WAI 1750 – NORTH-EASTERN BAY OF PLENTY

HEARING WEEK 3

HELD AT WAITANGI TRIBUNAL OFFICE, WELLINGTON

MONDAY 18 NOVEMBER 2024 - FRIDAY 22 NOVEMBER 2024

Tribunal:	Judge Doogan Professor Tom Roa Dr Grant Phillipson Dr Robyn Anderson Basil Morrison
Crown Counsel:	Craig Linkhorn Daniel Hunt
Claimant Counsel:	Natalya Holmes-Mustart Sophie Gordon Karen Feint KC Nerys Udy Raewyn Clark Josie Witehira Annette Sykes Jacki Cole Maia Te Hira Ihipera Peters Carmen Mataira Michael Sharp Tania Te Whenua Tony Sinclair Dr Bryan Gilling Caitlin Fellowes Zion Tait Eve Rongo Chelsea Terei-Tipene Dr Season-Mary Downs
Interpreter:	Paiheke McGarvey
Witnesses:	**Day 1 - [18 November 2024]** Professor David Williams **Day 2 - [19 November 2024]** John McLellan Tony Walzl

Day 3 - [20 November 2024]
Tony Walzl

Day 4 - [21 November 2024]
Tony Walzl
Jane Luiten

Day 5 - [22 November 2024]
Jane Luiten

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HEARING COMMENCES ON MONDAY 18 NOVEMBER 2024 AT 9.03 AM

(09:03) PROFESSOR TOM ROA: (MIHI)

Tēnā huihui tātou. He tau eke, he marere kura, he marere pai, he āpiti nuku, he āpiti rangi, he **(Māori 09:03:20)** aroha ki a rātou e ngaro nei i te tirohanga kanohi, e whai ana i te hikuroa o te tira haere Kīngi Tuheitia Potatau Te Wherowhero VII. Koutou e kawe mai nā i o tātou mate, ā tēnā o ngā tōtara nui o te wao nui a Tāne Tā Bom Gillies o roto i a koutou, rātou te hunga mate, rātou ki a rātou. Tātou ko te Arikinui Kuini Nga Wai Hono I Te Po Potatau Te Wherowhero VIII, tātou ki te whenua, tātou te hunga ora ki a tātou, nō reira haere mai tātou. **To everyone gathered. [Opening Karakia] to those who have conveyed our dead a tōtara from the forest of Tāne, Sir Bom Gillies is the deceased and we pay respect to them. To the Arikinui Nga Wai Hono I Te Po Potatau Te Wherowhero VIII and those on the land living and so welcome.**

KARAKIA TĪMATANGA (PROFESSOR TOM ROA)

(09:04) JUDGE DOOGAN: (MIHI)

Tuatahi, he mihi tēnei ki a koe Tom, nāu i tuku atu ngā whakamoemiti ki tō tātou Kaihanga nō reira tēnā koe. Ka mihi hoki ki a koutou kua huihui mai nei ki tēnei wiki roa, nau mai. **Firstly, I want to thank you Tom for giving thanks to Almighty God, so thank you. I also want to acknowledge everyone gathered here for this long week, welcome.**

Welcome everybody. First, if I could just introduce our panel who I'm fairly sure need no introduction but I will do so. First, to my far right Ms Prue Kapua, who we are privileged to have on the panel with her experience in law, RMA practice, and also longstanding mahi with the Māori Women's Welfare League amongst other achievements. To my immediate right, Dr Grant Phillipson our historian member, formerly Chief Historian of the Tribunal and author of many reports on the Tribunal's record over a very long period of time. To my far left, again, the far left is probably not the right terminology perhaps, Dr Robyn Anderson, our

second historian member also who has given tremendous service to the Tribunal over a very long period of time on a number of significant inquiries, including Te Raki of course. To my immediate left, Ahorangi Tom Roa, who we are very privileged to have as our mentor and guide and source of considerable wise counsel. Joining us online is Mr Basil Morrison, tēnā koe Basil, who has extensive local government experience, including as former Mayor Thames, Coromandel and past president of the New Zealand Local Government Association, among many other achievements. Mr Morrison will be with us today, āpōpō, and then has a conflicting matter he could not change on I think Wednesday and Thursday. So, welcome Mr Morrison.

JUDGE DOOGAN ADDRESSES COUNSEL – APPEARANCES (09:08:07)

(09:08) MS NATALYA HOLMES-MUSTART: (MIHI, APPEARANCE)

Tēnā koutou e te Kaiwhakawā me ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. **Greetings your Honour and the members of the Waitangi Tribunal.** Counsel's name is Natalya Holmes appearing with Sophie Gordon as counsel assisting the Tribunal commissioned expert witnesses this week. Tēnā koutou.

JUDGE DOOGAN:

Tēnā koe Ms Holmes, Ms Gordon, tēnā kōrua.

(09:08) MS KAREN FEINT KC: (MIHI, APPEARANCE.)

Tēnā koutou e ngā rangatira ki te tēpu. Otirā, ata mārie ki a koutou e huihui mai nei i te rā ātaahua. Ko Karen Feint māua ko Nerys Udy he māngai rōia mō Ngāti Ruatakenga. **Greetings the esteemed members of the panel. Good morning to everyone gathered on this beautiful day. I'm Karen Feint alongside Nerys Udy, counsel for Ngāti Ruatakenga.**

Can I record my apologies that Ngāti Rua have been unable to come down for this week. As you probably know, we have just finished a two-week Supreme Court hearing in the MACA space for Whakatōhea and matua

Te Riaki came down for the opening and closing of that hearing. But that's his travelling down for the month so we're on our own. Tēnā rā tātou.

JUDGE DOOGAN:
All right. Tēnā koe Ms Feint, Ms Udy.

(09:10) MS RAEWYN CLARK: (MIHI, APPEARANCE)
Tēnā koe e te Kaiwhakawā, otirā ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. Tēnā koutou e ngā rōia. Tēnā koutou ngā rōia mō te Karauna. Tēnā koutou katoa. **May is please your Honour and the members of the Waitangi Tribunal. Greetings to the counsel and the Crown counsel. Greetings all.**

Counsel's name is Ms Clark. I am presenting today with my colleague Ms Witehira, we are here on behalf of a number of claims, Wai 1781, Ngāi Tamahaua. Wai 1795, which is matua Tawhirimātea Williams, for and on behalf of himself, his whānau and the hapū of Ngāti Rua. We are also here on behalf of Wai 1827, the descendants of Te Rangihaerepō and a claim that they are also involved in with the members of the Te Hā Leadership Group which is the Wai 1920 claim the economic and socio-economic issues claim. Further to that, at the risk of (inaudible 09:11:05) my friend, Ms Mataira, we jointly represent te whānau Mokomoko, that is the Wai 203 claim.

(09:11) MS ANNETTE SYKES: (MIHI, APPEARANCE)
Ko te tuatahi, kei te tuku te rākau ki a Maia, ki a mihi ki a tātou ki a whakahoki ngā whakaaro ia rātou mā kua wehe. **Firstly, I pass the floor to Maia to acknowledge those who have passed on.**

(09:11) MS MAIA TE HIRA: (MIHI, APPEARANCE)
Tēnā rā koe e te Kaiwhakawā, otirā tēnā koutou ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. Kei konei mātou ko Ms Sykes, ko Ms Cole, e whakakanohi ana i ngā kerēme e whā. Ko Wai 558 tētahi, he kerēme tērā mō te hapū o Ngāti Ira o Waioeka. Ko tētahi atu ko te kerēme Wai 2510, he kerēme tērā nā Joseph Kahika mō tōna whānau. Ko te kerēme

Wai 2728, he kerēme tērā nā whaea Sharon Campbell mō tōna whānau, hapū, me tōna iwi whānui. Ka mutu, Wai 864, he kerēme tērā mō te Quarry o Motuhora/Moutohora. **Greetings your Honour and greetings to the member of the Waitangi Tribunal. Appearing alongside Ms Sykes, Ms Cole for four claims. Wai 558, a claim made by hapū of Ngāti Ira o Waioeka. The claim 2510, a claim by Joseph Kahika on behalf of his whānau. The claim Wai 2728, a claim by Sharon Campbell and the whānau, hapū and iwi. Wai 864, a claim by the Quarry of Motuhora/Moutohora.**

Kei te tangihia tonutia tātou i te rironga o Ricky Lee Tapuni Mitai, kātahi anō ka hinga. Rangatira nui o Te Whakatōhea. Tamaiti nā Ngāti Patu, Ngāti Ngahere. Nō reira, tau ārai o te pō ki a ia, tītoko te ao mārama ki a tātou kua huihui mai nei i tēnei rā. **We continue to mourn Ricky Mitai, who passed away. He is of Te Whakatōhea, Ngāti Patu, Ngāti Ngahere. We acknowledge him in the night and to the daylight goes to us. Thank you.**

(09:12) MS IHIPERA PETERS: (MIHI, APPEARANCE)

Tēnā tātou katoa. Tēnā koe e te kaiurungi o tēnei waka o Te Rōpū Whakamana i te Tiriti o Waitangi, otirā koutou katoa ngā pou herenga o tēnei waka tēnei te mihi nui ki a koutou katoa. Ki a koe e te pāpā, nāu i whakatuwheratia tō tātou hui i runga i te tika, te pono me te aroha tēnei te whakamiha ki a koe. **Greetings all. Greetings to the navigator of the waka of the Waitangi Tribunal and to those who are the posts who bring everyone together. To you the uncle who opened our proceedings with love and respect.**

E tautoko ana ngā whakaaro nui a taku hoa ki a rātou kua wehe ki tua o te ārai, otirā tō tātou taonga nei kua riro atu nō roto o Te Whakatōhea me ngā mate huahua o te wā haere, haere, okioki mai rā. Hoki mai ki a tātou te hunga ora tēnā rā tātou katoa. **I endorse the great respect that has been expressed towards those who have departed beyond the veil, this treasure that was lost in Te Whakatōhea farewell, farewell, and rest in peace. Returning to us the living greetings.**

Ko Ms Peters tēnei, nō te tari o Kaupare Law. E whakakanohi ana i tētahi kerēme na te hapū o Ngāti Patumoana, ko Wai 1775 tēnā. Ko ngā kaikerēme ko te tokorua kua wheturangitia arā ko Russell Hollis rāua ko John Hata, me ngā waihotanga mai ko Antoinette Hata rāua ko Te Ringahuia Hata. Tēnā tātou katoa. **Greeting all, Ms Peters speaking from Kaupare Law. A claim on behalf of Ngāti Patumoana, Wai 1775. The claimants are, those who have passed on, Russell Hollis and John Hata, and Antoinette Hata and Te Ringahuia Hata. Thank you all.**

(09:14) MS CARMEN MATAIRA: (MIHI, APPEARANCE)

Tēnā tātou katoa. I te tuatahi, me mihi ka tika ki a koe e te pāpā mō tō tātou nei karakia o te rā, otirā, ki a koutou ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi tēnā koutou. Ki a koe e te Kaiwhakawā ngā mihi nui ki a koe. Ka tautoko au i ngā mihi kua mihia i tēnei ata. Ko wai au, ko Ms Mataira ahau. Kei konei au mō te whānau Mokomoko, hei māngai mō te whānau Mokomoko Wai 203. Nō reira tēnā tātou katoa. **Greetings all. Firstly, I must thank the elder for the karakia opening and to the members of the Waitangi Tribunal greetings. To you, your Honour, greetings. I support those acknowledgements that have been expressed. Who am I, I'm Ms Mataira. I am appearing for the whānau Mokomoko Wai 203. Thank you.**

(09:15) MR MICHAEL SHARP: (MIHI, APPEARANCE)

Tēnā koutou Te Rōpū Whakamana i te Tiriti o Waitangi. Ko Michael Sharp ahau, he rōia mō Wai 2160 mō Ngāti Muriwai. **Greetings to the Waitangi Tribunal. I am Michael Sharp, lawyer for Wai 2160.**

Also putting in an appearance for my friend, Ms Te Whenua, who appears for Wai 1511 Ngāti Tamatea. There appears to be some problems with remote counsel appearing and connecting, perhaps the registrar can have a look at that.

(09:16) MR TONY SINCLAIR : (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. Te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Whakatōhea, tātou katoa, he mihi tēnei ki a koutou. **Thank you your Honour. The Waitangi Tribunal greetings. Whakatōhea, all of us, greetings to everyone.**

Sir, my name is Sinclair and I appearing today for Wai 87, Te Whakatōhea Raupatu claim. With us today, Sir, we have the principal claimant, Adriana Edwards and some whānau. Sir, they, like others, have spent two weeks in the Supreme Court and are now here for a following week before the Tribunal. The other claim I am appearing for Sir is Tūrangapikitoi Wai 1794.

I have two colleagues assisting with me on Wai 87 and Wai 1794. Mr Brett Cunningham couldn't make it for Wai 87, he has other legal engagements in Auckland. But Mr Yashveen Singh will be observing on the public link for Wai 1794. He will not be participating. Kia ora mai.

(09:18) DR BRYAN GILLING: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, me Te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. **Thank you, your Honour and to the Waitangi Tribunal, greetings.**

May it please the Tribunal, counsels name is Gilling, and I appear this week with my learned colleague, Ms Fellowes. Sir, just to advise, following on your earlier comment due to other things happening, I will need to be popping in and out. Particularly on Friday, we intend to have Ms Soriano here instead of me. We appear in this inquiry for two claimants, Wai 339, Dean Flavell for Hiwarau C and Wai 1865, very unfortunate number for this inquiry, Ms Miranda Horan, also another Hiwarau claim. Tēnā koutou katoa.

(09:19) MR ZION TAIT: (MIHI, APPEARANCE)

E te Kaiwhakawā tēnā koe. Te Rōpū Whakamana i te Tiriti o Waitangi tēnā koutou. Ko Zion Tait tōku ingoa, kei konei māua ko Eve Rongo nō te tari o Oranganui Legal. **Your Honour greetings. The Waitangi Tribunal**

greetings. Zion Tait is my name, appearing alongside Eve Rongo from Oranganui Legal. May it please the Tribunal, counsel appears for Wai 78, a claim on behalf of Ngāi Tahu. Ngā mihi.

(09:20) MR CRAIG LINKHORN: (MIHI, APPEARANCE)

E Te Rōpu Whakamana i te Tiriti o Waitangi tēnā koutou. Ka huri au ki te rūma tēnā koutou katoa. Ko Craig Linkhorn ahau. Ka tū māua ko Daniel Hunt mō te Karauna i tēnei wiki. Kia ora. **May it please the Waitangi Tribunal and greetings all. I am Craig Linkhorn appearing alongside Daniel Hunt for the Crown. Thank you.**

JUDGE DOOGAN ADDRESSES COUNSEL – MIHI (09:20:25)

MS FEINT KC ADDRESSES JUDGE DOOGAN – WAI 1782 (09:20:27)

(09:20) JUDGE DOOGAN: (CLARIFICATION MACA EVIDENCE)

Just before we get underway, just in the lead up to the commencement this morning, the panel were discussing some of the evidence. We have a question about, in light of Professor Williams' evidence and some of the source material from the MACA High Court proceedings, so we have a lot of that in terms of the evidence available to us now on our record. What we weren't so sure about is, first, whether there is a transcript of the High Court proceedings and if so, whether it might be possible to have either the relevant parts or the transcript itself also added to our record. Ms Feint.

(09:21) MS FEINT KC: (RESPONSE)

Yes, there is a transcript so it would be helpful to add that to the record. Matua Te Riaki for instance gave evidence over four mornings. He expanded quite a lot on his written brief of evidence and there's a lot of cross-examination as well.

(09:21) MS SYKES: (RESPONSE)

Sir, there is also the stage two inquiry. So there has been a stage two, and I am not sure if that affidavit is on the record, there's some very work done by

Professor Pou Temara on wāhi tapu and other of the kaumātua. I am not too sure what is the status of those pieces of evidence. There is a transcript from there which I found very helpful in terms of Professor Williams evidence especially.

JUDGE DOOGAN:
All right. Thank you.

JUDGE DOOGAN ADDRESSES ALL COUNSEL – NIL OBJECTIONS RE MACA EVIDENCE (09:22:30)

JUDGE DOOGAN ADDRESSES MS UDY – FILE MACA EVIDENCE (09:23:04)

JUDGE DOOGAN ADDRESSES COUNSEL – WITNESS EXAMINATION APPROACH (09:24:04)

(09:24) MS SOPHIE GORDON: (MIHI, APPEARANCE)
Tēnā koutou e te Kaiwhakawā me ngā o Te Rōpu Whakamana i te Tiriti o Waitangi. Ko Sophie Gordon tōku ingoa. He **(Māori 09:24:32)** ahau e tiaki ana te kaiwhakaatu i tēnei rā. **Thank you your Honour and members of the Waitangi Tribunal. My name is Sophie Gordon. I am assisting the witness today.**

MS GORDON (CALLS)
PROFFESOR DAVID WILLIAMS (SWORN, #A031-(a))
Tēnā koutou Sir and members of the Tribunal. Counsel's name is Sophie and I appear assisting the Tribunal commissioned witness today. I propose to first call Emeritus Profession David Williams evidence, after which he will fully introduce himself and deliver his presentation.

Q. Tēnā koe. Could please state your full name for the Tribunal?
A. David Vernon Williams is my full name.
Q. Could you please confirm that you are author of the Tribunal commissioned report entitled, *Tribal Connections, Settlement Patterns*

and Resource Use in the North-Eastern Bay of Plenty prior to 1860, filed with the Tribunal on the 15th of September 2023 and has the record of inquiry reference #A031?

A. I can confirm that, yes.

MIHI

Kāti, te wāhi tuatahi he mihi ki a koutou katoa. Ka tautoko ahau ngā mihi me te karakia ki te tīmatanga o te hui tēnā koe e tama, e koro. E ngā mema o Te Rōpu Whakamana i te Tiriti o Waitangi tēnā koutou. E ngā hau e whā o ngā hapū i te taha o Te Moana-a-Toi, e ngā whānau o te YouTube, o te motu tēnā koutou. E ngā rōia i waenganui i a tātou tēnā koutou, tēnā koutou, tēnā koutou katoa. Ka huihui tātou i tēnei wā i raro i te maru o te Tiriti o Waitangi he kawenata tapu i waenganui i a tātou, nō reira Toitū te Tiriti. **Firstly, I want to acknowledge you all. I support the acknowledgements at the commencement of our proceedings so greetings to you elder. Members of the Waitangi Tribunal greetings. To the four winds of the hapū alongside the Bay of Plenty, to the whānau throughout the country greetings. To counsel amongst us greetings, greetings, greetings all. We assemble here under the mantle of the Treaty of Waitangi, a sacred covenant amongst us all so may the Treaty endure.**

Sir of the Tribunal, members of the Tribunal, I have a report summary which is #A031(a). I am aware of the time constrictions and I will omit some passages and read other passages and I will let you know as I go with what I'm doing.

The summary is drawn primarily from the actual working of the report itself. I take it that my credentials and the potential conflict of interests can be taken as read.

As to the project scope referred to in paragraph 1, I just emphasise that I have no remit to discuss matters that affect Te Ūpokorehe which essentially means that a very large portion of the issues that might have arisen in the western part of the district, I have not inquired into at all, and leave you as members of the

Tribunal and as lawyers and claimants to deal with when another report is completed.

In paragraph 4 to 6, I look at methodology and approaches. Essentially, emphasising that I have followed the methodology and approach of the late Dr Angela Ballara, a former member of this Tribunal, but her report for the Central North Island claim is one that I have relied on in terms of methodology and approach.

So I take you to paragraph 7 on page 5 and I will read from there.

REFERS TO REPORT SUMMARY #A031(a)

I was grateful to be granted permission to attend all Ngā Kōrero Tuku Iho hearings that directly related to my project brief. It needs to be emphasised that this report is intended to complement claimant oral and written evidence. In assessing this commissioned written report, it should not be presumed that a written report (especially one written by an outsider 'expert') holds more authority than oral histories presented by claimants in understanding the tribal landscape prior to 1860, and in providing a context for the Treaty-breach claims into which the Tribunal is inquiring.

I was required by the project brief to consult statements of claim relevant to this research. My review of those statements of claim revealed that an important contested aspect of the oral history of the tribal landscape to be covered in this report concerns the deference due, according to many claimants, to multiple founding ancestors from several migrating waka traditions, as compared with claims that prefer to emphasise Muriwai as the primary founding tīpuna and affiliation to the Mātaatua waka as basic to Whakatōhea iwi identity.

Another issue is that a considerable number of statements of claim include assertions that the precise boundaries of Te Whakatōhea lands may be found in evidence from Te Hoeroa Horokai and Heremia Hoera in 1920. This evidence was presented to a hearing of a Native Land Commission in Ōpōtiki

on 14 July 1920. A matter for this report is how the boundaries there specified compare to other evidence concerning the pre-1860 tribal landscape.

I interpolate your Honour that Dr Amoamo, in response to questions from Dr Phillipson, provided some more information about Heremia Hoera (otherwise known as Hoera Poaka) relating to his #D007 evidence.

Paragraph 10. A feature of the North-Eastern Bay of Plenty Inquiry District, that is distinctively different from most (if not all) of the Tribunal's historical inquiries heretofore, is that there are contemporaneous parallel inquiries and processes with a focus on the same or similar historical issues and claims. There are Wai 1750 commissioned reports, including those being considered in this hearing week 3. There is material, including historical accounts, produced in the context of direct negotiations towards a Treaty Settlement conducted between the Minister for Treaty of Waitangi Negotiations and the Whakatōhea Pre-Settlement Claims Trust as it was then. There is also a considerable body of written and oral evidence presented to the High Court at Rotorua in 2020 under the Marine and Coastal Area (Takutai Moana) Act 2011. A lengthy judgment of Churchman J was delivered 7 May 2021, your Honour has referred to that this morning. All of this material has been perused in the preparation of this report. The primary source documentation relied upon includes in particular evidence from claimants presented to the Native Land Court in the nineteenth century, but also evidence to the *Re Edwards* High Court hearings, and evidence to Ngā Kōrero Tuku Iho hearings in this inquiry.

Paragraph 11. All the bibliographies prepared for those researching the history of the Wai 1750 Inquiry District highlight the importance of two books in particular. The first is *Whakatōhea of Ōpōtiki* published in 1979. This book, which I was allowed to have with me while I did this report, and I think Judge Doogan you were hoping for me to return it back so that you can get hold of it and I believe that Dr Grant has been looking at it as well. And then there's the Dr Ranginui Walker *Ōpōtiki-Mai-Tawhiti, Capital of Whakatōhea*. I have studied both books with great care and drawn on them liberally in this report.

However, those authors are very open about their focus on Whakatōhea as a whole and its identity as an iwi in the twentieth or twenty-first centuries. That focus is not pertinent to the scope of this commission and the commission concerns all hapū/iwi in the inquiry district and not only Whakatōhea. This report considers the changing hapū/iwi landscape of the region over many generations prior to 1860 and thus prior to the dislocations and re-alignments imposed on all Māori in the North-Eastern Bay of Plenty after 1865. It does not assume as a given the strengthening of iwi identities in modern times. Nor does it assume that the limited number of hapū recognised by Crown actors after the wars in Compensation Court hearings and in the allocations by Special Commissioner Wilson in Ōpape reserve and elsewhere in the confiscated lands district necessarily reflect the pre-1860 realities. Those are matters to be dealt with in other reports and in evidence by claimants. In the substantive chapters of this report, primary source documentation has been sought to assess whether there is support for the propositions made in these published books by Lyall and Walker.

Usually, in writing up evidence given to Native Land Court title investigations, the primary source is cited first along with a reference to a secondary source if that might be helpful. Given that the whakapapa lists presented to the Native Land Court were very frequently shortened versions of descent from ancestors important to the witness, Lyall in particular has been an extremely useful source for fuller versions of entire descent lines drawn from evidence presented at multiple court hearings in the last quarter of the nineteenth century. That whakapapa information is particularly important for efforts to understand the pre-1860 tribal landscape. The basic historiographical principle needs to be emphasised that primary sources (when accessible) ordinarily should be accorded greater weight than secondary literature evaluations. On the other hand, whilst endeavouring to extract historical information from primary sources rather than secondary sources, this report does make frequent references to published works of immediate relevance including Lyall and Walker's books when their information and comments are important.

Paragraph 13 on **Social formations: Fluid or fixed?**

In chapter 5 of the report, adopting the methodology and approach advanced by Dr Angela Ballara, this report is wary of assuming pyramidical schemes of social organisation in pre-contact and immediate post-contact Māori social formations. As Ballara wrote, prior to the need for Māori to organise themselves into larger polities for dealings with the Crown and its agents 'Māori sources rarely if ever spell out neat, pyramidal schemes of ancient tribes and their sections, and neat chronological accounts of the defeat of earlier by later peoples.' Thus, Toi and other ancestors (whose origins in the land long pre-date the arrival of ancestors such as Tūtāmure, Muriwai and Tamatea) are frequently cited as a contributing strand for customary entitlement claims put forward in the late nineteenth century. What Ballara insisted upon, and what the evidence I have perused suggests, is that 'before as well as after contact, Māori lives were moulded by multi-stranded whakapapa, hapū with more than one iwi affiliation, communities and settlements shared by multiple descent groups, and lands and resources claimed through an intersecting web of inherited, gifted or conquered rights (to mention only a few categories of land acquisition and control).' These historical complexities have to be acknowledged however much Crown entities and some Māori leaders today crave for simplified versions of hierarchical large natural groupings.

There can be no doubt that an iwi included all the people who could derive their identity from particular eponymous, ancient, and founding ancestors. However, intermarriage offered multiple lines of descent so that people might belong to many different hapū, and – a point that the evidence reviewed for this report suggests needs to be emphasised – some of the hapū they might belong to would link them to more than one iwi. In agreeing with scepticism about the notion that the groupings of Māori social formations should be described in terms of a top-down pyramidical structure, the main focus of attention in this historical research has been the hapū. Hapū is a term to identify descent groups that would be best translated, in my opinion, as 'tribe', not as 'sub-tribe'. Certainly, 'hapū' might be applied to widely differentiated groups in terms of size and antiquity. Hapū were the corporate groups whose membership frequently acted as one body in political, social or economic affairs in ways that waka or iwi seldom or never acted. Though always vulnerable to fragmentation in times

of stress, it is hapū that formed economic and military units requiring concerted action and it is primarily hapū who feature in the accounts of occupation of land and defence of land. Hapū were usually more recently differentiated from their parent bodies than iwi and might take their names from ancestors living four to twelve or so generations before people living in the nineteenth century. Some large, older and more established hapū might be found scattered across a number of sets of settlements and pā. Small or minor hapū could sometimes take their name from ancestors living only one to three or so generations before mature individuals living in the mid-nineteenth century or from quite recent events. An instance of the latter is the hapū Ngāti Patumoana emerging as a hapū name following a killing at sea of a Ngāti Ngahere rangatira woman as recently as 1830 or 1831.

It is of course an historical fact that in times of war hapū of an iwi would of necessity tend to come together for mutual defence. Sometimes several large hapū, close kin to each other, would concentrate all their branches in a single defensive location or advance together to defeat foes who threatened them all. The implications for customary entitlements to land when hapū joining together as an iwi for self-defence at a particular place became a very thorny issue in Native Land Court proceedings that are discussed in detail in the chapter concerning the Takaputahi block.

This research project has inquired as deeply as possible within the time available into the tribal landscape of the very numerous hapū identified in historical materials as connected to Whakatōhea, the hapū of other iwi present in the North-Eastern Bay of Plenty district (apart from Te Ūpokorehe), and the nature of their histories, identities, settlement patterns and links to the land.

Some of the key issues looked out for during the research included:

i. the appearance and disappearances of hapū from mai rā anō to 1860 and the origin of hapū names;
ii. whakapapa from the earliest tangata whenua, as well as ancestors arriving in the later canoes;

iii. the size and strength of hapū (if knowable);

iv. the impact of contact with Europeans (including, after 1840, Crown representatives) for the emergence of larger hapū or iwi as primary identifiers for groups;

v. the revival of hapū names in Native Land Court hearings later in the nineteenth century;

vi. evidence that branches of the same hapū could be widely separated by geographical location;

vii. the extent to which iwi and waka groupings, or 'great names' were regarded as the ultimate source of identity;

viii. the extent to which, owing to multi-stranded whakapapa, hapū might claim more than one iwi affiliation.

Boundaries

In this inquiry district, Te Whakatōhea-affiliated claimants have expressed a strong attachment to precise territorial boundaries of their iwi. In many instances, hapū claimants in their statements of claim have stipulated that their hapū boundaries coincide with the iwi rohe. The description of that rohe is based (on the evidence I have already referred to) of Te Hoeroa Horokai and Heremia Hoera to the Jones Native Land Claims Commission at Ōpōtiki in 1920. The 'pou' mentioned in their evidence of boundary markers includes non-traditional structures such as a swing bridge and a trig station to assist in the very precise delineation of the iwi rohe. The same boundary markers are the basis of the iwi rohe in the historical account for the Deed of Settlement of 27 May 2023 and figure 3 at page 86 of my report presents in map form the slightly different versions of the iwi rohe based on that 1920 evidence. And my report details your Honour that there is more than one version of that evidence recorded so the boundaries look a little bit different.

