TUKAU
LAW AND CONSULTANCY

Wai 3300: Tomokia ngā tatau o Matangireia - the Constitutional Kaupapa Inquiry

Appendix A: Relevant findings from Wai 1040 Te Paparahi o Te Raki Stage 1 and 2 reports

Wai 1040 - He Whakaputanga me te Tiriti (Stage 1)	
Extract	**Page/s**
We have already concluded that the verbal assurances formed a crucial part of the agreement. 'The treaty' clearly also included the text which was read to the rangatira and which they signed: te Tiriti.	521-522
We do, however, agree with the approach adopted by the Tribunal in previous reports, which have given special weight to the Māori text in establishing the treaty's meaning and effect. They have done so because the Māori text was the one that was signed and understood by the rangatira – and indeed signed by Hobson himself.	522
The relationship between kāwanatanga and rangatiratanga was not made explicit in either the text of te Tiriti or the debates. However, it is clear that the rangatira did not agree that the Governor should have ultimate authority. Rather, many explicitly sought assurances that they and the Governor would be equals, and appear to have signed te Tiriti only on that basis. As we have said, in practice this would mean that where the Māori and Pākehā populations intermingled, questions of relative authority remained to be negotiated over time on a case-by-case basis. We further consider that the Māori intention was for Crown authority in Māori–Pākehā interactions to be exercised co-operatively and in a way that protected rangatiratanga rather than impinged on it. Such was the chiefs' understanding of the relationship between kāwanatanga and rangatiratanga, forged in translations of the Bible, in he Whakaputanga, and through the assurances of Hobson and his missionary translators.	524
In our view, the meaning and effect came from the Māori text, on the one hand, and the verbal explanations and assurances given by Hobson and the missionaries, on the other; the similarity of the written text and the oral agreement undermines the very notion that the two sides talked past each other. As noted, for example, 'tino rangatiratanga' was likely the way Williams translated Hobson's assurance to the rangatira of 'perfect independence'. Hobson was instructed to place particular emphasis on the dangers the rangatira would face if Britain was not given authority to control its subjects. This received similar emphasis in the Māori text of the treaty and was also stressed verbally by both Hobson and his missionary translators.	526
Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and	526-527

different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Māori. It was up to the British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson's silence on this crucial matter means that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met.	
What does this mean for treaty principles? Given we conclude that Māori did not cede their sovereignty through te Tiriti, what implications arise for the principles of the treaty identified over the years by both this Tribunal and the courts? That is a matter on which counsel will no doubt make submissions in stage 2 of our inquiry, where we will make findings and, if appropriate, recommendations about claims concerning alleged breaches of the treaty's principles. It suffices to reiterate here that, in February 1840, an agreement was made between Māori and the Crown, and we have set out its meaning and effect. It is from that agreement that the treaty principles must inevitably flow.	527
In summary, an agreement was reached at Waitangi, Waimate, and Mangungu in February 1840. That agreement can be found in what signatory rangatira (or at least the great majority of them) were prepared to assent to, based on the proposals that Hobson and his agents made to them by reading te Tiriti and explaining the proposed agreement verbally, and on the assurances the rangatira sought and received. Under that agreement, the rangatira welcomed Hobson and agreed to recognise the Queen's kāwanatanga. They regarded the Governor's presence as a further, significant step in their developing relationship with the Crown. In recognition of the changed circumstances since he Whakaputanga had been signed in 1835, they accepted an increased British authority in New Zealand. The authority that Britain explicitly asked for, and they accepted, allowed the Governor to control settlers and thereby keep the peace and protect Māori interests. It also appears to have made Britain responsible for protecting New Zealand from foreign powers. The rangatira who signed te Tiriti were aware that Britain was a powerful nation. They recognised that they were consenting to the establishment of a significant new authority in their lands, where previously all authority had rested with them on behalf of their hapū. They must also have recognised that, where the Māori and European populations intermingled, questions of relative authority would inevitably have to be negotiated over time on a case-by-case basis – as, of course, was typical for rangatira-to-rangatira relationships. Having sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals, many rangatira were prepared to welcome this new British authority. They did not regard kāwanatanga as undermining their own status or authority. Rather, the treaty was a means of protecting, or even enhancing, their rangatiratanga as contact with Europeans increased. The British viewed the arrangement differently. Britain's intention, plainly set out in Normanby's instructions to Hobson, was that Māori would cede sovereignty to the Crown and so become subject to British law and government. Article 1 of the English text reflected that intention. But it was never conveyed to rangatira. Hobson had been instructed, among other things, to emphasise the protective aspects of the treaty, and that is what he did. Neither he nor his	527-528

