

**Wai 863/85 – Pouākani Remedies**  
**held on the 24 September 2019 at Waitangi Tribunal, Wellington**

---

**Tribunal:** Judge Carrie Wainwright  
Dr Ruakere Hond  
Dame Margaret Bazley

**Crown Counsel:** Andrew Irwin

**Claimant Counsel:** Matanuku Mahuika  
Michael Colson

**Witnesses:** Bruce Stirling  
Murray Hemi (Attendee)  
Robin Potangaroa (Attendee)

## Contents

HEARING COMMENCES ON TUESDAY 24 SEPTEMBER 2019 AT 9.03AM.....	3
(09:04) DR RUAKERE HOND: (MIHI).....	3
(09:08) ROBIN POTANGAROA: (MIHI).....	3
(09:10) JUDGE WAINWRIGHT: (MIHI).....	4
(09:12) MATANUKU MAHUIKA:.....	5
(09:16) MICHAEL COLSON:.....	6
(09:19) ANDREW IRWIN:.....	9
(09:21) MICHAEL COLSON: (CALLING WITNESS).....	10
(09:21) BRUCE STIRLING: (#J96).....	10
(09:43) JUDGE WAINWRIGHT TO BRUCE STIRLING:.....	21
(11:03) JUDGE WAINWRIGHT TO BRUCE STIRLING: (CONTINUES).....	42
(11:31) DR RUAKERE HOND TO BRUCE STIRLING:.....	55
(11:43) MATANUKU MAHUIKA TO BRUCE STIRLING:.....	60
(13:29) ANDREW IRWIN:.....	77
(13:30) ANDREW IRWIN TO BRUCE STIRLING:.....	77
(13:47) RUAKERE HOND: (MIHI).....	85

**HEARING COMMENCES ON TUESDAY 24 SEPTEMBER 2019 AT 9.03AM****KARAKIA TĪMATANGA (DR RUAKERE HOND)****(09:04) DR RUAKERE HOND: (MIHI)**

I runga anō i te karakia hei tuku ana i ngā whakaaro ki runga i o tātou aitua kua tōia mai rā ki roto i tēnei Pouwhare. Ana, kua huri atu ki te Waipounamu, Tahu Pōtiki mā, kua haere ki te Tai Tokerau, i te Parāone mā, ērā anō ka hora pana i te motu i tēnei mea, te hūpē, te roimata. Nō reira, ka tuku atu te whakaro ki a rātou katoa i roto i a koutou, i roto i tēnei tā – anō hoki, tēnā koutou, tēnā koutou, tēnā tātou katoa. Kua hui ki te kōrero. Tukua te kōrero kia eke ki runga, kia eke ki te taumata o ka aro, tēnā tātou katoa.

**MŌTEATEA**

Nā, i eke nei ki runga i ngā kōrero i te rangi nei, Pouākani te kaupapa, tuku atu tēnei anō, a kupu, a kōrero o ngā iwi, o ngā karanga mā i roto i te rūma i te rangi nei, tēnā koutou, tēnā tātou. Whakawāteahia atu ki tētahi pea, mehemea e pīrangī ana kia whakautua, ki te kore, kare atu wā tātou kōrero. Tēnā tātou.

**MIHI (MURRAY HEMI)****WAIATA****(09:08) ROBIN POTANGAROA: (MIHI)**

Tū mai au e mihi ana ki a koutou mā kua tatū mai nei ki roto i tēnei whare i tēnei rā. Ki a koe Murray, tēnei he mihi aroha ki a koe mō to Matua Rex kua takoto, i te mārama kua pahure nei. Ngā mihi aroha ki a koe me to whānau, te whānau Hemi i tēnei wā pōuritanga kei runga i a koutou mā. Tēnei au e mihi ana ki a koutou mā.

I'll just say it in English, you know. Over the years we all have a scrap but at the end of the day we still look at our whanaungatanga and I think whānau I think we are all going to get through this and we are actually going to come out

in the better place. I'm not saying we're going to kiss and hug each because I don't intend to kiss and hug a lot of people. But the reality is, is that we all have a job to do for each of our sides and at the end of the day we're going to make a good sandwich and have a good coffee and when we get older we'll probably going to have a laugh at ourselves about how at times we're all idiots to each other.

But I want to pay tribute to Uncle Rex because when he sat here we all knew he was dying but he sat here for his son, we have a scrap with but he also sat here for our Treaty Trust of which he was once a trustee and he had the manaaki most of the time to be pleasant to all and sundry and he was a good man, he was a hard man but that's what I would like us to remind ourselves of that at the end of the we're actually still all related to each other and that we owe it to another generation who comes after us, to actually say nice things about us and not call us mongrels and we just need to get on with the job and that's pretty much all I've got to say and no I'm not going to say, thank you.

**(09:10) JUDGE WAINWRIGHT: (MIHI)**

Tēnā koe, Mr Potangaroa. Tēnā tātou. Tēnā koe, Murray. Aku mihi aroha ki a koe me to whānau. Kei te tino mōhio au ki a Rex mō te wā roa, nā reira aku mihi hohonu ki a koutou. Kia huri tātou ki te mahi o te rā nei, i mua i te tīmata o te kōrero o Bruce mai, ētahi take.

The first is, and I did not – I thought it would be easier to deal with this here rather than by memorandum or anything. Our timetable for our hearing in December, the dates that we were to sit in December were the 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> of that week. One of our members cannot sit on the 12<sup>th</sup> and so regretfully we have had to swap the 11<sup>th</sup> and the 12<sup>th</sup> of that week so that instead of sitting on the 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> we will now sit on the 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup> and 13<sup>th</sup>. So, that means that our day off is not the Wednesday but the Thursday. We do apologise for changing those dates and we hope that you can all accommodate the change without too much difficulty.

That is the first thing. The second thing is that there is a couple of matters that are kind of floating that I would like to cover off. One is the question of whether the Wai 85 claimants are proposing to call reply evidence to the evidence that is to be presented today. And the second one is whether there is any intention to seek leave to file a further affidavit, Mr Colson, because I think both of those matters are hanging on the wall. So, if I can ask you first, Mr Mahuika what the position is for your clients.

**(09:12) MATANUKU MAHUIKA:**

Ma'am, I think there are two parts to my answer to the question. The first is that we have filed a memorandum, if you like, taking a legal position in respect of the evidence and its relevance to the hearing but secondly, there is – that there's quite a bit of detail potentially that you could go into around, you know, what did or didn't happen, what people were or were not thinking in the context of the decisions around who would be on the blocks and so we're – at this stage, we still don't really have a clear view as to whether we want to get into a big debate about that particular issue because it's not an easy thing to resolve –

**JUDGE WAINWRIGHT:**

It is not.

**MATANUKU MAHUIKA:**

- looking, you know, revisiting a Court decision that was 135 odd years ago. And so, some of it will depend on what transpires out of today, the questions maybe that the Tribunal has in respect of Mr Stirling and then we will make a determination. We are also very conscious about not wanting to elongate the process. So, we do have a feeling that if we can deal with any matters that we need to deal with in the context of today then our preference would be to avoid you know, -

**JUDGE WAINWRIGHT:**

Yes.

**MATANUKU MAHUIKA:**

- if we file through the evidence then, you know, I would have to I think agree if my friend wished to have it heard and cross-examine it, there are all of those other sorts of considerations which are at grey –

**JUDGE WAINWRIGHT:**

Yes.

**MATANUKU MAHUIKA:**

- here as well and which I am afraid there is still some discussion occurring about, so, we will make a determination after today's hearing.

0915

**JUDGE WAINWRIGHT:**

Well, thank you. I think I intermated in a memorandum directions that although it would have been preferable had this evidence come forward earlier, its relevance is a matter that we as a Tribunal are completely convinced of and in fact I think on more than one occasion I called for evidence of this kind and as a commission of inquiry obviously, the decision to take in evidence on relevant matters remains open to us for the duration of the process.

However, we do also want to adhere to the rules of natural justice which of course would demand and opportunity for you to – for your clients to reply and for there to be process around that if that is what happens and I understand the points that you are making about that so, we will just have to see how that falls out and respond to whatever processes required at that point. Kia ora. Mr Colson.

**(09:16) MICHAEL COLSON:**

Morning Your Honour. Thank you and I'm - obviously the Settlement Trust is very relaxed about any reply evidence that might come in given the timing of its evidence.

**JUDGE WAINWRIGHT:**

Yes.

**MICHAEL COLSON:**

In terms of your second issues, is to leave for further evidence. I wonder if I might, I will just comment on that and describe to you and its possible I may need to have discussion with my learned friend. The – what has taken some time because obviously the trustees of the trust and others are doing this themselves in their spare time, but what they have done is just conduct a cross check of the WMI shareholder list to the beneficiary list to look at the correlation between the two. That task was finally completed on -

**JUDGE WAINWRIGHT:**

Sorry, is WM – what is WMI?

**MICHAEL COLSON**

Sorry, the incorporation, Wairarapa – Wairarapa incorporation shareholder list.

**JUDGE WAINWRIGHT:**

If you want to be my friend Mr Colson, you have to avoid acronyms. Kia ora.

**MICHAEL COLSON**

I know, you don't use acronyms. I do, I should have remembered that Your Honour. Sorry.

So, the Wairarapa Moana Incorporation shareholder list, which we have, which has been given confidentially obviously for the purpose of the Tribunal. The Settlement Trust also obviously has its own list of registered beneficiaries and what has been done is just a correlation check -

**JUDGE WAINWRIGHT:**

Right.

**MICHAEL COLSON**

- between the two which shows the percentage overlap. So, the summary of that is a one-page document and I would be happy, obviously, to give my learned friend access on certain terms to the beneficiary list to check the maths.

But the summary is a one-page document but I'm also conscious of not, you know, further elongating the processes my learned said. But that just shows that cross over between two entities really.

**JUDGE WAINWRIGHT:**

All right. Is that likely to be controversial?

**MICHAEL COLSON**

I would have thought it was controversial especially if provided, you know, in order to possibility from the learned friend if he wished that because it is really a question of you know, maths – a bit more than maths because it's been a long process checking the names and possibly, it could have been done electronically but the members of the – Sorry, of the trust and the whakapapa committee were conscious of doing it manually so it's been done manually but you know, it can be checked so I wouldn't have thought it was controversial in the sense that there's two lists and it's a cross check.

**JUDGE WAINWRIGHT:**

Well, I think it would be interesting for us to have that before us. Do you have any comment to make on that, Mr Mahuika?

**MATANUKU MAHUIKA:**

No, Ma'am. For me, it will come down to its relevance and significance probably more than the content of the document itself. There is no argument that there's overlap and given the size of the register of the Wairarapa Moana Incorporation it wouldn't surprise me if there was significant overlap. But, you know, the debate that we might have about if the Tribunal is minded to make a resumption order, who should be the recipient, I don't think we'll necessarily turn on that.

**JUDGE WAINWRIGHT:**

No.

**MATANUKU MAHUIKA:**

So, you know, we will still be having – making the same points.

**JUDGE WAINWRIGHT:**

All right.

**MATANUKU MAHUIKA:**

I would have thought regardless of what that said although as you say, you know, perhaps it would be an interesting thing to look at, ultimately my view it will say what it says, and we can have debate about its significance if we need to.

**JUDGE WAINWRIGHT:**

Okay. All right, Mr Irwin, do you have any comments to make on any of that?

**(09:19) ANDREW IRWIN:**

No, no, Ma'am.

**JUDGE WAINWRIGHT:**

All right, thank you. All right, I think those are the matters that I wanted to air. Are there any other interlocutory issues that any counsel would like to raise? No? All right, good. In that case, we can turn to you Mr Colson and to Mr Stirling.

0920

**MICHAEL COLSON:**

Now, Your Honour, I was just going to have Mr – I think it was – I talked to Mr Stirling about summarising his evidence orally, but given the nature of the detail, I think it's hard for him to do that.

**JUDGE WAINWRIGHT:**

Yes.

**MICHAEL COLSON:**

So, I was proposing therefore to have him read about the first 15 pages, up to paragraph 43 which go through the key aspects of the original decision. I thought that was the best way because it's too hard the other way.

**JUDGE WAINWRIGHT:**

All right.

**MICHAEL COLSON**

Now, I'm sure the Tribunal has the documents available et cetera, but I do have a couple of hard copies if the Tribunal required that of Mr Stirling's evidence together with the various attachments to it.

**JUDGE WAINWRIGHT:**

All right, thank you.

**(09:21) MICHAEL COLSON: (CALLING WITNESS)**

So, otherwise Mr Stirling, if you could just confirm your name that it is Bruce Stirling.

**BRUCE STIRLING:**

Yes.

**MICHAEL COLSON:**

And perhaps you could read your affidavit from paragraphs 1 through to paragraph 43, please.

**BRUCE STIRLING:**

Yes, I can. Thank you.

**JUDGE WAINWRIGHT:**

Tēnā koe.

**(09:21) BRUCE STIRLING: (#J96)**

Mōrena koutou.

**READS BRIEF OF EVIDENCE #J86**

"Following the Pouākani remedies hearing, the Settlement Trust requested I prepare evidence to assist the Tribunal's inquiry into the identity of the

customary owners of the Wairarapa Moana, and their subsequent representation in title to lands at Pouākani. So, I set out my findings here.

My qualifications and experience are set out in the evidence completed for this inquiry, this is 16 years ago and presented to the Tribunal in 2004.

Since that inquiry as completed I have prepared other evidence and publications relevant to Wairarapa Moana and to Pouākani issues. In 2007 I presented evidence to the High Court in the *Paki and others v Attorney-General* case concerning the ownership of the bed of the Waikato River beside the Pouākani block. And my evidence there concerned the title history of the Pouākani lands beside the Waikato River, and the navigability of the Waikato River.

In 2009, I was commissioned by the Greater Wellington Council to prepare a comprehensive heritage study of Wairarapa Moana, from prehistory up to its lake – management of the lake in the 1990s. A book emerged from this report which I contributed a chapter focusing on the *tuku rangatira* of the lakes in 1896, and that was published in 2012 as *Wairarapa Moana*. Mr Hemi was involved in that project as well, he contributed two chapters. Four? Did a bit better than I did.

And since 2013, I have been contracted to the Settlement Trust to provide historical advice on a wide range of matters related to the Trust's Treaty Claims settlement, including matters of customary interest, gap-filling research, and the historical account and acknowledgements that are included in the deed of settlement.

The customary owners of Wairarapa Moana comprised numerous hapū, who had held rangatiratanga over the lakes since the arrival of Ngāti Kahungunu in Wairarapa. These hapū were forced into the Native Land Court in 1882 against their wishes by a Crown application intended to promote the Crown's interest. The Crown provided no legal option for the hapū to hold their customary interests in Wairarapa Moana under the collective authority of their rangatira.

The hapū were instead obliged to accept an individualised ownership list that resulted from a brief and contested title investigation in 1883.

The 139 owners included in the 1883 title did not include all the hapū members with customary rights to Wairarapa Moana. One rangatira said at the time that there were more than 500 Wairarapa Māori owners of the lakes, a number that is entirely reasonable given the number and range of hapū referred to as holding customary rights there. More than 20 hapū are referred to in the records examined in this evidence. And they are listed there, I won't read through them.

Moving to paragraph 8. Later evidence confirms that the 1883 list of 139 owners did not include all those hapū members with customary rights.

When there was a need to exercise authority over Wairarapa Moana, the hapū turned not to the 139 individuals on the 1883 list but to their representative komiti, who managed the lakes in the 1880s and arranged the tuku rangatira to the Crown in 1896. The komiti also managed the distribution of the payment made by the Crown in 1896, which was shared out to many more people than the 139 owners.

0925

What is also clear from the evidence is that the 1883 list of just 139 became the foundation for the time title to the Pouākani land, and it remains the foundation for that title today. The 1883 list was the basis for the Court's incorrect allocation of relative interests in 1915 and it remained the basis for the final allocation of relative interests in 1924 and that 1924 title is in turn the basis for the current title to the Pouākani land.

So, moving back to 1882, the customary owners of Wairarapa Moana did not want the title to their lakes to be determined and individualised by the Native Land Court. It was the Crown that, in January 1881, applied to the Court to have it define the interests it claimed to have acquired under its dubious 1876 deed for Lake Wairarapa. The Crown's application left the customary owners with no option but to defend their interests by putting their own claims to the Court.