Paragraph 19. The claims of Ngāi Tai are within my terms of reference. Though not yet filed in these Wai 1750 proceedings, there is a map of an area of interest identified by Ngāi Tai Iwi Authority in its 2013 deed of mandate to enter into Treaty settlement negotiations. It displays a series of long straight lines from the coast to the interior. Given that the coastal starting point for

Ngāi Tai in the west is from Tirohanga (and thus includes the entirety of the Ōpape reserve), there is a very substantial overlap with the various Te Whakatōhea claimants' understandings of their ancestral rohe. There is a map at figure 6 at page 89 of my report to illustrate that.

The pre-1860 context is the sole objective of this research commission. In traversing evidence given to the Native Land Court in the nineteenth century, and then looking at the fixed boundaries discussed above, there must be a very large question as to whether there ever were fixed hapū or iwi rohe boundaries when tikanga was the only operative law of the land. When no-one had yet heard of the requirement to provide surveyed maps of blocks for Native Land Court hearings, could tangata whenua have imagined that a colonial court would utilise boundaries on maps to ascertain and then extinguish all customary entitlements and interests in large blocks of land? It is suggested that maps and boundary markers are a latter-day outcome of colonisation and colonial legal practices that forced a reconfiguration of ancient knowledge and wisdom about tikanga to fit into the different modes of thinking required for 'success' in the Native Land Court.

Though 1860 was ninety years after first contact with Europeans and twenty years after the Treaty of Waitangi, tikanga remained the only effective law of the land (in what is now known as the North-Eastern Bay of Plenty) until after 1860. European traders and missionaries had to operate in ways that accommodated the fact that the mana of rangatira and the operation of tikanga prevailed. There were no Crown agents or officials living in the district. This was not a world governed by Native Land Court procedures requiring maps and fixed boundaries. My report cited, in support of the views taken, a memorandum by Chief Judge Taihakurei Durie for the Ngāti Awa Raupatu Tribunal panel that is directly relevant to this current project:

> The question of where boundaries lie between contending iwi, assumes such boundaries existed. The Tribunal is not entirely convinced that iwi were arranged in state-like institutions with borders of approximate definition fuzzed only by contestable zones.

Thus, the approach taken in assessing the pre-1860 context in this report reflects on the following issues concerning boundaries – fluid or fixed:

(i) the unlikelihood that iwi or hapū in the North-Eastern Bay of Plenty were divided from one another by strictly defined and rigidly observed territorial boundaries, within which they had exclusive rights;

(ii) the extent to which hapū or iwi may have exercised authority over core territories that were edged by zones of overlapping occupation;

(iii) the possibility that within established core areas of a hapū or iwi there might be 'kainga pockets' in the territories of other hapū or iwi;

(iv) evidence that hapū were forever enlarging, fragmenting, and migrating, often as a consequence of warfare, but perhaps just as often following internal, domestic disputes, and that no group was necessarily fixed in one location for all time;

(v) the impact of 'conquering rampages' by taua from outsider hapū/iwi on the hapū/iwi tribal landscape within the district in the pre-colonial period;

(vi) the response of hapū and iwi within the district when notions of fixed tribal boundaries were introduced after contact with Europeans, and especially with Crown officers, in the period up to 1860 but prior to the dramatic dislocations caused by wars and raupatu in the 1860s.

Contextual issues

Paragraph 23. In chapter 7 the report canvasses some contextual issues. For an historian, it is obviously important that, so far as possible, twenty-first century understandings of tribal origins should not skew research trying to ascertain pre-1860 understandings. The research included consideration of whakapapa and traditions presenting waka migration narratives for origins, journeys, return journeys, and arrival points for hapū/iwi who now reside in and around the North-Eastern Bay of Plenty district, including Te Rangimātoru, Arautauta, Ōtūrereao, Nukutere, Mātaatua, Te Arawa, Tainui, Horouta, and others. In some traditions, I expected the first comers would be known and named as being descendants of Toitehuatahi (or alternative Toi names) and other first comers; in others I expected the emphasis would be on one or more migrating

waka traditions as the foundation for named hapū and iwi who remain in place to the present. In line with the general approach taken to the research and writing of this report as outlined above, and unlike in the writings of Pākehā ethnographers in the past, this report makes no attempt to establish a "correct" version of conflicting traditions. It sets out the complexities of the lineages and traditions that have been recorded in the past and that may continue to be of significance in the present and the future.

Pūrākau, I just interpolate there, your Honour, that I use the term pūrākau throughout my report, rather than myth or legend or some other Pākehā version of stories of origin and the mana of people from the past. Pūrākau discussed in this report are sourced from written resources that recount oral histories and traditions. In a narrow Eurocentric perspective adopted by some historians, much that follows would be denied the name 'history' because the peoples, places and events are not verifiable in the manner that academic historians usually prefer their work to be scrutinised and assessed. This is not the approach that is adopted here. Rather than engaging with academic debates about myth or folk history, pūrākau encompass more than simple notions of creation and origin, 'myths' and 'legends.' They include contemporary re-telling of whakapapa, the origins of hapū names and place names, the location of taonga, and such like, passed down from the past to illustrate something about the present and the future.

Native Land Court

Paragraph 25. Most of the material included in this report is drawn from the minute books of the Native Land Court. However, the chapters of this report do not focus on the tenurial revolution institutions of the colonial state. The report by Jane Luiten on *Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part Two: Lands 'a waho'* is of singular importance and is being presented in this hearing week. This tribal landscape report draws heavily on the same evidence that Jane Luiten considers. However, it does not focus on whether the findings and judgments of the Native Land Court were good, bad or indifferent from a Treaty of Waitangi jurisprudence point of view. Rather, the search is for glimpses of the indigenous

voice concerning hapū and iwi origins that may be gleaned from the evidence recorded in the Native Land Court's written minute books. They contain a huge body of evidence concerning whakapapa, pūrākau of origins, migrations and settling within the blocks subject to the title investigation hearings. Claimants put forward evidence as to whom they acknowledged to be the founding ancestors that justified their customary entitlements in the land. They asserted customs and usages specific to the block and/or to the larger rohe. The evidence usually makes explicit, often in a formulaic manner, what were the tikanga bases for the claims made. My focus is on the way claimants and counter-claimants framed arguments in support of their customary rights and entitlements, for the bases in tikanga of claims that were advanced, and for information on resources and locations utilised by hapū over the centuries.

What is concentrated upon in this report is the importance of evidence about the inland blocks of land, and the assertions of many (but not all) claimants that the coastal areas confiscated after 1865 were an integral part of a single landscape from the mountains to the sea. There was heavily contested evidence in many nineteenth century hearings as to the relationship between the coastal areas (by then confiscated) and the inland blocks that would become the subject of Native Land Court title investigations. Ngāi Tai witnesses tended to concentrate on evidence directed to their asserted conquest of the specific inland block under investigation without reference to adjacent lands. On the other hand, claimants from the various hapū now affiliated to Te Whakatōhea presented a range of conflicting narratives. Though the narratives were conflicting they all assumed that their customary entitlements to lands inland were closely linked to the coastal areas bordering the interior. They relied heavily on continuity of occupation evidence and denied the finality of any alleged conquest by Ngāi Tai at an earlier point in time.

Grievances about the raupatu of fertile flat country along the coast in the 1860s must necessarily be a hugely important part of this inquiry, but it ought not to be concluded that the steep hill country inland was of little use to Māori (even if it was, as it turned out, of little use for long-term pastoral farming by European settlers). It is important also to remember that the flat country close to the coast

was not always fertile open country. Forests covered the entirety of Te Ika-a-Māui, including the coastline adjacent to Te Moana-o-Toi, when the first human migrants arrived on these shores. Those original tangata whenua and later waka migrants modified the landscape to create the forest-free coastal strip that existed around 1840.

What can be demonstrated, from evidence to the Native Land Court about the inland mountainous areas and from evidence given to this Tribunal in the Ngā Kōrero Tuku Iho hearings, is that the inland blocks were a hugely valuable source of food and resources that helped to sustain the population including those who resided for much of the year along the flat country of the coastline. Inland resources were important to the health and well-being of hapū members over many centuries and remained so right up to 1860, even if less so in the peaceful period of coastal trade and relative prosperity in the last twenty years of the remit for this report after 1840 to 1860.

How many minutes have I been going for?

Paragraph 29. The report's review of population estimates suggests that no more than 5,000 or 6,000 max would have been the total population in the North-Eastern Bay of Plenty inquiry district at the time of contact with Europeans. This a rather small total number of people living in a region of considerable size and fertility. The obvious point to be made is that the islands now known as Aotearoa or New Zealand, and the Ōpōtiki district in particular, were sparsely populated compared to the present. There was an abundance of food in the seas, rivers, coastlands and mountains to feed the population. Effort would be required daily, but it would not be a matter of extreme difficulty to sustain low numbers of people in dispersed locations by gathering, planting, harvesting and storage from season to season. Tikanga conceptual regulators and values on occupation (ahikāroa), and the principles of reciprocity and balance (utu) would be well able to maintain and sustain peoples on their lands in reciprocal relationships with their kin.

So turning to the first major Native Land Court Inquiry, the Ōamaru block paragraph 30. Chapter 8 of the report is the first of the chapters that consider

evidence given in Native Land Court hearings concerning inland blocks. To assess that evidence the chapter begins with some comments from Tā Hugh Kāwharu on ambilineality as a form of kinship affiliation or of cognatic descent in Māori social formations that relies on self-defined affiliation within a given social system, meaning individuals have the choice to be affiliated with their mother's or father's group. In the Ngā Kōrero Tuku Iho hearings the Tribunal heard evidence to the same effect from Dr Te Riaki Amoamo. He spoke of hapū affiliations that might be called 'taharua' or 'karangarua', which he loosely translated as *bilineal*. In whakapapa terms this applied when one's parents are from two different hapū and it gives you the right to stand to speak, or represent your whānau, on both marae.

Certainly, in the research for this project I have ascertained numerous examples of claimants and their witnesses offering more than one affiliation to identify themselves depending on the time, place and context. A prime example is the rangatira Tiwai Piahana, whose name has been mentioned on several occasions to this tribunal, also known as Piahana Tiwai and as Tiwai Pearson". It is suggested that every one of the following different self-identifications (as cited in my report) are all perfectly valid for the setting in which each statement was made by that one important rangatira:

> My name is Tiwai Piahana – I belong to Ngāti Patu. I am also a Chief & formerly belonged to Ngāti Ngahere, but at the death of a woman called Hineaua…

That's what it said in the transcript. That should be Hineiāhua.

> [Hineiāhua] I became the Chief. We changed our name to Ngāti Patu – leaving a portion of Ngāti Ngahere as they were.
>
> I am of Whakatōhea, i.e. of Ūpokorehe and I reside in Ōpōtiki. … I claim [this land] as a Raumoa. My ancestor Raumoa lived there.
>
> My people Ngāti Patu worked at Waiohape.

I am a chief of Whakatōhea.

I am a Queenite.

Your Honour, I just note that there's a whakapapa for Tiwai Piahana. That's from hearing week 2, day 2 at 10.48 which has a mistake in the heading. It says "Tiwana Piahana", Tiwana rather than Tiwai.

(09:58) JUDGE DOOGAN TO PROFESSOR DAVID WILLIAMS:

Q. Excuse me. Professor Williams that reference you just noted was from day 2 of week 2, was it?

A. It's a whakapapa from hearing week 2, day 2, and the heading is "Tiwana Piahana" but it should be "Tiwai Piahana".

HEARING ADJOURNS: 9.58 AM

HEARING RESUMES: 10.06 AM

(10:06) JUDGE DOOGAN TO PROFESSOR DAVID WILLIAMS:

Q. Thank you Professor Williams. I think you were at 32.

A. I need to skip over some of these paragraphs and I'll just try and highlight the ones I think are most important.

Q. Alright.

A. As always happens at select committee's in Parliament everyone says they've all read it beforehand. In this case, you'll jolly well all have to have read it beforehand and then you can ask me the questions.

Q. All right.

(09:58) PROFESSOR DAVID WILLIAMS: (CONTINUES)

CONTINUES #A031(a) PARA 34

Treatment of Native Land Court evidence

I'll just go straight to 34. One of the major findings of this report is that the pre-1860 tribal landscape is distorted by any assumptions that the confiscated coastal lands were in some way distinct and separate from the inland bush blocks and their ample resources. There may well be dispute as to which rangatira and which hapū was entitled to enter land-use transactions with the missionaries from 1839 onwards, but the important point in the Ōamaru evidence is that the land in Ōamaru was a part of a rohe that 'would have gone to the sea'.

The key points of the considerable evidence about the ancestor Tarawa, for the purposes of this report, relate not to the historicity or otherwise of the pūrākau about his dramatic arrival on these shores, but the fact that an ancestor at least sixteen generations removed had lived in these inland parts, that there were other prior inhabitants already in the district, and that Tarawa was an ancestor from whom many hapū in the inquiry district can and do trace a direct line of descent. Many of the kaiwhakahaere/conductors and their witnesses in Native Land Court hearings about the four inland blocks considered themselves to be of Te Whakatōhea, asserted that their coastline was at the least from Paerata/Opotiki to Awaawakino (contrary to Ngāi Tai claims), and that their lands spread from that coast a long way south, at least to the inland territory around where Tarawa and Manawakīaitū lived out their days at the maunga Motuhora.

Turning to paragraph 37. As an ancestor upon whom a claim in this one area of land might be sourced in the evidence, and the various waka of those ancestors, there were multiple options. Without elaborating on the ways that the whakapapa were interconnected, it seems important to note how numerous are the ancestors who appear at the beginning point of whakapapa evidence by claimants: Tarawa, Rangipuraho, Ranginui a Te Kohu, Ruatakena, Uru Ariki, Te Rangitaukapiti, Taritoronga, Warokino, Tapuarongo (with some other three

people with that person), Toi, Muriwai, and Te Rangi. All of these founding ancestors are thought to be of crucial significance by one claimant or another for the various hapū claims. They draw attention to ancestors living many generations apart from each other in some cases. Whilst some wishing to draw attention to the oldest traditions relating to Toi, Tarawa and Muriwai, others invoked ancestors much closer in time to themselves and their hapū.

Since the post-raupatu land allocations by the Compensation Court and the Special Commissioner Wilson, and then later the statutory creation of the Whakatōhea Māori Trust Board, only a very small number of hapū have been recognised by Crown agencies and officials. Most of the statements of claim of participants in this inquiry have identified themselves with one or more of that small number of hapū. Evidence from the Ōamaru hearing suggests, however, that the often quoted possibility that there were twenty-two hapū in Whakatōhea's past must be an under-estimate of the total. My count of the hapū mentioned in the minute book narratives for this one block, found at least twenty-six named hapū entities. How large each hapū might have been and how many of them were hapū that had ceased to exist is a matter for conjecture. What is clear is that multiple hapū identities were an important aspect of life in social formations in this inquiry district prior to 1860.

What is also a matter of interest is that not all of those hapū recognised by the Crown in the 1870s receive a mention in the third volume of the Ōpōtiki Minute Book in evidence for a block of land immediately south of the Ōpape reservation. And then, on the other hand, the Court, which was presided over by Judge Wilson, who himself was the Special Commissioner in the 1870s – recognised (and then extinguished) customary entitlements of some hapū not recognised by he himself in the 1870s. The Court's rather arbitrary conclusions on customary entitlements are set out in the Luiten report. What I would note is that of the seven hapū granted land in the Ōpape reservation, just four are named in the partitioned blocks within Ōamaru: Ngāti Ira, Ngāti Patu, Ngāi Tama, and Ngāti Ngahere. Hapū not named in the 1870s but recognised by the Court in 1888, the same person, were Ngāti Rangi, Ngāi Tamoko, Ngāti Rakautahi, and Whakatāne. Not named as such by the Court as having

entitlements in this block were three hapū who had been fully or partly recognised within Ōpape: Ngāti Rua, Ūpokorehe, and Ngāti Muriwai. Of those three hapū, Ngāti Rua is the subject of a great deal of attention in the evidence but is not recognised as such in the title determinations. Ūpokorehe is mentioned a small number of times in relation to the Whakatāne claim but that is beyond my remit. Ngāti Muriwai is not mentioned at any point in the evidence or the title determination, though Muriwai as a foundational ancestor was mentioned many times.

Moving across to paragraph 41. This report concludes that it is inconceivable that each hapū had just one discrete area of customary entitlements and that if its members travelled further afield then they would be somehow "trespassing" on the whenua of another hapū. Certainly, it is inconceivable that in a block of some 104,480 acres – which was the immediate hinterland for numerous hapū living for much of the year, but not all of the year, in coastal locations – could have been in the 'customary ownership' of just one or two hapū. By way of a counterfactual scenario, if some of Ōamaru had been retained in Māori ownership for a number of years after the title investigation in 1888, would Ngāti Rangi owners in Lot 6 be "trespassing" on the lands of Ngāti Ngahere owners in Lot 5 or Ngāi Tamoko owners in Lot 7 as they travelled up the Pākihi stream? Would Ngāti Ngahere owners in Lot 5 be "trespassing" on Ngāti Ira land if they sought to access their large block from the Waioweka river rather than the Pākihi stream? It is suggested that it would be equally incongruous to ask, in respect of the pre-1860 era, if members of those hapū, all of whom gave evidence of existing resource gathering activities in the block, were not entitled to be there at all.

The next section deals with the names aspect of the Takaputahi Hearing No 1. I'll just refer to a couple of paragraphs in here. It was all 17 days of hearing in vain, your Honour, because the Native Appellate Court made other decisions, but there was a long conversation about entitlements if the Whakatōhea claimants had been granted title.

So I think I will just turn to paragraph 44. Others, whose intermingled descent lines made them close relatives of Ngāti Rua, pointed out that all involved were descendants of Tūtāmure by one descent line or another, that it was the Tūtāmure ancestry that bound them all together, and so all should be treated equally as members of Te Whakatōhea iwi. One statement by Rewita Niwa in the Takaputahi hearing was a flat rejection of the notion of discrete hapū boundaries: "I don't know of any particular portions of this land belonging to particular ancestors. This land I always heard was a hunting ground belonging to the ancestors there are no boundaries in it." On the other hand, the evidence of that same Rewita Niwa for Ngāi Tama in the Ōamaru hearing (quoted previously) spoke of his ancestor Warokino making the first division of the land among the different hapū.

Just down to paragraph 45. There is an interesting consideration in this Takaputahi evidence as to whether Ngāi Tamako and Ngāti Rua were one hapū or two. These were said to be separate names for the same people, or was Ngāi Tamako a name that came to be distinctive owing to the fact that, in the difficult times of the inter-tribal musket wars, some members of a hapū lived for a time elsewhere in Ngāti Porou lands to earn money from flax scraping, whilst other members of the hapū kept the home fires alight in the hope and expectation that all could be reunited on their ancestral lands when peace came in the future? As with much else in this report, on many issues there were contestable versions of how tikanga could or should play out from one context to another.

So I'll turn over a few pages given that counsel's given me some times. The **Whitikau and Whakapaupākihi blocks** are discussed from paragraph 47 onwards relate to chapter 10 of my report. They provide an interesting lot of material which I hope you have all read.

I'll turn to paragraph 51. The evidence discussed in this chapter, like that in the previous chapters on hapū origins and rohe, provides many examples of diversity in the choice as to who might appropriately be named the founding ancestor(s) for the land in issue. The further back the ancestor a claimant relied

upon the wider and more inclusive would be the communities of descendants. Identifying a more recent ancestor as the founding ancestor narrowed the potential members of the group to a specific hapū or sub-division of a hapū. The evidence provides widely differing perspectives on the importance of conquest as a source of title compared to other take – in particular the weight to be attached to occupation (permanent or seasonal). Disputes about boundaries, and doubts as to the relevance of boundaries, is to be found here also.

Descent from Muriwai is always seen as absolutely crucial for those highlighting their Mātaatua connections. However, claimants in the Native Land Court title investigations for the inland blocks generally identified themselves with a primary affiliation to one (or more) of the hapū Ngāti Ruatakenga, Ngāti Patumoana, Ngāti Ira, Ngāti Ngāhere and Ngāi Tamahaua who were herded into the Ōpape reserve after the post-1865 confiscations. Witnesses also mentioned more than twenty other named hapū of Te Whakatōhea in their evidence, but Ngāti Muriwai is very seldom mentioned. There is a Ngāti Muriwai hapū that often occurs in descriptions of the Tūhoe tribal landscape but that hapū was centred on Ōpouriao near Tāneatua (but that is well outside the Wai 1750 district).

Contradictory as the evidence was in the Whitikau and Whakapaupākihi hearings of the Native Land Court, there are important pointers to the pre-1860 tribal landscape that should be useful for the Tribunal in the Wai 1750 hearings. The first, and most important perhaps, is that there can be no certainty about ancestral boundaries – certainly not fixed boundaries – between the hapū of Ngāi Tai and the hapū of Whakatōhea. On the contrary, almost all witnesses addressed the fact that there had been a long succession of battles and disputes between those contending parties over a long period of time, and often named the important warriors who had died in each of the battles. Depending on who had won the most recent fight, the area of the coast between Tirohanga and Tōrere might change hands from Ngāi Tai to a hapū of Whakatōhea (usually Ngāti Rua, but often with others).

The most significant issue in all of this, it seems, was that – _even if it was appropriate to make title determinations about fixed boundaries at all – then the totality of the lands from the coast to the deep interior should be viewed as a whole and not on a block-by-block basis. Ngāi Tai claimants found it convenient to restrict their evidence to claims of a single successful defeat of Panenehu, or a series of defeats of Panenehu over a short time a long time ago somewhere in the Whakapaupākihi/Whitikau area. They insisted that that was the end of Panenehu whose identity had been submerged into that of Ngāi Tai. The evidence offered for continuing Ngāi Tai occupation of this part of the interior was sparse.

I will turn over quite a few pages now. The material from paragraph 59 onwards relates to evidence you've already heard as members of the Tribunal in the Ngā Kōrero Tuku Iho hearings or from the *Re Edwards* litigation so I'll let that speak for itself and move to more recent times.

Paragraph 65. Chapter 13 deals primarily with the aspect of the research commissioned of early contacts between iwi and hapū of the district and Europeans prior to the 1860s and what was the Māori response.

I expressed some doubts about whether the research commissioned you asked me to enquire into alienation of land by iwi, but that's dealt with in paragraph 66 and I'll let it stand as it is.

Paragraph 67. Given the minimal practical impact on everyday life of some rangatira adhering to the Treaty, and I can leave that stuff for you to look at as well. Your Honour, I don't think that Dr Walker is right to talk about Pax Britannica from 1840. If anything it's Pax Christiana. And I don't think that Jane Luiten is right to talk about this being the time of Te Ture. Te Ture is old testament material that is of no relevance to what happened. Tikanga continued to be the only law in this district until 1860.

I will turn to a comment or two on the Treaty, as signed in May of 1840 paragraph 70. The report sets out the few known facts about the signing of the

Fedarb sheet of te Tiriti and who the signatories were. There are two pieces of information that are usually mentioned about this sheet of te Tiriti. The first is that none of the Crown officials who received the Fedarb copy commented on the fact that Hobson's signature on the copy was 'forged' by Stack when he made the copies at Tauranga. Stack wrote 'William Hobson' though Hobson's own signatures on Treaty sheets were always 'W Hobson'.

The second is that this is the only copy that has Christian crosses placed beside the names of some of the rangatira. At the request of rangatira connected to the Church Missionary Society, Fedarb identified the Ōpōtiki chiefs who were Roman Catholics by placing a cross beside their name.

Just briefly, I just say, it is very odd because just a plain cross was not a crucifix. It would signify you were Protestant rather than Catholic but anyway. It's clear, and you have heard evidence about this, that the term Pikopō was a transliteration for Bishop and there was a reference to the Roman Catholic Bishop Pompallier. In the documents available for this inquiry, he is described as 'te Epikopō Katorika Romana' the Roman Catholic Bishop. Epikopō is very close to Episcopus which was the Latin origin of that term.

I do have some comments which I think are important on paragraph 72 which relate to the people who are missing from the signatory list, and in particular, Tītoko is not there. Even though he was involved in all of the transactions relating to the CMS missionaries arrival and in relation to many of the trading activities that were going on, he was not a signatory, even though two other persons, one of whom his brother, did sign te Tiriti. Why did he not sign? So, I just leave some questions at the end of paragraph 72. Where was Tītoko on 27th and 28th May in 1840? Was he present but refused to come forward, or was he somewhere else on those days? We don't know. What we do know is that not all of the hapū later, recognised by Wilson, were signatories to te Tiriti.

Paragraph 73. What we also know is that there were no women rangatira who were signatories, even though there were a number of women that played a key role in Native Land Court hearings later in the century. Dr Anderson might

like to ask me some questions about that because I heard her asking some questions of other witnesses about that.

My conclusions from paragraph 74 onwards is that there was a continuing dominance of te ao Māori and tikanga from 1840 to 1860. There is very little of this report adds to the small amount of information that's known about the local Treaty transactions. In fact, though, it's suggested that this is not a significant problem. It's a firm conclusion of this report that the signing of te Tiriti appears to be largely immaterial to this tribal landscape report. The reason for this conclusion is that those ceremonies had no immediate practical significance for the way of life of either Māori or Pākehā residents in the district. There was no change to the relevant laws in force. Tikanga remained the legal order. The Treaty had no impact on the patterns of the tribal landscape that had been re-established in the late 1830s. There was a tiny Pākehā population, no resident Crown officers or agents, but fleeting encounters with Crown officials.

The section from paragraph 75 is my conclusions on hapū autonomy continuing to prevail after 1840. There are references in my report drawing on Tony Walzl's report which would be the subject of your inquiries later this week. And that, although there were the transactions with the CMS Missionaries, es the hapū continue to go about their own economic and social activities on the land which at least some of the CMS Missionaries thought they had bought under some sub-concept of English law, but English law did not apply in this district and those transactions did not keep Māori away from continuing to apply their own tikanga and customs.

I'll go finally to my concluding remarks at paragraph 79 onwards. Research into Native Land Court minutes revealed that there were a very large number of hapū that have lived in this district at one time or another – at least thirty and probably rather more than that. As functioning units of people living and working together, and self-identifying themselves to those with whom they interacted, the number of hapū has been reduced to five to seven with affiliations to Whakatōhea and two hapū in Ngai Tai. The Native Land Court evidence quoted in previous chapters included frequent mentions of how hapū

were named, who their founding ancestors were, and where they lived in the district. Hapū names might and did change and the most recent being the emergence of Ngāti Patumoana that I've already mentioned.

There is plenty of evidence (paragraph 80) that hapū became widely separated in the 1820s and 1830s during the period of raids from Tai Tokerau and Hauraki iwi, but they continued to retain their hapū identity in various places of exile. Most came back to their ancestral homeland after peace came in the late 1830s. There was some uncertainty about this in one instance at least when Ngāti Rua exiles went to Wharekahika (Hicks Bay) as Ngāi Tāmoko and yet still were, on one whakapapa lineage at least, explicitly a Ngāti Rua hapū.

I think I will turn over to my **Remarks on boundaries** from page[*sic*] 85. This researcher is yet to be convinced that hapū in the North-Eastern Bay of Plenty were divided from one another by strictly defined and rigidly observed territorial boundaries, within which they had rights exclusive only to members of the one hapū. By the 1880s and 1890s the fact of surveys and of defined blocks of land being investigated in the Native Land Court put a huge premium on claimants being able to define precise areas over which they held their customary entitlements. But that is something that flowed from the Native Land Court rather than from the pre-1860 tribal landscape.

So I have **Two broad conclusions** from paragraph 89 onwards that may offer claimants, the Crown, and the Tribunal some focus for comments and questions. The starting point for the two conclusions is that one should banish from the forefront of our minds the lines that are drawn all over the maps that have been inserted into the text. Imagine a world without a dotted line signalling the raupatu confiscations of the 1860s as it appears in the Wai 1750 District Inquiry map. Raupatu by the Crown had yet to happen. Imagine a map without the inland hills and valleys being criss-crossed by lines of blocks of land surveyed for the Native Land Court title investigations. The Native Land Court had not yet been established. Until very late in the piece as 1860 approached, te ao o ngā hapū was the only world, mātauranga ā-hapū was the primary knowledge system and the source of one's world-view, te reo Māori was the

only language, and ngā tikanga ā-hapū, ngā tikanga ā-iwi was the only legal order. The landscape was governed by the actual features of the land – which way did the rivers and streams run, where was the flat land, where were the hills, where were the pās, where were the whitebait, where were the eels, where were the birds and ferns, where were the seafoods? What were the names of all these features of the actual landscape and who gave them those names?

Having posed these questions, I inserted Figure 36 at page 378 entitled *From coast to inland: Contested tribal landscapes.* It is Plate 11 in the CFRT map book. It does still have the usual lines on it so we can see – it has the usual dotted lines but it's got three different dotted lines. The topography of the terrain, the flow of most rivers and streams, the direction of tracks that people travelled along in the past, the location of pā and sites of significance identified by claimants – these all point to a region where people mostly lived on and walked over lands connecting sea resources, with cultivated flat lands, small hilltop pā sites, and then inland to hills and valleys on a seasonal basis. In Pākehā compass terms, the line of the landscape was generally from nor' west on the coast to sou'east in the hills. That is the direction of the dotted lines inserted from various potential boundary points of Figure 36.

