Oh. That would be an enormous project.
- Sinclair So the Nga Waka a Kupe block for example.
- Goldstone That's I think 500 pages of really badly written evidence. I mean you could spend two years looking at Nga Waka a Kupe.
- Sinclair Did Mr Stirling analyse that case?
- Goldstone I can't recall at all. Nga Waka a Kupe – that's there just it would be an enormous project to take past 1882.
- Sinclair Just two more questions. Her Honour was asking you about the order in which cases were taken and your response to that was to refer to the order in the panui. What kind of discussion might there be at the start of a hearing about how the ...
- Goldstone Oh yes. Yes I have provided evidence for that in my report. The ... a few examples of at the start of a hearing the Native Land Court will discuss what the order of business would be and where the hearings should go. I can provide the page numbers if you want.
- Sinclair I think we can just leave it with your general observation. And the last question.
- Wainwright Dr Sinclair are you suggesting that that was in means of limiting the level of expense by claimants on the process? I am just ...
- Sinclair I suppose it's not for me to say but I was hoping that Mr Goldstone would be able to shed some light on the interaction between the Court and parties that would minimise inconvenience and smooth the progression of hearings to the extent that that's possible or predictable.
- Wainwright I see.
- Sinclair And my last question again refers to something that Her Honour discussed with you and was along the lines of the indecision of the court in some of these more intractable cases. I am wondering if you have any views on what the alternatives to making decisions about ownership would have been in a say a customary way and what sort of time and costs might be involved in those alternatives where the cases are contentious.
- Goldstone I have presented a picture of the Court when faced with intractable cases or disputed cases to preferring for Maori to arrange the issues for themselves out of Court. The alternative would have been a court that was essentially not accepting the evidence given by Maori in a court but pretty much interrogating witnesses. Taking a fairly I would have thought aggressive approach in trying to find out these things. I would have thought that taking that kind of approach would have for a start I don't think it would have met with much Maori approval and think it would

- have taken a much longer period of time I would have thought if the Court was becoming actively involved in actually interrogating witnesses and taking a far more inquisitorial role.
- Sinclair If we think of the Maori Komiti process which does start to emerge how do its procedures compare with those of the Land Court and are there comparisons one can draw about time spent, costs incurred?
- Goldstone I, there is reference to Komiti in the 1880s Land Court minutes these komiti meet during the later 1870s to try and resolve disputes over land. One of the problems I think my report points this out is that often groups will not accept komiti decisions they will claim that members on a committee are related or have interests in the land themselves or whatever. In terms of the amount of time I just cant that will be speculating I wouldn't know. In Gisborne there was a reference to a hearing by a komiti rather than a Court and what fascinated me was that the komiti adopted exactly the same processes and everything as the Native Land Court did.
- Sinclair Yes.
- Goldstone But with regard to Wairarapa there is just not often evidence.
- Sinclair No. No. Alright thank you Mr Goldstone.
- Ambler Ma'am before Mr Goldstone escapes can we have a direction that his database be produced onto the record of the inquiry.
- Wainwright I am not sure that we know whether it's extant do we?
- Sinclair I am very happy to make inquiries as to its availability. I should think it can be produced. I would be surprised if it can't. This is a national I believe
- Goldstone I went through all the ... nation wide all the certificates of title are just lumped in together nationwide. I went through it as I was going national just making notes as I went through but there is a specific one for Wairarapa
- Sinclair Oh there is right ..
- Goldstone Up to 1882.
- Sinclair So I take it that it's just the Wairarapa data.
- Sinclair Yeah I'll make inquiries.
- Wainwright Yes. Well we will assume that you will produce it Dr Sinclair unless you let us know otherwise within 28 days.
- Sinclair Yes. Yes. Thank you Your Honour.
- Wainwright Kia Ora. Kia Ora Mr Goldstone

Goldstone Thank you.

End of transcript