agents explained Britain's understanding of what Crown acquisition of sovereignty would mean for Māori. Rather, their emphasis was on the Governor acquiring sufficient authority to control British subjects and to protect Māori and their rangatiratanga. This is the arrangement that was presented to rangatira. It was an arrangement that explicitly guaranteed rangatira their 'tino rangatiratanga', their independence and full chiefly authority, while seeking for the Crown the power of 'kawanatanga', which was essentially explained as the authority to control settlers. This was an arrangement that the rangatira were prepared to accept, and indeed welcome. The treaty's meaning and effect can only be found in what Britain's representatives clearly explained to the rangatira, and the rangatira then assented to. It is not to be found in Britain's unexpressed intention to acquire overarching sovereign power for itself, and for its own purposes. On that, the rangatira did not give full and free consent, because it was not the proposal that Hobson put to them in February 1840. In making the decision to sign, the rangatira placed their trust in the missionaries, and in missionary translations of Hobson's words. Before signing, they had feared that the Governor would be above them, that British soldiers would come, that they would be swamped by settlers, and that they would lose their land. But on the basis of the clear and consistent assurances they received, te Tiriti seemed to offer them peace and prosperity, protection of their lands and other taonga, the return of lands they believed Europeans had wrongly claimed, security from mass immigration and settler aggression, protection from the French, and a guarantee of their ongoing independence and rangatiratanga – all in return for allowing the Governor a limited authority. In the end, the rangatira who signed took a calculated risk. While they knew the British were powerful, they chose to trust that this power would indeed be used to the advantage of both parties. This report completes stage 1 of our inquiry. In stage 2, it remains for us to apply the insights we have gained from this preliminary inquiry, and to report on claims that Crown actions since those original February 1840 signings have been inconsistent with the principles of the treaty. Our stage 2 hearings are well advanced, but the parties will have the benefit of access to this report in filing their closing submissions. Was the agreement that was reached in February 1840 honoured in subsequent interactions between the Crown and Māori within our inquiry district? That, now, becomes the question.	
Though Britain went into the treaty negotiation intending to acquire sovereignty, and therefore the power to make and enforce law over both Māori and Pākehā, it did not explain this to the rangatira. Rather, in the explanations of the texts and in the verbal assurances given by Hobson and his agents, it sought the power to control British subjects and thereby to protect Māori. That is the essence of what the rangatira agreed to.	529
Wai 1040 - Tino Rangatiratanga me te Kāwanatanga (Stage 2)	
The principles are not defined in any way in our governing legislation. It is left for the Tribunal itself to define the principles against which Crown actions will be tested. Each Tribunal panel, as it reports on the claims it is hearing in any given inquiry, decides which principles are appropriate for that inquiry. No Tribunal is bound by the decisions of a previous Tribunal	21

inquiry (or the courts). A Tribunal inquiry panel may develop principles outlined in a previous inquiry, or add new principles.	
Our view, which we explain further in this chapter, is that we must consider if, or how, our understanding of treaty principles may evolve, both in light of our stage 1 report, and through the exploration of various principles in other Tribunal reports as applied to a range of contexts. In Te Raki, it may no longer be appropriate to rely on principles that are based in a cession of sovereignty by rangatira to the Crown. The treaty principles we apply must reflect the expectations and understandings of Te Raki Māori that have arisen from the history of their relationship with the British Crown and from the undertakings given to them at the treaty ceremonies. They must not be preoccupied with the intentions of the British, who in any case, as we have shown in stage 1 of our inquiry, did not reveal their full intentions and expectations to Māori. The principles must be based in the actual agreement entered into in 1840 between Te Raki rangatira and the Crown, rather than in an assumption that sovereignty was ceded by Māori, who would become the Queen's subjects in return for the protection 'of their chieftainships and possessions'. That was not the exchange that took place in Te Raki. Here, Māori leaders agreed to share power and authority with the Governor, though they would have different roles and different spheres of influence. They understood that they had received assurances from the Crown that they would retain their independence and chiefly authority, and they also understood that through the treaty, the Crown and its agents asked for authority (kāwanatanga) to control the Europeans. This was the arrangement to which they consented. They appear, too, to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.	23
We begin with the Tribunal's reminder in *He Whiritaunoka* of the derivation and purpose of treaty principles. In that report, the Tribunal considered why it is statutorily required to identify treaty principles and suggested that this was > perhaps the most effective way of defining a standard for assessing Crown conduct that responds to the power imbalance that developed and continued after 1840. Those who assumed power did not consider that there needed to be an ongoing application of the Treaty's provisions, because – from their perspective – the purpose of the Treaty was fulfilled once the Crown assumed sovereignty and land transactions progressed. In requiring the Tribunal to identify Treaty principles, the Act recognises that it was the Treaty that the newcomers relied on to gain the upper hand and set the agenda. Thus, the Tribunal concluded, it has long been accepted that treaty principles are to be derived 'not only from its texts but also from the context and spirit in which the Treaty was entered into'; in other words, the principles are derived from the *meaning and effect* of the texts. Given that the *contra proferentem* rule and legal precedents concerning treaties with indigenous peoples direct the Tribunal to ascertain 'the natural meaning of the Treaty' to those Māori who entered into it, the Tribunal considered that the treaty principles most relevant to its inquiry 'are those that speak to the kind of relationship that Māori properly expected to be able to enter into'. They should, therefore, reflect understandings about what the treaty	41-42