When the Court first sat to hear the Wairarapa Moana claims in October 1882 the first claim put to the Crown was from Hoani Toru of Ngāti Moe, who claimed Wairarapa Moana as Ngāti Hamuti. This hapū is little known, at least to me and appears to be no longer active but Hoani explained he claimed through the tipuna Hamuti, Pouri, and Te Angarakau (or Hangarākau as it is sometimes spelled and pronounced). It can be noted here that Pouri is a tipuna of Ngāti Kahukurawhitia and Te Hangarākau was a tipuna of, obviously of Ngāti Te Hangarākau. And I just note here interpolate that Ngāti Hamuti is mentioned again at paragraph 56 of my brief but it's the only other reference I've seen to them in the sources. In response to Hoani Toru's claim, eleven counter-claims were put for various hapū and those are listed there.

I move to paragraph 13, Ngāi Tūkoko, Ngāti Rākaiwhakairi, Ngāti Kahukurawhitia, and Ngāti Rangitāwhanga are hapū names that were frequently raised around Wairarapa Moana and they were among these claimants that are listed above. Ngāti Rewangārangi, Ngāi Tuawhio, and Ngāti Rangiākau are unfamiliar to me (and may have been mis-recorded by the Court). It can be noted that Tuawhio is one of Pouri's parents and is a tipuna of Ngāti Kahukurawhitia.

The Court minutes note that 10 of the counter-claims were 'admitted' by the claimant Hoani Te Toru, but do not note that the counter-claim of Piripi Te Maari was admitted although it appears it was. He, Piripi later spoke on behalf of the other rangatira so the minutes may have simply omitted to note his claim also was admitted.

Despite these preliminaries, most of the rangatira present opposed the Court in general and objected to submitting their claims to it, asking that the case be struck out. The court did not oblige and later that day asked for lists of names to be submitted but as no lists were submitted it instead adjourned the case and moved on to consider the Crown's claims.

Te Manihera Rangitakaiwaho was called by the Crown to give evidence, during which he said he was a large owner in the upper lake, adding: 'I hold the same as the other chiefs, there are about 30 chiefs but I believe there are about 500 other owners. In the lower lake they are about the same and some of the chiefs own a larger scale.' The number of rangatira he gives is far more than the 12 who had raised their claims in Court. He gives the number of customary owners as 500, which represents the majority of Wairarapa Māori. The 1881 census records about 700 resident Māori in Wairarapa identified as members of various hapū of Ngāti Kahungunu (as well as 34 identified in the census as Rangitāne)

After the Crown's interests were required under the 1876 – Sorry, after the Crown interest acquired under the 1876 deed were defined by the Court in 1882, the Wairarapa Moana title returned to the Court in November 1883 for Māori interests to be identified. It was reported that when the case was called, all the claimants sought to withdraw their claims due to the strong opposition of the Māori Committee, and the views of the Natives of the Lower Valley against having any claim put forward by individual natives in connection with these lakes. The named claimant, Parāone Pāhoru, defied any opposition and brought the matter on for hearing, which then compelled Piripi Te Maari, the leader opposed to Parāone's claim, to participate in the hearing.

None of this controversy which was reported in the press is evident from the bland minutes of the Native Land Court. The 1883 claim was presented by Parāone Pāhoru of Ngāti Moe whose ancestral claim was through Te Rangitāwhanga and Pouri. As noted, Te Rangitāwhanga is the tipuna for Ngāti Rangitāwhanga but is also a descendant of Rākaiwhakairi (tipuna obviously of Ngāti Rākaiwhakairi) and also a descendant of Kahukurawhitia.

When the counter-claims were called, 26 appeared which are listed there at paragraph 19.

The minutes record that all of these claimants were represented by Te Whatahoro Jury, but it's abundantly clear from the evidence that this is not

so, and that there were stark divisions between at least three broad groups of claimants.

The first witness called was Piripi Te Maari, who claimed as Ngāti Rākaiwhakairi although he and most other claimants emphasised the tipuna from whom their personal rights to Wairarapa Moana were derived, rather than presenting claims on behalf of their hapū. Piripi named Tūkoko, Rangitāwhanga, Rākairangi, and others as well. As said, I confine myself to the three mentioned. He stressed that Tūkoko and Rangitāwhanga belonged to Rangitāne and Ngāti Kahungunu.

Te Manihera Rangitakaiwaho named the tipuna of Wairarapa Moana as Tūkoko, Tumai Te Uru, Pouri, Te Rangitāwhanga, Rākairangi, Kariwhare, saying they claim the lakes and the land adjoining the water. Raniera Te Iho endorsed this evidence. The case was then adjourned to enable Natives to come to a final decision, re those objected to. Or, as the press reported more fulsomely, the court adjourned in order that an opportunity might be given to the various claimants to make some arrangements amongst themselves. This they failed to do, and the hearing of the case proceeded.

As they could not agree, one of those to whom the claimants objected proceeded to give evidence, being Manihera Maaka. He claimed instead from Te Whakamana and Raekaumoana. Karaitiana Te Korou endorsed his evidence and when questioned by the Court's Assessor said: 'My principal claim is through Rangitāne.' Even so, Ngāti Te Whakamana have been noted as an aho rua hapū of Wairarapa Moana. In addition, in 1948 Ihakara Wiremu Te Korou (the last surviving son of Karaitiana Te Korou) emphasised that Te Retimana Te Korou (He was Ihakara's grandfather) had been paramount chief of the Ngāti Kahungunu tribe."

Piripi Te Maari – Sorry, I sort of mention that because it's become a fairly key point during settlement negotiations, all are contesting with Ngāti Rangitāne over who's who and this is some evidence that happened to merge through that process. So, I've sort of introduced it here just to assist the trust and to

emphasise that identities are not as fixed as they sometimes appear in the Court.

“Returning to paragraph 24, if Piripi Te Maari was recalled to rebut Manihera Maaka’s claim. He noted that Rangitāne used to reside here before the Ngāti Kahungunu came, and then he very briefly related the tuku whenua of Te Rerewa involving the exchange of land for waka. Manihera Rangitakaiwaho was also recalled to rebut the Rangitāne claim. He also referred to the tuku whenua and that Wairarapa Moana was included within it. He agreed that Te Rerewa, Te Whakamana, and Te Raekaumoana had interests in the lakes in their own time, but added, ‘After their time the Ngāti Kahungunu had the principal claim to these lakes.

However, when Te Rangitakaiwaho was questioned by Manihera Maaka he told him, ‘I don’t dispute your claim. Peace was proclaimed after the war between yours and my ancestors.’ Based on this exchange, the Court then found that Manihera Maaka’s claim was ‘substantiated.’

Marakaia Tawaroa then made a similar claim, based on descent from Te Whakamana and claiming through "the Rangitāne tribe." When questioned by Te Whatahoro he said his rights were recognised by the Crown when he received a share of the purchase proceeds from Crown purchases of lands around the lake, but this claim was undermined when he admitted that it was customary to divide proceeds of lands sold among others than those in the immediate neighbourhood. This response was then undermined in turn by Ngatuere when he was called and testified that one of the sums paid to Marakaia in the Crown purchasing was by reason of his title to the land and based on this the Court immediately accepted Marakaia’s claim.

However, two other claims based on descent from Te Whakamana and Te Raekaumoana were rejected by the Court because the claimants, Matenga Ruta and Hanita Arama could not also show occupation of land around Wairarapa Moana.

And when Hikawera Mahupuku was called to testify about the claim of Irihapeti Whakamairu he confirmed her ancestral claim and then added that Ngāti Rākaiwhakairi, Ngāi Tūkoko, Ngāti Hinetauira and Ngāti Moe were the hapū who resided chiefly along the lakes.

0935

One hapū whose interests at Wairarapa Moana were challenged was Hāmua. When the Crown agent Maunsell was giving evidence, he was asked about them by Te Whatahoro, replied he had not heard of Hāmua claiming Wairarapa Moana. He knew only of Ngāti Rākaiwhakairi.

When Hikawera Mahupuku was questioned by Te Whatahoro, he said, "I never heard that Hāmua Tribe had a claim there." It is not clear that any claim had been made by or for Hāmua, but this may be how the claimants of the Ngāti Kahungunu Hapū resident around Wairarapa Moana interpreted the reliance of three other claimants, the ones just mentioned, Manihera Maaka, Karaitiana Koro and Marakaia Tawaroa. Their reliance on descent from Te Whakamana in earlier Rangitāne tipuna whose descendants were an aho rua hapū.

This is probably the group referred to in press coverage as the Masterton natives claiming under the Rangitāne Tribe who handed in a list of 65 names to go on the title. After taking evidence from only a handful of claimants about the tīpuna for Wairarapa Moana, the case closed on 13 November 1883, and later that day a list of 139 owners was passed by the Court.

The anodyne minutes of the Court fail to capture the depth of the controversy and dispute caused by a title investigation that was imposed by the Crown on the customary owners of Wairarapa Moana against their wishes. Other observers reported that: "So strong was the party feeling, owing to the persistency of Sam [or Hamuera] Mahupuku and Parāone Pāhoro, that at one time it looked as though violence would be used against them.

It was reported that those claiming from Rangitāne ("the so-called Masterton natives") have handed in a list of 65 names, while Parāone Pāhoro's list

comprised 27 (about 20 of which were admitted by John Jury [ie, Te Whatahoro] as appearing on his list also). The evidence given against the group of 65 claimants described as "Rangitāne" resulted in about 50 names being "struck out" of that list. In addition to these names, Te Whatahoro submitted a list of about 45 names.

So, the final list of 139 owners included the 17 signatories to the Crown's deed, who the Court placed on the title even though some of them had admitted to the Court they had no rights at all to Wairarapa Moana (for example Paiura Watarauhi and Hemi Epanaia).

The 1883 list did not represent all of the customary owners of Wairarapa Moana. Te Manihera referred to 500 Māori owners and nor can it be assumed that the 139 are any sort of representative group of those 500 owners; those on the 1883 list were not just rangatira (who it could be argued were intended to represent a wider group) but included the children and even the grand-children of leading owners. This became clear in 1896, when the composition of the 1883 list was referred to, and later became a source of complaints from owners who had put only one generation in the 1883 list.

Finally, another way to put the 139 owners for Wairarapa Moana into perspective is to compare that with the numbers of owners included in the titles to the few Wairarapa land titles heard under legislation that provided for more than 10 owners to be included in titles.

So, that's what's heard either under the 1867, section 17 provision or the 1873 Act. And there's a list there giving the areas and the number of owners of several blocks in the Wairarapa with large, sometimes larger number of owners than Wairarapa Moana, and most of these blocks at paragraph 37, most of these blocks are relatively modest compared to Wairarapa Moana, either in terms of area or in terms of the number of hapū involved in the ownership. And I think this emphasises how far short the Wairarapa Moana title is from being a complete list of the customary owners.

The investigation of title to Wairarapa Moana has been gone into in some detail here as it has not previously been considered in any detail in the existing evidence.

I should probably interpolate there that this is really because the focus I think of the existing evidence from particularly Teresa Crocker and Roberta McIntyre was really on Crown actions in relation to the lake, rather than on the customary interests in it. So, those minutes weren't really gone into much detail by anybody.

So, this deficiency in the evidence has not only obscured the extent of the controversy caused by the 1883 case, but it has also served to obscure the deficiencies of an ownership list imposed on the owners by a fraught and hard-fought process that was as antithetical to tikanga as any Native Land Court title investigation. The awarding of title to 139 owners in 1883 was not the end of the controversy caused by the title investigation. And this is just a few notes here on hapū identity in that 1883 ownership list.

0940

The hapū involved in the list were not referred to when it was submitted to the Court. However, as part of preparations for a 1924 Court hearing into the relative interests of the 139 owners, some owners did prepare a list that purports to show which hapū each owner was identified with.

The list should be read with caution. It must be emphasised that it does not constitute any sort of agreement amongst the descendants of the 139 owners as to which hapū the original owners were intended to represent in 1883. And by 1924, most (if not all) of the 1883 owners were dead.

The list was evidently drawn up by only one of the parties involved in the 1924 hearing of relative interests for the Wairarapa Moana title (that process was to enable title to issue for the Pouākani land that had been given in exchange). The list does not appear to have met with the general approval of other parties. For instance, at the foot of each page of the original list..." which is included in the documents, "...two numbers are pencilled in; one labelled "āe" and the other

"kāore" (the two numbers on each page add up to the total shown in the list on that page). This indicates that only some of the hapū affiliations were agreed to, but that doesn't clarify who on each list was agreed to ("āe") and who was not ("kāore")."

So, there's a list there of the hapū names and the numbers of owners who listed under them in this document, which I won't read through. But moving on to paragraph 42. I will just point out that the numbers add up to 139 which is as to be expected.

At paragraph 42, I mean, "This list features hapū not previously referred to, such as Ngāti Kariwhare." Although I should note here that that tipuna Kariwhare was of course referred to in 1883 as noted earlier, but not the hapū name from his descendants.

"Finally, it should be emphasised that the hapū affiliations ascribed to the owners in 1924 do not reflect those previously given by the owners themselves." And there's a list there of various hapū identities claimed by some of the individuals on that list and where they differ from the group they'd been allocated to in 1924 and most of them are quite senior figures, senior rangatira for their hapū.

Moving to paragraph 43. "Given these discrepancies, the 1924 list should be treated with caution. What it does illustrate is the difficulty in matching up a contested list of individuals named by the Court in 1883 as the result of a title investigation with the long-standing preference of Ngāti Kahungunu to focus on the collective rights and identities of hapū. It is difficult to retrospectively assign hapū groupings to a list that was evidently not drawn up on the basis of hapū rights or identities."

That brings us up to paragraph 44 and start looking at the Wairarapa Lakes, but that's possibly covered the essentials. Thank you.

**(09:43) JUDGE WAINWRIGHT TO BRUCE STIRLING:**

Q. A tēnā koe Mr Stirling. Yes, you are right that one of the interesting aspects of our entering into this remedies phase 16 years later is that the emphasis are different from those that were present in our initial inquiry, and although many of the issues that you explore here were touched on in the course of that inquiry, the rights into say, as it were, between the individuals and hapū of Wairarapa Moana were not so relevant because there was not a difference between them at that point about these matters, and so I find it really fascinating to sort of dig deeper into the material, and I would like to take this opportunity to get you to take us further on this journey because I think it is probably fair to say as a result of the work that you began for this Tribunal, that over the years you have become something of an expert in the tribal landscape of Wairarapa, haven't you? Now, you probably do not want to –

0945

A. No, I hesitate to –

Q. Yes, yes, of course you do.

A. – to call myself that because, well, my original evidence is very much about their interaction with the Crown and particular rangatira and hapū and representative people of various hapū and iwi and not really dealing with their interrelationships or who they were or how they fitted together.

Q. Yes.

A. But the work I've been doing for the Settlement Trust, which obviously you know hasn't resulted in anything public other than this, has been much more about the various issues you've just described; the difficulties of relationships, the problems with Native Land Court title investigations and a lot of contesting with Rangitāne. Because at the time during the hearings the Rangitāne evidence wasn't particularly challenged by the Trust, but by Ngāti Kahungunu, the Hapū Karanga group as they were then, but became apparent -

Q. Well there was a hope –

A. Yes.

Q. I think there was a hope then, wasn't there –

A. Yes.

- Q. – that it would all – that the wider group would –
- A. Work together.
- Q. Yes.
- A. Yes, but it became clear during negotiations and it was actually pretty important. So, I did actually have to do a lot of work for the Trust digging into the minutes, but that was more focussed on Tāmaki and Tararua.
- Q. Yes.
- A. And figuring out the relationships –
- Q. Mmm.
- A. – and the hapū and the rangatira and what the Court had done and where it had got it wrong and how it had gone wrong. So yes, but still the focus was on the Court and the flaws in its process, and that’s become a theme in post-settlement work, I mean, most of the Mangatū Inquiry is really about that in a lot of ways.
- Q. Mmm.
- A. I got dragged into a case in Tauhara for the Ngāti Tahu and Tūwharetoa and various hapū of Tūwharetoa and that was again about a court decision that seemed uncontroversial but actually hit a can of worms once you looked at it more closely which we had to do for the – because there was geothermal resources at stake, so it’s important to people, there’s a lot riding on it. So, yes, it’s a different focus from the Tribunal’s inquiry where, you know, you’re looking at the Crown –
- Q. Mmm.
- A. – and people are generally happy to work together against a common foe.
- Q. Yes.
- A. But the Court, once you start looking at it closely, yes, you’re taken back to the classic divide and rule sort of strategy that the Crown used in the Court, sort of microcosm of that. But yes, I wouldn’t be – I’m certainly not an expert on who these tīpuna are, how they relate to each other, –
- Q. Mmm.
- A. – what Takirirangi called the whakapapa kōrero. Like, I really just – I just do not have any of that.
- Q. Mmm.
- A. And I’m not about to learn it.