The suggestion is that if a hapū lived at any point along the coast and sought access to the hill country at any convenient point in the year, then sou'east would be the most obvious direction of travel. From Onekawa pā at Ōhiwa, Ngāti Patu and other hapū in the westernmost portion of the region might go directly south up the Waiotahe valley. But moving inland at any point from Pākihi to Tirohanga (or from Pākihi to Te Rangi) would most obviously be in a sou'east direction. The most expansive version of the Ngāi Tai rohe in the past (and still to this day) extends along the coast from their core territory at Tōrere to as far as Tirohanga. If that claim was accepted, though the hapū of Whakatōhea would not accept it, even so occupation of the coastline from Tirohanga to Tōrere would not enable easy access to the inland blocks of Ōamaru, Whakapaupākihi and most of Whitikau or to the tracks to Motu and onwards to Tūranga. Ngāi Tai claims to a considerable portion of that region were based on an ancient conquest and then assertions that there had been

no occupation of the area by anyone else. However, there was an overwhelming and convincing body of evidence (contradictory though it was in inter-hapū terms) of long term ahikāroa by many hapū of Whakatōhea in all the inland blocks. Whichever of the boundaries one might choose to separate Whakatōhea and Ngāi Tai iwi from each other as was proposed in 1843 – whether at Tarakeha or at Te Rangi – in both cases Whakatōhea hapū would have had easy access to Ōamaru, Whakapaupākihi, Whitikau, and most of Takaputahi and onwards into Mangatū. Ngāi Tai could have had no easy access to any of that whole area unless they risked running into members of the hapū of Whakatōhea whom they had fought against so bitterly and for so long. I conclude on the basis of my own research, and the evidence of living claimants at Ngā Kōrero Tuku Iho hearings, that – contrary to the decisions of the Native Land Court – the entire area that includes coastal raupatu lands and all of the blocks sou'east of there – Ōamaru, Whakapaupākihi and Whitikau, and most of Takaputahi – were a single rohe over which the various hapū of Whakatōhea exercised their customary entitlements from times long past and up to 1860. That is the first of my broad conclusions.

The second one more tentative is that this is a district of overlapping hapū rohe were a necessary fact of life from times long past and right up to 1860. There are assertions in many statements of claim and in some of the evidence tendered, that a particular hapū has and had customary entitlements over the entire territory of Whakatōhea as an iwi, as well as its own core rohe as a hapū. An instance is the map of Ngāi Tamahaua's rohe map presented to the Tribunal in Ngā Kōrero Tuku Iho evidence at Ōpape marae. Of course, as has been noted in earlier chapters, traditional history about traditional rohe have been more than a little distorted by Crown actions confining hapū within Ōpape Reserve for so long and denying them access to their ancestral lands and sites of significance especially in the raupatu district lands. My most likely second broad conclusion then is that overlapping and partly shared ancestral lands and resources were a major feature of the tribal landscape of the North-Eastern Bay of Plenty prior to 1860. It is suggested by this cultural-outsider researcher that this conclusion is a tikanga-appropriate conclusion. It may be that some claimants will wish to support, or to oppose,

that conclusion by tendering evidence from their own cultural-insider knowledge holders as to the relevant tikanga and mātauranga on such matters.

That concludes my summary members of the Tribunal and I am of course open to questions.

JUDGE DOOGAN ADDRESSES MS FEINT KC, MS CLARK – CROSS-EXAMINATION TIMETABLE (10:37:13)

(10:38) MS FEINT KC TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe Professor Williams. It is a pleasure to see you in the witness box again.

A. Wakatū remembered.

Q. Indeed. So I'm not sure whether you'll be disappointed or relieved to hear that, due to my commitments in the Supreme Court, you're going to get off relatively lightly today. If I start with some questions about methodology, you say in your introductory chapters that your research as an historian means that you concentrate in documentary records and you've been explicit about the fact that you don't regard yourself as having been trained in oral history. But nonetheless, you do incorporate some oral history, to the extent that you've incorporated evidence from the Ngā Kōrero Tuku Iho hearings. So, in terms of how we understand the value of your evidence, it's contributing to part of the picture but it's not the whole picture. It's a part of the jigsaw puzzle.

Yes, it's a part that I can claim some expertise in as a historian looking at documentary records and noting the context and noting the inconsistencies. Though, as I said, my approach is not to try and smooth out the inconsistencies and create an uncontested view of what the whakapapa strands should look like. So, it's certainly not the whole story. In any case, when asked to do this, I said: "Well look, I can't do oral history. I haven't got the training for it," and I don't think I should be asked. I don't think any Pākehā expert should be asked. It should be coming from the oral history from the claimants themselves, and the Tribunal has heard that through the Ngā Kōrero Tuku Iho hearings. Most of which I

had the chance to listen to and therefore to be able to incorporate into this report but it's their words speaking. It's my summary of them which might be subject to criticism. But otherwise, it's intended to be a holistic but only partial account.

Q. Understood. You just said “it's not your intention to seek to reconcile a singular correct narrative”, so to the extent that there are competing narratives, what does that mean in terms of your approach to conclusions in your report?

A. One of the important differences between the 1860 landscape, as I understand it to have been, and the landscape post-1870s is the very small number of hapū that were recognised after the Crown invasions and wars and confiscations. So what the evidence of people who, when giving evidence, had been alive during the 1840 to 1860 period and earlier, that’s pretty direct evidence of what the tribal landscape looked like at the time. Therefore, that’s to be given great weight, I think, as a primary source and what that shows is a significant number of hapū narratives with a whole range of founding ancestors given the greatest level of importance. So where this hits the ground in current terms is that there are some who wish to have a singular perspective, usually a Muriwai perspective and a Mātaatua perspective. One of my pretty firm conclusions really is that that is not how it was pre 1860.

Secondly, where I have expressed a pretty clear view is that the Native Land Court got it wrong in Whitikau and Whakapaupākihi and that Ngāi Tai really obtained recognition by the Native Land Court – and Jane Luiten will be able to talk about this more – not on the basis of customary entitlements but on the basis of the most recent battle. The sort of what I talked about in my book *Te Kooti Tango Whenua* which was that if all else failed the Native Land Court would look for the most recent conquest and say: “Well, that’s it, whoever won that battle they're going to get the title.” There was conflicting evidence there, but on that occasion I did have a rather clear view that the Native Land Court decision could only be justified if one saw those inland blocks as completely separate and never part of the coastal rohe of all the other hapū.

Q. I want to return to both those important topics, but before we get to that just to take you back to the dull questions about methodology. In terms of the inherent limitations on the documentary records available historically, I'd like to suggest there are like two gaps, if you like, in terms of the lack of availability of information. Because one problem is that there were very few Pākehā in the district before 1860 and so it must follow that there be relatively less written about it by Pākehā. Would you agree with that assessment?

A. Well, not only were there not very many Pākehā, there weren't very many Māori there either because of the war period and there were people no doubt holding each of those districts. I think the first written records of this area are the references to Cook sailing by and a very, very large number of waka going out to meet those ships. They didn't land there but they made some favourable references to a Bay of Plenty rather than a Poverty Bay and indicated a large number of people did live in that area. William Williams goes past a couple of times. But there's very, very little, yes, the answer to your question is very little by way of written records. In fact, apart from the missionaries I don't think that most of the traders were literate either so they didn't write up much.

Q. And then thinking about the Native Land Court records another problem is that the Native Land Court only investigated the blocks to the southern end of the district, principally the southeast end, because the confiscated area was subject to a different process.

A. Yes, there was never any customary entitlement investigation of anywhere in the confiscated area, other than the superficial and truncated hearings of the Compensation Court, which are covered in the work of other researchers that will be presenting to the Tribunal this week.

Q. Thank you. Just my final question on methodological issues. I was interested that throughout your report you sometimes observe that particular understandings might be more contemporary, or of being influenced by the evolution in tikanga as a result of the forces of colonisation. So I understand you to be saying that you have to take care to look at contemporaneous records to understand how people thought back in the 19th century as opposed to now.

A. Yes, I mean that's always what historians are on the lookout for. Are the statements that have just been given of a particular defined boundary of a hapū or an iwi something that has been handed down from the past or is it something that's been moulded to meet the need to fit within a thing called "large natural groupings" which the Crown says is essential if you're going to be able to talk to them? So, both with respect to the Native Land Court in the past and with respect to Treaty settlements in the current era, Māori necessarily had to try to fit their cloth to suit the expectations of those whom they sought to influence. The older the reference and the earlier in time the person was born would be the best evidence, and as time goes by, it becomes less reliable if it's of course influenced by other factors.

I mean there is clear evidence of tikanga evolution though from once the traders and missionaries are there, there are transactions with those Pākehā and there is a coming together of hapū in larger concentrations, especially at Ōpōtiki. It's not that the tikanga is sort of set frozen in time at all. There also had to be adjustments when the differing groups came from exile back into the territory in the 1830s. All of that is a story that needs to be understood as best we can from the time of the events. But people who want to win Court cases use arguments that are going to be helpful and their witnesses supply evidence that's going to be helpful. That's not that they're telling lies. It's just that they're understanding the past through the lens of the present.

Q. Understood. I think you endorse the late great Dr Ballara's thesis that in terms of pre-1840 traditional Māori society, the hapū was the polity for political, economic and social purposes and iwi were only understood in a sort of much more vague conceptual sense as a larger kin group. But is that thesis, does that play out in the Whakatōhea rohe from your understanding of the evidence?

A. Yes. Of course, the focus on hapū rather than iwi is something the Crown did get right in Article 2 of the Treaty. The work from Dr Ballara was in the Central North Island immediately to the south of this inquiry district. I found her approach highly relevant, but also her comments on the fact that in this area the outcomes from the pre-colonial wars did not much

affect the customary tribal landscape. In where we sit here, there was a huge change between the 1820s and 1840 as to who held the mana of these lands because other people had come in and some had been conquered and some had been dispersed and so on. Well, there was the dispersal but not the displacement in the North-Eastern Bay of Plenty. Dispersal then returns and then people more or less came back to their same areas, except for that congregation around the trading port. Dr Ballara didn't have that trading context but she made that same point in her report about the Central North Island that, despite the disruptions of that period, people finished up more or less where they'd been before, and I think that is relevant to this report.

Q. It's a feature of this district that struck me that it's a place where these hapū trace back a very, very long period of occupation, more than 30 generations.

A. Yes, depending on how people wanted to put their claims forward. But in the Native Land Court minute books, there's lots of people who sometimes are called, Te Tini-o-Toi, but they're not in these records they're just referred to as tangata whenua. I assume they came on a waka but no one knows what the name of the waka was, so the pre-named waka people are there and are frequently mentioned in the evidence in the Native Land Court and then the various waka that came later and the rather magnificent stories about Tarawa and so on.

Q. You say that there must be a very large question as to whether there were rigid fixed hapū boundaries. But I think, in fact, you're actually rejecting the notion that there was in traditional Whakatōhea society, aren't you?

A. From that Takaputahi names investigation, the abortive hearings on who should have entitlements in Whitikau 3, because of the way in which the Native Land Court worked, the Ngāti Rua people were wanting to say: “Actually, this is all our land and you other people did come along help us fight Ngāi Tai but you can just then go back to your own area,” so there was a sense that people had their own areas. That there's one side of the Ōtara River and there's the other side of the Ōtara River and there's the Waioeka Gorge and so on, so there are hapū areas which have pretty clearly got some hapū identifications. Not just the six or seven but with

kin affiliations that are a rough equivalent of the six or seven that are there in more recent times. So, I prefer the sort of the fuzzy boundary, the not delineated, clearly delineated boundary. But also when you're going inland, the point that I made was that, if you're going in to get your eels or your birds or whatever and you know the name of the tree and you have stories about a particular taonga that's been there and all the rest, my suggestion is that people who were close kin would be unlikely to treat that as absolutely exclusive. That there would be some joint sharing of ability to go to places.

Q. Yes. So perhaps a better way to understand it is that the whakapapa is interwoven and that means that there aren't any exclusive or discrete territories but there's a focus on connections in terms of the way the whakapapa is interwoven with the rohe.

A. Yes. And the way in which that worked out in Land Court hearings is that if you as a representative of your hapū wanted to get as close to an exclusive claim as you could, you'd choose a fairly recent ancestor as the relevant apex ancestor for your claim. If you choose Tūtāmure then you're going to get that everyone's going to be in, but if you include someone much closer to you, then you're saying: "Oh, no, it's only we are the application that have been here." So that's how the boundary between iwi-wide type of entitlements would compare with narrower hapū type entitlements.

Q. Yes. Like your conclusion, your second broad conclusion is interesting because that's essentially the conclusion that we reached in the MACA proceedings that there are distinct hapū and they might have core territories or areas that are more important to them but that broadly speaking all the rohe are more or less completely overlapping with each other.

A. Yes, yes. No doubt they have to have their arguments along the way, but yes.

Q. Is someone in control of the screen? Are we able to bring up the map at page 378 of Professor Williams' report?

JUDGE DOOGAN ADDRESSES MS FEINT KC – ADJOURNMENT (10:57:52)

PROFESSOR DAVID WILLIAMS ADDRESSES JUDGE DOOGAN – #A031 (10:58:13)

HEARING ADJOURNS: 10.58 AM

HEARING RESUMES: 11.29 AM

JUDGE DOOGAN:
Kia ora anō koutou.

(11:29) MS ROBYN ZWAAN: (APPEARANCE)
Apologies, Sir. Just before we begin, I arrived a bit late this morning, I was in a different court this morning. I just wanted to lodge an appearance. Ms Zwaan on behalf of Wai 1758 as well as Mr Lyall and Ms Sreen and Ms Swedlund on behalf of Wai 1092, 1787, and Wai 3727. Thank you.

(11:29) MS FEINT KC TO PROFESSOR DAVID WILLIAMS: (CONTINUES)
Q. Tēnā anō koe Professor Williams. The map I was going to refer you to before the break is at page 378 or your report and also plate 11 in the map book.

A. Yes.

Q. I wanted to focus on your thick dotted lines that one starts at Tirohanga and goes inland and likewise there are lines based at Tarakeha and Te Rangi. Part of what I understand you to be saying is that the way to understand the tribal territories in this region is that the coastal region that was the region that was mainly occupied but that coastal region is very much interrelated with the hinterland because of the resources and the bush and so hapū regarded their rohe as extending from the coast back into the hills. Is that right?

A. Yes that's right. That's what a very large number of the claimants said in the hearings to the four major blocks to the south of the coast there that

this was one block. Indeed, they got into disputes with each other as to who were the right people to deal with the CMS Missionaries. So they were dealing with the missionary transaction around 1840 and '41 along the coast as part of the same block of land as Ōamaru and Whakapaupākihi.

Q. In terms of your conclusion about the Ngāi Tai claims to the hinterland blocks that's set out at page 380 of your report, if I understand what you're saying correctly, you're saying it's not plausible that Ngāi Tai had strong customary rights, claims to those inland blocks because Whakatōhea was controlling the coast at Tirohanga and therefore they'd also be controlling the hinterland. Is that an accurate assessment?

A. Yes. Although from time to time that changed because the outcomes of battles moved the habitations along the coast so that what the map got there is the furthest extent of the Ngāi Tai claims through Wiremu Kingi and others was Tirohanga and that was brought before the Compensation Court in fact. Even if that was accepted that that was all Ngāi Tai territory right through from Tōrere right across to Tirohanga, in terms of the access to the bush blocks to the south that wouldn't give them access to the bush blocks to the south.

The most obvious pathway for Ngāi Tai was the pathway called Kanakana which was from Tōrere which went south towards Mangatū but for people getting into Ōamaru and Whakapaupākihi and Whitikau there were a couple of paths. One was called Te Kowhai and one was called Te Wero Ngā Koanga and they came on that southwest direction from the area which is called Waioeka Parish in that map. Ngāti Ira would insist on it being Waioweka but anyway.

The river lines are sort of the direction that people are going to be – and ridges beside those rivers are the ones that people are walking south. There was quite a bit of walking inland to collect resources and to identify important places.

The other two are Tarakeha and Te Rangi those two are there as the two places which tried to create a buffer according to the 1843 transaction where Wilson Senior and Shortland and some Māori catechists tried to

keep a peaceful respectful distance between Ngāi Tai and the various hapū of Whakatōhea.

So, on either of those lines clearly Ngāi Tai will have to use that Kanakana pathway if they're going to go into the bush. But even if it's Tirohanga it's still not going to give them access to Ōamaru or Whakapaupākihi or Whitikau which were where they got given allocations by the Land Court based not on customary interest because they said the customary made no sense or the people had different stories and who could believe what. So just based on most recent conquest and that was viewed as the killing of a person Parata and a particular unknown quite date which is some considerable distance ago.

All the evidence from the hapū of Whakatōhea were that there would be continuous over many, many years. Interrupted slightly by the raids from the north and from Ngāti Maru. But backwards and forwards into those bush blocks in the south. Not entirely bush blocks either because in the area around Motuhora that's where Manawakīaitū lived with Tarawa. Some people lived inland all the time, and where were their relatives, they were down on the coast. So it's one area that's the very strong evidence that was given by most of the claimants.

(11:36) JUDGE DOOGAN TO PROFESSOR DAVID WILLIAMS:

Q. Professor Williams, just before you move on, the name of the path, could you just repeat the path which you say Ngāi Tai would most readily use to go inland from Tōrere? What was the name of that path?

A. Kanakana, K-A-N-A, Kanakana.

Q. Thank you.

(11:36) MS FEINT KC TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. And of course, in terms of control of that coastal area between Tirohanga and Ōpape like the last relevant battle is the battle of Waiwhero which I think was early 19th century, so Ngāti Rua and the other Whakatōhea hapū remained in control of the coast after that time. Did they not?

A. There were still some little backwards and forwards even up until the late 1830s. There was a burning down of something at Ōmarumutu at one

stage but it didn't go into – they were supposed to become Christians by then and they decided they perhaps shouldn't have any more fights but there was still contest up until pretty well 1840.

Q. It's interesting actually there was that same contest played out in the MACA proceeding.

A. That's surprising.

Q. But the solution that was adopted was the Tarakeha boundary because that was the recognised boundary since the Shortland mediated agreement of 1843.

A. Yes. Well, I would call it the Māori catechist agreement because I think it's actually the Christian influence that led to that rather than the Crown influence. I've got material on that in my chapter. Not all of the kaumātua accepted it either at the time or in the later Land Court hearings. There was definitely the Māori catechists were the ones that were promoting that. The problem with that is that it leaves out Te Rangi which is where the Nukutere waka comes in and I think a very large amount of the evidence by many claimants was that Te Rangi was absolutely essential to the identification of most of the hapū of Whakatōhea.

Q. Yes, exactly. In your report, you talk a lot about hapū identity and society being moulded by the multi-strand of whakapapa that people had which allowed them to affiliate with multiple hapū and iwi. Do you see that the nature of those tribal identities as being inherently connected to the fluidity of the so-called boundaries or the sort of interconnecting zones of hapū in this district?

A. I think I'll just try and reiterate what I tried to say before which is that all of these people who are giving evidence are people that know their whakapapa and sometimes they're truncated whakapapa. By the way Jane Luiten assumes that when it's seven it's just seven generations but it's not because they're often truncated versions of the whakapapa. But the more exclusive you want to be in your claim the more recent is the ancestor that you choose. In the Takaputahi hearings they started off with Tūtāmure and they won on the basis of Tūtāmure. But then Ngāti Ruatakenga said: "Well look, actually, this Ōpape this is us; this is not all of Whakatōhea. And if it's Tūtāmure, well, that is all of

Whakatōhea." So, you go for an ancestors that makes it clear that this Ōpape area is Ngāti Ruatakenga, yes.

Q. I thought it was really interesting in your report how you talk about the outside influences starting to perhaps change identity or understandings about identity even before there was really a lot of Pākehā settlement or Crown involvement in the district. Particularly, you talk about Pakowhai becoming a centre for trade and that meaning the hapū travel from their various like heartland districts to settle in Pakowhai for a great deal of the year, and you traced that as the beginning of an emergence of a wider Whakatōhea identity.

A. I think so, yes. The leading role of Titoki and the fact he, for example, was the one that was negotiating both with the Protestant and the Catholic missionaries over various issues. Being mindful that the gap between the Protestants and the Catholics in those days was about, I don't know, the gap between the United State and Palestine on issues. I mean they were seriously at war with each other ideologically, and people like to Titoki he's taking a leading role.

Tony Walzl has quite a bit about complaints by the missionaries both Catholic and Protestant that people weren't going to church enough. They weren't going to church enough because they were growing crops, and they were involved in trades so they were embracing the new world and that therefore was having impacts because they had to buy ships and they had sell produce and so on.

But what my report emphasises is that this was all done within a tikanga evolution. It's not something imposed from the outside. It wasn't that the Crown officials came along and said: "Well, we now believe in written documents and so you must have written documents." It was that they engaged with people who offered them written documents and they said: "Well, let's have an arrangement." But there's no Crown imposition prior to 1860. It is all tikanga evolution. Concentration around Pakowhai for purely practical reasons. Therefore, probably, and this is only an assumption, but probably less resort to the bush because you didn't have to go to the bush quite so often to get resources now that you've got pigs and trade.

Q. Do you think that trade would have led to a greater interaction of ideas from other parts of the motu and other iwi because they wouldn't have been travelling to Tāmaki-makau-rau and Kororāreka?

A. Yes. Well, of course, I mean the seeds of that were from the dispersal during the previous pre-colonial wars, so that some people were at Wharekahika (Hicks Bay), some people Tūranga (Gisborne), some people were at Tauranga. They had made links there, which then tended to play out again, in buying ships and trading and so on and going to other places. I mean the striking thing really is that many of these ships, as you say, were going to Kororāreka and that's where most of the invading parties had come from but they said: "Let's put that aside. We're involved in the new world now." But not a world in which Crown officials played any role whatsoever, apart from two fleeting visits in the 20-year period.

Q. And you talk about Pax Christiana rather than Pax Britannica, how do you assess the influence of religion on tikanga?

A. I mean one of the significant things about conversion to Christianity – I use the word conversion because that's the word missionaries used – is that most of the missionaries expected individuals to convert. That's not what happened. There were people who were sticking to their old ways and then it was sort of a collective decision made: "Right, we're all going to become Christians."

This is a little bit unusual this area because there were two competing versions of Christianity. In most parts of the country the Wesleyans and the Catholics and the Anglicans kept away from each other and didn't directly compete but they did directly compete in Ōpōtiki. "Okay, we're going to become Christians. Which one are we going to choose? Are we going to be mihinare or are we going to be Katorika?" Having made the decision, of course not everyone goes to church every Sunday, but a pretty large proportion of all of that hapū had decided to become Christian go to church quite regularly. Ngāti Ruatakenga they have a little church somewhere near Ōmarumutu as well as going into Ōpōtiki.

But the requirements of the missionaries to go to church and the requirements of the traders to have people working to produce the produce to then put on the ships were conflicts which had to resolved by

new means because these were new issues. But they were all evolutions within tikanga. They weren't evolutions imposed from the outside.

Q. Right. You say that signing the Treaty of Waitangi was largely immaterial in that period between 1840 and 1860. And what I wondered was, I noticed it was only signed over a two-day period the 27th and 28th of May, so it wasn't clear to me whether the Treaty was understood as a major change to the existing constitutional order, perhaps because it hadn't been extensively debated by the rangatira of Whakatōhea, or whether you are saying that it's simply just didn't have any practical impact or perhaps a mixture of both.

A. I think a mixture of both. I mean they did have those short hui. Fedarb is a young fella. He was the super cargo which means he was in charge of the cargo of the ship not that he was in charge of the ship that came along the coast. They had the two days at Ōpōtiki and then at Tōrere and the somewhere further up Whānau-a-Apanui. If, in the succeeding years, they had then been magistrates sent to hold courts in Pakowhai or somewhere, then no doubt the local rangatira would say: "Hang on, who are these people? Have they got authority here?" Well, that didn't happen.

The issue of what it meant by the tuku of kāwanatanga didn't actually arise as a practical issue. Until you get the 1862 report by Crown officials who unbeknown the fact that the Māori of this district are operating their own rūnanga and they're operating fines, they are imposing fines, so that is an evolution of tikanga but it is not an evolution imposed by the Crown. The people are continuing to harvest the produce and fell trees on land that the CMS missionaries thought they had already bought. It all points to tikanga just continuing and that that was the single legal order.

They would have had to have worried about the relationship between kāwanatanga and rangatiratanga if there had been an issue. But essentially until, well, drastically in 1865 there hadn't been an issue.

Q. And certainly, CMS had to renegotiate the purchase of their block and so that essentially is telling you that tikanga prevailed in terms of how that transaction was understood.

A. And some refunds and various other things, yes.

Q. You also talk about the impact of the raupatu on hapū identity because of the creation of what Whakatōhea call “the Ōpape reservation” which resulted in the relocation of hapū on to that block and essentially the crafting of new identities but also the impact of Ngāti Rua as the primary residents of that area. Are you able to expand upon the changes that you see as a result of that?

A. It applied slightly differently depending on which hapū you’re talking about. Because Ngāti Ira for example who were allocated blocks within the Ōpape reserve, nevertheless, preferred to be up on something closer to their traditional rohe area at Ōpeke, on the other side of the river originally and then across at Ōpeke at Waioeka Gorge. But Ngāi Tamahaua and Ngāti Patumoana in particular really lost virtually all contact with any whenua within their own original area and finish up, for very natural reasons, today identifying maunga and significant points in their pepeha within the Ōpape reserve, which was not their traditional area prior to 1860. I think in particular for Ngāi Tamahaua and Ngāti Patumoana being deposited within what had been Ngāti Ruatakena was a very significant impact.

Q. I wondered also whether the fact that Ūpokorehe got reserves at Ōhiwa was the beginning of a greater separation between them and the other hapū.

A. Beyond my remit.

Q. Okay. It's interesting that you talk about the Takaputahi hearing in 1895 and you emphasise that there was a united Whakatōhea front presented in terms of the common tipuna, Tūtāmure, at least as far as award of title, but that united front quickly evaporated once it came to drawing up the list where Ngāti Rua started to say: “You need to look at a more recent ancestor to understand who was occupying the land.” And that incident would suggest that in the late 19th century hapū identity was still very strong and indeed, the prevailing force in Whakatōhea affairs.

A. Yes, and the only way in which Ngāti Rua could salvage anything out of that, in compromised terms within the confines of the jurisdiction of the Native Land Court, was that they got three shares per person, whereas people from other hapū owners lists, so-called owners lists, only got one

share per person. But I posited a couple of counterfactual questions there where I said: "Well, if some Ngāti Rua people had gone up to Ōpeke and said: 'We want to have some interests in this Ngāti Ira land,' I think that many Tamaipaoa and others might have said: "No, this is our area." I think the Ngāti Rua response in that hearing was what one would expect in tikanga terms. "Actually, really, this is just our area. Sure, you people came along and supported us, but then when you've supported us you go back home to your other area."

Q. You'd agree like post-raupatu hapū identity remained very strong in Whakatōhea?

A. Yes, but not just the six or seven hapū identified in the immediate post-raupatu period. The 20 or 30 hapū identities were still being maintained and are still being maintained even to today. I noticed the evidence at Terere where Ngāi Tū is named. Ngāi Tū is not just a hapū that has apparently ceased to exist. It hasn't been subsumed it's still there and so on. These diverse hapū identities were very strong in the 1880s and 1890s when those Land Court hearings were being held.

Q. You talk a bit in your report about the emergence of an identity of Whakatōhea that I think, you say, wasn't there pre-1860, but you aren't that clear about when you see that identity emerge.

A. What I see is a slightly complicated story where the various hapū of Whakatōhea who come late to the Native Land Court. Initially they don't want to be involved. They've got obvious reasons why they don't want to be involved in a Crown institution like that. They've heard stories from elsewhere. Dr Walker would have it that they were so poor that they really had to sell some land.

So that's the Ōamaru Inquiry. There was never attempt for the investigation at Ōamaru to be for them to continue to use those blocks. It was only to sell, and the issues about surveys will come up in other reports.

But one possible approach was to say: "Let's all band together and name one ancestor and we'll all get in there together and that will be great," so Whakatōhea did appear to be Whakatōhea in terms of a large number of hapū coming together. But then when they lost the case, Ngāi Tai gets

given the land and they think: “Oh, well, we made a mistake there, let’s go back to being lots of different hapū making our claim.” So the two issues were live together. There were some people who were pushing for a sort of a pan-Whakatōhea approach, but when it didn’t convince the Native Land Court Judges they said: “Well, that’s not going to work, so let’s try another approach,” and it was: “Let’s advertise the diversity of hapū,” so they're both there.

Q. In terms of your discussion about Lyall’s, what I think you would regard as a more hapū-centric approach, and Dr Ranginui Walker’s focus, which is much more on Tūtāmure being the unifying ancestor for Te Whakatōhea, you consider that there are grounds to suggest that Ranginui Walker is retrospectively interpreted whakapapa and history to reinforce the Whakatōhea identity in the 20th century.

A. That’s what I expressed in my report, yes.

Q. Because it’s interesting the approach of Lyall because in our submission to the Supreme Court on Friday actually was that Whakatōhea is a little bit unusual as an iwi because it doesn’t descend from an eponymous ancestor. But rather each of the hapū trace their lineage back to various pre-Mātaatua waka and tīpuna and they seem to place more emphasis on those pre Mātaatua waka and tīpuna than they do on Mātaatua and Muriwai itself.