signified 'that would have been recognisable, realistic, and relevant to people' at the time the treaty was signed.	
We agreed that the Tribunal has clearly been influenced by the Court of Appeal's findings. We suggested, however, that the Tribunal has made its own important observations since the *Lands* case – evidence of a clear development in thinking beyond these findings. We particularly note that it has from the outset derived principles from both British and Māori worldviews, law, experiences of their mutual relationship, and intentions in entering into the treaty.	43
In Te Paparahi o te Raki, our starting point is the context and the circumstances in which rangatira of Te Raki entered into te Tiriti. These were, as we explain later, unique. Ngā mātāpono/treaty principles, as we apply them in this inquiry, are based in the actual agreement entered into in 1840 between Te Raki rangatira and the Crown, which for Te Raki rangatira did not involve a cession of their sovereignty. Te Raki Māori leaders expected effective recognition from the Crown of their tino rangatiratanga over their own affairs and lands. They agreed to share power and authority with Britain, and expected the Crown to exercise its authority over the growing number of settlers in their rohe.	66
In this inquiry, we attach great weight to the principle of tino rangatiratanga, often referred to as the principle of autonomy. We prefer the former term. It connects the principle directly to the words of te Tiriti – a matter of great importance to the claimants. It also reflects the claimants' deeply held view that only the Māori text, te Tiriti, is of any relevance to them because that was what their tūpuna understood and committed themselves to. Te Tiriti had mana, its own authority, in ways the English version did not.In the words of Erima Henare, 'It is to that Tiriti that our ancestors, our tūpuna affixed their tohu tapu from the ngū of their noses, making it tapu.' Ngāpuhi leader Tā James Henare has also explained the sacredness of te Tiriti : > [T]he most important thing for me and the Māori people is – for the Treaty to be made honourable and prestigious. The main thing for me is the spiritual side of the Treaty. What good is the spirituality when it has no integrity? When the integrity of the treaty exists, the integrity of a spiritual nature will also exist and the integrity of all the customs that come with the Treaty will also be spiritual. Spirituality cannot be seen by the human eye; however the body of the Treaty was signed by our ancestors.	66
In considering the immediate context in which te Tiriti was signed, we place particular importance on the unique circumstances of the declaration to which the rangatira had put their tohu, on or soon after 28 October 1835. He Whakaputanga must be seen in the context, outlined in our stage 1 report, of the relationship between Te Raki rangatira and the British monarchy that had developed over the previous 15 years, in particular. Hongi Hika's visit to England in 1820, at a time of increasing relations with traders and more recently, missionaries, was regarded by the claimants as a 'momentous event' in their history.	68
The rangatira, in our view, intended he Whakaputanga as an expression of the highest level of authority within their territories. They asserted their tino rangatiratanga – their rights as leaders of their hapū subordinate to no one else within their territories. They asserted their kīngitanga – that their status was equal to that of the King, and that there should be no leaders above	70