- Q. Mmm.
- A. And I'm not about – I try to stay out of it because it's dangerous waters to tread in. So, I've just kept strictly to the sources. I'm not...
- Q. Which are fragmentary, aren't they?
- A. Yes, yes. Well some of the linkages I've got from work that the Settlement Trust has done in terms of identifying rangatira and hapū and whakapapa connections, so I can refer to that material and see how some of these particular tīpuna relate to various hapū, so some of that material isn't actually footnoted directly to a source. So, if it isn't, it probably comes from the Settlement Trust's records.
- Q. So, because of the way that history unfolded, that original list of 139 owners which the Native Land Court arrived at in 1883 is very important because despite what happened afterwards, no one was ever really prepared to unravel that list, were they?
- A. Well yes, the Court later, yes, wouldn't go near it. Somebody wanted to raise it. I think at one point I quote Taiawhio Te Tau who was obviously a very influential person at the time in one of the hearings – 1921 it might have been – sort of saying there were some problems with the names on the list, but he assumed that the old people had signed off on it or it was okay, so he decided not to challenge it. But actually, I mean, if you look at the evidence from the time, it wasn't really signed off by those rangatira, they had to put up with the Court imposing people on them that they didn't want in there, and there's a lot of hints about that later on.

But it's a relatively small group, I mean they keep referring to them as Hāmua and they thought they had been allocated a smaller share and they kept saying, "Well, they should get a smaller share of it, they should get the shares from the people who put them in." They assumed it was done out of aroha or for some other reason but if you go back to the minutes and you can see that it was actually as a result of the Court saying, "well, this person established a claim, so they are going in whether you like it or not."

- Q. Well, there were all kinds of potential basis for a claim to the 25,000 acres comprised in this lake and one of the things that seems clear to me is that

– I was looking at the obvious dissention and difficulty that the leading people of the period experienced once they were brought to the reality that they were going to have to come up with names, that – a resource like Wairarapa Moana in the Wairarapa would have had so many different kinds of connections to people and people to it and looking through the material that you have presented, it seems to me that the Court never really articulated what the criteria were for inclusion on the list so that some people seemed to have got in on quite arbitrary basis.

And for instance, the various kinds of interests that people might have had, so there is just – you will be able to amplify this I am sure, but if you look at the ancestral connection that Rangitāne would have had by virtue of their pre-existing rights to the lake and probably also continuing mahinga kai and then other groups from the north of the district, who would have had resource relationships with the land and then people who lived beside or near it, and then people who had whakapapa connections to tipuna who were acknowledged as being connected to the land.

All of those, all of those were possible ways of expressing entitlement to be on a list, but I cannot see of any stage that there was a real analysis of what should get you on the list and what should disentitle you from being on the list, there wasn't that, was there?

- A. No, no, I guess if they had been able to hold out a bit longer, like if the Crown hadn't pushed that deed through and dragged into Court I think it would have been held back from the Court for quite a bit longer and you see evidence like from the 1891 commission that touches on a lot of these issues. I think that material and there actually, there are manuscripts of hui held before the commissions sat where people worked out a lot of these details like who had rights where and what they did there and what the place names, all the different places names that have been lost now and what they meant and what they related to.
- Q. Okay.

A. And that's in the Māori Purposes Fund Board manuscripts which I think they were part of a big translation project that was done towards the end of the Tribunal's inquiry.

Q. Yes.

A. I'm not sure if it ended up on the record or not, but Frances Reiri-Smith sort of supervised that.

Q. Right.

A. It's hundreds of pages of the manuscripts and the translations, yes.

Q. Yes, I remember that, yes.

A. So, there's quite a lot there from 1891 and 1896 recording what people said and some of that is the HHR that I've referred to here where Whatahoro lists all the different places around the lake and which hapū and which rangatira had rights there. So, he's focused more on, that's more on the 139, that's focused on the resident hapū and who had the rights. But you see also, what you are referring, referring to other hapū who had rights to come and fish who aren't in that list because they don't live next to the lake either.

Q. And that is the sort of – that is the culture clash, that sort of failure tikanga to be, well the failure of the system to recognise the multi layered nature of rights that people experienced, you know, day-to-day in their working

–

A. Yes, yes.

Q. - well, not their working lives there, just their lives.

0955

A. Yes, I think they could have – yes, if they had been able to hold it out of the Court until perhaps the 1900 Act passed it could've been investigated by, you know, the Land Board, which is essentially their own committee and they might've come up with a much different sort of approach and solution, but because the Court was imposed upon them and they really had to sort of just fit into the Court and you can see it's a very brief hearing relative to the importance of the asset and the number of people with interest in it. So, yes.

Q. So, the problem really started with Te Hiko's sale, didn't it?

- A. Yes, yes. Well, you can turn that around and say, “Who was pushing the deed on him?” Who cornered him in Wellington and kind of, you know, said, “Sign this,” and targeted another person –
- Q. I am not –
- A. Yes, yes, but –
- Q. I am just calling it “Te Hiko”.
- A. Yes, yes.
- Q. I am not saying it was Te Hiko’s fault.
- A. No, no.
- Q. I am just saying, that event, –
- A. Yes.
- Q. – that getting a small group of people with or without interests, –
- A. Yes.
- Q. – that they should really have been able to sell, and getting their names ostensibly conveying the lake. Once people were invested in that, it set the whole thing in train didn’t it, because that is what was happening in 1883, right?
- A. Yes.
- Q. I mean the Crown was wanting to extract value from that transaction.
- A. Yes, well, it was seeking control of the lake really to reflect settler interests and keeping the lake level permanently lower than what would otherwise happen during the Hinerangi, the sort of seasonal higher levels when – well they were important for eeling. So yes, I mean, that is the root cause of the whole thing and also the legislation that allowed the Crown to bring a case, to have its interests defined without the consent of the actual customary owners. So that was –
- Q. So, in the –
- A. That was the key in legislation –
- Q. In the process of the Crown having its interest defined, everybody else is hauled in, right?
- A. Yes.
- Q. And what determined at that point whether you were a claimant or a counter-claimant?

- A. That's just part of the court process I think, it identifies one particular group as the claimant. There was often debate about that before the case start; whose claim was going to be taken or who put it in first or...
- Q. So, is it sort of to do with prominence and that kind of thing?
- A. Yes, or priority often. Who put the first claim in or whose claim covers the whole block because some people might be claiming only parts of it.
- Q. But effective –
- A. But that's not recorded. Often it is, but in this case, it isn't, but possibly because the Crown brought the case, yes.
- Q. So, it was the Crown's claim really.
- A. Yes, yes, so I guess – well I'm still not sure who Hoani Toru is because he is not on the list of owners. I presume he had another name, but that's the name he gave in the minutes.
- Q. Right.
- A. And there are quite a few Hoani's, but I haven't seen any Toru, and that could be a middle name, it could be misspelt, so I'm not quite sure where he fits in and he doesn't seem to be a signatory to the Crown's deed either.
- Q. To Te Hiko's deed?
- A. Yes, yes. So, he's leading the claim, possibly the Crown had him do that, I'm not sure, but because the minutes are so sketchy –
- Q. So effectively –
- A. Yes.
- Q. Effectively then, the Crown is the claimant, but somebody else is arguing for those interests, is that what was happening?
- A. Well the people who had sold their interests to the Crown I guess had to argue their claim in a way. So, the Crown calls witnesses to back that claim up.
- Q. Right.
- A. Yes.
- Q. So, the 17 –
- A. Yes.
- Q. – would be claiming that they had the rights that they needed to make the sale?

A. Yes, yes, and that would help the Court define what the Crown had purchased, although I think in this case has been explored in the report already, this debate about what the deed was even supposed to convey, whether it was fisheries rights, whether it was the lake bed or water.

Q. Yes.

A. It was all pretty fuzzy.

Q. Well in a –

A. But the court wasn't fuzzy.

Q. In a better time, it would simply have been thrown out, wouldn't it?

A. Yes.

Q. I mean, it was a bad business.

A. Yes, but you see even two of the signatories to the deed said they didn't really have any rights, they probably just signed it because somebody said, "Well here's some money if you sign this."

Q. Yes, and they would –

A. Despite that, they're put on the list as somehow legitimate owners because they signed the deed.,

Q. And they stayed there.

A. Yes, they did.

Q. Mmm. So, then those people having argued, the claimants having argued for the interests of the 17 in Wairarapa Moana, all the people who were the counter-claimants were those who were taking an oppositional view to what the claimant said?

A. Not necessarily because it becomes then a question of establishing customary rights. So, they couldn't deny that some of the people who signed the deed had rights in customary terms, which is presumably and ostensibly what the court is there to determine.

Q. Mmm.

A. You know, for the purposes of extinguishing them, they have to identify them...

1000

Q. But there is 17 – well, the Crown was claiming that the 17 had the mana to convey the whole thing, didn't they?

- A. I don't know if they tried to argue that. I think they were just defining the rights they thought that acquired. So, it turned out 17 –
- Q. So, the Crown always thought that they only had some of it?
- A. Yes, yes, yes. It was some. I think they kind of stopped when they realised they couldn't get anymore, the opposition was becoming very strong through various committee and the leadership of people like Piripi Te Maari. So, they were really trying to stop anyone else signing the deed.
- Q. Yes.
- A. I think people realised what was happening so that got shut down.
- Q. Yes.
- A. So, I think the Crown, yes didn't accept that it acquired everything.
- Q. Right.
- A. It had acquired, in the end, at the end of the case, it had acquired 17 out of 139 interests, whatever –
- Q. Yes.
- A. – Whatever those of them, they hadn't been defined. I mean, the relative interests hadn't been defined.
- Q. So, how much the Crown had got from having those 17 signatures on the purchase deed would be larger the fewer names were admitted to have interests in the block wouldn't they?
- A. If you proceeded on the assumption of equal shares, yes, but that might be separate case that will be argued. Like, if there were only 10 other people put forward on the list, maybe 10 – but the better to oppose –
- Q. But say they had been 500 people in the list for equal shares –
- A. Yes.
- Q. – or even for any shares actually, the 17 names that the Crown had secured would have resulted in a smaller percentage of interests.
- A. Well, it's pretty hypothetical but that's the most probable outcome, yes.
- Q. Yes. Unless – yes, unless it were found that they – yes, I mean obviously there are scenarios in which 17 names might have got you a lot but probably and given who those names were, it was only going to be a smaller part of the interest in the lake.

- A. I think if that situation had arisen, if there were fewer than a 100 people and that give 17, apparently disproportionate interest, well then somebody might have resorted to a relative interest hearing to define that, but I am struggling to remember if that process was used in the Wairarapa in this era, I don't think it came in until later.
- Q. The relative interests?
- A. Yes, I don't think it was in. There's so little land left.
- Q. Well, I mean it occurred to me that the people who understood what was going on would have been motivated to put – like, if their line were recognised as having interest in the lake, that it would be in their interest to put in as many names as possible to dilute the 17.
- A. Yes, but countering that you've got, you put too many people in there, well that's just hundreds more individuals to be targeted by the Crown or whoever later on or to start partitioning and fragmenting. So, that's the other risk that you, that's the risk of the Court title.
- Q. Yes.
- A. So, I guess they had to weigh that up, like what are the pros against the 17 and the cons of having, you know, a lot of individuals particularly if you start bringing in people who are from further north or the coast who only come in fishing rights and reside there temporarily and might be seen to have not such strong rights as the resident hapū and you put them in their hundreds. You know, they might get targeted by a purchase agent. What are they going to do?
- Q. So, there is a lot at play?
- A. Yes, yes. A lot of what it is – yes, yes.
- Q. So –
- A. So –
- Q. I mean, when we consider all these possibilities all the various kinds of interests that different groups and individuals had and the politics of the situation with the 17 now being in there and everybody's interests in the lake being different, what was the best strategy to advance your own kaupapa, whatever that was? I mean, presumably the kaupapa of the 17 was different from the kaupapa of Piripi mā, and so you can see why

people didn't really want it to go into the court, can't you? That it was – they knew that it was –

1005

A. Yes.

Q. They knew that it was a can of worms.

A. Yes, well, yes, I mean they did their best to oppose it and keep it out of the court, adjourn the case, have it thrown out, but yes. Well, as you will know from the inquiry, it's not an easy thing to stop the court once it's rolling.

Q. Indeed. So, in paragraph 15 you talk about how there was a general objection to submitting claims to the court and asked for the case to be struck out. Was there ever any possibility that that would happen?

A. Well, yes, if the case hadn't involved the Crown interest, I suppose it's possible.

Q. Right.

A. The court might've seen the extent of the opposition and thought, "Well, yes, maybe we could adjourn this," or, you know, indefinitely, sine die, see what can be resolved outside the court using, you know, the local native agent Maunsell or somebody like that to see if they could resolve the differences. But because it was a Crown interest at stake, I presume the Court would, you know, would be reluctant to adjourn, particularly when the Crown is the applicant.

Q. Yes.

A. And there's broader settler interests at stake as well, so you don't want to be the Judge that, you know, let's the natives control the lake and –

Q. No.

A. – flood these poor settlers' land, although you know of course it wasn't actually their land.

Q. No, right.

A. There's that whole saga. So yes, there's all that weighing on a Judge who I think – I'm struggling to remember who it was at this hearing. Simons I think? Who, you know, isn't likely to stand up against all that pressure.

Q. So, in paragraph 17, you say that, "It was reported that when the case was called, all the claimants sought to withdraw their claims due to the "strong opposition of the Maori Committee," and the views of "the Natives of the Lower Valley against having any claim put forward by individual natives in connection with these lakes". What's that about? Talk to us more about the role of the Māori Committee here?

A. Well I think that's covered pretty well in the existing evidence or partly in the work I did on the repudiation and committee movements, but also the work that Therese Crocker and Roberta McIntyre did on the work of the Committee trying to stop the lakes for the benefit of the customary owners, and that's just another example of the committee trying to keep the land out of the court and maintain some sort of control of it.

But because the Crown interest had already been defined the previous year, I think it was even harder than usual, and it was usually hard enough to try and keep the court out if someone applied to bring it in. In this case, you know, Parāone Pāhoro wasn't going to stop.

So, the committee, yes, it basically goes back to the powerlessness of those committee or legal powerlessness against the authority of the court and the lack of any sort of – well, this was before the Native Committees Act was even passed, but that was a toothless **(inaudible 10:08:37)** anyway. So even if it had been passed earlier, it wouldn't have really made much difference.

Q. So, you say here that after the Crown's interests were defined in 1882, it was returned to Court in 1883 for the Māori interests to be identified. What would be the interest of Parāone Pāhoro there to ensure that that next phase happened?

A. Yes, that's a good question which I don't know if I could really answer. His motivation isn't explained.

Q. Well...

A. Presumably he's standing against what the committee represented.

Q. So, could we hypothesise that he had an interest in having his interest determined for the purposes of sale perhaps?

- A. Well yes, that's possible, I suppose the Crown was still interested in acquiring more interest, but that's probably something you need to go back to the inquiry evidence about the Lake Deed and its progress, which I have, you know, I've looked through, but only really to identify material relevant to these issues –

1010

Q. Right.

- A. – rather than the broader picture which you know, I think was gone into pretty thoroughly during the inquiry so I haven't revisited it but, yes well it's always hard to know but you know, that's problem with the Court, an individual could do that, defy their community because the Court empowered them to do so, that's basically the crux of the problem with the Court, and the hapū and the komiti if it's to manage land.

