

BEFORE THE WAITANGI TRIBUNAL
WELLINGTON

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The Wai 2700 Mana Wahine
Kaupapa Inquiry

AMENDED STATEMENT OF CLAIM

Dated: 01 October 2020

Te Aro Law Ltd
Barristers & Solicitors
PO Box 11277
Manners St
Wellington, 6011
Ph: 0800 99 22 65

Em: helen.curtis@tearolaw.com
Counsel Acting: H Curtis
(on behalf of R Zwaan)

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Waitangi Tribunal

1 Oct 2020

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This Amended Statement of Claim is filed on behalf of the Claimants of the Wai 375 Claim, Wai 520 Claim and Wai 523 Claim (“**the Claimants**”).
2. This Amended Statement of Claim particularises the claims that the Claimants have in relation to the Mana Wahine Inquiry.

Eligibility

3. The Claimants are Māori, and have been or are likely to be prejudiced by Crown policies and practices that subjugated women.
4. Those actions are inconsistent with the principles of Te Tiriti o Waitangi.

The Claim

5. Traditional Māori society held that there is a male and female balance from the spiritual to the physical – shaping all things Māori. In this society, wahine leaders were not the exception. Such leadership was seen in many facets of whanau and marae life.
6. The Crown has not protected these practices.

The relevant Treaty Principles

7. The Crown has duties, pursuant to the Treaty, to actively protect the rights and property of the Claimant and, to ensure that the claimant is accorded the rights and privileges of British subjects.
8. Without limiting the Treaty or its principles, the principles of the Treaty as outlined in Chapter Two of the *Mohaka Ki Ahuriri Report* (2004) are a useful summary.

Continued Rangatiratanga

9. The Tribunal in Stage One of the Northland Inquiry found that Māori did not cede their Sovereignty in 1840. The Claimants say they have not ceded Sovereignty today. Māori continue to exercise Rangatiratanga and do so within the three spheres of influence discussed by the Tribunal in the Stage One Report.¹
10. Māori continued exercising Rangatiratanga, even when the Crown tried to impose its system of laws over top of them. Māori have acted within the confines of the European legal system, as they were acting under the principles of Te Tiriti, by acting in good faith and partnership.
11. The three spheres of influence relates to the idea that Māori had rangatiratanga over their people and within their territories, the Crown would have Sovereignty over their people and within their territories and then when these two worlds would cross over there would be shared rangatiratanga.
12. It is evident that this has not worked out in practice, but that does not mean it is not possible to make it work if the Crown is willing to work with Māori to find a solution.
13. The three spheres of influence are not separate spheres of sovereignty, but they are varying levels of influence within the same sovereignty. The Claimants say that the Crown and Māori would work together under the larger umbrella of “sovereignty” with varying levels of authority depending on what issue is being dealt with at a particular time.
14. This has been discussed by other Tribunals, emphasising the extent of control retained by Māori. Māori were and are to be protected not only in the possession of their property but in their right to control such property in accordance with

¹ He Whakaputanga me Te Tiriti, p527.

their own customs and having regard to their own cultural preferences² and to have protected their tino rangatiratanga, being the full authority, status and prestige with regard to Māori possessions and interests.³

15. This was stated by the Mohaka ki Ahuriri Tribunal:

*Since in the Māori text chiefs were guaranteed their 'tino rangatiratanga' over their lands, and in the English text they were guaranteed the 'full exclusive and undisturbed possession of their Lands', it follows that the Crown could not unilaterally take that land, by confiscation or compulsion, or alienate it by other means (other than through the exercise of Crown pre-emption), or alter the tenure, without the willing assent of the chiefs. Indeed, the Crown had no licence under the Treaty to do anything with Māori land without the approval of Māori unless exceptional circumstances prevailed.*⁴

16. As the Mohaka Ki Ahuriri Tribunal stated at page 24, the guarantee of property:

... included specific rights of ownership, undisturbed possession, and management of land and the exercising of those rights according to Māori custom.

Preservation of Property

17. A fundamental principle of the Treaty is the protection and preservation of Māori property and taonga.⁵

Protection of Custom

² Waitangi Tribunal: *Motunui-Waitara Report 2 ed.* (1989), p51.

³ Waitangi Tribunal: *Manukau Report* (1985), p67.

⁴ Waitangi Tribunal: *Mohaka ki Ahuriri Report* (2004), p22.

⁵ *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, PC, 517.

18. A fundamental principle of the Treaty is the preservation of Māori custom including an ongoing distinctive existence as a people albeit adapting as time passed and the combined society developed.⁶

19. The requirement on the Crown is to take active steps to ensure that Māori have and retain full exclusive and undisturbed possession of their culture.⁷

Partnership and the Duty to Act Reasonably and in Good Faith

20. A fundamental principle of the Treaty is that the Crown owes a fiduciary duty of good faith to Māori.⁸ This duty has also been expanded on in the recent *Wakatu*⁹ decision. Such duty includes the obligations:

- (a) not to use other unfair means when dealing with Māori;
- (b) to abide by the Christian and traditional Māori values the Treaty emphasised;¹⁰
- (c) to protect Māori and treat them with utmost care; and
- (d) to provide reserves when purchasing land.