them. Taken together, these assertions of mana, tino rangatiratanga, and kīngitanga undoubtedly amounted to an assertion of their authority to make and enforce laws, and therefore of their sovereignty. Despite Busby's wish to create a chiefly legislature so that it could carry out his instructions and to establish an executive under his control, it does not seem that the rangatira saw he Whakaputanga as heralding any new development in the existing forms of their political organisation. They signed it as leaders of autonomous hapū and did no more than agree to deliberate and act in concert when circumstances required it.	
It is crucial not to lose sight of Te Raki Māori understandings of the significance of he Whakaputanga. It seems doubtful that rangatira had relinquished their assertions of mana and independence by 1840. On the contrary, they may well have felt there was nothing in te Tiriti to challenge that position. The rangatira were being assured in te Tiriti of the retention of their tino rangatiratanga rights, and they had requested Britain to use its power to protect their exercise of these rights. He Whakaputanga was an unambiguous declaration that hapū and rangatira authority continued in force, and that Britain had a role in making sure that state of affairs lasted as Māori contact with foreigners increased. By contrast, as far as the British were concerned, the only purpose of he Whakaputanga in 1840 was to provide a basis for the establishment of British authority, through a cession of sovereignty. Hobson assumed that the treaty would supersede the Declaration of Independence. But he Whakaputanga provides a unique context in which the signing of te Tiriti by Ngāpuhi rangatira must be understood. It has remained significant ever since in the political history of the north. Accordingly, Te Raki rangatira expected their authority to continue to be recognised and respected once they had reached this significant agreement with the new Kāwana (Governor). That, to them, was what the Tiriti agreement meant. That was their understanding of the basis on which their relationship with the British would be conducted, and on which they would assess it. Interpreting te Tiriti's guarantee of tino rangatiratanga and the significance of that guarantee to the hapū and iwi of Te Raki must be grounded in their worldview, experience, and understandings.	71
In our view, he Whakaputanga was, above all, an affirmation of tino rangatiratanga. Te Tiriti continued this affirmation, and in fact strengthened tino rangatiratanga rights and responsibilities. While it permitted a new, limited Crown presence in New Zealand, Te Raki Māori understood it as an agreement that would sustain and guarantee those rights and responsibilities that their communities had possessed and practised for generations prior to the time of the treaty signings. In Te Raki, where the treaty was first signed, where it was debated at considerable length by rangatira, where assurances were given by missionaries and by the Queen's representative Hobson himself in a hui that clearly seemed momentous at the time, where accounts of that hui and the whaikorero have survived (even if they are not as comprehensive as we would wish), we have been able to reach conclusions about how Ngāpuhi and Te Raki rangatira understood te Tiriti. We consider that it is not sufficient to suggest (as the Crown does) that they 'are in a similar position to other tribes who signed the treaty but did not intend to cede sovereignty'.	72-73

Te Raki rangatira were clear about the history and nature of their relationship with the British Crown and what they therefore expected from te Tiriti. They were dealing with the Kāwana sent by the Queen, who had not indicated that their own authority would be compromised in any way. He had not explained that the British intended to assume an overriding authority, despite having every opportunity to do so. The rangatira did not regard kāwanatanga as undermining their own authority. They regarded the treaty 'as enhancing their authority, not detracting from it'.	
Yet as we have seen, the Crown interpreted the treaty to entitle it to assert sovereignty over New Zealand and its peoples. This was a move that reflected the shift in British policy from 'minimum intervention' in the Pacific (initially strongly influenced by the missionary societies) to its acceptance of an increase in British authority in New Zealand, and finally of the desirability of securing sovereignty over the whole country. At the same time the Government moved to adopt a plan for the establishment of a settlement colony in New Zealand. These twin decisions would shape the country's future. But there was a third decision also: because Britain had previously recognised New Zealand's independence, the Crown required Māori to consent to the establishment of any form of British jurisdiction in their islands. This led to the composition, public discussion and signing of the treaty which (following he Whakaputanga) was in two languages ; it recorded Māori consent to the Crown's sovereignty only in English and, while some of the guarantees made to Maori were also expressed in English, the crucial guarantee in their own language was that of their tino rangatiratanga over their whenua, their kāinga, and all their taonga. In all the kōrero that preceded the signing by Te Raki rangatira, what they sought from the Kāwana and the missionaries – and believed they had received – were assurances that they would indeed retain their own independence and authority. The Crown's treaty obligation was accordingly to foster tino rangatiratanga, not to undermine it. When tensions arose with Te Raki Māori after its proclamations of sovereignty, it must refrain from coercing them into submission to Crown authority by the use of force, or the threat of force – an obligation which was greater when kāwanatanga was newly established, and the Crown was aware that Ngāpuhi prized their independence and were apprehensive about Crown actions. The Tūranga Tribunal affirmed, the Crown stood for 'just and fair government'. Its duty from the outset was to ensure treaty rights and guarantees were recognised in its laws and policies – especially those affecting hapū autonomy and tikanga, and hapū retention, control and management of their lands and resources, including the determination of titles. Laws must be equitable (see our discussion of the principle of equity in section 2.4.7). Where Government decisions or policies, or their impacts, were discriminatory, or placed unreasonable limitations on tribal or hapū exercise of tino rangatiratanga, they were not in accordance with the agreement reached with Te Raki Māori in February 1840 as to the respective spheres and responsibilities of kāwanatanga and rangatiratanga. In accordance with the principle of kāwanatanga, the Crown had particular responsibilities to Māori when the British Parliament considered and passed the New Zealand Constitution Act in 1852, heralding major constitutional	73-74