- Q. When you quote from the kōrero of the various rangatira who spoke in the Court, we see that the source of right to which they referred differed so that some of them were talking about the names of tipuna who were tipuna of the lake.

Some of them connected themselves to hapū who were the hapū of the lake, presumably the resident hapū who were acknowledged as having occupied the area and it is not – did you have any sense of why people emphasise one thing or another? Was it to do with the fact that this is kind of inconsistency, I suppose, to do with the fact that it was not clear what they needed to emphasise to get on the list?

- A. Well, I guess they had to wait to see how the Court reacted to the claims to determine how best to frame their own. So, you could sort of see, you know, once those Hāmua claims or so called Hāmua the Masterton natives as they were called by the press, Karaitiana and Manihera and some of those people. Once some of them succeeded, I guess people thought, well okay, that's all you need.

And so, even though they were opposed by most of the people, the Court found their claims valid because of the evidence that was given.

- Q. So, what – how did they frame that to the Court, those Hāmua people?

- A. I think, mainly on the basis of descent but also occupation because I think as I note several other people tried to claim it from the same descent, but they couldn't show they'd occupied the land at all so their claims were reject. And I think, as people went on to observe that that group put in a list of 65 but at least 50 were struck out.
- Q. Yes, and it is not really clear – I mean, again I mean that seems a bit arbitrary.
- A. It's probably on the basis, you know, they were challenged on the same basis that they hadn't been there, I think – but one of the suggestions she hadn't lived there.
- Q. But wasn't their interest ancestral anyway. I mean, when they were talking about 'hadn't lived there', is that 'hadn't lived there' before Ngāti Kahungunu or had lived there more recently?
- A. No, I think it's hadn't been there since. Yes, I think it's more recently.
- Q. Right.
- A. So, even if it was seasonal occupation they might come down for the fishing but then go back.
- Q. Right.
- A. But they had the right to keep doing that.
- Q. So, some of the people had done that and some of them had not.
- A. Yes, some hadn't. Some had moved away. I mean that's gone into in the minutes in a bit more detail, but they had been rejected because they hadn't maintained that ongoing right.
- Q. Right.
- A. Whereas others had. So, yes, you see its descent and occupation.
- Q. And yet, in tikanga those people presumably had they wished to exercise those rights would have been allowed to.
- A. Yes, yes. But I suppose, the point was that they hadn't.
- Q. No.
- A. So, they're kicked out. And there were other people who were challenged to like people saying, "well, how did he even get in?" but because he was in he stayed in when the Court reviewed it. Kingi Puihi is the one example that stands out and he's mostly Muaūpoko but of course Muaūpoko and

Kahungunu were connected pretty strongly through Hāmua and that is noted by both sides in different cases, in other cases not in here.

But, people wondered, “Well, how did he get in? You know, he obviously didn’t have much residential right or occupation right because he’s living over at Horowhenua. Well, as far as I know he’s always showing up there.” So, it’s pretty inconsistent but then he might have got on the list because someone put him there or no one objected and that was enough. I mean, if a list wasn’t objected to, the court would pass it. It’s not going to interrogate every single name on it, unless someone objects to the process—

1015

Q. But this was objected to though, wasn’t it?

A. Sorry?

Q. I mean, this list was objected to.

A. Yes, yes.

Q. I mean, if we look at your paragraph 19 where you talk about the counter-claims and there were 26 and quite a number of those were leading men, is that a high level of opposition compared with other processes that you’ve looked at?

A. It’s not so much opposition, it’s asking to be included as well. They might not necessarily oppose the claim that’s been made –

Q. Well yes.

A. But because the claimant doesn’t admit them readily, well then, they have to put in their own counter-claims.

Q. Right.

A. Call them counter-claims.

Q. Right.

A. Yes.

Q. So, it’s –

A. I mean, just about all of those people got onto the list.

Q. Right.

A. Well not – certainly most of them, yes. Yes, so a lot of the claims were accepted.

- Q. And when you say at the bottom that the minutes say that Te Whatahoro was representing them all, but there were actually three broad groups of claimants, what was the groupings that you identified?
- A. I think that's mainly to do with – all that emerges in the final lists here when they talk about the different groups of lists like – or the Rangitāne grouping, Rangitāne or Hāmua or Masterton natives.
- Q. Yes, yes.
- A. That was one groups, and Te Whatahoro had a separate list and Parāone Pāhoro had a list of his own, relatively smaller than the others. But even that report of who was on what list doesn't actually count for everybody, so I think the other major grouping is probably those under Piripi Te Maari because in 1896 you can see there is quite a clear division in to two groups. So Te Whatahoro is listed, Piripi Te Maari is listed, and Piripi Te Maari is dead by then.
- Q. Yes.
- A. But it's still referred to as his list –
- Q. Yes.
- A. – because of his influential role.
- Q. Those are his people, yes.
- A. Yes, so those are, that's – well at least three groups, so Piripi, Te Whatahoro. This is Hāmua, Masterton, Rangitāne grouping. Well, maybe four if you count Parāone Pāhoro. Yes, but the odd thing is the minutes say, "Whatahoro is representing all of them," but clearly, he wasn't.
- Q. He did not, no.
- A. But that's just possibly a mis-recording in the minutes.
- Q. So, when you have, say, in 25 that the Court found that Manihera Maaka's claim was substantiated, is your understanding that the Hāmua interest that ultimately were recognised on the title were ones where ancestry were combined with occupation?
- A. Well, in the three cases where there are minutes describing how they got in, they obviously established occupation. But, you know, as it goes on to note, there was a list of 65 of them put in, about 50 of which were

rejected. So, presumably the other dozen, other than these three, also managed to establish occupation.

Q. Or some of them.

A. Or some you know.

Q. Yes.

A. But it's being horse trading you know, because it's all done outside.

Q. Yes.

A. Away from the Court's eyes or away from the Court's records. It's hard to know what's going on, but yes, it's kind of on the basis on which the claim was accepted, and people saying they oppose it but then they admit that, "We made peace, so I don't dispute that you have a claim," but you know, clearly, they dispute the claim.

Q. Well that –

A. But the Court interprets that to mean, "Okay, there is no opposition so you're in." It's a pretty odd process.

Q. So that seems to be referring to the ancestral interest, doesn't it?

A. Yes, yes. Yes, well I mean as the Tribunal itself has noted when I cited the descendants Ngāti Te Whakamana do affiliate to both Rangitāne and Kahungunu.

Q. Mmm.

A. And that's not that uncommon.

Q. So is –

A. Sorry, yes, I was just going to say that they never refer to themselves as Hāmua, that's the odd thing.

Q. Right.

A. It's everyone later on saying, "Those Hāmua, how did they get in?"

Q. Right.

A. I even heard someone refer to, I think referring to them as the piri pāua, the pāua that stick to the rock won't let go.

Q. Right.

A. And that's a term that's used about them coming down the valley and sticking around I suppose.

1020

Q. Right, well why wouldn't you?

- A. There's a lot of attitude towards them, yes, later, and people assume they got in through aroha or you let them in, you let them in. How did they get in? And we don't want them there, but they should get a smaller share, but that's not what happened. Everyone ended up relatively, equally shares, depending on the generation that they belong to in the final analysis.
- Q. Yes.
- A. So, yes, it was a bit confusing trying to work out who the Hāmua they're talking about but when you see the minutes, you can kind of relate it back. You can see that these people, even if they didn't identify as Hāmua directly in Court based on their ancestry and who they are, they all stand strong, Hāmua links.
- Q. So, if we go to paragraph 32 where the – you talk about the depth of the controversy and dispute and there was a report that so strong was the party feeling owing to the persistency of Sam Mahupuku and Parāone that at one time it looks as though violence would be used against them. Now, what were they persisting with? What was the persistency that was referred to there?
- A. Well you have to kind of infer it I suppose.
- Q. Yes.
- A. It's not stated explicitly, but yes, persisting with their claim I suppose, bringing the claim itself.
- Q. Of the determination of the Māori interest?
- A. Yes, of actually holding the case at all.
- Q. With other people didn't want that to be sleeping dogs lying.
- A. Yes, yes, because I see you checking the date. Yes, that is relatively early in the hearing and it's the same report that describes the problems at the start of the hearing. So, yes, I think I – because I put it there. It looks like it came later, but it's actually, dates from the same report.
- Q. Right.
- A. So, there is this – yes, Parāone's pushing it. Presumably Mahupuku is behind the scenes because he doesn't even seem to appear in Court, and he's obviously pushing it as well, which, yes, is a little explicable given

his political stance, attitude to the Court, but it just indicates how complicated things are.

Q. Yes, and really, so – even though they had been dragged into the process by the Crown’s application in 1882, in 1883, they were still really not wanting their interest to be defined by the Court.

A. Well some of them.

Q. Some of them.

A. But it seems like most were opposed, but yes, as I said, that’s not out of Court work. It’s not a popularity contest. You got a claim, it gets heard and then people don’t like that, well, they have to show up and be heard as well.

Q. Indeed, yes.

A. Yes, or they miss out.

Q. So, in paragraph 34, we have the situation where Paiura Wataruihi and Hemi Epanaia had said that they had no rights in the lake, but they were included in the title. Is that not the unusual?

A. Yes, well, that dates back to the 1882 hearing.

Q. Yes.

A. Because they signed a deed, suppose the Court decided that everyone who signed the deed that somehow is an interest?

Q. Should be on the list.

A. Yes, yes, and the Court might’ve thought that they were backing away because they’re now – didn’t want to be seen to be supporting the deed.

Q. Right, right.

A. So maybe, they might have – maybe the Court thought they were being untruthful about not having rights.

Q. Hostile witnesses?

A. Yes, that kind of – that’s a possibility, but because the minutes are so sketchy, you know, you don’t really know why. And I suppose if they weren’t admitted, they might have had to repay the money. They could’ve admitted trouble.

Q. But they were saying they had no rights.

A. Yes, they admitted it.

Q. So, you would have thought that that risk was just one that they were running, by saying that.

A. Yes, they were going to take. And it wouldn't be the first time the Crown had paid people money and turns out they didn't have interests.

Q. No.

A. So, that was something they done for. They stopped this policy of advance payments before title was determined. Shortly after I think the deed was signed, about 1877, '78. Seventy-eight, Bryce brought boom down on it, because they lost money in other districts paying people, and when block got to Court, it turns out they had no rights.

Q. Right.

A. But, yes, I think that's just the – reflects the extent to which the process has been pushed through.

Q. Yes, it just – and that it is pretty arbitrary.

1025

A. Yes.

Q. And then this question of whether you put yourself in or yourself and your children and your grandchildren, the fact that there were clearly quite different practices in that regard, does that indicate that the people who were meeting outside the Court to determine, to agree on the people who would be put in were in different clusters? Is that what was going on?

A. Well, yes you have to sort of infer that but as I said there were these different groupings so presumably, the different groups had a different approach and possibly even whānau within those groups might have had a different approach then put forward certain names and people might not see the fall list before it goes in, they just made sure they were on it, or people in their hapū were on it and they might not realise that other people have put extra names in of so called children and grandchildren. The difficulties is, there don't seem to be any minors on the title, they are normally list separately –

Q. Yes.

A. – and there's none there so I subsumed that it meant, children and grandchildren meant adult children and just adult grandchildren. So maybe it would be the older generation would be in the 60s, children in

their 40s, grandchildren in their 20s. Generations would have been a bit closer together. 'Cos in the end, that's the only reason I could see why there wouldn't be minors even though people are talking about grandchildren but relatively small numbers, I think you can see that in the 1896 list and the final allocation of shares. There's not too many children or grandchildren relative to the total number.

Q. Yes.

A. But, it would have been more if everyone had done it.

Q. Yes.

A. But not everyone had. I mean, yes, Hoani Tunuiarangi was most vocal about that, yes, because obviously he hadn't done it and I think he would have been with Piripi Te Maari's group I would think given their location and affiliation. So, that it applies it was Whatahoro's group that had done that.

Q. Right.

A. Yes, he checked the 1896 lists to determine that. I think that's the case.

Q. All right. And then in paragraph 36, you give those other examples of blocks and the number in those and I thought that the Mataikona example was a good one because that also is a significant number of acres, although of course, much, if I may be so bold, least desirable land than the land around Wairarapa Moana which was, you know, flatter and more fertile and you know, all of that.

So, on the face of it, you would expect that 25,000 acres on the flat with the resources of the water as well the land that was annually, you know, watered and flooded and covered in silt, that a throughout 163 owners in Mataikona there would be an awful lot more in Wairarapa Moana.

A. Yes, well that's – yes, that's what I inferred from that. That's what I'm implying. Yes, I think Mataikona – Well, Mr Potangaroa can correct me, but I think that's most of Te Hika a Pāpāuma I think, let's put it to that title. Some of the others, yes, they are relatively small blocks like Okurupeti, Well, it's still yes, over 5000 acres, but that's got quite a few owners and that's –

Q. It does.

- A. – slightly better land near Masterton.
- Q. Well, I mean, as a comparison, 139 for that 25,000-acre block compared with a 163 for Mataikona, that does not add up to me.
- A. No, that's why I thought it was interesting to see what else was out there.
- Q. Yes, yes.
- A. Because, yes, again that's not sort of the level of detail we got quite around to looking at in the inquiry.
- Q. No.
- A. But the evidence was there fortunately, and I like I said, yes, Manihera did say, you know, there was about 500 and that seems to reflect the sort of numbers you would expect because that's a good proportion of the Wairarapa population.
- Q. Indeed. All right, Mr Stirling we are going to take the morning adjournment now and we will be back at 11 o'clock. Kia ora.

**HEARING ADJOURNS: 10.30 AM**

**HEARING ADJOURNS: 11.00 AM**

**JUDGE WAINWRIGHT:**

Kia ora anō tātou, haere tonu. Kāre anō kia tae mai a Dame Margaret, nā reira a tōna wā.

**(11:03) JUDGE WAINWRIGHT TO BRUCE STIRLING: (CONTINUES)**

- Q. Haere tonu. Sorry, this has got a funny button. All right, so the list with the hapū names attached, is just confusing really isn't it, because we do not know who made the list and it does not reconcile in some important ways with other hapū attributions that were made, and it is not clear anyway that the original list was formulated by hapū affiliation, because many of the people didn't even talk about that when they were establishing their claims.
- A. No, no, which is a little unusual. I think when the case first started, someone introduced themselves, go the iwi, the hapū, but most of the

others just talked about a particular tipuna and gave that as the basis for the rights, so, it was almost a personal linkage for them rather than making it on behalf of a hapū. So, yes, it was a difficult exercise and it's tricky – yes, it's difficult to know who did it. I think, trying to think. I think the manuscript collection. I think this is Te Whaiti papers, something that could be something to do with that hapū grouping, but it could be that they just kept a copy of it someone else had done. It's hard to know a prominence of it.

Q. Yes.

A. But yes, as I said, it certainly wasn't agreed to by everybody, so –

1105

Q. So, it is just kind of an interesting sort of thing but not probably one to be overly relied upon?

A. No, no, although I think it has been.

Q. Yes.

A. For some purposes recently in relation to Wairarapa Moana itself. That's the story, water under the bridge now.

Q. Okay, all right.

A. Yes.

Q. So, it is just kind of an interesting sort of thing.

A. Yes.

Q. But not probably one to be overly relied upon.

A. No, no, although I think it has been.

Q. Yes.

A. For some purposes recently in relation to Wairarapa Moana itself, but that's a different story.

Q. Okay.

A. Water under the bridge now.

Q. All right.

A. Yes.

Q. So, if we have a look at the 17 names who have no affiliation, do we know anything about those 17? I mean, why would there be a group of names to which no affiliation is ascribed, do you know?