The Duty of Active Protection

21. Following on from these principles is the principle that the Crown owes a duty to protect, preserve and promote the economic position of Māori. This has been variously stated:

- (a) a duty on the Crown to ensure that Māori were and are left with sufficient land and other resources for their maintenance and support and livelihood and that each hapu maintained a sufficient endowment for its foreseen needs;¹¹ and

⁶ *Taiaroa v Minister of Justice* (unreported HC Wellington CP99/94, decision McGechan J, 29 August 1994 at p.69).

⁷ Waitangi Tribunal: *Orakei Report* (1987), p.135.

⁸ *Te Runanga o Wharekauri Rekohu Inc. v Attorney-General* [1993] 2 NZLR 301, CA 305-306.

⁹ *Proprietors of Wakatu v Attorney-General* [2017] NZSC 17 [28 February 2017]

¹⁰ Waitangi Tribunal: *Te Roroa Report* (1992) p.30.

¹¹ Waitangi Tribunal: *Orakei Report* (1987), p147.

(b) such endowment is not just an endowment sufficient to survive but sufficient to profit and prosper and includes the facility to fully exploit such land and resources.¹²

22. The Mohaka ki Ahuriri Tribunal found that the duty of protection:

...applies particularly to the Crown's involvement in various forms of acquisition of Māori land and in the need to set aside and safeguard reserves. No matter how land was acquired, the Crown also had a responsibility to ensure that Māori retained a sufficient endowment for their existing and future needs. The question of what might constitute a 'sufficient endowment' has always been difficult to answer. As the Ngai Tahu Tribunal put it, there was no one answer and any particular answer depended on demographic and economic factors, such as the nature of food supply and production, as well as when the land was alienated.¹³

23. As part of this duty the Crown should not take advantage of the poverty of Māori, created at least in part by the Crown, to acquire land from Māori.

The Principle of Mutual Benefit and the Māori Right of Development

24. Māori have a right to develop and expand their resources using modern technologies and are not to be consigned to those technologies known at the time of the Treaty.¹⁴

25. These principles and rights extend to a Crown duty of active assistance in appropriate circumstances:

¹² Waitangi Tribunal: *Muriwhenua Fishing Claim Report* (1988), p.194.

¹³ Waitangi Tribunal: *Mohaka ki Ahuriri Report* (2004).

¹⁴ Waitangi Tribunal: *Muriwhenua Fishing Claim Report* (1988), p.220; Waitangi Tribunal: *Ngai Tahu Sea Fisheries Report* (1992), pp.253-254.

*For Māori, access to new markets and technologies necessarily assumes a sharing with the settlers who provide them, and for non-Māori, a sharing in the resources requires that Māori development be not constrained but perhaps even assisted where it can be.*¹⁵

26. This right is closely linked to the duty of protection of sufficient resources, without which there is nothing to develop. The Mohaka Ki Ahuriri Tribunal has stated of Māori:

*In our view their right to development, combined with the Crown's fiduciary obligations, entitled them to participate fully in the developing colonial society and economy.*¹⁶

The Overriding Principles

27. An overarching principle of the Treaty is that the Crown should deal with Māori honourably and in good faith, and should ensure the protection and prosperity of Māori as a people including their economic, physical, spiritual and cultural well-being.

28. The other overarching principle of the Treaty is that the Crown should remedy past breaches in all but very special circumstances.¹⁷

PREJUDICE

29. Due to the Crown's actions, policies and legislation set out in this Statement of Claim, the Claimants have suffered, and will continue to suffer prejudice including:

(a) The disregard shown to the Claimants of their cultural practices that are unique to them, thus denying their tino rangatiratanga;

¹⁵ Waitangi Tribunal: *Muriwhenua Fishing Claim Report* (1988), p194-195.

¹⁶ Waitangi Tribunal: *Mohaka ki Ahuriri Report* (2004), p27.

¹⁷ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641, CA, 664-665.

(b) The inadequate systems set up for the claimants to demonstrate their mana wahine; and

(c) The lack of acknowledgement of the fact that the claimants have never ceded sovereignty to the Crown.

FINDINGS AND RECOMMENDATIONS SOUGHT

30. The Claimants seek the following findings and recommendations to help remove the prejudice set out in paragraph 29:

(a) A finding of facts in the claimants favour;

(b) A finding that the claim is well-founded and that the Crown breached the Principles of the Treaty of Waitangi; and

(c) Any other recommendation that the Tribunal thinks appropriate.

31. The Claimants seek leave to further amend this Statement of Claim as Appropriate.

Dated at Wellington this 1st day of October 2020



Helen Curtis (on behalf of Robyn Zwaan)

Counsel for the Claimants

This Amended Statement of Claim is filed by Helen Amy Curtis, a barrister and solicitor of the High Court of New Zealand, of the firm Te Aro Law, whose address is Level 11, 94 Dixon Street, Wellington; and whose address for service is as follows:

(a) by posting to Applicants solicitor at P O Box 11277 Manners Street, Wellington; or

(b) by courier to offices of Te Aro Law at Level 11, 94 Dixon Street, Te Aro, Wellington; and/or

(c) emailing to Applicants solicitor at helen.curtis@tearolaw.com