change. The principle required the Crown to ensure that its treaty duties were not abrogated as self-government was granted to the colonial Government, which progressively assumed responsibility for the Crown–Māori relationship. It had to ensure engagement with Māori on these changes, and their effective participation in the new New Zealand Parliament and in the national and provincial governments. And in the new political landscape the authority of Māori leaders must be recognised and given effect, and the structure and functions of any district or national rūnanga under consideration must be negotiated and agreed with them.	
We accept that it might well be the case that in some situations the Crown must balance its treaty obligations to Māori against the interests of other sections of the community – for instance, in exceptional circumstances, such as war, or in the interests of public safety, or in matters involving the national interest. But even so, as the Tribunal has found in the past, such a balancing exercise must not be undertaken 'without restraint'; that is, it must not diminish the authority of tribes and hapū. And in the absence of such exceptional circumstances, the Crown had and has no right to impinge on the rights of Te Raki hapū and iwi to make their own decisions.	74
The treaty marked a new stage in the relationship between Ngāpuhi – and their sphere of autonomous authority expressed in te Tiriti as te tino rangatiratanga – and the British Crown. With the signing of the treaty, the basis for a partnership was laid. In February 1840, rangatira had sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals.	75
Because the rangatira made no cession of sovereignty, we do not see the authority granted to the Crown – kāwanatanga – as a superior authority, an overarching power to govern, make, and enforce law, albeit 'qualified' by the requirement to give effect to treaty guarantees, including the right of Māori to exercise tino rangatiratanga. To that extent we depart from the framing of the principle of partnership by the Tribunal in earlier reports for some other inquiry districts. Rather, the Crown's authority was expressly limited in Te Raki to its own sphere. Alongside it, and equal to it, was that of tino rangatiratanga. The treaty partnership, therefore, required the cooperation of both parties to agree their respective areas of authority and influence, and both parties were required to act honourably and in good faith. The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed: that was for Māori to negotiate with the Crown. Shared spheres of authority, as we pointed out in stage 1 of our inquiry, must also be agreed.	75-76
Consistent with the treaty, the relationship of the Crown with Te Raki Māori should always have been based on dialogue and shared decision-making, as well as independent decision-making by either party where appropriate and where both parties agreed to this. Where unilateral Crown consultation has left hapū and iwi feeling disempowered, but trapped in processes that seem to them to offer the shadow of participation rather than the substance, it has not met the test of partnership. In accordance with the principle of partnership, the Crown's duty was always to engage with Te Raki Māori leadership actively (rather than merely consulting), and to ensure their role in shaping policy. True partnership remains the ideal; the foundation of any renegotiation of the relationship between Te Raki Māori and the Crown.	76