A. Yes. Lyall was married into the iwi, wasn’t he, and the way he explains it in his book is that initially he sort of heard everyone talk about Mātaatua and Muriwai as their founding ancestor and that was it. And then when he decided to do a bit of research for the Historical Society in Whakatāne he said: “There seems to be a wee bit more complicated than that,” and then he wrote up various notes and various historical journals and then he decided to put it all together in that book. So he was definitely coming from the point of view of saying: “Gosh, there is a lot of diversity of approach.”

My commission also asked me to look at the statements of claim and I did draw attention at some point to the fact that Wai 87 when first lodged by the late Claude Edwards was it started off with Nukutere. It didn’t start off with Mātaatua and the second revised Wai 87 statement of claim

narrows it down to Muriwai and Mātaatua. So there was obviously movement within the claimant community then as to whether you focus on a diverse range of ancestors which gives you different strands of whakapapa linked from different waka traditions and pre-waka traditions or whether it's better to focus on a single identity which has got Muriwai at the centre and it's got statements about Muriwai that neighbouring iwi claim were said by someone else and so on, so that is obviously part of the modern story.

I think it is a replication of what was happening in the 1880s and 1890s: what's going to work best? Is it better to just have a clear single focussed story and the Crown will recognise us and we can negotiate with them or is it better to recognise that we're hapū diverse peoples and we've got our different stories? All of them blended together and they're not all separate histories but they're all interwoven histories.

Q. Yes, indeed. Thinking about the focus on Muriwai as a unifying ancestor, are we able to bring up the whakapapa chart at #C006, document #C006 of the record of inquiry?

WITNESS REFERRED TO WHAKAPAPA CHART #C006

Q. This is the chart that was prepared to hang on the wall of the Whakatōhea Māori Trust Board.

A. I do have it in front of me.

Q. Right. Yes, I suppose this shows how the hapū are connected which might be important when you have a Crown institution like a trust board which has provided redress at an iwi level. But one of the things I thought was interesting about it is if you say: "Look, at the Ngāti Rua line," which shows how they're connected down from Repanga and have common ancestry with Te Ūpokorehe, in fact, if you look at the Ngāti Rua evidence of Dr Te Riaki Amoamo he emphasises Tūtāmure as the most significant tipuna for Ngāti Rua and he places far more prominence on the Nukutere waka lineage than he does the Mātaatua one, albeit that he recognises that the bloodstreams are mingled.

A. So the really odd thing about document #C006 is that Tūtāmure appears there but has no descendants on this chart. The Tribunal has heard evidence from several people about that. Te Riaki Amoamo was himself

one of the informants for the creation of that. Tracy Hillier I think from Ngāi Tamahaua spoke about being a young woman at the time that was put together and I think she said the advice was from, was it Tā Monita Delamere? Anyway, an elder at the time said: "We need to put together a whakapapa that emphasises the importance of Muriwai as the apex and founding ancestor," and so this whakapapa was explicitly for that political purpose. I think quite early 1960 or thereabouts. I don't know when it was originally done. Lyall was mentioned as a source as well.

Q. Yes. Well, if you look in the bottom left-hand corner the authors were Te Riaki Amoamo, Matenga Biddle, and Te Huinga his whakapapa book.

A. Yes.

Q. Yes. I hadn't picked up, until I read your evidence, that Dr Ranginui Walker focuses on Tūtāmure as the unifying tipuna rather than Muriwai. I thought that was interesting too.

A. Yes.

Q. Do you think it's true to say that the fluidity of hapū identity in traditional times has become somewhat more ossified now, perhaps as a result of the raupatu and there being the six hapū who were given land blocks and then the six hapū placed in the trust board?

A. Well, certainly, in the evidence I've seen of the way in which peoples of this rohe relate to the Crown (and whether to negotiate or not, whether to settle or not), there has been what you called an ossification, in that there were the Sim Commission Inquiries in the 1920s and that finally led to the creation in the 1940s of the Whakatōhea Māori Trust Board which had certain properties and it had that chart on the wall. For those purposes, there was clearly ossification because that's how they presented themselves to get the trust board established after that very modest finding in their favour in the Sim Commission in 1926 I think it was. That doesn't mean to say that things don't change on the ground.

That's what I just thought it was quite striking preparing for this hearing to look at some of the evidence in Terere Marae where Ngāi Tū appears as a continuing statement of "that's the iwi that some of us relate to" in that short pepeha. So that's not one of those ones that are mentioned here.

Q. I'd suggest to you and because of that representation of a hapū Whakatōhea remains strongly hapū-centric. Would you agree with that or do you think it's beyond your remit to talk about contemporary-

A. It is something that happened after 1860 I think. I mean I'm aware of it because I've been involved in other proceedings but I think it would be not proper for me to answer that question.

Q. All right.

(12:06) JUDGE DOOGAN TO MS FEINT KC:

Q. Ms Feint, just before we move from this chart, I just wanted to clarify one aspect. I think Professor Williams said in response to one of your questions a moment or two ago that, or there was a discussion about Tūtāmure and the chart showing no uri. But on this, as far as I can see, Tūtāmure doesn't appear on this whakapapa, unless I'm missing something.

A. Yes, he's married to Muriwai's daughter, Hine-i-kauia.

Q. I see. Right, thank you.

A. Yes.

Q. I don't know how I missed that but thank you.

PROFESSOR DAVIDD WILLIAMS:

That's emphasising the Muriwai.

JUDGE DOOGAN:

Yes, right. I follow now thank you.

(12:07) MS FEINT TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. Just to finish off Professor Williams, I've just got a few specific questions about the group calling themselves Ngāti Muriwai. You didn't find any historical documents pre-1860 that mentioned Ngāti Muriwai, did you?

A. There's the evidence of Paku Eruera in the Whitikau No 3 rehearing where there is ambivalence as to whether he's talking about the Muriwai ancestry as a hapū called Ngāti Muriwai or whether he's relying on his whakapapa connections to Whariu who most people assume to be the

ancestor of Ngāi Tai. He says: “I was put in as a descendant of Whariu,” in that hearing. There’s a lot of emphasis on Muriwai as the relevant founding ancestor but a reference to Ngāti Muriwai as a distinct hapū is I think just mentioned once in one of the questions of Paku Eruera. But the entitlement that he got from the Land Court was not based on that.

Q. No. He didn’t make any claims as Ngāti Muriwai, did he?

A. No.

Q. You didn’t find any documents dated pre-1860 that refer to Ngāti Muriwai?

A. No. His claim was on behalf of Te Panenehu of Tūtāmure not the Ngāti Rua of the present day that’s how he put it. He doesn’t refer to Ngāti Muriwai as such at all.

Q. Right. But you didn’t find any pre-1860 documents that referred to Ngāti Muriwai?

A. Well, yes, the one Whānau-ā-Apanui area Court hearing there’s a Ngāti Muriwai that was mentioned and that’s in my report and there’s a Tūhoe Ngāti Muriwai as well. I think the claimant who is at the back of the room here now did tell me in part one of the research hui that it’s the hapū called Ngāti Muriwai in the hearings of a block within what’s now in Whānau-ā-Apanui rohe which she relates to but that’s her evidence. I don’t know anything more than that.

Q. So you don’t know the whakapapa of that Ngāti Muriwai group at Te Whānau-ā-Apanui?

A. Well, I’ve enquired into that. I haven't looked at that block. I haven't looked at the Native Land Court hearings for that block.

Q. The reason why I'm asking is because that group at Te Kaha whakapapa'd to Kauao, the youngest child of Muriwai rather than Repanga, so it's not clear that they're the same group.

A. Well, all I said in my report was it's not clear. You've added something to my knowledge in terms of whakapapa but I didn't enquire into that block because it wasn't within this Wai 1750 Inquiry District.

Q. Fair enough. Thank you Professor Williams you've answered all my questions. Thank you very much for your evidence. It was very interesting.

A. Kia ora.

Q. Tēnā koe. **Thank you.**

JUDGE DOOGAN ADDRESSES MS FEINT KC, PROFESSOR DAVID WILLIAMS – MICRO BREAK (12:10:58)

HEARING ADJOURNS: 12.10 PM

HEARING RESUMES: 12.16 PM

MS CLARK ADDRESSES TRIBUNAL – TIMETABLE UPDATE (12:16:37)

(12:16) MS CLARK TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe Professor Williams. **Thank you Professor Williams.**

A. Tēnā koe. **Greetings.**

Q. As you know, I represent Ngāi Tamahaua, the Wai 1781 claim. Ms Broughton is going to bring up a document that I'd like to put to you, Professor Williams. I know that you won't be surprised to see this document because it was something that I indicated I would like to speak to you about and it concerns the Ngāi Tamahaua rangatira Tītoko. We're going to page 73 of the document, which for your record has now got the appellation #E001, I believe.

WITNESS REFERRED TO DOCUMENT #E001 PAGE 73

Q. You have mentioned a number of times already today the importance of Tītoko in the 1820s-1830s period. You would agree he was a prominent chief around this time?

A. Well, more 1830s, 1830s-1840s.

Q. 1830s into the 1840s.

A. Yes.

Q. You would've no doubt already read the paragraphs that I referred you to in this report which is by Mark Derby –

A. Yes.

Q. – and was part of the *Edwards* application in the High Court hearing.

A. I've looked at all the paragraphs that you alerted me to, yes.

Q. Thank you. Yes, starting at paragraph 73 there, I wanted to take you through and hit on some of the key points within the narrative regarding Tītoko and I'll just step you through. I will keep it brief. But essentially what I want to suggest is that these paragraphs and this narrative that is presented by Mark Derby offers further detail regarding the reasons why Tītoko was a prominent chief at this time. Would you agree with that?

A. Yes. He was certainly the one that got people to go out there and cut and scrape flax because they wanted to get firearms to level up the imbalance with the Tai Tokerau and Ngāti Maru invaders. Obviously, the way in which he operated was not just for his own particular hapū. It was working with some of the others, yes.

Q. Thank you. So that does come through in the paragraphs from 73 onwards in the Derby report where it steps through. For example, you've mentioned that they scraped flax to sell for firearms that's at paragraph 73. It then talks about the attack of the Te Papa pā site and that's at paragraph 74. Perhaps you would scroll down a little bit.

WITNESS REFERRED TO #E001, PARA 74

(12:20) JUDGE DOOGAN TO MS CLARK:

Q. Ms Clark, just before we go on to paragraph 74, at the start of 73 when it says: “At this time,” are we talking about 1828 or thereabouts, or?

A. Yes, we are.

Q. All right.

A. I say that from reading slightly back from that.

Q. Okay, that’s fine. Thank you.

Q. Thank you I did mean to clarify that.

(12:20) MS CLARK TO PROFESSOR DAVID WILLIAMS:

A. Can I just add that, of course, it wasn’t only Tītoko that was encouraging people to go and scrape flax to be able to sell for rope to be able to buy muskets and so on. Some of the Ngāti Rua or Ngāi Tamoko people were in Hicks Bay (Wharekahika) were doing the same thing.

Q. Yes, and that is all part of that paragraph 73. Paragraph 74. In April 1828, before the pā, at Te Papa near the western end of the present

Waioeka bridge, was fully complete, Ngāti Maru, together with some Ngāti Awa and Ngāpuhi, swept up the river in canoes to attack. Whakatōhea were routed and the survivors fled. Large numbers were taken as slaves and taken to a Ngāti Maru pā at Haowhenua.

Down to paragraph 76. As with the 1828 battle against Ngāti Awa at Ōhiwa, after the defeat of Te Papa Ōpōtiki was all but deserted for some years. Some Whakatōhea survivors grew so fearful of their exposure to further raids that they moved across to the Gisborne area. They scattered; they moved elsewhere.

And then if we drop down to 77. Again, I'm just hitting the key points in the narrative that speak to Tītoko's role at this time. While Tītoko was at Tauranga acquiring arms, a messenger arrived from Waikato asking for assistance against the Ngāti Maru of the Thames district. Whakatōhea and Ngāi Te Rangi departed for the Waikato where they decisively defeated Ngāti Maru and they were able to liberate the Whakatōhea slaves that had been taken at the Haowhenua pā by Ngāti Maru at Waikato. And then there was a further battle which is mentioned at the second half of paragraph 77 there. On their return to Tauranga, the Whakatōhea and Ngāi Te Rangi heard that another Ngāpuhi war party, under the Ngāti Kurī tohunga, was attacking Mayor Island and Motiti, and a 1,000-strong Whakatōhea and Ngāi Te Rangi force under Tītoko, Waharoa and Tupaea surprised the Ngāpuhi party at Motiti in a fleet of canoes and are said to have killed all but two of them. From this, the Whakatōhea warriors armed themselves from those slain. Ngāpuhi no longer held the balance of armed might.

Tītoko and the Whakatōhea warriors returned to Ōpōtiki in triumph with gunpowder, weapons, a 90ft canoe and a captured cannon.

My final reference point that I'm going to make is down at 81 where it says that in the late 1830s the Whakatōhea refugees gradually returned to their lowland settlements around Ōpōtiki, although greatly reduced in numbers.

I think I already put this question to you. You would agree that this provides detail, which is touched on, especially from the evidence of

Rewita Niwa in your report, this provides further detail around the prominence and the reasons for the prominence of Tītoko?

A. Yes. I mean most of that material is taken from the evidence of Niwa and Ranapia and others.

Q. Yes.

A. The citations you've given from Walker and Lyall I think as well. There is one thing I would say about those paragraphs is that you refer to Ngāpuhi on several occasions in there, or Mark Derby does, but the people in the Bay of Plenty weren't particularly fussed it seems about the actual affiliations of the people coming from the north, they were all called Ngāpuhi. Actually, some of them were Ngātiwai, some of them were Te Rarawa but in the historical records that I looked at in this report they all get lumped in as Ngāpuhi. They identify Ngāti Maru as a distinctive invasion force but all the rest of them are just called Ngāpuhi by almost all of the Whakatōhea people and Lyall and Walker and many of the witnesses in the Land Court in the 1880s and 1890s they just refer to them as Ngāpuhi. But there are one or two witnesses that do say: "Well, actually the chiefs," I think with the Motiti that battle you're talking about which led to coming home with those canoes which are represented on the walls of the marae where you had the evidence at Ōpape. I've forgotten the affiliation but someone said that it was Ngātiwai, was it? It was someone. Anyway, just to make a point that when the word Ngāpuhi is used in all those paragraphs, I'd put a little question mark as to exactly what you mean by that because they were just generally a number of invaders from Te Tai Tokerau, all of whom had a lot more muskets than the local people, until Motiti.

Q. Yes, invaders from the north.

A. Yes.

Q. You mentioned the pictures on the wall of the whare as Ōpape and another thing that comes to mind is there is also a picture of a cannon –

A. Yes.

Q. – as well which again ties in with the narrative that we're hearing here. So, at this time, the 1830s, would you agree or you would agree that the

core rohe for Ngāi Tamahaua would have been the trading Ōpōtiki which had become at that time the trading port?

A. Yes. Well, before the trading they were a little bit further inland but I think most of the time on the other side of the Ōtara river but the other side on the western side of Ōtara going down to Pākōwhai. It was a very rapid period of expansion. When they decided to get into shipping they really got into it in a big way. But that was certainly not just Ngāi Tamahaua that was all of them really.

Q. Yes. This rapid period of expansion, however, only started once they returned from being scattered –

A. Sure.

Q. – and they returned and we see the role that Tītoko played in that return. Hence, it's understandable that he is raised to prominence, especially in the kōrero of Ngāi Tamahaua.

A. Yes. I suppose a key part of my evidence really is - and that was really very little to do with the Treaty of Waitangi as such that was signed in May 1840 – it was do with the fact that peace had come. That the majority of people had decided to identify with one or other of the Christian religions. Given the capacity of Christians to wage war around the world, it's a bit hard to remember that when Māori heard that gospel in the 1830s and 1840s it was a gospel of liberation and peace, a liberation of slaves and bringing peace. So whatever our perceptions of Christianity might be, their perceptions then were Christianity equals peace and not war so now is the chance to get into trade.

Q. Yes. Having just come out of that period of wartime and slavery –

A. Yes.

Q. – that would have no doubt resonated; that message would have resonated with them.

A. Yes, absolutely.

I want to take you down a little bit further in the Derby report to paragraph 83 and there's two paragraphs that I want to refer you to. The resettlement of hapū such as Ngāti Rua away from borderlands and into the heartland of Pākōwhai – and we're talking about this time that we've just spoken about that they had returned, Ōpōtiki is booming – this

concerned the leaders of Whakatōhea who feared that their tribal boundaries were insufficiently protected. A meeting was called at Ōpape to consider this issue. It was decided that a section of Ngāti Rua would permanently occupy at Waiaua to prevent an encroachment by Ngai Tai and in 1844 the Ngāti Rua chief Te Aporotanga built a pā there named Rangiariki. So a couple of things from this paragraph. I'll go down a little bit further and just complete what I'm saying from the Derby report. Actually, I'll continue with where I was going there. So, a meeting was called at Ōpape to consider this issue. This is the evidence of Rewita Niwa. What I would like to suggest to you is that it's highly likely that this decision that Ngāti Rua would go and effectively look after that order with Ngāi Tai, it's highly likely that Tītoko and Ngāi Tama played a role in that decision that Ngāti Rua would look after the border with Ngāi Tai. Would you agree with that?

A. There were still little incidents with Ngāi Tai in the early 1840s and clearly Ngāti Rua would have wanted to make sure that they didn't try to reassert some of their claims that had extended as far as Tirohanga so that would have obviously been a major issue at the time. My understanding of what you're talking about there was that all of the rangatira who were wanting to engage in trade are wanting to bring people into Pākōwhai and wanting them to church either at Hato Marie or at Hiona. That that shouldn't mean that they just leave the country open to old enemies that might want to cease the time. It looks pretty much like an initiative which is showing the importance of hapū working together in this new world order of what Dr Amoamo calls the march of civilisation having arrived.

Q. Yes. If I could scroll down now to paragraph 86 where it says: "With the eastern border thus secured, Ngāti Rua moved between its settlements at Waiaua and Ōpōtiki, where their large houses were. The other hapū of Whakatōhea recognised Ngāti Rua as holding Waiaua 'for all Whakatōhea', as their sentinel on the border with Ngāi Tai." Now just to clarify exactly what is meant by Waiaua here and, am I correct in my understanding that this is the fertile plain and area of which became pretty much the only cultivable area within the Ōpape reservation when that was

created later on? Are you able to help me with that or confirm my understanding on that?

A. Well, the word Waiaua is used in a narrower and a wider sense in different contexts. Waiaua in terms of the Ngā Kōrero Tuku Iho hearings was the marae –

Q. Yes.

A. – there where Ngāti Patumoana gave their evidence and with the Catholic Church below and Dr Ranginui Walker's remains in the urupā there. Waiaua is sometimes that whole valley going down there and sometimes it's more specifically that spot. But before all of those buildings were built, there was that, you had it up there, Te Rangiariki, what was it called, the one that was built?

Q. The pā was Te Rangiariki.

A. Yes, Te Rangiariki. That's within what's broadly speaking the Waiaua area, yes.

Q. You would be aware that-

(12:34) DR GRANT PHILLIPSON TO MS CLARK:

Q. Sorry, Ms Clark. Just before we carry on, can we see what that footnote reference is for that statement and paragraph 86.

A. 119.

Q. Yes.

A. Footnote 119.

Q. So, who is saying that?

A. It is indeed the evidence of Rewita Niwa.

Q. It's Rewita Niwa saying that. Right, okay.

A. So this is certainly continuing to be emphasised by Rewita Niwa.

Q. Thank you.

(12:34) MS CLARK TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. So, you would be aware that scarce resources around the Ōpape reservation when the hapū were located there caused conflict and in particular, there was this question, and I think it has been referred to, even by my friend Ms Feint just earlier, as to which was the hapū that had the

prominence in this Ōpape/Waiaua area. I want to suggest to you that part of that conflict, or with paragraph 86 and what we read here, this indicates a reason for that conflict. Ngāti Rua saw themselves as the pre-eminent hapū of that area, whereas from a Ngāi Tamahaua perspective, because we know this evidence is coming from Rewita Niwa, from a Ngāti Tamahaua perspective they are there and holding Waiaua for all of Te Whakatōhea.

A. That's the same issue that played out in the Takaputahi list of owners and the Ngāti Rua people were very strong in that hearing that they were the eastern protectors and they could call on others as need be. But from 1843 onwards, there was no requirement to call on others to fight off Ngāi Tai because Ngāi Tai didn't attack at any point between there and the end of my period of 1860.

Q. Yes. But this shows the genesis of many years later where this dispute would have arisen from.

A. So what you're showing me is one example of a person talking about Whakatōhea as a whole and in earlier evidence to Karen Feint I said there was constantly a backwards and forwards as to whether the best strategy in the late 19th century after all of those confiscations and the reservations creation was to go for a pan-Whakatōhea approach or a hapū-specific approach. So there is evidence for both in lots of the hearings and you picked out one that focusses on for all of Whakatōhea.

Q. Yes. On that point, your report is very clear that it was the Native Land Court that encouraged the claimants to define their rohe in terms of boundaries exclusivity because that was the context they were in. But going back I think you land on the side that from a customary interest perspective what is more accurate is a broader view of interlinking hapū, interlinking lines of whakapapa, and a much broader picture not seeking to exclude but rather seeking to create links. Would you agree that's the more accurate perspective from an original customary perspective pre-Native Land Court?

A. Yes, absolutely. For the Ōamaru inquiries everyone there was waiting to get some money out of the block. That was not trying to find out what the customary entitlements were or for people to continue living there. It was

an order for the block to be sold. In that context, a very large number of hapū claimed exclusive rights. Well, I take upon that is that they felt that they had to do that because that's the only way they could get 'success' in front of Judge Wilson.

I just put in the counterfactual if they were to hui where there was no competition as to land but the discussion is what to do about trading they might have decided: "We all work together and we're all kin together." It absolutely depends on the context as to whether you're talking about working all together or whether you're working for "get your little bit of the poultry pie that might come out of the Native Land Court hearing".

Q. Yes. With that in mind, quite a simple point, but with that in mind that does indicate that those very broad definitions of customary entitlement, and I think you refer to them at plate 3 in the map book there, where you note that hapū define their customary entitlement in terms of the entire rohe of Te Whakatōhea. With that in mind that that is supportable with the sort of broader perspective that did exist at that customary entitlement level.

A. We accept that my report is doubtful about the whole idea of that boundary definition.

Q. Thank you. But nevertheless, you agree to a broad definition of hapū entitlements –

A. Yes.

Q. – perhaps with the core rohe and I think you might mention that.

A. Sorry?

Q. Perhaps with the core rohe but a broad customary entitlement.

A. Yes. I mean the Ngāi Tamahaua problem was that they were entirely dumped within the reservation and had essentially nothing else in their prior area. Other hapū had a few options. But, yes, I don't think I can take that any further.

Q. Okay. Thank you those are my questions.

A. By the way, I appreciate you using the words "customary entitlement" because I explicitly refused to use the word "ownership" when we're talking about these things because I don't think ownership is the right term. Thank you.

JUDGE DOOGAN ADDRESSES MS CLARK – MIHI (12:41:22)

(12:41) MS PETERS TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe e te Ahorangi. Ko Ihipera Peters ahau, ko au te rōia mō te hapū o Ngāti Patumoana i roto i tēnei nohoanga. **Greetings Professor. I am Ihipera Peters and counsel for the hapū of Ngāti Patumoana in this hearing.**

A. Tēnā koe **greetings**.

Q. Tēnā koe. Can I just say, it's heartwarming to hear your exchange with my friend Ms Clark about Motiti as an uri from there and having just flown off the moutere over the weekend for another tangihanga there. Otirā, kia ruku atu ki aku pātai **nevertheless, I'll dive into my questions**. I only have a few pātai for you that arise from your oral presentation this morning. In your summary, you mentioned Tiwai Piahana and it's at paragraph 31 of your summary and as you mentioned he is a prominent tupuna rangatira for Ngāti Patumoana particularly in the 1860s. My question is are you aware of the whakapapa for Tiwai Piahana that was provided by koro Te Riaki Amoamo in this inquiry?

A. I think that's the whakapapa that I said had been misspelt in the heading. It said "Tiwana" instead of "Tiwai".

Q. Āe, tēnā koe. Just for the record, the record number for that is #D007(e).

A. Āe, thank you.

Q. You mentioned also that he was known as Tiwai Pearson.

A. Yes.

Q. My instructions are that my clients haven't heard of that Pearson reference whether it's a translation or otherwise and I just wanted to ask whether you can tell us where you got that reference from.

A. Compensation Court I think. He's referred to as Pearson in one of those. Either the Compensation Court or the Wilson's out of Court settlement. It was from that 1867 period he is referred to as Pearson somewhere. I assumed that Piahana and Pearson were transliterations of each other but whichever way around I don't know. Pākehā often gave Māori names that they thought sounded a little bit like their Māori name. There was willingness to give Māori a Pākehā version of their name. I assumed that

Pearson was. I think I saw a press report about Pearson as well so he was known as that somewhere.

Q. Tēnā koe.

A. He was also of course the person that Judge Wilson invited to give evidence for Ngāti Patumoana given that the judge was sceptical of Tauha Nikora's claims to be Ngāti Patumoana. The judge got rather upset that it turned out that Tiwai was basically in agreement on some of these issues which the judge wanted him to be in disagreement on. He was certainly a rangatira that spoke forcefully for himself and for his hapū of Patumoana.

Q. Tēnā koe. In that same paragraph in your summary at 31 further down you referred to, there's a part there which looks like a quote: "My people Ngāti Patu worked at Waiohape." My understanding that that should be Waiotahe.

A. I imagine so, yes. I'm just quoting how it was in the material.

Q. Ka pai.

A. In my report the citations are there. I haven't got any footnote references in the summary.

Q. Ka pai, tēnā koe. Koinā aku pātai i tēnei wā. Tēnā koe e te Ahorangi. **Thank you. Those are my questions today. Thank you Professor.**

JUDGE DOOGAN ADDRESSES MS PETERS – MIHI (12:45:28)

(12:45) MR SHARP TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe Professor Williams. I should stand so you can see me.

A. You can stand or sit, it doesn't matter to me.

Q. Thank you. If you can peak through the-

A. The Tribunal members are sitting.

Q. Well, I should take the lead then; take that lead. Sorry, Professor Williams is it or?

A. Sorry.

Q. I'm just wondering how to address you?

A. Professor will do. There's a few other names I've got but that'll do.

Q. Thank you.

A. Or David will do.

Q. I'm acting for claimants on behalf of Ngāti Muriwai.

A. Yes.

Q. Now I've just got a few areas I just want to discuss with you. First, it's quite striking the degree of resource sharing which seemed to have occurred within the Whakatōhea people which you have discussed and Ms Clark just discussed with you. Is it a little unusual compared with many other groups where hapū have certain areas where they have exclusive use of resources?

A. I think exclusivity is a word which is very closely associated with the English notion of ownership as an exclusive right from the heaven's above to the earth beneath. It's not a word that makes much sense to me from what I know of the materials that I've looked at for anyone anywhere really. So what I've put in my report was the quotation from Chief Judge Durie from the Ngāti Awa Memorandum-Directions. I don't think that there were political boundaries which were fixed.

Q. Yes. So rather than exclusive I'm just, you know, as far as the tikanga goes as having mana over resources. So, certainly in some areas a hapū would have mana over resources so if other hapū wants to share it or use it, then it's under the mana of that hapū or with their permission but that seems to be not operating to that sort of structure in Whakatōhea. Would that be correct?

There is quite a lot of evidence in the Ōamaru hearing where there's particular claimants give the actual name of a rock, the actual name of a tree, the actual particular spot where an incident occurred and one of them was about a particular taonga that had been deposited there. Now I'm sure that the people giving evidence about those specific names and places would be the people who said: "We are the only people that did have that story. That's our story about that particular place." But all of the claimants in the Ōamaru hearing gave very convincing evidence of having their ancestors going into that same area and gathering eels and so on. Where the, what you might call, exclusivity, but where the problem would come if someone desecrated a particular site that had been named by one particular person from a specific hapū, then there might be trouble

mightn't there, but all of the evidence from all of the competing parties, and Ngāi Tai weren't involved in that hearing in particular in putting their own claims forward, so they were all parties who had ancestors whom they named and places that they named and so that looks like sharing resources on a seasonal basis but within it having some pretty important named sites. There is a whole lot of maps that we provided as evidence at Ōpeke Marae hearings of the Tribunal which identify very large numbers of sites within that Ōamaru block.

In my opinion as an outsider, a cultural outsider expert, that looks pretty strong evidence that there were lots of people from different hapū that all went into that same area. There wasn't the one that was exclusive to any one hapū. Some would go up the Pākihi Creek to Whakapaupākihi, which is why it's called Whakapaupākihi, and some would go perhaps to Ōpeke and up Waioeka (it'd be a bit of a rough trip in those days, I think), but others would just go up the Te Kowhai track; lots would go up the Te Kowhai track. There's no record of any battles between people who were kin going to collect resources in that area. In the record I've looked at there's plenty of evidence to hapū rivalry. No evidence of hapū conflict over what I would call sharing of resources.

Q. Very broadly it would seem that if someone or whānau were associated as Whakatōhea in the area of Whakatōhea, then they have rights which, as you say, exercised in accordance with the tikanga set within Whakatōhea.

A. Yes.

Q. Thank you. Also, I was interested in what you said from the back blocks, the bush blocks that run right down to the ocean as far as resources. Did you look at the sharing on the foreshore or on the ocean as well?