- A. Well yes, some of them signed a deed, but certainly not all 17 oddly enough. The number is the same, but that's not the reason I don't think, but some of those people had signed the deed.
- Q. But that does not really explain why no hapū is ascribed to them.
- A. No, yes, yes.
- Q. Unless they do not have a hapū because they are not entitled?
- A. Well I guess whoever drew up the lists couldn't figure that out or there might be people whose descendants weren't present to argue for them. I mean, you can see one of them is Epanaia whom –
- Q. Right.
- A. – you know, ostensibly had no rights or admitted as much despite signing the deed. I mean, Wi Kingi Tutepakihirangi, he signed the deed. Ngahui Hemara is, yes, that name did come up in the Ngāti Hinewaka research, some of the coastal lands. So yes, it would be possible to find something out about them, and I think identified successors as well –
- Q. I am not really – so interested in what their hapū are –
- A. Yes, but –
- Q. – as to why they do not have a hapū ascribed to them.
- A. Yes.
- Q. It seems odd that, you know, somebody has had a stab at everybody else but there is 17 that are omitted from that exercise.
- A. Yes, well, it is what it is.
- Q. Yes, okay.
- A. It's getting the limitations of the source I'm afraid.
- Q. Indeed. And also, I mean it is interesting, given what we discussed before which is that when people were making their claims they did not routinely emphasize their hapū that the list tries to do that rather than attaching people to tīpuna as they did themselves.
- A. Yes. Well I think the examples I give, they also identify as hapū in other cases or use a hapū identity, and I think it's possible because some tīpuna had more than one hapū descending from them.
- Q. Indeed. Indeed.
- A. So, it might be better to claim through the tīpuna rather than narrow yourself to one hapū or another.

- Q. Mmm.
- A. But yes, it's an odd thing that it didn't come up in the hearing even though people would identify themselves by hapū in other cases. But I think it's because – it goes back to the individualistic nature I suppose of the contest that it wasn't based on hapū. Because if you look at the other sources like the Lakes Commission, it's very much focussed on who the rangatira and the hapū were and where they were around the lake.
- Q. Okay.
- A. So, in a different context, the focus is on hapū and hapū identity.
- Q. So, we have to think about why that was then, don't we? In that context in the commission, that people were coming through that door if you like. Whereas before the Court, it makes me feel like there must've been something going on, maybe the politics of it all, that made people emphasize their individual rights and their personal whakapapa rather than their collective interests.
- A. Yes, well it's two different processes. So, in the Court obviously, like you say, the focus is on the individual right in getting an individual name on the list rather than identifying a hapū and then getting the whole hapū put in there.
- Q. Yes.
- A. That's not generally how the Court operated.
- Q. No.
- A. If you see in the Commission, they're really focussing on customary rights and defending the lake as a whole and establishing a claim to it to a commissioner.
- Q. Yes.
- A. So, I mean, well, you know, as this commission of inquiry people will emphasize the collective identity –
- Q. Yes.
- A. – because it's a different – it's that process, it's a different process. Sorry, yes, more aligned to custom I would suggest, even though it was a fairly ordinary commission of inquiry, it had a different focus to the Court, so people were free to give its evidence that focused more on traditional

associations, hapū connections and that sort of things they didn't in the Court.

1110

Q. Well, it might also be and again this is an inference of mine, that Alexander Mackay was more receptive to that kind of kōrero than the Judges in the Native Land Court.

A. Yes, well yes, they would have been familiar to him through his work on the reserves -

Q. Yes.

A. – seven or eight years earlier. And in addition, I think they had time to prepare and organise politically since the Court through the agents trying to maintain and sustain their claims to the lake, to the lakes and control of them in different forum. So, they were well used to coming – and it came together, and you can see that they sort of plan this and met before hand and agreed on how they were going to proceed and what evidence they would present. So, they would see a manuscript first -

Q. Right. I did not realise that, that's interesting.

A. Yes, so that manuscript information is sort of presents some of the same information that's in the commission but in more detail.

Q. Okay.

A. And I think it's dated, yes, each – the pages are all out of order, the manuscript seems to be quite jumbled but you find dates every now and again and then the topics and in this case, I think it's 1891 and the topic is you know, the lake and all the different places around it in a lot more detail than Whatahoro presented to the commission but essentially very similar information, yes.

Q. Right. So, if we go to the discussion that you have in paragraph 45 and 46 and 47 or in fact – it is really – it appears to me that after all of this, you know, the events of '82, '83 and then as you say the struggles of the 80s and then the Royal Commission. There are still really different emphases in the kōrero of these rangatira about you know, where the source of right lies from the rangatira, from the tipuna, from the hapū and to different parts of the lake and the different – you know, the fishing rights and the land rights so on, but it is still, it is still a really complicated

tapestry, well, when I say it is still, it is a complicated tapestry and people come at it from different points of view. It is not – no one is, it is not a very unified story.

A. I thought it was a little more coherent than that.

Q. Did you?

A. Or at least consistent. Yes, but I think there were fewer people giving evidence so that perhaps made it easier to manage. And as I said, they met before hand and with various committee and established some of these things, presumably agreed upon them. Well, I think yes, certainly I think these are Whatahoro's manuscripts, so they are going to reflect his viewpoint and perhaps his groups viewpoint. Maybe it wasn't everybody as you say, Tunuiarangi is perhaps not in that group and presenting a slightly different perspective. But he's also explaining some of the detail you know, -

Q. Yes.

A. – like, how recent some of these rights were and how they came about so custom is still sort of continuing in terms of –

Q. Yes.

A. – it's almost like a –

Q. Inhabitation is obviously not fixed and that is changing things. I mean, I was really interested in the last part of the quote in paragraph 18 – sorry, 48, "These hapū owned the dry land and their rights extended into the lake as well." I thought it was always the case that if you had interest in the shore that your rights would extend into the lake. Do you think he was just saying that so that Mackay was aware of it?

A. Yes, I think, yes, I think it's just to clarify how what he said relates to the lake because he's clearly talking about fishing rights –

Q. Yes.

A. – even though he's talking about the land that they occupied but I assuming that they had to occupy the land in order to fish in the lake because you can't occupy the lake.

Q. Yes.

A. So, I think, yes, maybe he's just emphasising that to Mackay in case he didn't get it. But I suppose the other thing that evidence brings up is at

paragraph 44 as well where they talk about, as you said before, the different layers of rights. So, there are other hapū who come from a distance to share in the fisheries or those even further or they might just receive presents of dried eels later on after the harvest.

So, that's a sort of a use right or a gift exchange. But maintaining that custom, even though those people might not have direct rights in terms of getting on the title or claiming to be owners of the lake but having access to its resources or a share of them.

Q. And also, the different levels of right in the different lakes with the subsidiary lakes and the, you know, the original mouth of the Tauherenikau for instance. I mean, they're not generalised rights, they're quite specific to different parts of the district, which of course was a really big area.

A. Yes, yes, you forget sort of, you look at a map and you just think –

Q. It's huge.

A. – “Here's a single place,” but it's actually –

Q. Yes.

A. Yes, it's obviously a big area to get around.

Q. And obviously the 25,000 acres that were under consideration here were not the whole of the wetland because the wetland when it was full was more like 50,000 acres.

A. Yes, yes. So, this is what's left. Well it's what's under the title as well, I think that's the other issue, it's what the Court awarded title to.

Q. Yes.

A. So, it defined the boundaries by survey, or the Crown did by default because the Crown granted the land next to the lake –

Q. Yes.

A. So, by default became the boundary of the lake even though it wasn't the traditional boundary.

Q. No. And –

A. But yes, you can see this reference is to the specific rights of the mouth which at Onoke which are pretty critical to controlling the level of the lake –

Q. Indeed.

A. – and access to the tuna at the right time, and yes, I don't think it's mentioned here, but later on there's several of the lagoons near Mapunatea sort of on that south-eastern side and who's got rights to those and those were quite important separate wetlands whose names I've now forgotten. But yes, that's definitely in there.

Q. So, coming through to paragraph 58, you draw emphasis to the fact that it was the Tribal Komiti who were working to regulate the use of the lake and to stand in the way of further sales, and you say that the activities of the Komiti instead of the owners is indicative of the inadequacy of the list as a reflection of the true rangatiratanga in the lake. Is that simply an inference?

A. Yes, yes, it's an inference, yes, based on the sources. So obviously there's what they call an incorporated committee of the owners, so that's like a block committee, that's just the owners, but then there's this other separate tribal committee that was referred to and I think that's the committee that's active in the lead up to this period through the 1880s, particularly under Piripi Te Maari, which presumably is more widely representative and that's sort of reflected in the larger groups of people who are included in the 1896 benefits of the tuku rangatira or, you know, in terms of the cash that was paid out.

Q. Yes, although those, the payments out, are so interesting aren't they in terms of what was tika to those who were in charge of the divvy at the time because it is not straightforward the way in which the money was given, I mean, to three visitors present throughout the lake's proceedings is sort of, well, just fascinating really.

A. Yes, I mean they might be people given particular support.

Q. Yes.

1120

A. And I think well in reference to the waiata this morning, this is also referencing – including Te Whiti's people so, clearly offering support there still, something that –

Q. And what did Henare Parata do with £9 and 12s –

- A. Well, he got married into the quite senior lines in Ngāti Kahungunu and was living, he's acted for the Māori Committee and Māori Council in the early 1900s, so he would have been active—
- Q. But, 10,000 is quite a lot.
- A. Yes, that was more than most owners got.
- Q. Yes.
- A. Yes. So, that was presumably an exchange for the help that he had given because he had, I think political influence as well.
- Q. Right.
- A. In Parliament, with Government.
- Q. Right. I mean, I just find it really fascinating.
- A. Yes.
- Q. You know, how do you get to £9 12s as a reflection of his contribution, it is just so specific.
- A. Well, yes, I guess that everything had to add up.
- Q. Yes, yes.
- A. So, that might have been what was left over after everyone else got an equal share of a certain amount that was —
- Q. Yes. But £526 8s to the 56 owners...
- A. Yes. Well, that works — and I think worked that out, that's actually £9 4s each which was the same amount that the people on the other list got, I think.
- Q. Right.
- A. Yes, so I think there was some limitations because of the people entitled would have had to have got a share because the Court is supervising this process —
- Q. Yes.
- A. — and the Crown's involved in it. So, there are some constraints, they can't just give the money out to anybody. So, all the people on the title, you know, get the lie and share and effect once certain costs are paid for but then you see how widely dispersed the money that they — where there's some flexibility they pay it out much more widely and for different reason.

- Q. So, we have been talking mainly thus far about where – how the interests in Wairarapa Moana were granted by the Court and the difficulties with that. And then in the later period, 1915 and in the 1920s there was the focus on the relative interests and that process did not have the effect of curing the defects in the original list, did it?
- A. No, no. Well, firstly because yes, the original list couldn't be touched.
- Q. No.
- A. It was just a matter of relative interest.
- Q. Well, it could have been touched but there was a deep reluctance to touch it.
- A. Yes, yes. Well, I think – Well, 1915 I guess there was a possibility of doing that but the later hearings, I think legislation was reasonably specific about what the Court could do.
- Q. Okay, yes.
- A. So, I don't think it had much opportunity to do more than to go into relative interests but even the question of you know, the people on the list, if they didn't have rights, well the Court wasn't going to get into that either.
- Q. No.
- A. They still had to get a share even if it was a small one. There wasn't – you know, you can't be just removed because now these become codified legal rights, they are not like customary rights which seem to be pretty easy to dispose of and vanish.
- Q. So, in paragraph 98 where Te Whatahoro is talking about this, we see that the Court was impatient with the owners' endeavours to resolve amongst themselves what the appropriate relative shares were and insisted instead that it knew everything it needed to know and went on and made decisions about relative interests which Whatahoro politely described as a grievance with the Judge of that Court, that the owners had.

So, we are looking really at layers of error here, aren't we, with the original list and then with the attribution of relative interests none of which appears to have been conducted in the way in which the people who owned the interests would have wanted it to go. I mean, even to the – I mean,

clearly, they did not want the interests defined at all but if they were to be defined they were not being defined in ways that felt fair to them.

A. Yes. Well, I think the problem with the 1915 Court in particular was that it made the wrong assumption that some list that it had that had one share next to most names, and one third of the share divided amongst some owners, which were later presumed to be the aroha interests or people who, given rights that didn't customarily sort of have them . the Judge misinterpreted that as an allocation of relative interest when it was just something that someone had written on a list, was never passed by the Court or investigated. So, that might be why the reason why the Court said, "Well, I got everything I need here, like, don't need to hear from you.

Q. Right.

A. And you know, I'm busy.

Q. Yes.

A. So, it just pushed it through and clearly you know, I wasn't happy about that, but he might've been shown this list and several, oh, well, we're stuck with that and been unable to contest it and the Court wasn't in the mood by the sounds of it to brook opposition. But I mean well at least with the 1921 inquiry, the Judge established that was wrong and there was no definition. So, managed to start with a blank slate, but even then, I think as you can see at paragraph 100, I mentioned earlier that Taiāwhio Te Tau tried to point out that there were people not on the list, but then was reluctant to bring up that issue, and well, even if he tried, he probably couldn't because the Court didn't have authority to do that.

Q. But then he said that he did not want to reopen it because it was done by the old people, which is, believe is only partial truth.

A. Yes.

Q. Because the old people were not really on board with it either.

A. No, but I suppose people had the tuku rangatira and the title in mind, perhaps weren't aware of the details of what had happened in 1882, and 1883.

Q. Yes.

A. And well, particularly him I think, well he would've been, I think dominantly Ngāi Tumapuhia. I'm not sure that he would've had any role at that time,

so it's taken I think – I suppose taken as read that this was done by their ancestors, but because it's an established fact, would actually go back and look what happened. That's not how it played out.

Q. So, again in 1924, the Court is wanting to restrict the scope of the inquiry because it would be too hard, and it did not have time to go back through it all carefully. So, this is really the opportunity for there to be a proper investigation of the title and the Court just wasn't prepared to do that, was it?

A. No-no, I think it feared, yes, once you opened it up, who knows who'll come out of the wood work, which I guess you could take to mean there's probably a lot of people who would have.

Q. Yes.

A. Had to be an opportunity.

Q. So, anyway, by this time if you were not going to reopen the original list, it really is all down to relative interest and the equitability of the share of those who had already been identified, so it is just an apportionment of interest among a list of people only some of whom should have been there and lots of people who are not there.

A. Yes, yes. Yes, I mean it's shuffling the cards the Court had I suppose.

Q. Yes.

A. Rather than bothering to look at a way – another deck that should've been included.

Q. So, when, in 107, talking about the only outstanding issue being relativity between real owners and those admitted through aroha, that was the issue that they felt was the issue that could be resolved at the time, but that was not – that was not the real issue, was it?

A. Well, I suppose it was an issue but yes, as you say, there wasn't any other issue that could be resolved by the relative interest process except that, like how can we now – these people that we don't think should really be entitled to a full share, how can –

Q. We are not really whether anyone was admitted through aroha, in fact, are we?

A. Yes, it's not quite clear who they're talking about. I think it's a reference to I think because of who was involved in the case. I think it's a reference to those they described as Hāmua.

Q. Yes.

1130

A. Somebody thought they must've been let in through aroha rather than actually fighting their way in through the Court. But I suppose another aspect of that is that they might have earned the right to have some interest there through, well, the term aroha is used but possibly it had something to do with the early 19<sup>th</sup> Century or 1820s, 1830s fighting in which some of those people would have come down to assist the lower valley Kahungunu –

Q. Okay, right.

A. – drive out Te Atiawa and those other people who came over briefly and tried to take the land.

Q. Okay, so a recognition of that, right.

A. That's another possibility, yes.

Q. Okay.

A. But they again would still be the same group from upper valley –

Q. Yes.

A. But that didn't mean they didn't have rights. I mean, you know, I think we had the example earlier of Ngāi Tahu coming in through a marriage gift and an association that was after 1840, early 1840s. So, yes it could be those sorts of rights that were established by this group that people saw as being admitted through aroha but, yes because the minutes are sort of so sketchy about who it is –

Q. Why people were in there.

A. – it's a little hard to be sure.

Q. Yes. Well, I am going to turn to Dame Margaret now to see whether –  
No, no.

**DR RUAKERE HOND:**

Ka pai.