There seemed to be at least the basis for a relationship between Maori and the Crown based on recognition and respect for each other's values, beliefs, laws and institutions. But that relationship would be sorely tested over the decades that followed, in particular for Māori, as they saw their tino rangatiratanga repeatedly challenged and undermined. The respect of Te Raki Māori for the governing and legal institutions of the British would be tested against their understanding of te Tiriti and the extent to which they experienced Crown recognition of their own institutions. Given their understanding of te Tiriti, we think that that was a fair test for them to apply to the monarchy, the authority of Parliament, of magistrates and courts, including the Native Land Court.	77-78
In our view, it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law.	78
We note that previous Tribunal reports have variously emphasised the Crown's obligation to recognise and respect Māori concepts and systems, particularly tikanga and the Māori sphere of authority outlined in the treaty. For the Crown, its recognition and respect of hapū communities, their authority over their lands and waters, taonga (including awa, maunga, and ngahere), and their values, rights, and spheres of authority, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.	79
We agree with counsel for Ngāti Hine that had the Crown observed its obligations under both texts of the treaty from 1840 – particularly its commitment to recognition of tino rangatiratanga – the duty of active protection might not have assumed such importance.288 In our view, to say the Crown is obliged to 'protect' the rights and authority guaranteed under article 2 is problematic in Te Paparahi o Te Raki. It misunderstands the fundamentally separate, equivalent spheres of authority that were recognised by the treaty and understood by Te Raki rangatira; the Crown cannot paternalistically 'protect' what it has no authority over. The Crown, after all, had guaranteed through the treaty that it would not take steps to undermine or usurp Māori autonomous control over their people, land, resources, and taonga.	80
We accept, however, that the principle of active protection has served a very useful purpose, as claimants acknowledged, precisely because the Crown's commitment to tino rangatiratanga was often absent. In its very expression, the duty calls for active effort from the Crown jointly to realise the potential of the treaty as a living, evolving agreement. We consider the active protection of tino rangatiratanga is not a Crown duty arising from its sovereign authority, rather it is an obligation on its part to help restore balance to a relationship that became unbalanced. Because the Crown expanded its sphere of authority far beyond the bounds originally understood by Ngāpuhi in February 1840, this duty is heightened so long as the imbalance remains. But as the fundamental relationship between Te Raki Māori and the Crown is renegotiated, we see this duty as sitting alongside the other treaty principles we have highlighted in this inquiry. Partnership, not active protection, is the framework for governance of New Zealand; this unique arrangement is one to be celebrated and cherished.	81

In the interests of pursuing this ideal partnership, we consider that the treaty standards embodied in the principle of active protection as articulated in previous Tribunal reports are still useful for assessing Crown actions and omissions, and for reminding the Crown of its obligations where such actions and omissions, particularly in respect of land loss, have caused prejudice to Māori. We use it in this report accordingly. However, we prefer to emphasise the principle of mutual recognition and respect as better reflecting the treaty-based partnership that Te Raki Māori entered into.	
Through article 3 of the treaty, Te Raki Māori were guaranteed equitable treatment and citizenship rights and privileges, and the Crown undertook actively to promote and support both. Equity requires the Crown to focus attention and resources to address the social, cultural, and economic requirements and aspirations of Te Raki Māori. Providing the same or similar service across Māori and non-Māori population groups may be quite unlikely to satisfy the principle of equity. The Crown must actively address inequities experienced by Māori, and this obligation is heightened if inequities are especially stark.At its heart, satisfying the principle of equity requires fair, not just equal or the same, treatment.	82
Under the treaty agreement, it has always been the Crown's duty to give effect to the guarantee of tino rangatiratanga contained in the plain meaning of article 2. The Crown's progressive expansion of its own authority from 1840 in ways that have encroached on and often eroded that of Te Raki Māori has heightened this duty. Today, the Crown has the power and capacity to recognise, respect, and give effect to the treaty guarantee of tino rangatiratanga. It has had this power since it signed te Tiriti. Its duty to give effect to the guarantee of tino rangatiratanga is as important today as it was in 1840. That is the basis for te houruatanga, a partnership in which each party to the treaty recognises the authority of the other, and together they decide how each will exercise that authority on matters in which both have important interests.	87
As with commercial and resource arrangements, the political relationship between rangatira and Britain was subject to different cultural interpretations. Māori and British leaders had different notions of authority : those of Britain based on a monarch who was nominal head of state in a highly centralised system in which sovereignty resided in Parliament ; those of Te Raki Māori based on mana possessed by many autonomous hapū, each exercisinged (sic) authority through its rangatira and with its consent in accordance with tikanga. They also had different ways of concluding agreements. In British culture, the written word was paramount; in Māori culture, as we have seen, agreements were concluded orally, a rangatira's word being regarded as unbreakable. He Whakaputanga in 1835 and the treaty signed at Waitangi in 1840 drew on the distinct notions of authority and methods for reaching agreement within the two cultures.	179
Māori believed te Tiriti preserved their independent authority, preserved their lands, protected them from uncontrolled settlement, and provided a basis for ongoing mutually beneficial relationships with the Crown and settlers. Rangatira had signed te Tiriti only after receiving assurances that they and the Governor would be equals, and that Britain would use its power to protect them and their interests, not subjugate the Māori people. Furthermore, during the early 1840s Te Raki Māori had continued to govern	392-393

themselves in accordance with their tikanga, and manage Māori–Māori and also Māori–settler conflicts with minimal Crown intervention (see chapter 4).	