A. I covered that in the chapters that I didn't speak to in my summary.

Q. Okay.

A. But that's primarily drawn from evidence given in the *Re Edwards* litigation by Stirling and Kahotea and evidence given in the earlier hearings of the Tribunal.

Q. Which is to summarise in general Whakatōhea sharing as well in the ocean and foreshore.

A. I don't think I spoke about that at all. I just provided the evidence of others on those issue.

Q. Thank you. When we come to look at you talk about political decision-making I think at some stage within Whakatōhea. Just starting with te Tiriti, from what I could see it was signed by seven chiefs who all describe their iwi as Whakatōhea. Some had multiple hapū and others had no hapū affiliations. Is that correct?

A. I'm trying to remember what the original document looked like rather than the **(inaudible 12:54:13)** version of it where there's some updates. If you could put a document in front of me, I'd be helped on that because I think a lot of the hapū and iwi designations are what have been put in afterwards by people who thought they knew who those people were.

Q. Yes. All I've got here is the Bay of Plenty Fedarb sheet.

A. It's got the names of people and it has the cross beside three of them.

Q. No, sorry, this is just a list of what the names and the hapū are. I could probably provide that to you over the lunch break.

A. I mean it's in my report.

Q. Yes.

A. It's the material which includes the correct spellings of names and dual hapū identifications of some people. But I'm pretty sure that it's not from Fedarb, it's not from his report to Hobson or whoever he reported to. It's from Claudia Orange and the local informants from what the iwi have told people later on.

Q. Perhaps we could just briefly deal with that after lunch.

A. Okay.

Q. Yes. I was just looking also the information the Mark Derby's report you've a look at with Ms Clark to a certain extent but also he refers to a number of other correspondence written by government officials, including 1864 a native rūnanga operating in Ōpōtiki who write in regard to allegiance to the Kīngitanga. Have you had a look at that?

A. There's a report from 1862 and there's another one from 1864 I only looked at them from the point of view of information as to what the situation was like before 1860.

Q. Yes.

A. There was some reference to at least two people from one or other of the hapū of Whakatōhea going to Pukawa for the election of Kīngitanga leader. But those reports post-1860 I only used to really illustrate that actually those rūnanga you're referring to were created by the people themselves before 1860 and then after 1862 there was an attempt to get the government's rūnanga system applied and they weren't very keen on that.

(12:57) JUDGE DOOGAN TO MR SHARP:

Q. Mr Sharp, can you just clarify which reports we are referring to? Who produced them?

A. I'm just referring to Mark Derby's report.

Q. All right. Which part of Mr Derby's report?

A. The reference here has got page 13397. I can check that.

Q. All right. Thank you.

(12:57) MR SHARP TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. Just in general, it did appear that at around 1860 a rūnanga or group who called themselves chiefs of Whakatōhea who were making political decisions on behalf of all those in the iwi.

A. I don't know about all those in the iwi.

Q. Yes.

A. But they certainly had rūnanga and they certainly fined some people for not doing what they should have been doing in terms of the trading that was going on. But they weren't Grey's rūnanga. They weren't the rūnanga that the government officials were trying to promote after 1860. They were their own rūnanga and they were being criticised for exercising more power than the Crown thought they should have. But this is retrospective thinking by the Crown officials because they hadn't been there between 1840 and 1860 to impose any other solution to the way of which the life was led in those days.

Q. They were more than just imposing fines et cetera, weren't they. They were doing things like putting up roadways, erecting mills, generally setting themselves up for the modern world.

A. Absolutely. Yes, they helped to build a road that would I think along the lines of the Te Kowhai track that went across towards Tūranga and, yes, the flour mills and all that sort of stuff. If the hapū were as small as I suggest they were that obviously requires inter-hapū co-operation to achieve some of those things.

The only point I'm making is it is very hard to talk prior 1860 to Whakatōhea as a single political entity. There were people who identified as Whakatōhea to various different founding ancestors who worked together, who went to one church or another and so on. But the idea of Whakatōhea as a single entity is sort of in 1948 perhaps but not 1860.

Q. But still back then there were, it seems, to be a group of rangatira, Whakatōhea rangatira making decisions on behalf of all those who identify with Whakatōhea. Would that be correct?

A. Well, that's not how they expressed it in the Native Land Court records which are the primary source of my information for this report.

Q. Okay.

A. And they explicitly looked at some of the arguments about who actually did enter into transactions with the CMS missionaries and so there was dispute. "Who was really speaking for all of Whakatōhea?" "No, no one was speaking for them." "Yes, they were." "He was." "No, him." The records in the 1880s were of continuing contests as to who could speak for whom and there's only very few comments where people say "all Whakatōhea is one political entity and we know exactly who the rangatira is of that one political entity".

Q. This is you talking. During the Native Land Court hearings you're talking about.

A. Yes.

Q. Right, yes. I was talking about earlier on before 1860.

A. Yes, but that's the source of the information that I put in my report.

Q. Thank you.

JUDGE DOOGAN ADDRESSES MR SHARP – ADJOURNMENT (13:01:36)

HEARING ADJOURNS: 1.02 PM

HEARING RESUMES: 1.49 PM

TECHNICAL ISSUE – NO AUDIO RECORDING FROM 13:49:22 TO 13:54:40)

(13:54) MR SHARP TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. **(audio recording resumes 13:54:40)** …to hapū?

A. No, they weren't given to Whakatōhea. Jane Liuten's report will go into the details. But they were given to the several named hapū and my report identified that of the six or seven hapū named in 1872 three of them got no specific mention in Ōamaru block and there is another five that were recognised that were not mentioned in 1872 but none of the awards were to any entity called Whakatōhea.

Q. Thank you. Thank you for clarifying that. With Ōpape, I was interested you were discussing today about in the Ōpape reservations there officials refer to sub-hapū and I think you said they were already hapū. So from your report and from Jane Liuten's report, it seems like within the partitions that ended up being made, there were some maybe you called them larger hapū and some smaller sort of hapū coalescing with them in the partition blocks.

A. You mean within Ōpape?

Q. Yes.

A. You're outside my time limit of 1860.

Q. Right, okay. It was just that you referred to them in your report –

A. Yes.

Q. – so I just wondered whether that had any connection with you. Okay, I'll take that up with Jane Liuten. With Ngāti Muriwai, you refer at page 261 of your report, and you're referring to any references to Ngāti Muriwai. You referred to the Tūhoe, the Te Urewera report.

(13:57) JUDGE DOOGAN TO MR SHARP:

Q. Mr Sharp, can you just specify where on page 261 you're at?

A. So, I'm page 261 on the end of the first paragraph on that page where Professor Williams says: "There are five specific mentions," you see there's Ngāti Muriwai in the *Rangahaua Whānui* report on Te Urewera.

(13:57) MR SHARP TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. Professor Williams, were you aware that Ranginui Walker in his book refers to the Ngāti Muriwai who are in Ōpape had come from Te Kaha and referred to Native Land Court minute books?

A. Yes, I refer that in my report as well.

Q. Yes.

A. I was talking about in answer to questions this morning.

Q. Right, thank you.

A. Yes.

Q. So when you say that there's – you just refer to one reference to Ngāti Muriwai with the Urewera report but there is that reference in Ranginui Walker's book as well.

A. I talked about the evidence of Paku Eruera so that's pages 250 to 253 I think –

Q. Yes.

A. – and the questioning from the judges and I think there. But if I can't find it, I can supply the information where I explicitly referred to the hearing within Whānau a Apanui of a block of land which referred to Ngāti Muriwai. I can't put my finger on it right now but I certainly did refer to that and I quoted Ranginui Walker on it.

Q. Thank you. Sorry, I didn't pick that up. When you said you looked through the Marine and Coastal Area reports or evidence-

A. Sorry?

Q. The Marine and Coastal Area hearings you said you'd looked at that evidence.

A. For the purposes of chapter 12 I looked at those materials where I summarised the report by Dr Des Kahotea and a report by Bruce Stirling.

Q. Right. So you didn't look at the evidence by Tony Walzl looking at the Native Land Court records of Ngāti Muriwai at Te Kaha?

A. No, I haven't seen that.

Q. Thank you.

A. I do know there was a Ngāti Muriwai in Te Kaha.

Q. Yes.

A. But as I said in answer to a question this morning, that's well outside Wai 1750 Inquiry District so I didn't follow that up.

Q. Thank you.

A. If people who identify as Ngāti Muriwai say that that's the same people as themselves and they supply the whakapapa for that I leave that entirely to them. I didn't come across any references to it as such, except for the cross-examining by the judges of Paku Eruera in that hearing I've just referred you to.

Q. That's the Whitikau 3 hearing.

A. Rehearing.

Q. Rehearing in 1895.

A. Yes.

Q. Yes. So I'll just come to that because in your summary at paragraph 82 you say that-

WITNESS REFERRED TO #A031(a) PARA 82

A. Sorry, where are we?

Q. Paragraph 82 in your summary.

A. The summary.

Q. Yes, sorry. You see the reference to Paku Eruera there.

A. Sorry, which number, 82 was it?

Q. 82.

A. Yes.

Q. So you say: "The position by Te Paku Eruera in the Whitikau 3 rehearing as a Ngāti Rua living at Ōpape reserve –

A. Yes.

Q. – is a descendant of the Ngāi Tai ancestor Whariu." Just to clarify, as far as I can understand it, the evidence of Te Paku during that hearing was that he was Ngāti Muriwai living at Ōpape reserve.

A. That's not what I read. That paragraph 82 is an instance where one of the things I was looking for from Dr Ballara's suggestions, methodology suggestions was: "Are there people who have a hapū affiliation where

they relate themselves to more than one iwi," and I thought that Te Paku Eruera was certainly a person who did that in that hearing of the rehearing on the Whitikau. The way in which he put it was that he was representing Te Pananehu of Tūtāmure and he refuted the right of Heremia Hoera to speak for Ngāti Rua. He said: "I live with the Ngāti Rua but the entitlements that I got in Whitikau came from my ancestral connections to Whariu," so that's the way he put it. So at page 251: "All Whakatōhea come from Muriwai," is what he says. Well, quite a few other people say that "all Whakatōhea come from Muriwai". But he said that: "Ngāti Ruatakenga have no right to Whitikau through this ancestor," so through the ancestor Muriwai they have no right to Whitikau. So that doesn't sound like Ngāti Muriwai is the hapū being recognised. In fact, it's the opposite of that.

Q. Yes. Professor the question that I had, and so if you look at page 253 when he's talking about the subdivision of the land he's got at Ōpape, he says: "The hapū named is Ngāti Muriwai." So when you say he was living at Ōpape as Ngāti Rua, what he's saying: "I'm living at Ōpape as Ngāti Muriwai," is that correct?

A. He was living with Ngāti Rua and in some respects of course at other occasions he identified himself as Ngāti Rua, but for the purposes of that rehearing he supported those who were the descendants of Whariu, who is the person who was either male or a female that gets contested, but definitely from Ngāi Tai.

Q. And that was through his own whakapapa to Ngāi Tai.

A. He has a whakapapa connected to that and that's why he got an entitlement in Whitikau No 3. But he explicitly said that all Whakatōhea come from Muriwai and Ngāti Ruatakenga have no right to Whitikau through this ancestor.

Q. Yes. He was distinguishing himself from Ngāti Rua because he has a right.

A. He distinguished himself from the argument put forward by Heremia Hoera for Ngāti Rua, yes.

Q. Yes.

A. But he was saying that his entitlement was through Whariu not through Muriwai.

Q. Thank you Professor Williams that's all the questions I have.

JUDGE DOOGAN ADDRESSES MS ZWAAN – TIMETABLE UPDATE (14:06:33)

(14:06) MR SINCLAIR TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe Professor Williams. I am counsel for Wai 87 and Tūrangapikitoi Wai 1794. I've got a few questions for you regarding your report.

WITNESS REFERRED TO #A031, PAGE 371, PARA 14.1

A. Yes.

Q. The interest in my questioning along these lines is the pre-1865 period and Dr Ranginui Walker has mentioned at least a number of hapū up to 22 is existing and your report also mentions a number of approximately 30 hapū at that time.

A. Can I just say, at least 30 named not necessarily all existing at the same time but historically at least 30.

Q. So when we say "historically" what time period are talking about?

A. The whole time period traversed by the witnesses who were giving evidence in those four inland blocks.

Q. So in the period leading up to the 1865 incursion by the military, are we able to put a number of hapū in existence at that period?

A. The easiest block to look at from that point of view is Ōamaru because there was no significant Ngāi Tai input into that, so in terms of Whakatōhea there was 10 or 11 hapū that were explicitly either recognised by the Court or put in claims for recognition which the Court didn't recognised.

Q. Yes, I understand that Professor. I'm really asking a question on whether there was evidence (oral and traditional evidence) not so much from the Court but that more than 10 or so hapū actually existed.

A. I wasn't referring to the Court. I took no notice of the Court's decision. There were 10 or 11 claims that were put forward by claimants some of which were recognised and some of which weren't.

Q. All right, thank you.

(14:10) JUDGE DOOGAN TO MR SINCLAIR:

Q. Mr Sinclair, can you just be clear about which time period you are speaking to? You said pre-1865 and the question also prior. Between what period up to 1865, 1840 to 1865 is that what you are asking?

A. Pre-1865, Sir, yes.

Q. Well, how far?

A. And from the period 1840 to 1865, in that period.

Q. All right. That's your question about how many hapū –

A. Yes.

Q. – would fall within the umbrella of Whakatōhea?

A. Would fall within the identification that Dr Ranginui Walker established that there were at least 22 and the report also mentions, I understand Mr Williams statement, that 30 overall, over an entirety of Whakatōhea existence.

(14:10) MR SINCLAIR TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. My question is up to the period and around 1865 before the Crown incursion, have you any idea whether that 22 hapū related to that time period just prior to it?

A. Counsel, as you would know, Māori present themselves in different ways in different circumstances and contexts. Basically, I am agreeing with Dr Walker that there were many hapū that continued to present themselves to other people within their social context but also in front of the Native Land Court and in front of the Compensation Court and in the period after 1860. So, is Ngāti Rua one hapū? Is it two hapū, Ngāti Rua and Ngāi Tamako? Is it three hapū, Ngāti Rua, Ngāi Tamako, and Ngāti Rākau? Apologies I haven't got it right in front of me but there was another hapū that was recognised by the Court and put in a separate claim. You see for some people there was just the one hapū of Ngāti Rua, for other people it was three hapū, who were all descended by the same ancestor and at times would call themselves Ngāti Rua. The thing is if

you add them all up you get to at least 22 and I think probably 30 that is what my evidence is.

Q. Yes, and that was reasonable typical of this area Whakatōhea, wasn't it. If we looked at say Ūpokorehe in the Ōhiwa harbour area and those surrounds, there could be said to be a number of hapū from that area.

A. Yes, that's true. Although I was hamstrung in terms of the Ohiwa area because I was required not to inquiry to Ūpokorehe, so given that I couldn't inquiry into Ūpokorehe and couldn't make any comments on whether they were an iwi or hapū of Tūhoe or Whakatōhea or of themselves so I essentially have attended very little to the Ōhiwa area.

Q. Thank you. Just moving on to the period where you state there is a reduction or a recognition of Whakatōhea as numbering between five or seven recognised hapū. My question to you is that the period of time where Whakatōhea are numbering anywhere between 22 and 30 hapū to the time period where there is a recognition not only from the Crown but amongst the tribe itself that its hapū are now registering five to seven named hapū. Would you agree with that?

A. Well, my understanding of the evidence is that people in order to achieve some recognition from these foreign institutions of the Crown and of the Native Land Court felt obliged to put themselves into that small number of hapū names.

But I've now got that third name so it's Ngāti Ruatakenga includes Ngāti Raukatahi. Ngāti Raukatahi was clearly an existing hapū, at least in the view of Nuhaka, who was one of the three women whose evidence appears in these Land Court hearings. Nuhaka is talking about Ngāti Raukatahi. The person that called him as a witness was the lead claimant who said he represented Ngāti Rua when he started, then he said he represented Ngāti Patu towards the end of the hearing, and then he said he represented Ngāti Raukatahi. So there we are they are giving these multiple references. Now Ngāti Raukatahi and Ngāi Tamoko were not recognised by the Crown in the Ōpape reservation.

Q. Would you say that that was fairly typical throughout Whakatōhea for that type of recognition of one person to several different hapū entities?

A. Multi-stranded whakapapa that's indeed one of the most important points that I think my report makes.

Q. Thank you. I want to move on to remarks that you have made on boundaries and my line of inquiry is along the pathway that you have interrelated multi-layered members of the same tribal grouping and over the same common rohe, the same common land mass. At page 374 at 14.2 – and while you're bringing that up I'll just read out a small excerpt – and you state basically: "You're yet to be convinced that hapū in the North-Eastern Bay of Plenty were divided from one another by strictly delineated and rigidly observed territorial boundaries." Now that would impute a very close whakawhanaungatanga relationship over shared territory, wouldn't you say?

A. Yes. That's true, yes.

Q. Yes. And hapū were transient in those areas for a matter of practicality, wouldn't you say? Practicality on seasonal resources: in the winter they travelled to the sea; in the summer seasons to the bush; and share those resources equally with the coastal hapū –

A. Yes.

Q. – as opposed to the inland hapū.

A. Yes. The evidence that was given by those rangatira in the 19th century basically indicated that there was a lot of seasonal migration. I don't think of a whole hapū but members of a hapū would go inland. There was one question put, I can't remember to whom. "Would people go to Toatoa to get resources from the bush?" "Yes, for the industries ones," was the answer I can remember. So there would be members of all of those coastal hapū who would go inland and who would know those trees and stones and eel sources and so on and would bring those resources back for the people who were primarily living at the coast. That, according to much of the evidence that was given, decreased a little bit after 1840 because of the concentration on trade.

Q. Having said that, there would have been also discrete areas that were hapū-specific or whānau-specific. I'm not talking natural resources here now. I'm talking places such as wāhi tapu. Would that have been an area

that would have been areas known amongst the tribal grouping that would be specific to certain hapū and whānau?

A. There was evidence to that effect by quite a number of the witnesses in the court hearings, yes. In terms of urupā and so on, yes.

Q. Yes. The territorial boundaries of a collection of hapū and whānau, would you describe that as being a natural area that would be defined as an iwi grouping rather than hapū-specific?

A. My review of the statements of claim in this inquiry showed that there was extensive reliance on almost all claimants on that 1920 evidence in the Jones Commission which has got very, very specific places that are a defined boundary. I think my understanding of that is that Whakatōhea felt themselves extremely badly dealt with by the Crown and wanted to make sure that they didn't have their neighbours pushing in on their own territory, as indeed Ngāi Tai with what Wiremu Kingi tried to do in 1867 and there were other pressures from Ngāti Awa on the western side which I know less about. It seems to me that those boundaries were defined as a way of saying: "At least this is our area, don't come in here."

Q. Because I'm representing a claim that involves a collection of hapū and whānau groups and blood kin groupings as a result of the 1865 matter in which displaced persons moved throughout the territory of Whakatōhea. What do you think is the – and in your report I've been searching for some purpose of an iwi, an iwi entity that provides some sort of support for the collective of hapū and whānau groupings. Is that what Whakatōhea as an iwi provided in reaction to the 1865 colonial incursion?

A. Well, I'm not in a position to speak on the post 1865 but I can speak on the earlier, and Dr Walker makes a point of the fact that Whakatōhea, in other words, lots of hapū put in 800 warrior men on the field of battle in some point just before 1840 and so that clearly was not just one hapū, that was people working together for the defence of an iwi.

Q. My final point is, would that be the purpose of an iwi is when the collective territory of the tribe as a whole is under threat that the iwi comes together? There's no hapū as an island unto itself.

A. If that aligns with the evidence that was given on a number of occasions in what I looked at, yes.

Q. Thank you Mr Williams and I enjoyed your report.

A. Thank you.

JUDGE DOOGAN TO MS CLARK – TIMETABLE UPDATE

(14:24) MS ZWAAN TO PROFESSOR DAVID WILLIAMS:

Q. Thank you Mr Williams. As you heard, I act for claimants from Te Ūpokorehe and I've been tasked with leading the cross-examination and asking you some questions related to those claims. I appreciate that your report specifically excludes Te Ūpokorehe as a point that you are covering but I still just have a few questions more related to some methodology that I would like to ask you today.

I just want to clarify with you. You've specifically said that you did not include Te Ūpokorehe in your report, and how did you approach the issue when some people are of Upokorehe and Whakatōhea descent when you are looking at the issue of tribal landscapes?

A. So that came up for example in the Ōamaru investigation. There is the reference there to Te Whakatāne and I made some considerable comments about the arguments put forward by various Whakatōhea hapū. But I made no comment on the claims of Te Whakatāne which seemed to be some multi-strands with Tūhoe and Ūpokorehe but that was for another person to write a report.

Q. Thank you. How did you I suppose approach issues or claims or reports that are written from the view or commissioned from the view that Ūpokorehe are part of the Whakatōhea iwi? How do you deal with that issue?

A. I went through the statements of claim and identified the ones that I thought were within my purview and the ones that weren't. I noted the report by, is it, Johnson, was it, which is contested as to whether it represents Ūpokorehe and I said I have nothing to say about that and another report will deal with that.

Q. Okay.

A. One piece of advice that I took from the Ūpokorehe claimants was that culturally outside it should be the experts and that the people themselves

should speak their story, so I agreed with Ūpokorehe on that particular point.

Q. Yes, I did note your quote from Ms Baker on that point which was greatly appreciated. I'm just wanting to explore a bit. You've mentioned at page 36, basically throughout that page, some of the reports you've relied on, including some of the reports done for the Whakatōhea Treaty Claim Settlement Trust.

WITNESS REFERRED TO REPORT #A031, PAGE 36

A. Sorry, page 36.

Q. Yes, of your main report. Just in that bottom paragraph there.

A. Page 36. I didn't do any work for the trust.

Q. No, I appreciate that. But you've mentioned in the last paragraph there: "The opening 30 paragraphs of the proposed historical account contains material that's pertinent to this commission."

A. Yes.

Q. Yes. So I'm assuming that you have read those 30 paragraphs.

A. As at 2021 I think that was, so when I was writing that part of my report they hadn't got to the final historical account.

Q. I'm just wanting to explore a bit the idea because the Whakatōhea Pre-Settlement Trust sees Ūpokorehe as one of their hapū which obviously differs from my client's point of view that they are an iwi in their own right. So how do you I suppose meld those two ideas when you're looking at information that is written from a perspective that includes Ūpokorehe as a hapū when that's not how Ūpokorehe see themselves?

A. Yes. I informed myself of the relevant documents that were around the relevant allegations that have been made and drew absolutely no conclusions as to whether your clients are hapū, an iwi or part of Tūhoe or are just themselves and with their own mana all by itself. I didn't make any conclusions on any of that at all.

Q. I appreciate that. I've also like kind of gleaned from, it's basically kind of throughout your report and you have mentioned it a number of times today, that depending on why people are making specific statements or saying stuff like you mentioned in the Native Land Court that claimants may be speaking on one block of land put forward one story and then

they're speaking on another piece of land and put forward a different slant on it as an example. Do you accept that if researchers commissioned from a particular point of view, it's going to lead to conclusions that may be different if it was commissioned from a different iwi or perspective?

A. Well, those of us who are commissioned as independent researchers by the Tribunal are required by the code that we work under to be as independent as we can be.

Q. Yes.

A. As an academic, who taught for 46 years, I did often tell my students that experts do tend to somehow or rather usually come up with the sort of conclusions that their clients want them to, whether it be a forensic inquiry of a murder case or whatever it is. I don't want to say anything that relates to that report that the Tribunal has commissioned for Ūpokorehe.

Q. Yes, I'm not asking you to comment on that. I'm not necessarily saying that you've got a non-independent view because I appreciate you're being commissioned from the Tribunal. But research that may have been commissioned by the Whakatōhea Pre-Settlement Trust is commissioned from a particular point of view and may come to different conclusions. Would you accept that?

A. I didn't look at any research commissioned by the trust. I only looked at the historical account. The Crown asked me to look at the historical account.

Q. Yes.

A. I was commissioned by the Crown in that particular instance and offered some remarks as to whether Piripi Taumata-ā-Kura was indeed of Whakatōhea or of Ngāti Porou; those sorts of things. I just made a few what I thought were factual corrections.

Q. Yes.

A. But I didn't look at the reports behind the account. I just looked at the report, the historical accounts on its face, and did I have any comments and I made some comments.

Q. Would you accept that Ūpokorehe may have a different view on some of view on some of the events and Native Land Court hearings and different issues you have discussed in your report?

A. I would hope so.

Q. Yes.

A. If they are representing themselves well they will have a different view point. So those Te Whakatāne, the recognition of that entity, would you call that a hapū? Would you call that an iwi? Would you say it's one of the old tangata whenua? Would you say it's Tūhoe? So your people will have to inquire into that.

Q. Yes, that's our job to do. I appreciate that. But I just want to check that, do you think, in your view, the Tribunal should place perhaps more weight on Dr Husband's report from an Ūpokorehe perspective when they are looking at the Ūpokorehe specific issues?

A. It's up to the Tribunal what weight they give to the reports they receive.

(14:32) JUDGE DOOGAN TO MS ZWAAN:

Q. Ms Zwaan, some of this is really matters for submission and not really matters for this witness.

A. I wasn't really going to take it further than that your Honour and that was the end of my questions so appreciate that.

Q. All right.

A. We will deal with it in submission as well. Obviously, we need Dr Husband's report to be completed.

Q. Yes. Is that the end of your questions?

A. Yes, that's it. Thank you.

JUDGE DOOGAN ADDRESSES MS ZWAAN – REQUEST BY MR LYALL (14:33:01)

MS ZWAAN ADDRESSES PROFESSOR DAVID WILLIAMS – MIHI (14:33:56)

JUDGE DOOGAN ADDRESSES COUNSEL – MICRO BREAK (14:34:05)

HEARING ADJOURNS: 2.34 PM

HEARING RESUMES: 2.40 PM

JUDGE DOOGAN:

Kia ora. Good timing Ms Rongo, tēnā koe.

(14:40) MS RONGO TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe Professor Williams.

A. Tēnā koe.

Q. My name is Eve Rongo and I represent Ngāi Tai. You will probably have a pretty good feeling about the questions I will be asking you today, so I'll start off with an easy one.

A. Just before you start, can I just say that this report was written before the change of instructions as to who was the claimant and so on and which way you spell Ngāi Tai and all the rest. So, I spelt Ngāi Tai the way it was spelt in the report at the time of the original 2013 negotiations.

Q. Appreciate that, thank you for that clarification. This report you used a lot of evidence from the Ngā Kōrero Tuku Iho hearings, Dr Ranginui Walker's book *Ōpōtiki Mai Tawhito*, Lyle's book on Whakatōhea, you also used research that were done for Te Whakatōhea in the Marine and Coastal Area hearings, so that's a lot of Whakatōhea heavy voices in your head. My question is, how did you find the Ngāi Tai voice through all that noise?

A. So, what was the last thing that you said I did for Whakatōhea?

Q. So there's a lot of Whakatōhea heavy voices coming through in all of that material. A lot of them were definitely Whakatōhea-centric. Ngāi Tai didn't participate in Ngā Kōrero Tuku Iho, so that's a very Whakatōhea heavy, you know, a good amount of Whakatōhea evidence from there. My evidence is how did you find the Ngāi Tai voice through all of that Whakatōhea evidence that was there?

A. As you say, no reference and no contribution to the earlier hearings from claimant witnesses. The primary source for Ngāi Tai was what Ngāi Tai themselves said to the Native Land Court in the 1880s and 1890s. I think that my conclusions relating to Whitikau and Whakapaupākihi where Ngāi Tai was recognised as having entitlements by the Land Court, and I

have some sense of disagreement about that, related in particular to the fact that twice native assessors on the Land Court got on a horse and rode inland to some of these places about which evidence had been given and found that the evidence that Ngāi Tai witnesses had been given couldn't possibly be true because the places weren't there. So the suggestions that Ngāi Tai overstated their case was very largely based on those native assessors actually doing, what do the Tribunal call it, a site visit. There was a site visit by the native assessor and that seemed to undermine the Ngāi Tai story. That's the primary piece of evidence that seemed to me important, because the Land Court decided that these customary entitlement stories were so contradictory, as between within the Whakatōhea and Ngāi Tai being completely different, that they gave no credence to those customary entitlement stories. So that's where I arrived at my conclusions on Ngāi Tai evidence.

Q. But you don't think that's a little bit premature, given that you haven't heard the evidence from Ngāi Tai from any source, Ngā Kōrero Tuku Iho, oral histories, their contemporary viewpoints?

A. Well, I'm not sure what you mean by premature. I was given a commission. I finished it rather late and it had to be in by some time ago. If Ngāi Tai something more to provide with me before I wrote the report, I would of course taken it into account. My only material on Ngāi Tai is from what their elders said, so it was primarily Wi Kingi and Romana Tautari was his name, was it?

Q. Yes.

A. Yes, those are my primary sources.

Q. Okay, that's helpful thank you. But it's important, isn't it, to make sure that we don't look back using our today viewpoints? That we place ourselves in the te ao Māori worldview and in particular, the complex and often overlapping customary interests that might exist in a space that has been occupied for over 30 generations. You'd agree with that?