**(11:31) DR RUAKERE HOND TO BRUCE STIRLING:**

- Q. Kei au ētahi pātai. Ngā mihi rā ki a koe te rangahau. I acknowledge the significance of this work and it has answered certainly some of the questions we had earlier on even though there are many questions that continue, that remain.
- A. Yes.
- Q. In 1881 with the census, the 700 people that identified as Kahungunu, what was the region of Wairarapa that is identified within the census, is it the lower – is it all of Wairarapa? When you say 700 Kahungunu people living in Wairarapa in 1881, what was the area?
- A. Well, the area covered total was actually 1067 but that included –
- Q. Māoris?
- A. Yes, yes. That included southern Hawke's Bay, I think I noted it in footnote 12 – yes, southern Hawke's Bay and northern parts of Tararua and there's also visitors from other iwi who were living there at the time of the census. So, I took all those out and come up with about 700 and this is the 1878 census which uses different areas but comes up with a similar number and that didn't include the southern Hawke's Bay, northern Tararua area. And that was a similar 700 sort of a figure.
- Q. Kei te pai. So, not all of those would have been around the moana –
- A. No, certainly not. Well, probably relatively few of them because there wasn't so much Māori land, there weren't many papa kāinga there to live on. So, I think the '74, '78 and '81 censuses list are the hapū and the kāinga that they lived in so that information is set out in the inquiry research that I did.
- Q. Kei te pai.
- A. But it's very patchy and widely inaccurate. Sort of inconsistent between censuses, the hapū names change and then sometimes the name of the kāinga is given as the hapū, you know, so some of them just don't even make sense. So, it's a little difficult to drill down beyond the total of about seven hundred once you start looking at hapū numbers, it gets a bit random, and even the papakāinga, some of them you can't identify, but it's obviously been submitted in handwriting and then it's type set for HHR and then somebody mangles the spelling. There's a whole lot of issues

like that. So, I kept it at the broad brush provincial sort of total in the region.

Q. Okay. So, there's a lot of evidence around the people who submitted their names and are part of the lists. Is there any evidence of those opposed, who refused to be a part of the process? So, the ones who were forced into the process because it was – because of the Crown's decision to take it to the Court. Of those who opposed that didn't – yes, I suppose what I'm asking, is there much evidence about those who stayed away from the process who could have been a part that weren't on the lists?

A. No, well that's the sort of thing that doesn't survive in the records. Well, having said that, yes, didn't go back through the Māori newspapers, Te Reo Māori press. Might have correspondence or reports on some of this stuff. So that's something I wouldn't have been able to access anyway with my inability with te reo. So that's – could be something in there, correspondence complaints, reports, but it's not a great period for Māori newspapers that era, Te Wānanga was kind of closed down and some of the others are quite church oriented or specific to other regions, and then the *Wairarapa Press* kicked off again in the 1890s with Kotahitanga and becomes much more active, but there's this hole, which is right where we are, where there's not a lot to go on. So, I rather doubt you get much out of those sources.

1135

Q. So, there's no correspondence as such that says, "We need to a part –

A. Well no, there's not a lot because I can't read them, so, and I haven't checked those sorts of - that's one thing that might be worth doing but as I say, that there's not a lot to look at in that period.

Q. **(inaudible 11:35:21)**

A. Jubilee, might've been one of the few that was still published at the time, but the other thing is, there were a lot of people opposed to it, but once they were forced in and it was either participate or miss out, well they chose to participate. So, it would've been quite hard to stay staunch and just watch, watch your rights disappear, so I guess everyone in the end probably did join in. it's not evidence from later protests anyway that people had tried to boycott it or withheld their names because they

opposed it. I think that opposition favoured when there was no alternative, unless there were people who were absent or follow a particular leader, prophet somewhere else, and staying strong to that vision, but yes, I don't think there would've been very many.

Q. Ka pai.

A. Yes.

Q. Was there much of an activity by the Tribal Committee and the Incorporated Committee of owners after 1883? What was their main activity beyond that?

A. I think that's covered in the existing evidence. There's quite a lot in – well, in the Tribunal's Report and in some of the evidence I put in about what the committee was up to. The different committees that were in existence, because after 1883, they tried to setup an official district native committee, elected formally under the Governance Act, that proved and protect the lakes. So, I think Piripi Te Maari is particularly active in that one and we'll leave that fight for a while. So, I think that's referred to as, you know, one of the committee.

Q. Active right up until 1895?

A. Well yes, yes, until well he died I think in 1895, but the committee obviously was still there, it was referred to in 1896 as being active in working out the tuku rangatira. So, you've got the Tribal Committee and the Owners' Committee is two slightly different entities, which I sort of you know, which I thought was significant in terms of a Tribal Committee having a broader mandate than just the owners, and perhaps representing a wider group, and then that again is reflected in how the 1896 payment is distributed.

So that sort of gives you a hint of what might have been done in terms of broad range and different layers of interests if the customary owners of hapū and iwi had the option to enter into a process like that based more on custom even though they're just actually divvying up money, but you can see in the way they do it they're applying a form of tikanga and that might've been a form they could've used to allocate interests in the lake. You know, under some sort of owner control rather than under, you know,

a list of owners set by the Court, which is, you know, a quite different beast.

Q. With the pencil notes going “āe” and “kāo” next to the list of names in 1921, is that likely to be somewhat an official within the Court or is that – have you any ideas about who would’ve put those marks next to the names?

A. No, they’re private manuscripts, so yes, I guess with the –

Q. Okay, so some – and you mentioned -

A. Someone involved in one of the committee or one of the groups, you know, trying to wrangle things outside the Court and arrange things before they go in or during an adjournment. So, sort of papers that are generated and which occasionally are preserved, sometimes held by whānau, but these ones ended up at Turnbull and were dug out as part of the settlement negotiations in relation to the lake and the relative interests in it, yes.

Q. Okay, and the last one is really around when you’re talking about the minutes are barely legible. Is that because of the copies you’re working off or is the handwriting or –

A. No, it’s the handwriting. I mean, the copies and the documents are about as good as they’re going to get.

Q. Okay.

A. And they’re pretty bad. I had a stab at transcribing the bits that I could read, so I kind of quoted what I thought were the important parts and summarised other parts in the affidavit, but I did try and transcribe it initially, quite a bit of it. So, you can get the broad thrust, but there are still some words that are just defying comprehension.

Q. So generally, you’re confident with your interpretation of those?

A. Yes, at a general level, yes, yes, when they – you can sort of see when they’re talking about the original tuku with Rangitāne and some of the historical background and then they move on to other topics. So, you can sort of figure out the language and the words that are being used, but every now and again it just defies understanding. So, there’s definitely a few gaps in there, but I think you can see from the overall framework that it’s pretty limited as to what they could do and say and change with the

titles. So, I don't think there's anything crucial that's been missed through eligibility.

Q. Ka pai. I just noted, also asking about the £116 to Tamahau Mahupuku. Is that mainly because of – sorry, I have forgotten the paragraph number – the amount that was allocated in your paragraph 59.

A. Yes, yes.

Q. Is that mainly because of his role in organising the hui to have these discussions or a particular – what exactly –

A. Yes, it's probably more recent, yes.

Q. The costs of running the hui...

A. Yes, hosting a lot of people including officials and Seddon and Carol, so it was quite an important deal, and I suppose running the Court, someone had to look after that. I guess he would've stepped up, taken over as it were after Piripi Te Maari died, so that probably just reflects you know, the period since Piripi died I would think. Because the other costs –

Q. So, this is based in Papawai?

A. Yes, the other costs you can see are much bigger; £600, that was going back to the 1880s presumably. Yes, sorry.

Q. And so, this is in Papawai because it's in Greytown?

A. Yes, yes.

Q. Okay.

A. Yes, yes, took place at Papawai, except for the after-match at Tipapakuku, where they had the hākari and foot races and other entertainment, yes.

Q. Okay. Waiho ki reira pea. Ngā mihi ki a koe.

A. Āe, kia ora.

**JUDGE WAINWRIGHT:**

All right. According to our schedule here, we now turn to you, Mr Mahuika. He tohu tērā.

**MATANUKU MAHUIKA:**

(mic off 11:43:26). Well, ka waiho mā Heemi e pātai i ngā pātai. Ka pai. I knew I wasn't going to get out of it that easily. Thank you, Ma'am, Members of the Tribunal.

**(11:43) MATANUKU MAHUIKA TO BRUCE STIRLING:**

Q. Thank you, Mr Stirling, for your evidence. Just if I could start off may with, in relation to the original Tribunal Inquiries, the Wairarapa ki Tararua Inquiries, I know you were involved in those inquiries?

A. Yes.

Q. And my understanding is that you were commissioned to provide – actually, you provided quite a comprehensive amount of evidence in relation to aspects of Wairarapa Moana but not specifically in relation to the Native Land Court processes. Is that fair?

A. I didn't – no, I didn't end up doing much on Wairarapa Moana at all I think, except in relation to the activities of the Komiti.

Q. Yes.

A. Because I was writing a lot about Komiti's in the district.

Q. Yes.

A. So that was a particularly prominent one. But because several other people had done research on the lake, I kind of – well, I started out doing work on it, but because other people were commissioned after I started a very long process of producing that work.

Q. Yes.

1145

A. Took about six years. Started off being work for Ngāi Tūmapūhia in fact when I first met them in 1994. So, yes, and then it gradually got taken over and turned into this *Crown Forestry Rental Trust Commission District Overview Report*.

Q. Yes.

A. So yes, I didn't do too much on the lake in the end but did look a bit at the committee.

Q. Okay, and so the reports that are on the record would be like the likes of the *McCracken* and the *Crockett Reports*, they look more specifically at issues concerning the lake, is that correct?

- A. Yes, yes, that's right.
- Q. And to what extent, and you'll have to forgive me because I wasn't involved in that inquiry itself, but to what extent did they go into issues concerning the grant of title in respect of the lake?
- A. Well very little, well almost surprisingly little, but as I explained earlier, I guess their focus was really on Crown actions in relation to the lake, you know, 1876 Deed and what came later, control of the lake. So, they didn't really examine the minutes in much detail at all I think, it was a page or two in each report that deals with the title investigation and doesn't really examine the minutes very close.
- Q. And was there any specific claim that you're aware of relating to the award of title? So, I mean, there are – let me explain the question a bit better than I asked it the first time there. So, there are a variety of aspects. There is the fact that it goes through to the Court, the fact that it's individualised as a consequence of the award of title, but the specific issue we're looking at is the individuals who found their name onto that title. So, was that something that was specifically the subject of the claim before the Tribunal?
- A. Well not that I'm aware, but I wasn't sort of in the practice back then of trawling through statements of claim. I was sort of given a brief, fairly wide ranging, to look at a historical period in Crown interaction between iwi and the Crown and identify some issues. So yes, I wasn't particularly driven by the statements of claim. So, there may be one, but I couldn't tell. I know there are statements obviously from the incorporation, Wai 85, and there's others that refer to Wairarapa Moana, but I wasn't really focussed on them at the time.
- Q. I suppose that's part of the challenge isn't it. I mean what we are effectively doing is we are examining the decisions that were made in 1883 and possibly in the period shortly before that based entirely upon the record that we've been able to construct from some statements and from the Court's own minutes. That's essentially the exercise we're forced to undertake in this situation, isn't it?
- A. I don't know about forced, but it's yes, it's what I've done, yes.

- Q. Forced may be a bad use – but if we're to consider whether or not the award of that title was correct or incorrect, we're necessarily left with just those sources because everybody is dead – well, everybody is dead. So, we can't ask anybody that was there, we can just rely on whatever the written record says.
- A. Well yes, that's what I do, yes.
- Q. Yes.
- A. Rely on written records.
- Q. But the challenge of course with that is that the record itself is not complete.
- A. No.
- Q. You admit that yourself, in fact a lot of times you're having to draw inferences or make assumptions based upon how you've interpreted a particular written record?
- A. Well it's usually, you know, a combination of records or a variety of sources, but yes, you are limited by what you can locate and identify, but I thought the range of sources was a little richer than – was evidence from the existing research and I've tried to make as much use as I could of everything that was accessible to me.
- Q. Yes, but I mean, there must necessarily be a level of conjecture, subjectivity even, even amongst those participants because it depends on who recorded something, what they said, and if you're to go through that exercise you do have to be cautious about how much weight you attribute to those different written sources.
- A. Yes.
- Q. So, if you – if I take you to paragraph 7 of your evidence, and I'm just using this as a reference point. So, you discuss the comment by, I think you say there one rangatira said at the time that there were 500 Wairarapa Māori owners but later on it turns out that that was – I will just find his name – Te Manihera -
- A. Yes.
- Q. – Rangitakaiwaho. So, he makes the comment or he's the one who's responsible for the comment there, isn't he?
- A. Yes.

- Q. That there were 500 Wairarapa Māori owners of the lakes.
- A. Yes.
- Q. And what do we know about Manihera and what was his role in all of this? Do we have an understanding of what his interest was, who he was representing, what he was doing in the context of this inquiry?
- A. Well he's quite an important leader familiar to the Tribunal from the inquiry, the earlier inquiry. I suppose one – yes, well, an interesting aspect here is that Hoani Toru who I was struggling to identify earlier, apparently is better known as Hoani Rangitakaiwaho, so he's Te Manihera's brother, so he's one of the ones who signed the 1876 deed and then presented the claim when the Crown brought its claim to Court in 1882. But there's no evidence that Te Manihera was also involved in that, but obviously his brother was. But yes, he's a fairly influential rangatira so I thought that was a reasonably authoritative statement to rely on.
- Q. All right.
- A. And it matches up really with other evidence.
- Q. Does anybody else make that claim? Does anybody corroborate his claim that there were 500 owners to the lake?
- A. No, no.
- Q. And the thing that I, and you might have to help me here because I couldn't work it out based on the maths, but if you look at the number of individuals that were listed as potential owners in the hearing of 1883 with all of those different participants in the room, I mean, were there 500 people identified even in that process?
- A. Well yes, but that process wasn't tasked with identifying 500 or all of the owners, it was just dealing with the claims that came before it and the lists that emerged from that process and the claims that the Court approved of. So, it's not a sort of process where people are going to come up with a number and say, "Well, there's this many out there," because the Court at the time was actually obliged to list every single owner, that's what the 1873 Act required, unless there was an agreement to just put in a certain number of named owners and everyone agreed to that, and there's no evidence that that process was gone through here. So, I mean, the Court

was charged with identifying every single owner, but it's pretty obvious that it couldn't have done that given the limited nature of the inquiry.

- Q. And was Manihera involved in that process?
- A. Well he was present in Court and gave evidence.
- Q. So, if he had a view that there were 500 owners, why didn't he insist on there being a greater number of people identified in the ownership list?
- A. Well that's where you run up against the lack of sources to explain because that's from the Court minutes, the Court's not going to record what people were thinking unless they speak it out loud as evidence, so yes.
- Q. Well I mean it just struck me as curious that he would say that there were 500 owners in the lake, but then when he is given the opportunity to speak on behalf of those 500 owners he doesn't do that.
- A. No, well I think you have to look at that in the context of the Court process in that particular title investigation and there's pretty limited opportunity to present that sort of evidence when it becomes a sort of a horse trading appearing list of owners under three or four groups of competing claimants. The idea of getting everybody included is going to drop off that list of things pretty fast.
- Q. Do we know how many owners he suggested or how many people he contributed to the list?
- A. No, well none of that kind of process is recorded in the minutes, it's mostly I think arranged out of Court. Although, normally challenges to the list would be recorded in the minutes. I mean, there was a reference to 50 of the so-called Rangitāne list being challenged. Well it started at 65, but there's no actual record of that process of challenging those names.
- Q. Yes.
- A. So, I think it's more a matter of, you know, it's horse trading outside the Court during brief adjournments or even within the Court but without the Court recording it in any detail. So, there's a limited amount of information.

1155

- Q. Yes.