A. Over 30 generations, did you say?

Q. Yes.

A. Yes.

Q. So it's important that we put ourselves in their shoes in the te ao Māori worldview of that time.

A. Yes, I agree with that.

Q. But you would agree that the research report would have been fuller had Ngāi Tai participated? Would you accept that, first of all, that you're not an expert in Ngāi Tai tikanga or mātauranga **knowledge**?

A. I'm not an expert in Whakatōhea tikanga. I'm not an expert in tikanga.

Q. Okay.

A. I've written about the interrelationship between tikanga and state law.

Q. Yes.

A. That's a different expertise.

Q. Yes, okay. Now I did want to put a few questions to you in terms of the population estimates. You managed to get population estimates for Whakatōhea from Bruce Stirling's report that he did in the marine and coastal area proceedings.

A. Yes.

Q. I couldn't see anything for Ngāi Tai, so I went looking at Bruce Stirling's footnote which took me to some Ngāi Tai data which I would like to just put to you and then I will follow that with some questions.

MS RONGO TO REGISTRAR – DISPLAY POWERPOINT

Q. I filed this earlier this morning. Apologies for it being late. I wanted to take you to the Appendix of Journals of the House of Representatives which is page 2 of my bundle of documents and I've highlighted on the screen where it particularly talks about Ngāi Tai. What I did want to highlight is it looks like it's got Ngāi Tai in the column of tribes, location Tōrere, hapū Ngā Pōtiki and Ngāti Ririwhenua. I'm a lawyer not a mathematician but I think the total number of those two hapū put together is 177. You'd agree with that?

A. I agree that that's what's written in the AJHR, yes.

Q. Yes, okay. That's the leading chief is Wiremu Kingi-

DR GRANT PHILLIPSON TO MS RONGO – CLARIFIED DATE 1870

Q. So, 1870 we're looking at about 177 Ngā Tai. The next page, this is 1874, and we're looking at about a total of 176.

A. Sorry, can I just go back to where you were? Is it Ngā Pōtiki and Ngāti Ririwhenua, 93 and 84? Yes, I see. That 48 up there is not included. Yes, thank you.

Q. Yes that got me too. Yes, and in 1874 it looks like the total for males and females under and over 15 is 176.

A. 176, yes, I see that line. That's Tōrere, yes.

Q. Yes. And in the next page-

A. There's also Te Aitanga-ā-Māhaki at Tōrere as well.

Q. Yes, I saw that too. The next page we've got 1878 and we're looking at about 156 total Ngāi Tai and then the next page is 1881 and about 137. Now I did want to bare in mind what Bruce Stirling has said in his report in that there are limitations to this data, like it's very raw. For example, he says how sometimes half casts aren't taken into account, you know, people might have been moving at that time, but it gives us a general idea of kind of how much Ngāi Tai were in that area. My questions for you is it doesn't seem like there is a situation where there is a massive population density and they're fighting over resources. You'd agree with that?

A. Yes.

Q. Yes.

A. I mean there's a declining population as well right through the period.

Q. Yes, and that interested me in terms of the skirmishes and battles that would occur between Ngāi Tai and Ngāti Rua. I'll pick that up later when I look into the battles. But what particularly interested me too is that in the 1870 AJHR it had Ngāti Riri Whenua and Ngā Potiki listed which were the hapū of Ngāi Tai and then after that it just had Ngāi Tai. So that would support what you were saying in you report about how the Crown processes kind of moved Māori away from the individual hapū, whereas they were hapū-centric to more of an iwi structure. You'd agree with that?

A. Yes. Well, I'd agree with that as a general statement. I haven't perused these precise statistics to see whether they do the same with Te Urewera folk, or with Ngāti Awa. I see Ngāti Pūkeko is separate from Ngāti Awa and so on. But yes, but I don't think I can add anymore.

Q. Okay. It seems from that date onwards Ngāi Tai was always referred to as Ngāi Tai and no longer divided up into hapū. Do you have anything to say on that?

A. Well, Ngāi Tai's own evidence to the Native Land Court in the 1880s and 1890s it was a very single hapū, a single iwi I mean. There was one occasion where they acknowledged that there were one or two other ancestral hapū but they were pretty staunch iwi. "We are Ngāi Tai of Tōrere and we're Tainui and we're not like all of you lot, and by the way we beat you in Whitikau."

Q. Yes. On page 134 you talk about the whakapapa connection between Ngāi Tai and Panenehu but the Whakatōhea witnesses don't really refer to that much. What do you make of that?

A. Sorry, what was the last bit of the question?

Q. Just the fact that the whakapapa connection between Ngāi Tai and Panenehu is discussed –

A. Yes.

Q. – but you don't see Whakatōhea talking about that connection much in the Native Land Court minutes.

A. Most of the Whakatōhea hapū claimants identified the time of Ūpoko-hapa as the time when Panenehu was subsumed into one or other of the Whakatōhea hapū and primarily Ngāti Rua. The Ngāi Tai account is that Panenehu was subsumed into Ngāi Tai and all were Ngā Pōtiki of Ngāi Tai. The Ngāi Tai witnesses point out that there is actually two or three different Ngā Pōtiki and insist that there was a Ngāi Tai Ngā Pōtiki which actually is their incorporation of Panenehu.

Q. Turning now to the inland blocks. You talk at page 102 about Ngāi Tai concentrating their evidence on the conquest of specific inland blocks without reference to the adjacent coastal lands. I think you talk about that in particular when it comes to the battles, how Ngāi Tai would say: "We fought you here in the inland block and you never came back and got that back off us so that continues to be ours."

A. Yes.

Q. Whereas I think you're coming from the assumption of Whakatōhea that that whole block, that the block is seen as a whole whether it's inland or

coastal and if they beat Ngāi Tai on the coastal lands that would then incorporate the rights going back into the bush. Did I sum that up correctly?

A. Yes, I think so. The Ngāi Tai witnesses tended to assume that Ngāi Tai coastal area went right through to Tirohanga all the time. That basically Ōpape was always within Ngāi Tai. They said that there was that battle or one account was that it was one battle and one account was there were three. But at any rate "the Panenehu people were vanquished and no one from Whakatōhea has beaten us since." The Whakatōhea hapū said: "That's not true, you've beaten us and we've beaten you and you've beaten us and we've beaten you and you've been up the beach and down the beach and up the beach and down the beach." Each time you go up the beach and down the beach gives you more or less access to the bush blocks. So that conflicting evidence from different hapū of Whakatōhea, which put the judge off, does seem to be though to be a much better indication of what happened, rather than it was one final conquest, one raupatu that the Native Land Court Judge could say: "Ngāi Tai won, therefore, they get the block."

Q. But doesn't that then just tell us that they had different views? That, for example, Ngāi Tai are saying: "We beat you here," but Whakatōhea have a completely different view in which they're coming from. How do we reconcile that?

A. I don't know that they can be reconciled. I mean around the country in the research I did on a more general sense for my book on *Te Kooti Tango Whenua* is that judges were keen to get statements of the most recent conquest and give title on that basis. What I thought was difficult about that assessment of the defeat of Panenehu and their incorporation or absorption by Ngāi Tai is that the blocks we're talking about are not very close to the coastal area where the other battles took place. So that's why that map that was looked at earlier today with those dotted lines coming in from Tirohanga and Tarakeha and Te Rangi that's what made me wonder why it is that the Native Land Court accepted the Ngāi Tai conquest at an unspecified date, there's no date in there as to when this conquest took place, and didn't take any further note of what

might have been happening on the coast up and down. Because clearly Ngāi Tai marched down there and defeated various hapū of Whakatōhea on more than one occasion. So there must have been occasions when Ngāi Tai did push as far as Tirohanga at least and the final battles that have been mentioned this morning took place between Tirohanga and Tarakeha out in front of Ōmarumutu. So Ngāi Tai was definitely there but were they in charge of that coastline for all of the period of time between that Panenehu conquest in Whitikau and right through to 1888.

Q. I realise you went on a road trip to suss out the landscape and have a look at what exactly it looks like.

A. I wanted to find out what Dr Walker called “Tiger country”.

Q. But could some of your conclusions be based off the landscape as it looks today, today’s roads from coast inland and not based on historical knowledge from 30 generations ago when Tōrere and Manaakiao first lived in Tōrere?

A. What I relied on mostly was the evidence about those three ancient tracks that I mentioned this morning, Te Kanakana and Te Kōwhai and the other one and they don’t follow the current road. The current road wiggles around and you have to avoid logging trucks and you go up and down and around and about but they don’t follow the ancient tracks. Partly, they do, but mostly they don’t.

Q. I did note in your evidence that there were some instances in which Whakatōhea said that no one actually lived on the blocks and it was used by both iwi for its resources and in particular it was talking about Whitikau and Takapūtahi at page 244. I've got some questions around that hypothesis because at page 82 to 83 you talk about Ngāi Tai and Whakatōhea’s boundary overlap. Now we expect there to be an overlap from iwi that have lived together for 30 generations. But my question is have adversarial processes, like the High Court, like the Native Land Court and even this process, does it have iwi just focussing on the boundaries, when in reality it wouldn't be surprising to see the other hapū fishing in a fishing spot out to sea or hunting in a hunting spot way out the back bush?

A. Well, my only comment on that is that the way in which Ngāi Tai presented their evidence in those Land Court hearings was that they were always in enmity with their Whakatōhea neighbours. So I'm sure you're right that people would come and go, but I'm also pretty sure that if there was a meeting at one of these places, and the meeting was between some people who were primarily Ngāi Tamahaua and others who were primarily Ngāti Rua, there would be unlikely to be a scuffle. But if there was a meeting between some descendants of Whariu and some descendants of Tūtāmure out in the bush there might be a scuffle. That would be my assessment of what your Ngāi Tai witnesses said in the 1880s and 1890s.

Q. Now, my mind does turn to some writings of early settlers that in some areas have written about how unusual Māori were, in that, at one moment they would be fiercely fighting each other and then the next moment they would be sharing a meal together, such is tikanga. Did you bear in mind that sometimes with all the skirmishes and battles Ngāi Tai might've still had access to that bush according to tikanga?

A. Yes, because sometimes they married each other or at least they had children to each other as well. For example, one of the ways in which Tauha and Nikora sought to undermine the evidence that Tiwai Piahana had given to the Court was to say: “Well, you're not really Whakatōhea, you're actually Ngāi Tai,” so he accused his own elder really of being a Ngāi Tai in order to undermine him. But of course there is whakapapa truth to that statement, there are links between those two whakapapa.

Q. Yes, I did have questions around that with the interconnected whakapapa that it could get a little murky sometimes in terms of resource use but I couldn't find very much of that in your report.

JUDGE DOOGAN ADDRESSES MS RONGO – ADJOURNMENT (15:05:09)

JUDGE DOOGAN ADDRESSES MR LINKHORN – CROSS-EXAMINATION TIMING (15:05:30)

JUDGE DOOGAN ADDRESSES MS RONGO – CROSS-EXAMINATION TIMING (15:05:45)

HEARING ADJOURNS: 3.05 PM

HEARING RESUMES: 3.30 PM

HOUSEKEEPING – TIMING (15:30:19)

MS RONGO TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. Professor Williams, you spoke earlier about Ngāi Tai's lack of knowledge of the pā when you spoke about a couple of site visits that the native assessors went on. But there's no background as to who was on the site visit for Ngāi Tai to give that kōrero or the arrangements of that site visit. The reason I'm bringing this up is because you're aware that within iwi and hapū structures there are some whānau who are the fishers. Some whānau who are the hunters, some that are the mouthpiece of the iwi and hapū. But we don't know with those, with the applicable knowledge, were available for that site visit, do we?

A. No.

Q. So care needs to be taken in analysing this information as there is many assumptions that can crowd our understanding and misguide us. Would you agree with that?

A. In general terms, yes.

Q. Now in terms of the battles between Ngāti Rua and Ngāi Tai, I am thinking back to the population estimates that we went through for Ngāi Tai. What I noticed is that Ngāi Tai is roughly the same size as Ngāti Rua or in other words, Ngāi Tai is roughly the same size as a hapū of Whakatōhea. When we come back to the battles of Ngāi Tai and Ngāti Rua, they're roughly evenly matched. But we know that when Ngāi Tai came to battle against Ngāti Rua, the rest of Whakatōhea hapū would step in and help Ngāti Rua. I'm thinking that Ngāi Tai is always at a numerical disadvantage when they are engaging in that fighting, yet they're still engaging. That makes me think that perhaps there's more behind why

Ngāi Tai would choose to battle Ngāti Rua, such as the historical significance of that whenua to Ngāi Tai. Your thoughts?

A. I am sure that Ngāi Tai's numbers were much larger earlier on. I mean, they must have been like every iwi, hapū around the country. Much larger numbers earlier before the introduction of diseases which affected them, in particular. There is, in the evidence that I have discussed, one occasion which Ngāi Tai killed so many Whakatōhea people that their bodies were left in the beach and the insects, and the birds fed upon them. Ngāi Tai had the ability to beat a united Whakatōhea group of warriors. The numbers must have fluctuated, and I can't give you any idea what they are, but there were some occasions where Ngāi Tai did beat combined Whakatōhea forces. There are other times when they lost.

Q. At page 226, you talk about the tatau pounamu, the peace agreement made between Ngāi Tai and Whakatōhea. That's really significant. Under tikanga this is some of the more sacred of arrangements. It is sometimes accompanied with formal takawaenga marriages or intermarriages. Have you come across that information here?

A. Which page are you talking about?

Q. At page 226, you talk about the peace agreement between Ngāi Tai and Te Whakatōhea.

A. Yes.

Q. I was just saying that, under tikanga that those tatau pounamu, the exchange of pounamu, especially I think it was a war club and of course the kōiwi **bones** of Ngāi Tai's loved one. But that exchange, that peace arrangement, that is incredibly significant under tikanga. So, I know that with those arrangements they're normally followed up too, with formal intermarriages because it helps cement the peace. Iwi are less likely to go up against each other when they're killing their own. Have you come across whether there were some intermarriages here after that peace agreement?

A. By that time we're very close to the 1840s. Look, why ask me questions about this, Dr Amoamo has given quite a lot of evidence on that particular matter, he's a tikanga experts, he's the person that you should ask the

questions about it. He did refer to people of – But I think Ngāti Rua and Ngāti Patu who had tahatai connections with Ngāi Tai so it must have happened. But don't aske me, I'm not the expert.

Q. I'll do that.

A. Ask Dr Amoamo and bring your own experts.

Q. My other question too is after this peace agreement was made, do you know of any battles or skirmishes that might have happened after that peace agreement was made?

A. Yes, there was a – I think one person killed and the house burnt down and Whakatōhea scooted off from Pakowhai and there was no one still there and they decided not to go further, they said, 'Look, we will just leave it at that.'

Q. No one was hurt in that instance?

A. Sorry?

Q. No one was hurt in that instance?

A. Yeah, there was, I think, one person killed, wasn't it?

Q. Okay.

A. Yes. I think one person was killed and they said – and the house had been burnt down, they said, 'Let's rebuild the house and let's stick to our principles of peace.'

Q. Now, under your section 'Significant Sites' you didn't find any significant sites for Ngāi Tai?

A. Sorry, where are you talking?

Q. Your chapter on significant sites.

WITNESS REFERRED TO REPORT #A031, PAGE 307

A. No, I didn't find or wasn't provided with any information on that. I mean there was Ngā Kōrero Tuku Iho (inaudible 15:37:04) about it.

MS RONGO ADDRESSES JUDGE DOOGAN – MICROBREAK (15:37:11)

MS RONGO ADDRESSES JUDGE DOOGAN – LEAD COUNSEL CHANGE (15:38:46)

(15:38) MR TAIT TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. So I believe you were in the middle of answering questions on whether or not you found any or located any significant sites in relation to Ngāi Tai.

A. No. All that I have read was just the Memorandum-Directions and memoranda from counsel about Ngāi Tai people getting a new mandate and instructing Ms Rongo to act and I was not referred to any particular evidence. I presume there must have been some that was provided in the *Re Edwards* hearing but I didn't go into the *Re Edwards* transcripts other than materials that were put on the record of this inquiry district, so there was nothing from Ngāi Tai on this inquiry district record on those matters.

Q. Okay, thank you for that. Moving now on to the topic of boundaries. What strikes us from the evidence is that when the boundary is put in place in Tarakeha by Wilson, there isn't any physical force or push back from Whakatōhea. No skirmishes for the most part. The boundary is respected by Whakatōhea, although there were complaints and grumblings in the Native Land Court later on, but it was by and large adhered to. What do you make of that?

A. As I indicated earlier today, I don't think it was put in place by Wilson. I think it was put in place primarily by the Māori catechists I presume from Ngāti Rua. There is something odd about the records. They always talk about Māori catechists in the Native Land Court hearings and catechists are kaikatika, are Catholic, Wilson is Mihinare, so exactly who those people were is a little mystery to me. But clearly they were Christians who wanted to create peaceful conditions between Ngāi Tai and Whakatōhea, and in particular, Ngāi Tai and Ngāti Rua, and partly because Wilson and Shortland refer to it they are given the credit for it. I don't think that this was primarily responsible to either Wilson or Shortland. It was those Catechists put in a, people called the catechists, buffer. The idea was to create a buffer which, as you say, was mostly respected.

Q. I didn't quite hear. So what you made of the fact that the boundary was mostly respected, what would you make of that?

A. I would say it is an incredible act of generosity by Whakatōhea. Actually because Te Rangi is so important to the stories about the Nukutere waka and the tribal origin. Evidence was given by Dr Amoamo about a *Waka Huia* documentary where the Ngāi Tai people guided the footsteps of Whakatōhea to that place. That seems like to me a rather significant aroha between modern-day Whakatōhea people and modern-day Ngāi Tai people.

Q. On that point of aroha and a sharing, though you might share the perspective and there might be a perspective that Whakatōhea, even though that boundary is in place, it does not extinguish certain interests on the other side of the boundary, that the same might be true for Ngāi Tai, that the existence of that boundary does not extinguish their interests west of it.

A. No, from a tikanga point of view, it's going to depend on time, place, and context. And all that I could rely on from a Ngāi Tai point of view was the area of interest map that was presented to the Crown in 2013 which goes all the way from Tirohanga right up to somewhere a little bit east of Tōrere and inland from there right down to the Motu river.

Q. Okay. Moving on to the instances talking about that shared unity that Whakatōhea and Ngāi Tai have, what do you make of Ngāi Tai and Whakatōhea teaming up against external threats when required, and even Ngāti Ira going with Ngāi Tai to the Hauraki? What do you make of those?

A. There is at least two or three examples of times of alliance as well as all of those times of wars. There was another situation when they were down in Tūranga (in Gisborne, what is now Gisborne) where Ngāi Tai and Whakatōhea were together and then fell out with each other and so on. Yes, these were not enmities that stopped people cooperating at different times, and particularly in that uncomfortable period of the 1820s and 1830s of the pre-colonial wars.

Q. Those are all my questions thank you so much.

JUDGE DOOGAN ADDRESSES MS RONGO, MR TAIT – MIHI (15:45:07)

MS COLE ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMING (15:45:08)

(15:45) MS COLE TO PROFESSOR DAVID WILLIAMS:

Q. Professor Williams you know who I am, Jacki Cole. I am appearing for Ngāti Ira in Wai 864 the Whakapaupākihi Quarry claim. I just have some final really questions to do a bit of a mop up I suppose in some ways, although it does probably feel like I am going to start at the start, don't be concerned. The introductory section of your report and your discussion earlier today with Ms Feint in relation to not having sought to gather any direct oral historical narratives for the purposes of your report, do you consider that there is any limitation on the end product being your report as a consequence of that?

A. No, because if I was a Paora Meredith or someone like that who have done Tribunal landscape reports for the Tribunal, they'd use their skills as historians and as members of the particular iwi in question with their own cultural insider knowledge and have done oral history reports that include both. I really had the advantage that the Tribunal in this hearing created the Ngā Kōrero Tuku Iho hearings at the time that I was doing my report and I was given the courtesy and privilege of being allowed to attend those hearings through the COVID restrictions. So I was able to hear what the living wisdom holders were saying and put their evidence to the Tribunal and add my written report in based on all the Pākehā epistemology and you get both together. But I'm not Paora Meredith, I'm David Williams.

Q. Kia ora and we're grateful for that. Having undertaken the work that you have and particularly having read so widely of other authors' writings on the same topics that we're covering in the inquiry here this week of the tribal landscape and then into war and raupatu, was there anything in particular that you have identified through your readings that this Tribunal should be particularly wary of in terms of the contest of narratives or do you feel that authors of the various reports and books have been relatively well aligned?

A. I think, what the Tribunal should be wary of, is to not do what Elsdon Best and Judge Gudgeon and others did which was correct the whakapapa record that had been given by their Māori informants and come up with a correct version. I doubt on these matters that there is such a thing as a correct version. Many of these things are contested. I sit with Dr Angela Ballara that the contest continued to the present day and I just had some questions from Ngāi Tai that illustrate exactly that.

Q. In relation specifically to the historical account that is in the settlement deed, is there anything in that that you would draw particular attention to in terms of a difference between what is recorded in the historical account and what your research has brought to the fore? And if that's something that you'd like to answer in writing, then I'm more than happy for that.

A. I had beside me a text of some of the historical account and quite naturally, given that this was drawn to create a single large natural grouping, it tends to be a story that – well, it's iwi-centric story. I just did notice one or two things which were of interest in that Tarawa is mentioned in relation to Te Ara Umauma which indicates that they chose the story about Tarawa's arrival as being on the barge pole rather than on the waka which is normally called Te Ara Utauta, so there is little things in there that show that one story is chosen rather than another. There was a strong emphasis on Muriwai and Mātaatua. But the other stories do get a very brief mention but not in the same way that the Tribunal heard in the Ngā Kōrero Tuku Iho hearings.

Q. Kia ora. Perhaps we could put the, or would it be right in your view to put the historical account into that type of category of document that gets produced the way that you were discussing with my friend Ms Rongo before of how you talk to your students and how it's almost like you get 15 historians in a room and you're going to get 15 different stories that is just but one slant effectively a report of the historical account for these groups?

A. Yes, but some people put their mana on the line to create this, and I'm not going to spend my time agreeing or disagreeing with the politics of it all. What exactly is there about the Crown account that you want me to comment on?

Q. It was the general in particularly having regard to the comments that you had with my friend Ms Rongo in relation to the slant that a particular document might result in bias as that might come through, depending on who or for what purpose the document is actually prepared, whether or not you had any comment generally in relation to that?

A. No. Look, it's just that I'm influenced from having heard Dr Amoamo speak on more than one occasion –

Q. Yes.

A. – and Ruatakena was (inaudible 15:51:17) out and you knowledge –

Q. Yes.

A. – whatever it is.

(15:51) JUDGE DOOGAN TO MS COLE:

Q. Sorry, Ms Cole, I think if you want to raise an issue of bias or a wrongful slant on the history, you really need to go to a particular passage rather than-

A. No, I was wanting to explore Professor Williams' general views in relation to the different types of documents but that's enough.

Q. I know but the question presupposed that there was in that historical account a bias or that was the premise for the question as I understood it.

A. The premise of the question was whether or not Professor Williams' whether or not he had identified anything that struck him particularly.

Q. All right.

A. But it was very much a general question and we can certainly move on, yes.

Q. All right, thank you.

(15:52) MS COLE TO PROFESSOR DAVID WILLIAMS: (CONTINUES)

Q. I just wanted to ask you quickly in relation to Te Ūpokorehe and the mahi that you did that obviously did not include them. Can you explain, were there any difficulties or adverse consequences that that limitation presented for you and again presenting your final report?

A. Yes, you've got a considerable difficulty, yes, because I gave the example of the group recognises Te Whakatāne in the *Ōamaru* investigation and there were lots of instances where Ūpokorehe is mentioned. Is it two I think at least, of the Treaty signatories are Ūpokorehe but also someone else as well. And so, do I talk about Mokomoko as Ngāti Patumoana or do I talk about Mokomoko as Ūpokorehe? The difficulty for me is that I felt constrained to talk as little as possible about those people because it might be said by counsel and claimants for Ūpokorehe that I had gone beyond my remit –

Q. Yes.

A. – so it did cause some difficulties. My report is not as full as it might have been.

Q. Thank you. You refer at page 102 to the process in the Native Land Court which led to claimants putting forward evidence as to whom they acknowledged to be the founding ancestors that justified their customary entitlements and land and how further that there was heavily contested evidence and many 19th century hearing as to the relationship between coastal areas and inland blocks. I don't need you to go to the materials. Can you give your views as to how the Native Land Court system and the procedures brought about conflict between the different groups intentionally or not and caused in-fighting amongst the groups?

A. Well, in my own writings, I said that's why the Land Court was set up in order to create divisions amongst people and in particular between the sellers and the non-sellers and the partitioned-out things and the survey costs. Much of that material is really covered by Jane Luiten's report. I was looking at the Native Land Court in this report primarily for glean an indigenous voice reflected admittedly in te reo tuarua in English in the minute books. It wasn't my task to identify some of the ways in which the Land Court was a colonial institution designed to divide people and label a Crown to purchase as much land as possible as quickly as possible. So I'm on the record for that in my own writings but that's not in this report.

Q. No, and that was really all I was wanting to get on the record from you because it's not in this report but you are well known for having those views in relation to the Native Land Court processes. I suppose my

question could be more specifically in the research that you undertook for the purposes of this report you saw examples of hapū having to be adversarial toward other hapū?

A. Absolutely, yes, and particularly the Ōamaru hearing.

Q. The next question that flows on from that is to what extent then can this Tribunal rely upon the evidence that was adduced during the Native Land Court hearings, given that that was the circumstance in which the evidence was being produced at that time?

A. I'm sure that the Tribunal should take note of the whakapapa evidence that was given by all of those claimants in those hearings and note the importance that different claimants attached to different ancestors and the way that was important to them and why some claimants chose female ancestors rather than male ancestors in particular circumstances, all of that I think is very interesting material. It's all in those Land Court minute books and is worth commenting on if you're looking at the tribal landscape pre-1860.

Q. Moving on. In chapter 11 you have been able to cross-reference what claimants said in the 19th century and what claimants of today have said about their origins and at page 303 you say that the general thrust of the evidence presented in the Ngā Kōrero Tuku Iho hui “is very much in alignment with what was disclosed in the Native Land Court minute books.” My question is, does that mean that what you called an unbridgeable gap between the perspectives of Ngāi Tai and several Whakatōhea hapū still exists?

A. Well, I haven't heard what Ngāi Tai currently say so I can’t really answer that.

Q. You can't comment. That was what you said had been evident from the Native Land Court minute books there was an unbridgeable gap.

A. There was an unbridgeable gap in the Native Land Court minute books, yes. But whether that transfers through to the present day, I can’t say because I haven't seen the Ngāi Tai evidence.

Q. You can't say, thank you. Just in relation to the Whakapaupākihi block you observed at page 194 that it was a very important question for consideration in your report to whether in pre-1860 times there ever were

clear and agreed upon boundaries as to customary entitlements and the conclusions you reached I think have been heavily canvassed today. At section 14.2 you say that you remain unconvinced and I think we've heard that very fully from you today as well. Can you explain for the purposes of the Whakapaupākihi block the significance of the boundary for that particular area and the blurring of that boundary of that block?

A. The main historical significance of that particular block is that is where Moutuhora is. That is where Tarawa and Manawakīaitū were sent to by Manawakīaitū's father, given that Tarawa turned out not to be a good swimmer he got sent off to that precise area. It's of some significance for a couple of reasons. One is that people lived in those inland areas all their lives so the connection between the coast and the inland areas was of relevance to the seasonal rotation of living by coastal peoples but also there were inland peoples living there all the time. That's what I think the various Whakatōhea hapū tried to get across in that Whakapaupākihi hearing unsuccessfully in terms of the Judges response but I think the evidence was very strong.

Q. My final question in relation to Whakapaupākihi is, it was and is, there is a flat base and I think you comment on that and there's good grazing out there now, for example, and there always was, as I understand it, from the topography of the land. Is it your understanding that at the time of war and raupatu a number of groups went out to Whakapaupākihi that had not previously had customary entitlements out there?

A. I could make some guesses about that. It wouldn't be based on anything other than the evidence that I heard at Ōpeke about people that were supporting Te Kooti and went inland and had to live inland for quite a number of years so I'm assuming that that would have included Whakapaupākihi but I don't know that I've seen the evidence of Donny someone or other or one of the Ngāti Ira witnesses did identify a number of sites. If you asked me a written question I might be able to give a written answer to that.

Q. It may be that that movement of people actually post-dates the tenure of your report just thinking about that.

A. It does indeed. Yes, it does.

Q. Thank you. I didn't have any further questions. Thank you very much Professor.

MS SYKES ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION (16:01:03)

(16:00) MS SYKES TO PROFESSOR DAVID WILLIAMS:

Q. Can I take you please to page 276 of your report and I'm really just exploring with you, and I don't know if we've got time to put up the whakapapa, but Muriwai's husband was Tamatea Matangi.

A. Sorry.

Q. Muriwai's husband was Tamatea Matangi.

A. Yes.

Q. If somebody could put the whakapapa chart up on the screen that might help us. The origins of Tamatea Matangi are something that really is/was – well, first of all, did you manage to explore further the origins of Tamatea Matangi beyond the evidence that was given in pages 276, 277, and 278 of your report which actually comes from most of the Kōrero Tuku Iho evidence of Mr Tama Hata and others of Ngāti Ira?