- A. Now, which is why I've tried to be reasonable and careful to go through all of it.
- Q. Yes.
- A. Or what there is.
- Q. So, if we then go to the list of hapū, and this was someone who is not from the Wairarapa, I found equally challenging to try and work out, okay, what is this list? And I think I listed the paragraphs where a list of hapū are referred to and I think was 7, 12, 41, 44, 48, 50 – 51, and then 90 is sort of the last reference, and there's a lot of discussion about who are the appropriate hapū involved in respect of the lake. And that the last reference in paragraph 90, is the list that was cited by Hoani Tunuiarangi where he refers to those six hapū and their kin as having been the ones that in his view were like the final hapū that were included, but that doesn't appear to match the list that were used by some of the earlier rangatira in relation to this particular issue. So, others – is it possible to be definitive about the list of hapū in the context of the record that you are looking at?
- A. Well, I don't know about definitive, but I think it's possible if you build up a list, each of these lists and put them alongside each other, you soon start to see a certain commonality and key ones emerging.
- Q. Yes.
- A. And others that are essentially related to or part of other major hapū.
- Q. Yes.
- A. I think that sort of becomes clear from the 1896 list that Whatahoro gives out where he referred to several hapū sharing a particular part, and some other hapū having the same rangatira as the ones I just mentioned, so, they're obviously rangatira of several hapū who must therefore, you know, be quite closely related. So, that's where you get a lot of these names that are not that familiar in that full list of all the ones that I found mentioned in the resources, the 20, but they do boil down to a kind of a core group. And I think the others that aren't mentioned as often are likely to be quite closely related. You can kind of infer that in the sources and certainly I think that trust we talk more about that settlement trust in terms of how those groups fit together in terms of ancestry and whakapapa.

- Q. Yes. So, that's part of the background to this, isn't it, or part of the context within which it occurs, although there might be quite a number of hapū that are referred to. It could for example be let's call them sub-hapū for want of a better description, so some that are essentially derivatives from other hapū, is that fair?
- A. Yes, it's tricky to find a way to express it, but yes, I think it's obviously closely related hapū.
- Q. Yes.
- A. And names sort of vanish from the record that were obviously used at the time, and don't appear very often ever again. It's not to say they have vanished but people –
- Q. They're just not current.
- A. – not identified with them.
- Q. Yes.
- A. Yes, and they're no longer current or their lands are gone. There's nothing to connect them to, so they affiliate somebody else that they also descend from. So, particular names start to dominate.
- Q. Yes.
- A. Yes.
- Q. Or over time people simply emphasise certain of the maybe the larger hapū and those smaller units don't get referred to in the same way, that's another way that can happen.
- A. Yes, yes, yes. I think you can – well, a few censuses where they do breakdown at hapū level. You can find quite a few of these hapū in there that you don't find. So, they were in use at the time.
- Q. And I suppose where that gets me to, is that we can assume can't we, that the people that were having these discussions in 1883 knew who the hapū were that were associated with the lake. Surely, we are talking about the rangatira of that time.
- A. Yes, yes, I think they're very similar to the people who were speaking and agreeing on the hapū and the locations in 1896, and a lot of the same people are still active with the exception of Piripi Te Maari and a few others. So, yes, they were certainly those who claimed interests and

knew the land, knew the whakapapa, and yes, knew who they didn't want in and who they did.

1200

Q. So, where that gets us to, doesn't it, is that despite any – or despite our confusion of confusion, attribute this to then, but despite our confusion, they knew who they were talking about, didn't they?

A. Yes, yes, I'm not quite sure if that's the key point though, I mean they sort of – they know who they are and where they belong, but that's not to say they're going to agree with what other people say they are, and where they belong.

Q. Yes.

A. So, that's the problem with the Court, that there's no way to get a proper agreement about that in a customary way in that environment, in that squeezed timeframe under the sort of pressure they were under, dealing with a Judge who was under his own pressures to get an outcome that was actually sought by the Crown, not by those rangatira. So, yes, they had the knowledge, but they are forced into a process that undercuts their knowledge and their authority and does not, given the credit it should've been given. I think you could see where they operate in a more flexible environment where they can more freely talk about some of these things like, as with Mackay in 1891 or in 1896, the way they shared things out, but that's a better reflection of how things were, than the fragmentary sort of work which you get in 1883, and 1882 from the minutes.

Q. But nevertheless, I think we can assume, can't we, that in making whatever decisions that they made in front of the Court, they must have been mindful of the hapū context and their connections to the lake. So, perhaps they were advocating for their own particular interests within that grouping of hapū, but they're not going to advocate for a position, which is divorced from those connections and those understandings, are they?

A. Well, up to a point, but the problem is, they are not making those decisions. The Court makes the final decision. So, they can object to somebody, but if that person satisfies the Court's test, well they come, and then you end up with a situation of basically horse trading over lists and who comes in and who goes out and it's compromise and negotiation

with – but not within a tikanga context, within the Court’s context. So yes, I take your point that they know what they’re doing, and they know their rights and their history, but that’s not actually what’s driving the Court process.

Q. No. So, I accept that the Court is the final arbiter in this situation. The position’s been taken by the rangatira nevertheless, are being taken from a position where they understand their interest, they know who they represent and they’re representing them in that horse trade that occurs.

A. Yes, well yes, certainly within the limitations of that process.

Q. Yes. And so, then if we look at the Court process itself, you describe it in a couple of places as being controversial and there’s a reference made to Parāone and he basically insists on his claim staying in there as I understand it, and as a consequence of that the Court is able to sit and make the title determinations in 1883, is that accurate? So, if Parāone doesn’t participate and withdraws with everybody else, then there’s no hearing in relation to Wairarapa Moana?

A. Well yes, it’s not entirely clear, but because the press coverage refers to Hamuera Mahupuku also having some influence on that process which is a little hard to understand, but yes, Parāone Pāhoru I think, well he’s one of the, I should have pointed out before, one of the 1876 Deed signatories. So, I guess he had an interest in ensuring that his rights stood and that the claim was pushed through, and that’s the problem with the Court process, there isn’t any way to prevent that kind of thing, dragging everyone else in.

Q. Yes, and look, that was a very common experience around the country, wasn’t it? You get one claimant in then you get the whole block in basically.

A. Yes.

Q. Yes.

A. And what’s the worst thing about this is that it wasn’t even the owners who brought the case initially.

Q. Yes.

A. It was the Crown that forced them in when they didn’t want to go.

- Q. Yes. So, the situation was that actually the majority of those who had claims in respect of the lake were resistant to the idea of having those claims determined by the Court, weren't they?
- A. Yes, yes.
- Q. And so, when you look at the controversy it created, it appears to me that a lot of the controversy was around the fact that there was a hearing at all because the owners didn't want there to be a hearing. They were trying to protect their interest in the lake.
- A. Yes, yes, I agree with that.
- Q. Yes. So when you're looking at the controversy, it's not necessarily about the list itself, in fact, that's an incident of what's occurred, but it is about the fact that, my reading of it is that they understood once it got into the Court then there was a risk that the lake would be alienated, so they were resisting the Court making any determination in respect of it. Is that, well, you know –
- A. Yes, well – yes, yes.
- Q. But that was what I assumed was behind the resistance to having the determination.
- A. Yes, well that reflects, yes, their participation in the earlier repudiation movement and also in the Komiti movement at this time.
- Q. Yes.
- A. So, I was very much opposed to the Court. I mean, Kahungunu were being, you know, trying to boycott and stop the Court since – well shortly after they were introduced to it you know, as early as 1870 I think from memory, yes. Yes, with very little success obviously because, as you say, you can always find someone to drag in.
- Q. And then what interests me is that the land then goes through a number of formal processes. So, there's the Royal Commission in 1891, there is the hearing in 1915 that follows the 2014 legislation, and then of course there's the re-hearing of the relative interest in 1924. So, there are these various formal processes that occur following the original title determinations in 1883. Have I left any out?
- A. No, I don't think so, no.

- Q. So, it goes through a number of these different processes, and what is interesting to me is that although there is some discussion in relation to who should be there or whether their relative interests were appropriate, there isn't a lot that appears in the record which simply says, "This is wrong, we should revisit the list of owners."
- A. Well, I think that ship had sailed. I mean, see, any attempt to bring up any challenge to the existing list is swatted aside by the Court or mistakenly withdrawn as Taiawhio Te Tau's point was and when he said, "Well, there are other people, but we won't go there," sort of thing, thinking this original list had been decided by his ancestors, his tīpuna, rather than if you look at the minutes you can see it's, you know, the Court had a bigger hand to play than he probably imagined. But I think, yes, the step you missed out was 1896 and the gifting.
- Q. Yes, sorry, the gifting.
- A. And I mean that's perhaps not quite such a formal process, it's more of a political act, but I think the records around that were also pretty interesting in terms of revealing why there are interests and people that had been left of the list and attempts to compensate them. I think Piripi Te Maari's list referred to 33 so called children who hadn't got on the title as some of the other children had. So, they were given a share of money, but they didn't get on the title, and there wasn't any scope to introduce them back into it at any point because the legislation around those relative interest processes, they didn't allow that. So, I take your point that it's not a focus of protest because for one, the process didn't allow that; and two, well they had a lot of other things they were dealing with, they were trying to sort out the Pouākani land. I mean, that took decades and a lot of mucking around trying to decide who will go there, if they would take it or not, and that's really the focus rather than the ownership list from 1883, which is kind of set in stone by then anyway. So, it's not something that's justiciable, if you like, justiciable in the Court.
- Q. But that's the interesting thing about it though, isn't it, that what we do know is that Wairarapa Māori were quite happy to protest and to bring petitions and to take steps if they were unhappy with what had happened,

because there is evidence of that consistently happening during the latter part of the 19<sup>th</sup> Century, nearly 20<sup>th</sup> Century, isn't there?

- A. Yes, well, I mean that's a particular feature of the history of the lakes as well, but there's always these other issues to deal with. It was control of the lake rather than ownership that was initially more important, to the extent that, you know, it ended up being gifted in order to salvage something from the outcome. So, there's a heap of protests about it, but they focussed on slightly different issues because those are the issues dominating the period.

1210

So first it's the lake and control of it and then it's getting the land at Pouākani and trying to resolve that or get the reserves they were promised before deciding to take the Pouākani land instead. So yes, there's not a lot of space in there to sort of stick in a protest about something. Well, the whole thing's wrong anyway. I think once the gift is made in 1896, it's going to be pretty hard to go back on because that was done really, all those owners signed up to it as well as the komiti of the iwi. Yes.

- Q. But – so I take your point that there were lots of other things to worry about and you say that there wasn't space, but it's another explanation surely that actually it wasn't something that concerned them, you can't eliminate that as a possibility either, can you?
- A. Well yes, it's a possibility, but I think you've got to look at what fragments there are that counter that, like naming people who'd been left out, raising the fact that people had been left out, complaining that some people have been let in two or three generations and others hadn't. So, clearly there's unhappiness with it, but there's very little that could be done, and I think they were doing what they could. I mean, the whole thing about relative interests arose out of petitions and complaints.
- Q. Yes, but when those petitions were made, the petitions were just about relative interests, weren't they? They weren't about whether someone was in or out?

- A. Yes, yes, well I mean they're brought by people who are on the title, so they're not going to, you know, they're not going to vote to let more people in and cause more confusion.
- Q. Because if you look at paragraph 100 and the comment by Taiawhio Te Tau. So, you, I think it's fair to say, speculate that he made that comment because he didn't understand what happened in 1883, but that in itself is speculation, isn't it? That conclusion that he might've said something different if he had known what happened in 1883?
- A. No, I haven't said that there, but yes, that's –
- Q. No, that's what you said in answer to the question.
- A. Yes, yes, that's what I drew from what he said –
- Q. Yes.
- A. – given his age and the fact that he's not – well he wasn't on the original list. But again, even if it did want to open it up, he didn't have the opportunity to, I mean the Court already ruled that out, and it's that he would say, you know, he has no objection, but the old people did, but then he does object to something that presumably they did in terms of including parents, children and grandchildren. So yes, it's a little I mean, you know, I guess that's being – well one, politic; and two, working within the framework that's been set for them.
- Q. Yes, because the other thing is we could just take him at his word.
- A. Yes, you could, but that doesn't really stack up with the other evidence.
- Q. Well I mean – yes, okay. Because what he is saying is he's simply saying, "Well that's what the old people decided, I have no objection." We actually don't know what he knew and what he didn't know about what happened in 1883.
- A. No, but he certainly wasn't there, and the evidence people were there and the evidence from the time doesn't really reflect what he's saying. So, I think that's, you know, that's the kind of the statement that you see quite often from the next generation. It's not necessarily gospel.
- Q. No, no.
- A. I'm not saying it isn't, but the evidence doesn't really seem to support it.
- Q. Yes, I mean, the evidence that you've relied upon certainly –
- A. Yes.

- Q. – you would say doesn't support?
- A. No.
- Q. Nevertheless, that's the view that he expressed –
- A. Yes.
- Q. – when he was given the opportunity to express a view?
- A. Yes, yes, yes. Well his point is of course that there were other names that should've been on the list, but you know, he wasn't going to revisit that, but he still raises the point that there were others.
- Q. Well I think his –
- A. And he's prepared to let that lie, let sleeping dogs lie effectively, but that doesn't mean that sleeping dogs weren't there.
- Q. If I go to paragraph 37 and I just want to try and clarify something with you. So, at paragraph 37, sorry, got the wrong paragraph number. Sorry, 36, okay just as well somebody here knows their paragraph numbers.
- 1215
- So, if we go to paragraph 36, there were some discussion about these different blocks and there's a specific discussion about the Mataikona Block, which is recorded here as being 1800 acres and having 163 owners. And your reference to that is the evidence or the table in the evidence from Paul Goldston?
- A. Yes.
- Q. When I looked at that evidence and I mean you may want to have look at this. I'm not sure if you recall it, but when you look at the Mataikona Block, it's actually recorded as three blocks.
- A. Yes, it's awarded in three titles.
- Q. Yes, so, Mataikona middle, Mataikona North No. 1, Mataikona South No. 3.
- A. Yes, yes.
- Q. And in order to get the 163 owners, you have to add up the owners and each of those individual lists?
- A. Yes.
- Q. Did you do a comparison of those lists to see if there's any overlap in the ownership between those three blocks?
- A. No.

- Q. And if I then go to paragraphs 59 – 65, and this is the one that deals with how the money divvyed out, and what I noticed in this is that, so the various people that obviously looked like they have provided services of some sort at different stages, if you look at the list in '59, the list in '61 and then the list again in '65, that's correct, isn't it?
- A. Among other things, yes, yes.
- Q. But if you look at the total amounts of – that are being distributed excluding the items that are for the reimbursement of costs, most, if not, it's probably not quite all, but the vast majority of the sums are paid out to people based on the 1883 Title Award, aren't they?
- A. Well, most of them, certainly.
- Q. Yes.
- A. But not numerically, yes. It's quite a stark contrast, but I think as I say, that this is a process going through the Court.

**JUDGE WAINWRIGHT:**

So, what is the contrast you are talking about?

**BRUCE STIRLING:**

Oh, the numbers of people involved in the distribution of smaller sums, sort of like 178 people sharing £50 whereas, smaller group of people on the title share a considerably larger sum.

**MATANUKU MAHUIKA TO BRUCE STIRLING: (CONTINUES)**

- Q. That could be a reflection of their relative interests of their views about their relative interests too, couldn't it?
- A. To some extent, yes, I mean obviously a lot of people are you know, whanaunga, guests. I mean some, yes, actually Ngāi Tahu as in Te Waipounamu, not Ngāi Tahu but the Wairarapa Hapū, but then you know, there's quite interesting things like a large number of people omitted from the title, but they're only getting a small payment. They're getting like less than a third of what the children who were in the title received, even though they presume we have the same right. And I think that's driven partly by the Court and the Crown, because this money is

being paid essentially for the lakes, so, the lion share of it needs to go to the owners, otherwise, it's easily contested. And in all, they had to be paid out, the vouchers were signed off by the Crown, there's voucher numbers given, and the source and it goes through the Court. So, there's a reasonable amount of flexibility for certain things, but I think there's still the factors the bulk of the money had to go to the people on the title because that's the Court and Crown's view of who's entitled.

Q. Does this – just to help me, does the Court specifically give it direction or something that's referred to there?

A. No, it's done in Court and the vouchers are all paid and signed off by the Government. The documents have either voucher numbers or they refer to the voucher that was used for each payment. So, it's very much still a Crown process, if you like, even though they're trying to do as much as they can within quite narrow parameters to share that around and each group has taken a different approach, each group of owners.