A. I see what I quoted from them. What was the question about it?

Q. If you go to the whakapapa chart.

A. The #C006 one.

Q. Yes.

A. Yes.

Q. You'll see Muriwai's husband is Tamatea Matangi.

A. Yes, marries Muriwai and has four children.

Q. Yes, four children. Did you note that Tūwhenua was the waka that he'd come on in your report? I know it's in this. o I'll take you to the particular passage. But did you find out anything more about Tamatea Matangi than what's included in here in your research?

A. No, I didn't.

Q. So you would defer to other witnesses, as you have encouraged us to do, tohunga that will give evidence on that?

A. Yes.

Q. But he is quite a significant figure, you would agree? He is the husband of Muriwai.

A. Sure.

Q. In the evidence that I've just taken to you he is described as coming off the Tūwhenua waka which is a pre-Nukutere waka.

A. Āe, yes.

Q. It's the union of a significant group of tribal groups that come through that line of Tamatea Matangi to join the Mātaatua waka and the progeny of that union then become the six hapū through that whakapapa chart and show the interconnections of significant tribal interests prior to the arrival of the Mātaatua waka migration?

A. Yes, that's right. I mean the #C006 chart does have Tākitimu, Nukutere, Mātaatua and Rangimātoru but even if you go to the Ngāti Awa-DOC administered site on the western edge of the Ōhiwa harbour you will see at least four other waka traditions identified and you've identified one of them.

Q. Thank you. One of the key evidence that we've relied on is the question of 'taharua' or multi-lineal relationships –

A. Yes.

Q. – and how that becomes important in identifying entitlements, rights, relationships, and obligations to whenua. Sometimes they would be tri-lineal or even quadruple lineal, wouldn't they, in the context of your research?

A. Yes, definitely.

Q. That would make those relationships even more likely to be interpreted as one of sharing mutual obligations based on concepts of utu, concepts of whanaungatanga **relationships**, and concepts of manaakitanga **care**.

A. Yes, with more emphasis on manaakitanga sometimes and less emphasis if they think that their relations are trying to claim too much.

A. In your report, you helpfully discuss about how tikanga Māori or Māori law is an interface or an interrelationship of those regulators of Māori law to provide connections to place, connections to associations that arise from that place, and all of those matters must be seen within the context of tikanga.

A. Yes, and so I carefully avoided giving credibility to the concepts of take that the Native Land Court operated on under Judge Smith's Māori land law book.

Q. That's my next question to finish this section. I noticed that you didn't talk about take raupatu that much or take tuku that much, or even take ahikāroa **occupation issues**, but would you accept that in the pedagogy or the tikanga that operates within Whakatōhea there is that concept of ahikāroa **long-term occupation** coming through in the flavour of evidence that comes through various block applications, particularly post the establishment or post the relationships with the arriving settlers?

A. I think that if I emphasise anything it would be ahikāroa in what I wrote. I mean that is what came up in that Takapūtahi list of owners and that's where Ngāti Rua said: "Well, hang on, this is where we are, we've got ahikāroa here. You other people are all related to us and thanks for coming and helping us in the battle but you haven't got ahikāroa **continuous occupation**."

Q. Did you actually come across in your research any pre-Treaty transactions of the kind that occurred on Whakaari? For example, where my Te Arawa relations again the Tapsell's started asserting certain rights and interests that had been obtained there by virtue of relationships with individuals from Ngāti Awa. Did you see any of that in your research?

A. I didn't go down that track.

Q. Okay, thank you. Have you come across in your research anything about the battle of Tarata taking place specifically on Ngāti Ira lands? We were looking hard for it over the last few weeks and we just wondered if you'd found anything in the background material that the battle took place on Ngāti Ira lands.

A. That's where that modern monument is –

Q. Yes.

A. – where the cavalry charge was.

Q. Yes.

A. Yes. All that I came across was the evidence that you presented at Ōpeke pā.

Q. Yes. Thank you that's all we wanted to know. These are matters we're going to take up with Mr Walzl but we're just trying to explore if there was any further evidence you may have come across. My final thing is if I can go to the summary of your conclusions on the oral summary you gave this morning and it's your second broad conclusion I'd just like a comment from you on. That is, where there are overlapping hapū relationships, how do we reconcile those in tikanga terms as opposed to Western Anglocentric terms?

A. I suspect that Ngā Ture would require a precedent to be laid down and then that precedent to be rigid and applied, unless some new reasoning comes to light. My understanding from a tikanga compliant perspective of dealing with issues is it would depend on the particular context as it arises on each occasion.

Q. Some of the contextual internal regulators would be, and you've described them, whanaungatanga associations that may have been developed as a consequence of the threat of war or participation of war. Would you agree?

A. Yes.

Q. Would you agree that they may have also come around because of political agreements arising from tuku? Would you agree?

A. Political agreements arising from tuku, yes.

Q. Would you agree that they may have also come, these overlapping or shared responsibilities and obligations, as a direct strategy to ensure land is retained in Māori hands generally, or in Mātaatua hands generally. because of the way people were being categorised by certain individuals from the Compensation Court, assessors and the like?

A. I think that's correct. Although, I mean it is obvious that when people are wanting to get a claim recognised in the Land Court they do tend to go for exclusivity arguments and forget about their whanaungatanga because they want to get an outcome from the Land Court.

Q. I ask that, and I want to finish there, because in the evidence of Mr Bruce Stirling from Ngāti Ira he highlighted that some of the witnesses in the Hiwarau block that were asked how they got their take to that block

said: “We are children of the Government, the Government has placed us there, as a result of their allocation of rights as opposed to any tikanga.”

A. Right.

Q. So would you accept that that’s a particular example of the context that I'm trying to explore with you?

A. Yes. But, no, I can't respond because I haven't inquired into that and I know it's complicated.

Q. But can I say for Ngāti Ira, we want to thank you for both your report and your summary. It's been very helpful for us. Thank you.

A. Kia ora. **Thank you.**

(16:11) MR LINKHORN TO PROFESSOR WILLIAMS:

Q. Tēnā koe Professor Williams. Thank you very much for your most interesting report and the research behind it. In terms of the pace of the day the last couple of people who have asked you questions I noticed they've gone quite quick fire and my arms were sore trying to keep up but I think I will have to go pretty quickly. There's been a lot of material that I'm interested in and it's already been covered to some extent so I might put a bunch of propositions to you as saying: “I think your evidence stands for this,” and we'll go along on the basis that you're agreeing until you contradict me as a way to get through it a bit faster, if that's all right with you.

A. Yes. But if it becomes difficult I'll ask you to put it in writing and I'll answer in writing.

Q. Or you'll interrupt me and contradict me and then we'll start an exchange.

A. Okay.

Q. So I see that you've adopted Dr Ballara’s methods and really a self-awareness of the task in front of you and that within that there's an emphasis on the importance of oral history but you've made very clear that you're not doing that part yourself. You're bringing an interpretation of written records in front of the Waitangi Tribunal and the Tribunal has Ngā Kōrero Tuku Iho **evidence** as well as what you've reported the records as saying. I'm correct so far?

A. Yes.

Q. You're telling us essentially to hold space for the oral history alongside what the written material might tell us and I think you're also telling us from the exchanges that you've had with other counsel today that we need to keep in mind the limits of the written record. It's notorious now in Tribunal inquires that some of these processes recorded information that was being developed and deployed for particular purposes and we've heard you say and answer to questions Native Land Court outcomes that people sought for example. So that's an important thing to keep in mind, isn't it?

A. Yes.

Q. I think you mentioned that there are sparce written records before 1860 on the whole just because of very limited contact by the State for instance so not a whole lot of State records before 1860, are there?

A. No, a few missionary ones.

Q. Yes. The tragedy of confiscated land here and the processes of implementing that policy of confiscation here also means that we don’t have the same sort of records for land that was swept up into either an outright confiscation with no further inquiry or a Compensation Court process and even the Compensation Court records are quite limited, aren't they, compared to a first instance investigation of interests.

A. Yes, I said that this morning. The compensation very truncated inquiries were the only effort that an inquiry into customary entitlements pre-1865 and they were, as other witnesses will say in their reports, in the context where people were defined as either rebels or loyals or neutrals. The consequences that followed from that weren't necessarily what customary entitlements would tell you but that's for other witnesses.

Q. So I suppose just to sum up to that point that's quite a few sort of kia tūpato indications from you about the task the Tribunal comes to when it wants to make findings about the customary landscape as it were. Quite a lot of things to bear in mind. Quite a lot of work left for the Tribunal to do to knit together the relevant sources as well as take care over the limitations on the sources that you've brought to bear. Is that fair?

A. Yes, because the Crown never provided any opportunity for full hearings back in those days after 1865.

Q. The weight here is a matter for the Tribunal really in terms of the exercise of its jurisdiction.

A. Yes.

Q. Ms Rongo asked you about Ngā Kōrero Tuku Iho **evidence**, evidence for Ngāi Tai that it hasn't come out to this point, but I had assumed that you'd considered Ngāi Tai MACA evidence but perhaps not.

A. No.

Q. You've considered the Derby evidence in the MACA proceeding and you've considered the judgments in the MACA proceeding.

A. The Derby report only in terms of the questions that were put to me about the role of Tītoko. I mean I haven't read the whole report at all. I just read those various paragraphs that counsel drew my attention to. My role in the *Edwards* proceedings were solely related to the affidavit which is #A009 I think on the record of this inquiry.

Q. In coming to this today and thinking about Ngāi Tai evidence in particular of customary association, I was assuming wrongly I think that evidence in MACA proceeding had informed your evaluations in this report.

A. Well, in retrospect perhaps it should've but I didn't.

Q. But you're aware of the judgments of the High Court?

A. The judgments and the appendix on whakapapa, yes.

Q. Yes. The re-hearing judgment on the space between Tarakeha and Te Rangi?

A. To be honest, no, I haven't seen that one. I mean I know it exists but I haven't read it. It was after this report was filed.

Q. And you've spoken in answer to questions today about the disruptions that people experienced about where they lived and where they used resources from the musket war period down to the Treaty and beyond. I suppose I mention that because perhaps one of the most important things from your report is the very careful points and stress you lay on taking care not to impose boundaries on societies that didn't have them in the way that we now tend to look for them on maps and so on.

A. And survey plans.

Q. And survey plans, thank you. You quote Chief Judge Durie, as he then was, when he asked the question in the Ngāti Awa Inquiry whether there

even were boundaries and I took from that that you're saying that groups could make co-extensive use of resources away from their kāinga without that infringing the interests of other groups.

A. That's likely to be the case on some occasions. Doubtless there would be conflict in other occasions.

Q. Yes.

A. But certainly no pre-determined absolutely finite boundaries.

Q. Yes. When I say “co-extensive” I'm not positing a complete overlay of the exact same zone –

A. No.

Q. – something from a sort of Venn diagram upwards of interrelationship between people’s resource bases if we can label it like that.

A. Yes.

Q. That's me understanding you correctly?

A. I think so, yes.

Q. So when you said at page 380 that a Ngāi Tai claim of interest past Tarakeha to Tirohanga is not plausible that seems like a very big call in a boundary-less world. I wonder if I don’t need to spend a lot of time on this because my friends for Ngāi Tai essentially said: “Couldn't it go in either direction, west or east?”

A. Well, my answer will be that the three lines that I drew on the map, the final map that we looked at this morning, even on Ngāi Tai’s most extensive claim to Tirohanga, which at some point in time must have been true they were at Tirohanga at some point in time, but even if they were there and there were no Whakatōhea people there it still wasn't an obvious route to get from there to the south end of Whakapaupākihi.

Q. Well, perhaps we'll come in a minute Professor Williams to how you get to the inland. But just speaking of the coastal zone just for now, in a boundary-less world without groups having to have completely co-extensive areas, groups might make claims and make use of resources in areas without that being as disruptive of other groups as a sort of post-Native Land Court world would have one first believe.

A. Yes, I agree.

Q. Is the qualification on your broad conclusion here really that for groups with historical enmity or a lack of shared whakapapa or a sufficient shared whakapapa there's just less co-operation and more likelihood of conflict, even violence?

A. I think you put that very well, yes. That's my view, yes.

Q. Is that the real reason why the Ngāi Tai group sits outside of your first big conclusion at the back of your report?

A. Yes.

Q. Yes, okay thank you. Because if we consider Professor Williams the disruption of the preceding sort of 20 years before the Treaty, then all groups had a case to make, didn't they, that life had been so disrupted in that period that the new normal wasn't just a replication of the old normal. There were modifications that impacted on everyone's lives and that's before we even get to the new economy. That when people returned the new normal wasn't the old normal. Is that fair?

A. Well, I think Dr Walker would disagree with you that most of the people returned to the places where they had been. I think the new normal as it developed may have involved a more centralised gathering around Ōpōtiki, around Pākōwhai, but that people did return from Tūranga and from Wharekahika, from Waikato after the battle of Haowhenua, and basically went back to the places where they had been before they went into exile.

Q. And might the knowledge-keepers of those groups have been so disrupted through conflict and war and death that people's ways of articulating their relationship to the whenua were forever changed?

A. Well, I haven't heard words to that effect from any of the Ngā Kōrero Tuku Iho witnesses that I've listened to, so I can't take it any further than that.

Q. So we don't know but we do know about the impact that Christianity starts to have on the need to be prepared for conflict at any point, don't we?

A. The need to be prepared for conflict?

Q. Yes, people's living patterns change, don't they, because there's less defensive posture in the way that people are set up to live after the arrival of the missionaries? Am I understanding –

A. Yes.

Q. – your research to effectively mean that?

A. Less requirement to be constantly worrying about whether you're going to be attacked, yes, that would be one of the new aspects of the period from 1839 onwards.

Q. Professor Williams, I was going to ask you also about your reliance on the Native Land Court having assessed that some Ngāi Tai evidence about inland blocks wasn't credible because it relied on events that the assessor on trekking inland couldn't substantiate but I think that's been covered sufficiently by other questions. So I'll move on from there beyond saying that I think the outcome of the exchange is an acceptance on everyone's part today of the need to be very careful about what those Land Court processes were doing and what our extant records of what actually happened and why, and who, and how. Is that a fair summary of where you got to before?

A. Yes, and also that I said that you'd be able to have another crack at it when you look at Jane Luiten's report.

Q. Yes. Just then to jump into a point of detail, if we think about your answers today to the back and forth of conflict along the coastal strip and then the extent to which occurred inland, did your report, and I'm sorry if I've missed it, but did your report consider Te Whānau-ā-Apanui involvement in those conflicts?

A. Only in relation to Takaputahi where their interests were recognised.

Q. Right. Is that from your own research or from the Mark Darby evidence or somehow else?

A. No, it was from my own research on the Ōpōtiki minute book.

Q. Yes. I'm just looking at other stuff that I think has been covered off Professor Williams. I should just make clear that I'm correct, aren't I, in hearing you say in answer to questions today that we essentially have an incomplete understanding of the western end of this inquiry district because of the limitations on your research and report in relation to Ūpokorehe?

A. Yes, my commission made that clear.

Q. Does that also mean though that if we sort of do the sweep of the compass right round to the other coastal extremity of the inquiry district that we have limitations because you haven't looked at other groups, be they Tūhoe, Te Whānau-ā-Kai, Māhaki, Ngā Ariki groups in the inland zones?

A. All I looked at from that point of view was when Te Aitanga-ā-Māhaki and Whānau-ā-Kai and others appeared in the bush block hearings but there are of course substantial number of research reports and many volumes of the Tribunals findings on Te Urewera that take you right round to the western side –

Q. Yes.

A. – and would be contested by some of these claimants I believe.

Q. But just to be clear in my understanding of how you've gone about the task here, you've gone and looked up to the point of the bush blocks, we've called them that in this inquiry district, you haven't carried on further until the customary interests of these groups seem to tail off, have you?

A. No, I haven't. All I've mentioned is that there are extant claims that some Whakatōhea interests go further south into Mangatū perhaps and that there are some issues between Tūhoe and Whakatōhea hapū as well but I restricted myself to the inquiry district. I mean I looked at Ōamaru was at the same time as Moutohora but I didn't inquire into the Moutohora. There are reports but I didn't require other than reading the research report that was submitted to the Te Urewera Inquiry. I didn't go back to the original sources that that report was relying upon.

Q. Okay, thank you for clarifying that. Just finally it's not so much a question because others have covered it, but thank you for your very informative explanation about the impact of the new economy and Christianity and the changing patterns of settlement around Pākōwhai and such like and for your report generally. Those are my questions of you. Kia ora.

A. Thank you. Kia ora.

RE-EXAMINATION FROM MS GORDON – NIL

(16:30) DR ROBYN ANDERSON TO PROFESSOR DAVID WILLIAMS:

Q. Tēnā koe **greetings** Professor Williams. At many points within the Native Land Court evidence that you draw upon, and even though you yourself have avoided discussing take raupatu, there are a lot of claims and denials of conquest. I was wondering, do you have a view of what those speakers of the time meant by conquest and what sorts of evidence did they bring to back up those claims?

A. Well, what was the man's name Parata wasn't it, yes, we killed Parata. We slaughtered all their people and they didn't exist anymore. That's the sort of evidence of take raupatu that was given by claimants.

Q. Were claims made of conquest that didn't involve this kind of claim of extermination of people?

A. Quite often the take raupatu claims were that everyone was exterminated and then we married some of them so it is never absolutely clear what a total conquest really means. Except that it was intended to be so clear that: "Our side won that you the Court should give us the customary title to that land."

Q. All right, thank you. One thing I noticed was that there was no discussion of rāhui in these Native Land Court minutes that you have brought forward anyhow. Do you think that's unusual and is it significant?

A. Like the word rāhui wasn't used very much that I can think of. The references to pou and references to – I did mention that one instance of a particular taonga that was put at a particular tree and so on, so no doubt that would have been protected by some rāhui I'd imagine. There's the evidence about Kapuarangi and the ancestral taonga connections with that place. I can't imagine that that wasn't protected by rāhui of some sort. But I didn't find any particular reference to the word rāhui.

Q. Do you think that's unusual?

A. I don't think I have enough competence or confidence to be able to answer that question.

Q. Right. Okay, thank you. Maybe it's just the Native Land Court minutes I've been reading recently. I think you referred to the question I had asked in the last Tuku Iho hearing or maybe at the last hearing and I think it was about the difficulty of knowing whether particular tūpuna were male or

female and you suggested that you might be able to throw some light on that. Was that what you were referring to?

A. I was.

Q. Yes.

A. So I've got a little handwritten section here. I've written rangatira wahine –

Q. Yes.

A. – and there's at least three of note in the hearings that my research covered. I've already mentioned Nuhaka. I mentioned her five times in my report. She was the witness for Ngāti Raukatahi which was one of the successful applicants in the Ōamaru hearing. There was Mini Tamaipaoa, Ngāti Ira. I mentioned her 11 times in my report. She was a very important figure for Ngāti Ira. I did mention her saying “surely there must have been someone like her around in 1840 as well”. There must have been rangatira wahine and that they couldn’t have just come into existence in the 1880s and not existed in 1840. So why weren’t they on the Treaty? Well, probably because Pākehā didn’t think of asking them.

Q. Yes.

A. But the one in particular is Erena Uenuku, who was Ngāti Rua on her mother’s side and Ngāti Ngahere on her father’s side. She was in fact the kaiwhakahaere conductor for all of the Whakatōhea hapū in the Whakapaupākihi hearing to oppose Ngāi Tai. She emphasised three ancestors as founding ancestors: one male which was Tamaurahu who was a son of Tamako and two female ancestors, Manawakīaitū and Ataarangi.

Q. Yes.

A. Now those two were sisters, both daughters of Tauwharanui or sometimes called Tawharanui their father he's not mentioned and Manawakīaitū is named but not her husband who's the famous Tarawa. She's a woman conductor of the hearing giving emphasis to the female ancestors. And so when then challenged by a claimant for Aitanga-ā-Māhaki, she then mentions the importance of another female ancestor, Muriwai. Each time she looks at the whakapapa list she tends

to choose a female ancestor. I mean as between Tarawa and Manawakīaitū they were both parents of the whole whakapapa that comes down but here's a woman conductor acting for the whole hapū of Whakatōhea choosing the female lines as a way of presenting those claims. I thought that was quite interesting.

Q. Yes, indeed. Thank you for that that's very helpful. I mean you have occasions where people are saying I think it's Ngira or Tiwai says Ngira became possessed of land by marriage with Whakatōhea and had no real claim at Ōmaru. Is that a statement that you're claiming through marriage by a woman?

A. What was the statement that you were drawing upon?

Q. That you have no claims through marriage. Your claim is by marriage and therefore you have no claim at Ōmaru.

A. I'd have to see the specific context because plenty of these claims were based on females.

Q. Yes, all right. I do have a page reference but I'll put that in writing to you so that you can have time to consider it.

A. Thank you.

Q. I wanted to look a little bit again at the impact of tribal warfare, the so-called Ngāpuhi raids before 1840 and the impact that it had. I understand that you're saying that it's not like on the Manawatū area where people came in, new tribes came in and took up residence so people came back and took up residence again. But you also say that there were new alliances, although the general population remained the same. I just wondered whether you could expand on that idea of new alliances growing out of that earlier period.

A. My sense of it, and this is only my sense of it, but based on reading what was said by the witnesses in the land Court hearings later on, is that there was a pretty high degree of hapū autonomy in the early 1820s. That people pretty much ran their own lives quite small groups of people in the total population but having to go and sell flax to make rope, to get muskets and all the rest. There were lots of things that forced people to cooperate together a lot more for their own safety and self-defence so that was one of the major impacts of that period. That a small hapū couldn't rely just

on its own strength to survive, however, good their young warriors were or their old ones they did have to cooperate with others. In answers to questions from counsel, I did say that Tītoko for example did play a significant role in that. But Rangimātānuku and others also were other leaders who were encouraging the same thing: “Let's work together to strengthen our position,” and: “Hello, here are some missionaries, let's work together to see what stories they've got to tell and there are some traders, let's cooperate a lot more than we have in the past in order to provide the food in order to provide the produce in order to buy the ships, in order to engage in the new economy.”

Q. Okay. Did it have an impact in that area between Tirohanga and Tōrere in the period just prior to the signing of the Treaty? I wasn't quite clear whether the settlement pattern had changed as a result of those disturbances.

A. From what the witnesses were saying, my understanding was that as at about 1839 when Wilson Senior first arrives on the scene most of the hapū have gone back to where they were before. They've come from Tūranga, they've come Wharekahika, they've come from Ngāti Maru territory, and they've come back mostly to where they were. Until it becomes clear that they've now got some new opportunities in the trading area and that's when there probably is movement from fairly self-contained hapū in their various respective general areas not going inland so much to get sustenance in the seasonal way that they had in the past, but saying: “Let's go down to Pākōwhai and get involved with those one or two Pākehā traders down there and the ships,” and so on. So that's when the area from Te Rangi across people start to move to Pākōwhai, as I understand it.

Q. All right. That buffer zone that was created by you say the catechists were leading that and we don’t know who those people were, –

A. No.

Q. – were they likely to be men of standing within their own community? Can you speculate on that?

A. There was a rangatira that commented on that. And if you ask me a written question I might be able to remember who it was.

Q. Okay, thank you.

A. But it was to the effect that those people were people who were considered important by the church missionaries.

Q. Right.

A. They weren't necessarily people whom we appointed. It was probably the other way around. They were appointed by the church. They weren't appointed by me. So that's someone who was grumbling about this buffer zone. He wanted the boundary to go at least, if there was a boundary, to go at least to Te Rangi.

Q. Was it accompanied by what we'd consider more sort of tikanga elements?

A. Was what accompanied by a tikanga element?

Q. The setting of a buffer zone.

A. I think that's a sign of tikanga evolution.

Q. Right. Could you expand on that statement for us?

A. Because my understanding of most of the evidence is that there weren't very clear boundaries and here they are tyring to create a clear boundary.

Q. All right, thank you. I'll ask some in writing. But the last question I would ask you now is about those rūnanga that you say were still operating traditionally and that were criticised by those intermittent Crown observers that came in. They're sometimes I think they've been called rūnanga of chiefs and I just wondered whether you think that that is an appropriate sort of descriptor of how traditional rūnanga were operating?

A. I don't think they were rūnanga operating traditionally. I think they were – again it's another example of tikanga evolving to meet the new circumstances. Certainly, rūnanga operating traditionally wouldn't impose fines in people, well, these rūnanga imposed fines on people. My point about those rūnanga was that they were developments by the hapū themselves within using their own rangatiratanga to put it that way, but using their own sense of authority to try to create conditions useful for the trading prosperity that they sought at the time.

Q. I was interested in who these people were but we don't know who were the participants of those rūnanga?

A. No. Well, after the 1860s when there was an attempt to use government designed rūnanga, who was that, was it someone Poihipi? There was someone who has said not to have acted in the way in which they should have on the rūnanga. There was at least one or two named people but I don't know the names of the people in the earlier rūnanga that are referred to in the 1862 report.

Q. I was interested in I think it was Turton in particular was critical of the fact that the rūnanga were so big and that there were women attending and that's why I asked the question about whether they were actually rūnanga of rangatira and I'd given that statement to you. Do you have any comment on that?

A. So, Turton I imagine couldn't imagine that women could be rangatira, but my whole evidence is that in fact in this particular part of the country there certainly were a significant women rangatira and had been for a long time.

Q. Maybe also that there were so many participants in the rūnanga male as well which I think he described as being obnoxious or a very derogatory term.

A. Yes. Well, I don't think I can say much more other than by going beyond my sources. There are people that sort of like to have small groups of people so they can negotiate with them and get deals done. But in pre-1860 in this area the Crown really wasn't involved so whatever Crown outsiders thought about it when they talking about it after 1860, whatever happened before 1860 was something that the people there themselves devised and chose.

Q. All right. Well, I think it's ongoing issue into the 1860s so I'll explore that with Mr Walzl when he comes up. Thank you very much for your evidence and those are all my questions for the moment. Thank you.

A. Thank you.

Q. Before I stop, could you actually file that statement about the wahine you said you'd written it out.

A. My little notes in here?

Q. Yes. Would that be possible?

A. Yes, I could do that.

Q. All right. Thank you that would be very helpful.

JUDGE DOOGAN ADDRESSES PROFESSOR DAVID WILLIAMS – TIMING (16:49:16)

(16:49) DR GRANT PHILLIPSON TO PROFESSOR DAVID WILLIAM:

Q. Tēnā koe Professor Williams.

A. Tēnā koe.

Q. I just wanted to start by thanking you for this report. I won't be able to ask you much of my questions given the time constraints but some of them have already been covered in earlier evidence and the questions and answers. I just wanted to start by asking the three paths that you referred to the three tracks, are there maps of those?

A. I haven't seen them. I've only read the generalised descriptions of them from the witnesses in the Land Court.

Q. Right. Okay, thank you.

A. I thought, gosh, it would have been nice to see a map but I haven't seen one.

Q. No. Okay, thanks.

A. Maybe the claimants can be asked to produce, especially the Te Kowhai and the Kanakana ones.

Q. Yes, it would be really useful to know.

(16:50) JUDGE DOOGAN TO PROFESSOR DAVID WILLIAMS:

Q. Just on that, you don’t know or you can't recall the catchments broadly which those tracks relate to?

A. The Pākihi stream is certainly one of them, yes.

Q. All right.

A. And that’s the one where one of the witnesses said that Bishop Williams had gone up. Well, it couldn’t have been Bishop Williams or he wasn’t the bishop then anyway. But there's nothing in Selwyn’s or the two Williams’ records that I’m aware of and I did look for it –

Q. Yes.

A. – to indicate that they went along that path. But some missionary apparently did go with Whakatōhea through to Tūranga along that pathway.

Q. Yes. I think on our site visit earlier this year I think Mr Te Amoamo, if I recall rightly pointed out part of the Te Kowhai trail from one of the landmarks we were on. But anyway, something we'll follow up.

A. Thank you.

Q. Thank you.

(16:51) DR GRANT PHILLIPSON TO PROFESSOR DAVID WILLIAMS: (CONTINUES):

Q. Perhaps you could put in writing the descriptions, the particular descriptions of each of them.

A. Descriptions of?

Q. Of each of the paths that were given by the witnesses.

A. Okay. Are you taking some notes of what I have to do?

Q. We'll put them in writing anyway for you.

A. Āe.

Q. I'm just checking. I'll ask most of these in writing. I just wanted to ask you about the land above Whakapaupākihi on page 103, your map on page 103. So, it's above Takapūtahi. There seems to be a triangle where there's no name and then there's Kapuarangi which is half in our inquiry district and half outside. You didn't look at the minutes for the Kapuarangi block?

A. Kapuarangi, Takapūtahi, and Tunapahore were all considered together.

Q. I see.

A. I did refer to that, yes.

Q. Did you look at the minutes for that one?

A. Did I look at the minutes for that one or did I rely on Jane Luiten? I think I relied on Jane Luiten's report for information about that.

Q. Right. Do you know what that triangle is? I'll ask Jane Luiten maybe. There's just a triangle there with no name on it. So there's a triangle above Takapūtahi and to the left of Kapuarangi which doesn't seem to have a name.

A. I don't know that that really is an unnamed triangle. Where are my other maps?

JUDGE DOOGAN TO MS GORDON – MAP BOOK

A. There is one little triangle which is the bit between Awaawakino and between Tarakeha and Te Rangi. The triangle you're talking about, there's a line coming from Tōrere which hits the dotted lines but the dotted line of course is not a block boundary that's the confiscation line so there is something wrong about that map. If we had a map which just had the Native Land Court blocks which I think is in Jane Luiten's report you would not have that triangle I think. So that's something you need to enquire further.