Q. Well, I mean –

A. And now you can see that the numbers don't add up to 139, so, some owners don't get anything, obviously.

Q. Well, I mean, what's evident for example, is that some don't try and do on the face of it, much that's different at all. If you look at 59, there's the payment to Tamahau Mahupuku and there is the reimbursement of legal costs and then all of the rest of it is paid out to those that appear on the title. And similarly, if you look at paragraph 61, all of that that is paid out to the title except to T. Pūrākau and A Kumeroa for expenses. They are simply paying the funds there to those that are on the title, aren't they?

A. The bulk of them but then you look at 178 people sharing £50 who aren't on the title. And the other thing about that, I mean it's over a third of the money went on expenses, so I mean, it's a fairly significant amount. So, there is only the £1284 to divide up amongst everybody else. And ostensibly that money was to meet the expenses of the process over the years, that's how the Crown explained it, that it was actually – it wasn't a payment for the lakes which had been gifted. But despite that, you know, a lot of the money does go to the people on the title.

- Q. In relation to that, if we just move away from that topic now, one of the documents that you refer to is, I don't know if it's in – I'll ask that again. You make reference to in your footnotes to the *Wairarapa Standard* and I've been able to come across one article which is the 19 November 1883 article with the reference to the risk of violence to Parāone. Was there a series that the *Wairarapa Standard* ran in relation to that or is this the only article that they ran? So, if you look at maybe footnote 14 on page 6.
- A. Yes. Yes, 32 and 34 and 35, yes, and that is all to the same date, yes, it's the same article.
- Q. Okay.
- A. Yes, and that's – yes, it's from my supporting document.
- Q. Yes, yes. I was just wondering given this was obviously quite a topical matter, whether there are other references that you were aware of in relation to, you know, the *Wairarapa Standard* or making – discussing this hearing?
- A. Well, it could be. I mean if it said anything as news worthy as this one they would have been picked up during the research for the inquiry, but yes, it's not to say it's not impossible that there are other sources out there.
- Q. Sorry, I feel I'm supporting cast there, I'm just making sure I haven't forgotten anything. So, Mr Stirling, thank you very much for your evidence, those are my questions.
- A. Kia ora.

**JUDGE WAINWRIGHT:**

I think this is probably a convenient time to take the adjournment Mr Stirling and we will see you back here at 1:30 and probably not for too much longer. Kia ora.

**HEARING ADJOURNS: 12.24**

**HEARING RESUMES: 1.29 PM**

**(13:29) ANDREW IRWIN:**

Your Honour, I have just got a few questions for the witness. I've produced some documents to put to the witness and I think those have been distributed to the Tribunal, so Tribunal members should have a very thin bundle of documents.

Your Honour, there are just two documents. One is the report of 1891, which no doubt Your Honour is familiar with. The witness mentions it throughout his evidence and also just a couple of pages from your own report.

**(13:30) ANDREW IRWIN TO BRUCE STIRLING:**

Q. So, Mr Stirling you have those documents in front of you?

A. Yes, yes.

Q. Thank you, and you're obviously quite familiar with that first document being the report of 1891?

A. Yes, and could I ask perhaps, even Your Honour, I'm unfamiliar with the pronunciation of the commissioner. Is it Commissioner MacKay?

**JUDGE WAINWRIGHT:**

I believe the pronunciation is MacKay.

**ANDREW IRWIN TO BRUCE STIRLING: (CONTINUES)**

Q. Mackay.

A. That's what I've always heard too, a famous family of jurists.

Q. Mr Stirling, if I could ask you to turn to page 10 of *Commissioner Mackay's Report*. I'm going to focus on one paragraph in particular, and that is the paragraph half way down the page beginning to clearly elucidate the matter, just to provide very briefly some context before we get to that paragraph, if you could look at the paragraph that starts, "With reference to the deed of 1876?"

A. Yes.

Q. And there's some discussion there, isn't it – isn't there to reliance being placed on the rights to the lake through the deed of 1876, that would be correct?

A. Yes.

Q. And partway down that paragraph there's the sentence, "That you might be able to see all that has been acquired therefore, is a certain number of fishing rights and some of these are of doubtful value," can you see that?

A. Yes.

Q. the next paragraph goes on to discuss an argument that was put forward concerning Hiko, that would be correct?

A. Yes.

Q. And I guess the argument was that because he and a few other leading men were parties to the sale that the interests of others were also transferred through that 1876 deed, would that be a fair general statement?

A. No, I think he's just pointed the Crown seemed to have assumed the ones who signed the deed were more important than other people and have larger powers or authority.

Q. Yes, that's correct.

A. Yes.

Q. And then just going on to the next paragraph, that paragraph again addresses that issue, the paragraph beginning, "As regards Hiko's rights?"

A. Yes.

Q. And then we come to the paragraph I wanted to focus on, which is the paragraph beginning to clearly elucidate the matter, and because I want to focus on it, I will just read it out, but it's correct, isn't it Mr Stirling that that paragraph says, "To clearly elucidate the matter, it may be here observed that a New Zealand chief did not possess the sole right to the land, not yet to your preserves or other food producing places, which were even more common property, if possible than land, was amongst the hapū or tribe to which such possessions belong. It has been clearly demonstrated by many authorities in the matter that there was a right of property in the soil not residing in the chiefs by in them conjointly with their whole tribe, which they, the chiefs, could not alienate because they were not the sole proprietors thereof, for although they were the

recognised authority for treating for the sale of it, they possessed no more than an individual interest. And unless with the consent of the tribe, could not surrender any portion of those lands held in common by it and this will extend it to all proprietary rights of the tribe in all forms of property. That's correct that's what the paragraph says?

A. Yes.

1335

Q. And would you agree that this is a statement that in custom, interests in property were communally held?

A. That's certainly the point Mackay is making, yes, and not one I would dispute in general.

Q. Or at all?

A. Never say never. There are sometimes – interest come up that are less than entirely communal in particular areas of cultivation or something, occasionally you see evidence of that, but as a general rule that seems a pretty sound principle.

Q. And in terms of Wairarapa Moana?

A. Certainly there, yes.

Q. And so, when you say, "Certainly there, yes," you mean the custom, the rights are held in Wairarapa Moana were communally held?

A. Yes, although I think, as he says there, that authority might be held by a rangatira, but he can only act with regard to those interests with the consent of the tribe.

Q. Now, Mackay was writing here in the year 1891 and the Native Land Court determined title in 1883. Is the statement and the principle that Mackay elucidates in that paragraph, does that apply in the year 1883?

A. Well, it would've applied all the time, in customary terms I mean, but it certainly didn't apply in the Court. That would be the only distinction I'd make there.

Q. And in your evidence, this is your document #J96, could I ask you to turn to paragraph 6 of that evidence? And the first sentence reads, does it not, "The customary owners of Wairarapa Moana comprised numerous hapū, who had held rangatiratanga over the lakes since the arrival of Ngāti Kahungunu in Wairarapa." That's correct?

- A. Yes.
- Q. And the statement that Mackay made in his report that I've drawn your attention to is consistent with the first sentence of your paragraph 6?
- A. Yes, yes, in general.
- Q. Now just in your evidence and on the same page, at paragraph 7, near the bottom of that paragraph you say, "More than 20 hapū are referred to in the records examined in this evidence." That's correct?
- A. Yes.
- Q. And then you set out a list of 22 hapū, that's correct?
- A. Yes.
- Q. And am I correct that you are not saying that this list is exhaustive?
- A. Yes, I probably should have pointed that out, but yes, I've noted they referred to in the records examined for my evidence, so that doesn't necessarily mean they're exhaustive.
- Q. So, there could be others?
- A. Yes, quite possible.
- Q. And in that bundle of documents I provided to you, just near the back of that at page – the bottom, I've paginated the document, page 13?
- A. Yes.
- Q. You will see a page from the Waitangi Tribunal's report?
- A. Yes.
- Q. You can see that? And the page from the report is Volume 2 of the report, page 653, and there's text beginning, "The abundance of tuna made the lake mouth a perfect place to live." You can see that?
- A. Yes.
- Q. And then it says, does it not, "And many hapū had rights in the lakes and wetlands," that's correct?
- A. Yes.
- Q. And then just skipping a sentence, it says, "Hapū of Rangitāne and Ngāti Kahungunu occupying areas around the lakes included," and then there's a list of hapū, that's correct?
- A. Yes.
- Q. And then it stated, "Hapū generally had rights in the area of the lake adjacent to the land they occupied," that's correct?

A. Yes.

1340

Q. And for what it's work, the footnote to that final statement which I have included over the page, footnote 10, takes us back into Mackay's report, doesn't it?

A. Yes, it does.

Q. And in fact, you've cited in your evidence that extract, haven't you, in your evidence, at paragraph 48 of your evidence you've cited an extract that ends with that statement, that's correct?

A. Yes.

**JUDGE WAINWRIGHT:**

What paragraph?

**ANDREW IRWIN:**

So, at paragraph 48 of Mr Stirling's evidence there's a citation, quite a lengthy one, and the end of the – and this is a citation from the report.

**ANDREW IRWIN TO BRUCE STIRLING: (CONTINUES)**

Q. but it's actually in one of the appendices to the report, so I haven't provided that in the bundle of documents, but it concludes with that sentence, "These hapū own the dry land and their rights extended into the lake as well." Just coming back into the Tribunal's report and the list of hapū in the *Tribunal Report*, you can see that?

A. Yes, yes, thank you.

Q. And there are some hapū listed there that are not in your list at your paragraph 7, you'd agree?

A. Yes. At least three I think, yes, or four.

Q. Well if I read the names that I think aren't on your list, let's just clarify. The first one, Ngāi Te Ao Mataura?

A. Yes, that's not in my list.

Q. And the next one, Ngāti Te Aokino?

A. And that's another one, yes.

Q. And Ngāti Pakuahi?

A. Yes.

Q. And then Ngāti Te Whakamana?

A. Yes, that's not on the list, although it is actually mentioned in my evidence so probably should've been on that list, but...

**JUDGE WAINWRIGHT:**

(Mic off 13:42:09) How many that are listed here that are not in (inaudible 13:42:11).

**ANDREW IRWIN:**

Eight.

**JUDGE WAINWRIGHT:**

Eight.

**ANDREW IRWIN:**

I think eight? One-two-three-four-five-six.

**JUDGE WAINWRIGHT:**

Okay.

**ANDREW IRWIN TO BRUCE STIRLING: (CONTINUES)**

Q. Yes, and sorry, the final two are Ngāti Kōmuka –

A. Yes.

Q. – and Ngāti Rangiākau?

A. Yes, yes.

Q. And just finally, Mr Stirling, with those hapū that are not in the Tribunal's report that are not in your list, would you contest those hapū having interests in Wairarapa Moana?

A. Well that's kind of neither confirm nor deny sort of a thing. I'd have to check the sources relied upon which are predominately Kawharu and Poledniok, some Customary Tenure Overview, and Steven Chrisp would be the Rangitāne hapū. Yes, I'd be interested to see where they found the mentioned sources they relied upon and how

they relate to the sources I've used, but I wouldn't deny it, I'm just not going to confirm it either.

Q. Sure.

A. Because I haven't seen where they got that from.

Q. And just finally, you've mentioned in your evidence today that you've been assisting the Settlement Trust in their negotiations. Have you assisted in any way with the names of hapū that are mentioned in the Deed of Mandate for the Ngāti Kahungunu ki Wairarapa Tāmaki Nui ā Rua Trust?

A. No, no, I think that was organised before I came on board, done fairly early in the process.

Q. Thank you, those are my questions.

**JUDGE WAINWRIGHT:**

Ka pai. Tēnā koe Mr Irwin. I think that takes us to the end of other counsels' questions, is that right? Does anybody – ka pai. So, do you have re-examination, Mr Colson?

**MICHAEL COLSON:**

No, I don't, Your Honour.,

**JUDGE WAINWRIGHT:**

All right, Mr Stirling, I think we're done. So, it remains only to thank you for this latest contribution to our understanding of some of the circumstances applying to Wairarapa Māori in this particular period of history.

1345

It does indeed amplify some questions that were in our minds. We are cognisant of the partial nature of the written record, but your familiarity with the circumstances over there, and your expertise means that you are able to make inferences and doing analysis that is very valuable for us, so nei te mihi nui ki a koe.

Kua tae tātou ki te whakamutunga o te nohanga nei o te Taraipiunara nā reira ka huri āu ināiane ki tāku hoa, hoatu ki a ia te rākau.

**MATANUKU MAHUIKA:**

Ma'am just very quickly beforehand, in terms of one thing I said at the start of the day was us making a decision as to whether we would further evidence. I'm hoping to be able to do that within the next 24 – 48 hours just to give you, and indication of about that.

**JUDGE WAINWRIGHT:**

Ka pai, all right.

**MATANUKU MAHUIKA:**

Thank you, Ma'am.

**JUDGE WAINWRIGHT:**

And Mr Colson, I think the position is that you will file your short analysis?

**MICHAEL COLSON:**

Yes, I think that's where we got to Your Honour and I said to my learned friend to be fair, I'd send to him in draft to see if he had any objection to it.

**JUDGE WAINWRIGHT:**

Ka pai.

**MICHAEL COLSON:**

If he does, I'll probably file it anyway, and then we'll have that fight, but as a curtesy to –

**JUDGE WAINWRIGHT:**

I do not think it would be that.

**MICHAEL COLSON:**

As a curtesy to him, I thought I should do that.

**JUDGE WAINWRIGHT:**

Okay.

**UNIDENTIFIED MALE SPEAKER: (13:46:55)**

Very unlikely.

**JUDGE WAINWRIGHT:**

Ngā mihi, kia ora.

**(13:47) RUAKERE HOND: (MIHI)**

E tū, tēnā tātou. Kua eke tēnei anō ngā wā kua ea atu tērā te karawhiu o te pātai me te whakarongo ki te mātanga nei mō tēnei te ruku ki ngā kāpata o ngā kōrero kua roa e huna ana ki ngā Kōti, nō reira e mihi kau ana ki a koe e te mātanga.

Ana kei te hiahia atu āu kia waiho mā tētahi anō o koutou pea e tuku te karakia whakakapi, kei te pai anō, nāku i wāhi, engari anō ka tuku atu te mauri o te karakia ki a kōtōu. Engari anō, i mua anō i te tukuranga o tērā wāhanga, ka mihi anō atu āu ki a koe e te whanaunga ana i runga anō i te ngarohanga atu o tō matua, te matuatanga atu o tērā kōrero taku mihi nei i te ata nei, pā pouri anō tērā te mahuetanga. Engari anō, ana, āpiti anō tērā ki a Koro, ērā anō te ngaronga atu o te tangata, kāre e tawhiti atu te whakaaro ki te rārangi mai o ngā tūpuna i runga o ngā whārangi te roanga o te rangi nei. Ko hoki ora mai i roto i ēnei kōrero.

Nō reira tērā anō tō matua, tērā anō a Koro kua hoki mai i roto i tēnei rangi, me te mōhio tonu mā ēnei kōrero ana ka ora anō ko ngā uri whakatipu kei ngā rā kei mua i te aroaro. Nō reira kua hono atu o muri ki mua, tēnā koutou, tēnā tātou. Ana ki ngā mauri, ki ngā mana kōrero, ki ngā mana whenua, ki ngā ihi, ki ngā wehi, ki ngā tapu i te rangi nei, ana i runga i ngā kōrero i eke ki runga ki te taumata o whakaaro, tēnā koutou, tēnā koutou, tēnā tātou katoa.

**WAIATA (TE TANGI A TE RURU)**

Hoi anō ka tū tonu tātou te tangata, te tangi a te ruru, ana koia anō e rapu tonu nei tātou i te ara tika o te oranga tonu tātou te tangata. Tēnā koutou, tēnā koutou, tēnā tātou katoa.

Tuku atu ko tērā te mauri o te karakia ki tētahi. Ki te kore, ana ko hoki mai ki āu. Te āhua nei e tū mai nei koe **(Mic off 13:51:32 – 13:51:45)** nē? Kei te pai noa iho tērā ki āu. Engari anō, he pai anō kia kōrero ngā taha e rua o te whare, he poto te rā, engari he nui te kōrero. Nō reira he pērā anō te ihi o te karakia nei pea.

### **KARAKIA (RUKERE HOND)**

Tēnā tātou e te manawa ora.

**HEARING CONCLUDES: 1.52 PM**