Q. Thank you. I'll put the rest of my questions in writing, except for one, which is whether in terms of that agreement that was reached about what's been called "the buffer zone with Shortland" were the only references you saw about that in the minutes book or did you find anything in Shortland's papers or anything in the Archives New Zealand about that agreement?

A. I didn't undertake that further research, no.

Q. Right. It's from the minutes book.

A. Yes.

Q. Yes, okay thank you very much. I'll put the rest of my questions in writing but thank you very much again for this report. It's been very helpful.

(16:56) JUDGE DOOGAN: (MIHI)

Tēnā koe **greetings** Professor Williams. I think we will end our Tribunal questions at this point. Just acknowledging the day you have already spent up there and also we do not want you to miss your waka home. But I wanted to also on behalf of the Tribunal just extend our mihi to you for your mahi. This has been a very valuable report. I also acknowledge that there are a number of limitations with the brief you were given, particularly in relation to Ōhiwa and Ūpokorehe which does make your task more challenging than it already is. So I just wanted to again thank you for what you have been able to achieve and for the way in which you have answered and clarified with the assistance of the questions today. It has been very helpful. But I'm sorry we have not been able to complete the questions orally. You will be aware that Ms Zwaan and Mr Lyall are already applying to possibly have you recalled so we will cross that bridge

if we come to it. So we may or may not see you again in another stage of our hearing but I just wanted to thank you very much for your evidence today.

KC FEINT ADDRESSES JUDGE DOOGAN – UPDATE TIMETABLE (16:58:36)

KARAKIA WHAKAKAPI (PROFESSOR TOM ROA)

HEARING ADJOURNS: 5.00 PM

HEARING RESUMES ON TUESDAY 19 NOVEMBER 2024 AT 9.00 AM

KARAKIA TĪMATANGA (PROFESSOR TOM ROA)

(09:02) JUDGE DOOGAN: (MIHI)

Tuatahi, he mihi tēnei ki a koe Ahorangi Roa, nāu i whakakākahu tā tātou nohoanga ki te korowai o te atua, nō reira tēnā koe. **Firstly, I want to thank you Professor Roa, it was you who cloaked our sitting with the cloak of god so thank you.**

TECHNICAL ISSUE – WITNESS CONNECTION ONLINE (09:02:35 – 09:03:05)

JUDGE DOOGAN ADDRESSES MS FEINT KC, MS CLARK – TIMETABLING (09:03:08)

MS PETERS ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMING (09:07:14)

TECHNICAL ISSUE – WITNESS CONNECTION ONLINE (09:07:52 – 09:08:59)

MS FEINT KC ADDRESSES JUDGE DOOGAN – FILE AMENDED #C006 (09:08:56)

TECHNICAL ISSUE – TESTING WITNESS CONNECTION (09:10:21 – 09:11:06)

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – MIHI, TIMETABLE UPDATE (09:11:01)

MS HOLMES-MUSTART (CALLS)

JOHN MILLER McLELLAN (SWORN, #A003-(a)-(e))

Tēnā koutou. E te Kaiwhakawā me ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. Ko Natalya Holmes tōku ingoa. He

kaiwawao ahau e tiaki ana i ngā kaiwhakaatu i tēnei rā. **Nil.** Tēnā koutou, Sir, and members of the Tribunal. Counsel's name is Natalya Holmes and I appear as counsel assisting the Tribunal commissioned witnesses this week.

Q. Tēnā koe John. Could you please state your full name for the Tribunal?

A. John Miller McLellan.

Q. Ngā mihi. Could you please confirm that you are the author of the Tribunal commissioned report entitled *War and Raupatu 1840-1871*, given the record of inquiry number Wai 1750 #A003?

A. It is *1865-1874, Raupatu and Compensation in the North-Eastern Bay of Plenty*, yes. And it's #A003.

Q. Aroha mai, thank you. Ngā mihi ki a koe. Kei a koe te wā.

MIHI

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou katoa. I te taha o tōku pāpā ko Ngāti Rangi rāua ko Te Whakatōhea ōku iwi. Ko Te Whanganui-a-Tara te kāinga. Kei Rānana au e noho ana. Ko John McLellan au. Kua tae mai ahau ki te tautoko te kaupapa o tēnei wā, waiho i te toi poto nāu te rourou, nāku te rourou ka kī te kete. Nō reira tēnā koutou, tēnā koutou, tēnā koutou katoa. **Thank you, your Honour, and greetings all. On my father's side I am Ngāti Rangi and Te Whakatōhea and I live in Wellington. I'm John McLellan. I am appearing to support the matter currently and give through my contribution and through your contribution to the baskets. Thank you all.**

So, jumping into to the sort of very concise version of this summary, we'll just jump into the introduction.

REFERS TO #A003(b)

The Waitangi Tribunal commissioned the report summarised here in October 2019. As a focussed overview research report, it provides a high-level assessment of the raupatu implemented in the North-Eastern Bay of Plenty Inquiry District between 1865 and 1874. The requested period was initially established as 1865 to 1871, but has been extended to 1874 to allow the inclusion of relevant compensation awards published in that year.

Over five chapters, and largely in chronological order, the report contextualises then describes the 1862 murders of Völkner and Fulloon and the subsequent response of the colonial authority and its military forces, and its implementation of raupatu and the related compensation in the district.

The Waitangi Tribunal commissioned the report before the completion of Dr Therese Crocker's pre-casebook research discussion paper, and the report was submitted on the record of inquiry in July 2020. Since then, the Waitangi Tribunal has commissioned other evidential reports which offer more comprehensive analysis on the tribal landscape, early cultural interactions, raupatu, war and invasion, and nineteenth century political engagement.

The scope of the report was concise by design, but this was further limited by a lack of engagement with te reo Māori primary sources, and restrictions on archives and repositories during to the COVID-19 pandemic.

The report was completed before the Presiding Officer confirmed the final boundaries of the North-Eastern Bay of Plenty Inquiry District. That decision moved the western boundary of the district to take in the whole of the Ōhiwa harbour. As a result that, there may be discrepancies between this report and those that followed.

I'll just quickly read the **Conclusion** as well. 6.1 Following the killing of Reverend Völkner in 1865, the colonial government used the pretence of ensuring the security of the region to open up the best lands for Pākehā to occupy and farm in the North-Eastern Bay of Plenty. In pursuit of the killers, the colonial forces treated all Māori in the region as 'rebels' destroying the settlements and economy that Whakatōhea and Ūpokorehe had established on their customary lands.

The New Zealand Settlement Act 1863 and its amendments were then used as blunt tools to legitimise the blanket confiscation of Māori land. Within the Inquiry District, the peoples of Whakatōhea and Ūpokorehe all suffered the loss

of customary lands, as they were all treated as ‘rebels’ regardless of how tangential their involvement with Völkner’s death may have been.

Compelled to surrender to the authority of the Crown, some lands were returned through the problematic out-of-court negotiations and the Compensation Court. But it was a fraction of the area and quality once held by Whakatōhea and Ūpokorehe and was insufficient to reestablish the economy and wealth they had previously maintained. I think that’s definitely the (inaudible 09:17:02) version.

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – MIHI, BREAKS (09:17:08)

(09:17) MS PETERS TO JOHN McLELLAN:

Q. Tēnā koe Mr McLellan. Can you see me on your screen?

A. I can, yes.

Q. Ka pai.

A. Tēnā koe.

Q. Tēnā koe. Ko Ihipera Peters tōku ingoa. I am here representing Ngāti Patumoana hapū in this inquiry and leading out the questioning on behalf of claimant counsel alongside my learned friend Ms Cole who will follow after me. I just have a couple of topics to explore with you. The first topic is in relation to methodology adopted in preparing your report. As a starting point, I acknowledge the timing of your report pre-dated certain milestones in this inquiry, which you had mentioned in your written summary, including confirmation of the boundaries for this Inquiry District, the completion of the pre-casebook research paper, and other reports, including those that are being heard this week. But at paragraph 2.4 of your report summary, which is #A003(b), you refer there to the context chapter in your report. That’s your chapter to historical context chapter, correct?

A. Yes.

Q. You say in that same paragraph that: “The reports of Ton Walzl and Dr David Williams provide substantially more historical context than was

able to be captured in your report." Can I take it from that comment that you are familiar with their reports?

A. I'm only briefly familiar. I perused them but I definitely don't have an in-depth knowledge of their reports. The (inaudible 09:20:11) time after five years of being behind this report, it didn't really allow me to catch-up entirely on the other reports there.

Q. Ka pai. In terms of the way in which your report draws on a combination of both primary sources and secondary sources, including reliance on Tribunal jurisprudence, in your research did you identify any potential biases or gaps in primary resources that you referred to, including the government documents like the New Zealand Gazette and what was in the raupatu document bank?

A. Sure. I mean as a historian you take all of those documents within their context and so it is innate I would suggest.

JUDGE DOOGAN ADDRESSES MS PETERS – SEPARATE GAPS/BIASES (09:21:20)

(09:21) JUDGE DOOGAN TO JOHN McLELLAN:

Q. Mr McLellan I followed your answer in general that's it's inherent in the nature of the process. Could you just clarify a little bit around a distinction between gaps and potential biases in the material available?

A. I mean in terms of gaps, the gaps were immense in the limited time that I had to peruse the record. The record doesn't capture well what Māori perspective was of those events were. In terms of biases from Crown agents et cetera, they often had their own personal interests at heart as well as maintain their jobs, as well as various other factors that people always deal with.

Q. Thank you.

A. Does that answer the question or?

Q. Yes that's helpful. Thank you.

(09:22) MS PETERS TO JOHN McLELLAN: (CONTINUES)

Q. Thank you for that clarification Mr McLellan. Just following on from that, you would accept then that Kōrero Tuku Iho or oral histories would provide a unique and valuable insight into the research focussed on historical grievances like raupatu?

A. Absolutely, yes. I wish I had an opportunity to have engaged in that but that unfortunately wasn't available to me.

Q. And that Kōrero Tuku Iho would be the best evidence of the lived experiences of the hapū, including the cultural impacts of raupatu as a counterbalance to those colonial narratives.

A. It's definitely the counterbalance, yes. Whether or not it is the best balance I'm not sure I could say. Yes, just leave it there. Like the depth of knowledge that comes from oral histories et cetera is super valuable and often may be the truth lies somewhere in between them and what the official record is and that is I think often what the historian could pull out but a historian can do their best job with exposure to all of those sources.

Q. And you mentioned that you didn't have the opportunity to engage in that type of evidence. Was that simply a matter of timing for producing your report?

A. It was in part timing. Part of it was I don't full reo Māori capacity and there were some other limitations just in terms of my role at the Tribunal while I was working on this commission.

Q. Did you hear the evidence of Professor David Williams yesterday?

A. Only in bits.

Q. Do you recall hearing the part of his oral presentation where he expresses view about the term hapū being more appropriately describe as a tribe rather than a subtribe?

A. I don't think I witnessed that.

Q. To quickly paraphrase, he'd drawn that view because it was based on the historical records. It was the hapū who were at the centre of the operational framework and decision-making. From your research, would you agree with that premise?

A. I don't think that I had the exposure to I mean the oral history et cetera that Williams had to sort of draw that sort of conclusion. As you'll see in

my report, most of it is from Crown sources and secondary sources. I think you need a more in-depth access to make that sort of conclusion.

Q. Tēnā koe. Moving to another topic in relation to the relationship recognised in te Tiriti from which the invasion in the North-Eastern Bay of Plenty area must be viewed in this context. I'm not sure if you're aware that the Crown has made some concessions already in relation to raupatu so I don't propose to take you there. However, when looking at the text of Te Tiriti o Waitangi and from your background as a senior research analyst, you're familiar with what the three articles of te Tiriti say?

A. I believe so, yes.

Q. Do you accept that Article I of Te Tiriti o Waitangi guaranteed kāwanatanga to the Crown as a right to govern settlers under British law?

A. I'm not entirely sure that that's my place to speak to those in this forum but I'll take a steer on that if there is one.

Q. Ka pai.

(09:28) JUDGE DOOGAN TO JOHN McLELLAN:

Q. Mr McLellan, are you concerned about expressing a view on Treaty interpretation which is our or the Tribunal's role ultimately?

A. I prefer to leave that to you, Sir, yes.

Q. All right.

(09:28) JUDGE DOOGAN TO MS PETERS:

Q. Ms Peters, were you wanting to go through all of the Articles with this witness?

A. Very briefly. But he has given his answer so I'm happy to move on from that part.

Q. All right.

A. I think it's relevant in this context in terms of the high-level overview that Mr McLellan has explored in his report and as it relates to raupatu.

Q. Yes. The report itself doesn't do a Treaty principle, Treaty text kind of analysis. Are you happy to leave that issue and maybe deal with questions of the text and application or interpretation for submissions –

A. Yes, I'm happy to do that, Sir.

Q. – because that's probably a more straightforward radar to deal with that side of it? Thank you.

A. Tēnā koe.

(09:29) MS PETERS TO JOHN McLELLAN: (CONTINUES)

Q. Your report suggests that raupatu was justified by the Crown in one way as a punitive measure against rebellion. That's correct.

A. The brief it says that they believed it was, or my intention would have been to say that they believed it, yes.

Q. Yes, that's the intention of my posing the question justified by the Crown. You accept that the economic and settlement objectives also influenced those confiscations.

A. Yes.

Q. In terms of the labelling of rebels, in your research did you come across mechanisms for hapū to contest these designations?

A. Yes. I'm just trying to find where it was. But yes, there was the option or they could – once they were labelled rebel and – I might need to find my spot in my report.

Q. Kei te pai.

A. Do you have the page there?

Q. The follow-up question was really whether you recall how effective they were those mechanisms?

A. I mean hugely.

JUDGE DOOGAN TO MS PETERS – CLARIFY SOURCE IN REPORT

Q. It's in your fourth chapter and you explore it across pages 66 through to 68 which is the sub-chapter 4.2 in your main report.

WITNESS REFERRED TO #A003 REPORT, PAGES 66-68

A. Did you want to go ahead with the full question and I'll answer it?

Q. Sorry, you want me to repeat the question?

A. Yes please.

Q. Ka pai. My question was in your research did you come across mechanisms where hapū had the ability to contest the destinations of rebels? And if so, how effective were they?

A. So…?

(09:34) DR GRANT PHILLIPSON TO JOHN McLELLAN:

Q. Tēnā kōrua. Can I assist by suggesting Mr McLellan that the Compensation Court was the only mechanism through which individuals could contest whether they were rebels or not. I think that's where the question is going. And then the question –

A. That's seems a fair assessment of-

Q. – is how effective was that mechanism is I think the question.

(09:35) MS PETERS TO JOHN McLELLAN: (CONTINUES)

A. The efficacy of it is not great.

Q. Ka pai, tēnā koe.

(09:35) JUDGE DOOGAN TO JOHN McLELLAN:

Q. I'm sorry, just to be clear, Mr McLellan, you're accepting that the Compensation Court is the only mechanism by which designation as rebels could be challenged?

A. Yes.

Q. Thank you.

A. In my mind, I was trying to think of and identify the little pieces of the change around the Settlements Act that allow further compensation to those that had already designated as rebels. I was trying to think of how to develop that into the answer, but as you can see my brain is a bit slower than-

Q. All right.

(09:36) MS PETERS TO JOHN McLELLAN: (CONTINUES)

Q. Tēnā koe Mr McLellan. So you're aware of what te Tiriti says and that includes the guarantee to Māori to continue their rights over their whenua (lands) and taonga katoa. In your main report #A003 at page 69 at the second paragraph, do you have that in front of you?

A. Page 69 second paragraph the New Zealand Settlements, yes?

Q. Yes. So you're talking about there about the New Zealand Settlements Act 1863 and the Suppression of Rebellion Act 1863, you see that?

A. Yes.

Q. In the second sentence there: "Both pieces of legislation were duly submitted to the Crown Law Office which deemed they did not exceed the power entitled to the New Zealand General Assembly and were not repugnant to the Laws of England." My question is knowing the terms of te Tiriti the government's reliance on the New Zealand Settlements Act and the Suppression of Rebellion Act doesn't align with that guarantee does it?

A. My interpretation of that would be I'd agree with you.

Q. And so at the last sentence there where it says it wasn't "repugnant to the Laws of England" but the converse is actually true in terms of the agreement reached in te Tiriti?

A. I mean what's stated there is an assessment at the time by that particular entity.

Q. Ka pai, tēnā koe. I'm just conscious of my time e te Kaiwhakawā. I think I'll leave my questions there. Tēnā rawa atu koe Mr McLellan i au whakautu i tēnei ata.

MS PETERS ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION BY MS COLE (09:38:32)

MS COLE ADDRESSES TRIBUNAL – MIHI (09:38:39)

(09:38) MS COLE TO JOHN McLELLAN:

Q. Mr McLellan, you can hear me all right?

A. I can, yes, thank you.

Q. Ms Cole tōku ingoa. I just have a few, not too many questions. I might be 10 or 15 minutes maybe at the most, depending on how long your answers are. First of all, just from some of your answers to Ms Peters' questions could I just clarify, how long did you actually have to research and write your report? Because I gather from some of your responses that it was a fairly truncated timeframe or perhaps you had some

disturbances. I just note that you filed your report in July of 2020 so presumably you were probably impacted by all of COVID disruptions et cetera. I just wondered if you could clarify.

A. Sure. Yes, I mean I was in New Zealand at that time. I mean archival disturbances were and probably are ongoing, but they probably started well into or late 2019 I think, so that record started getting hard to come by. But yes, it was affected by COVID-19 and all those shutdowns. In terms of the period of time, I was commissioned on the 1st of October and it was-

Q. Of what year?

A. Sorry, 2019.

Q. Thanks.

A. I was due to provide a full draft on the 30th of April I think. So, is that seven months?

Q. About six months.

A. And then I think I had a five-week extension. So it ended up a full draft was stipulated on the 5th of June and then filed on the 3rd of July.

Q. Did you feel that perhaps you didn't have as long as what you might have liked? I just got the impression from some of your answers.

A. Absolutely, yes.

Q. Do you feel like there was some materials that were not-

A. Yes, there was absolutely things that I would have liked to have seen that weren't available to me at the time. I probably can't give a full list of that now.

Q. NO.

A. But absolutely there's things that I would have liked to have had better exposure to especially te reo Māori sources. But the intention of the report was to provide sort of like not a scoping but like an initial overview right for other reports to build on. That's my understanding and I did that the best I could in the time that I was given.

Q. Kia ora. Please don't think that I'm being critical of your report because I really enjoyed reading your report and it was incredibly helpful. I noted your answer to Ms Peters' question before about whether or not you had had an opportunity to read through the Walzl and Luiten reports.

Of course, Mr Walzl's report is I don't know something like close to 1200 pages long so it's an amazingly impressive piece of work. But given that you've had an opportunity to basically skim it and they have come after your report they've had a bit more time by the sounds of things. Would you defer to their reports in terms of perhaps, fuller information that they've been able to glean and include in their reports?

A. I mean I can't say that their conclusions are mine. But absolutely they're both well-established and been doing this for a long time so I trust they've done a great job with the extra resources and time that they were enabled to have.

Q. Kia ora. I specifically wanted to ask you a few questions about the Compensation Court and the compensation processes and I note of course that has been covered by both of those two authors also. My question for you is, did you find any evidence of consultation with Māori in the design or establishment of the Compensation Court or the processes that were followed in that court?

A. No and no.

Q. No and no, thank you. In the four sittings for the Ōpōtiki takings that we're aware of, were there any Māori observers or advisors to the Court that your research disclosed?

A. I don't think I discussed anything like that in the report. I mean Wilson's relationships at the time I mean he grew up in the area, knew a lot of people, i imagine he had people that he was Calling on for some advice but probably not in the sense that you're thinking.

Q. Were there written records that would disclose the people that he might have been speaking to for advice?

A. If there was I don't have awareness of them.

Q. No, thank you. Well, let's talk about Mr Wilson because he seems like an interesting character. He held multiple roles when it came to the compensation process and indeed the confiscation process. Do you have any comments to make that build on your report in terms of the conflicting roles that he held?

A. I think I have just like a passing line in the report that says that it seems like quite a conflict of interest.

Q. I wondered whether you had anything that you could build on for that?

A. Sure. No, I don't think that they would stand as good practice today.

Q. Did it stand as good practice in the day?

A. I think many colonies were putting up many hats on single individuals. I mean I couldn't give you another example of that happening but I wouldn't be surprised if it had happened elsewhere.

Q. When you say "another instance where that had happened" are you specifically confining yourself to confiscations and then compensation? I mean I'm thinking for example-

A. No, sorry, I'm just speaking generally. I don't have – sorry, what was the initial question?

Q. I think you've probably answered what your position is.

A. About Wilson?

Q. Yes, I was wanting to know whether or not you had any further thoughts that you could add to the very brief note that you had in your report about the conflicting roles that he had.

A. Sure. Yes, so I mean no I don't think that it probably wasn't unusual at the time and some people at that time probably thought it was acceptable and I'm sure others did.

Q. But that's just speculation. You've got no information specifically.

A. Absolutely.

Q. Okay, thank you. I wanted to ask you at 5.16 of your report you talk about the Compensation Court not being able to return land that had previously been allocated to military settlement.

A. Yes.

Q. I wondered whether you were aware as to whether those awards survived the years in that it remained the case that land that was allocated to military settlement remained out of reach of the original tangata whenua.

A. The scope of this report ends in 1871 and then, yes, slightly extended to '74. Within that time frame, I'm not aware of anything. Any answer I had would be informed from other areas where I've worked. And I know that the military settlers at that time that ended up in that area most of them didn't last very long and almost all of that land was on-sold very quickly. Any Māori that would have had, if they did have access to the resources

to purchase the land, the land would have been available for them to purchase but only as individual Crown title.

Q. So to your knowledge none of it was returned to the original inhabitants by way of compensation.

A. Not to my knowledge.

Q. Section 5.22 of your report you're talking about it taking years for some of the negotiations to be completed and Wilson was the Crown agent who was dealing with those negotiations, as I understand it, from your report. Is that right?

A. Some, if not all, yes.

Q. My question is where were the people who had been making those claims and therefore were participating supposedly in the negotiations where were they actually living throughout those years?

A. Yes, that's a great question, and I would have loved to have had the answer yell out at me while I was preparing this report. I presume that that is covered in the later reports. My understanding is that some, I mean depending what year, would have been at Ōpape but certainly not all. Depending what year, some would have still been inland, Kereopa, Perera, yes.

Q. Do we have a sense from your research as to their standard of living during that period?

A. I mean for those at Ōpape and generally speaking I mean they went from having ready access to crops as well as what they could forage et cetera, so they went from having ample opportunities to do that on their own lands to having significantly less ample opportunities to do that on significantly less land at Ōpape. Yes, I mean their existence would have been substantially worse than it had been in the early 1860s.

Q. I also wanted to ask you about you make reference to benefactors of compensation claims. Sorry, I might come back to that question because I think I've got a reference to a table but I seem to have managed to make an error in the way that I've notated the page numbers of your report. I'm just wondering if the hard copy that I've got printed off is different from the electronic copy that I've got so I might just park that. I know that you've got a table that refers to benefactors and you list the numbers of adult

men or the numbers of benefactors full stop and I was wanting to ask you whether when you would refer to benefactors you'd be referring only to adult men or a total population.

(09:50) JUDGE DOOGAN TO MS COLE:

Q. Is the term benefactors or beneficiaries?

A. It's benefactors which is what made me wonder.

Q. All right. So we've got to find the table, okay.

(09:50) MS COLE TO JOHN McLELLAN: (CONTINUES)

A. If it's wording in the table, it would have been wording from the source which would have been the AJHR.

Q. Yes, I haven't made that easy for you because of my error. What am I looking at here? I've just done a quick word search and I'm at page 127. No, look, I don't want to take up the time of the Tribunal so I'm just going to park that.

DR GRANT PHILLIPSON TO MS COLE – QUESTION IN WRITING

Q. Right. Hopefully this page is right page 98. This is going back to the negotiations by Wilson with individual claimant/claimants and he refer to an absence of Māori claimants from the areas where Wilson was attempting to undertake private negotiations for compensation claims. This is on page 98 halfway down the page.

A. Yes.

Q. The first question I suppose goes back to what I asked a couple of minutes ago about "where were the people" and presumably some were at Ōpape. But, am I right in thinking that others would have been more widely spread or?

A. I expect so, yes. My understanding of that time, so we're looking at sort of late 1866 –

Q. Yes.

A. – is that with the continued hostilities in the area people would have been making themselves scarce so they didn't become a target.

Q. I've noted that on page 141 you make reference to sporadic hostilities in the region, timing of sittings (this is for the Compensation Court) during

communal harvests, and the remoteness of sittings from their places of residence which the places of residence was again triggered my question about where were the people or what is our knowledge of where the people actually were.

A. Yes, sure.

Q. I find it interesting-

A. Yes, I mean in that instance I think those were taken from the Court notes so that would have been their description. They wouldn't have said where a resident was. It would either be from the Court sittings or it would have been from Wilson's own letters presumably.

Q. Sorry, can I just be clear. When I've quoted there from your page 141 about sporadic hostilities, timing of sittings during communal harvest, and remoteness of sitting from their place of residence, are they things that the Court made note of? So the Court was very conscious that that was-

A. Sorry, that was off the top of my head. I hadn't looked to see. I see 141 it's part of the conclusions.

Q. Page 141.

A. Yes, so that would have been a reference to something that I'll have a source for that further –

Q. Back in the…

A. – in the earlier pages and we can chase that up at a later time if that's acceptable.

Q. Yes, I've got a note that it was page 107, Wilson stated they'd been unable to attend due to being engaged in war. But I was really interested in your answer just then that it was things that perhaps the Court had noted so maybe we could follow that up. If there are notes from the Court's records that the Court was aware that these were reasons why claimants were not attending their hearings.

A. If it was raised in Court it would have been raised by Wilson I imagine. But yes, I can (inaudible 09:55:13).

Q. And yet the Court pressed on and made determinations? That's a question as opposed to a statement.

A. In some instances. But mostly what Wilson's referring to "not being able to settle claims because people had been absent" so that's where the

witnesses aren't there so they can't make a decision is the intention of what he's written. He was frustrated by not being able to progress things.

Q. Maybe I've remembered this incorrectly, but weren't there a number of claims effectively dismissed because of the non-appearance of claimants?

A. Yes that is correct.

Q. Do we have any information as to how claimants were actually advised of their Court dates?

A. Yes. I don't have it right in my brain. But yes, I'm pretty sure I included that in the report. It was proclaimed. Like the Court sitting date were proclaimed and I'm not sure-

Q. In page 109 you're talking about the Maketū Compensation Court and Wilson's written a letter to Pollen that: "The various tribes with claims, including Whakatōhea…," and I'm quoting from your report here: "…were all notified of the dates for the sitting of the Maketū Compensation Court ahead of time…," but then he goes on presumably to have: "…claimed to have been unaware of the scheduled Court date until just six days before the event having received no notice from the administrative arm of the Auckland Courts, or whether the claimants received notice ahead of Wilson is unclear." That just led me to wanting to ask you about the nature of the manner in which claimants were actually advised of their Court dates, given the seemingly large number of claimants who didn't actually appear. Perhaps that's something you could have another look at and if there is a simple answer you could provide us with some information.

A. Yes, certainly.

Q. Pages 96 and 98 you're talking about the Ōpape Reserve and at the top of page 98 the question of how the reserve was to be distributed or shared between eligible hapū of Whakatōhea was not addressed by the Government until 1879 and it was concluded in 1915 that Wilson had made no distinction between the various hapū of Whakatōhea for either confiscation of lands or the aware of the Ōpape Reserve. In the research that you undertook, did you find any redeeming features about the manner in which people were put on to the Ōpape Reserve?

A. Putting on, what do you mean?

Q. Reallocated to, deposited on, sent to.

A. Yes.

Q. Whatever you want to say.

A. Sure. Yes, I saw a lot of different language in terms of what's the active word in terms of how they ended up at Ōpape and I don't think I was able to achieve the clarity on how that happened that I would have liked. Hopefully that's been able to be achieved in one of the later reports.

Q. Yes. I think Mr Walzl goes into it a bit. I was just wondering from your perspective from your general impression of the work the research that you undertook whether you saw anything that was actually in any way a positive for the Māori?

A. Yes, I mean I'd be grasping.

Q. You can end there that's fine. I just want to ask some specific questions in relation to those that I specifically represent. For example, we act for Ngāti Ira. Although, perhaps a little bit more general also and I don't mean to upset Ūpokorehe colleagues here. As far as the Ōhiwa harbour or the western boundary of the Inquiry District, you'll probably be aware that that area remains relatively hotly contested, particularly in the marine and coastal area space. Do you agree that much of Whakatōhea interests in that western end of the Inquiry District, particularly Ōhiwa and the boundary at Maraetotara in Ōhope, it was settled by Ngāti Awa through the Crown settlement process without any inquiry or research into the Whakatōhea whakapapa interests and that most importantly my question for you is that problematic for this inquiry?

A. It's not something that I really covered in the report so it's probably –

Q. No, fair enough.

A. – you might be (inaudible 10:00:36) to it.

Q. Pages 106 to 116 you do cover the four Compensation Courts that were held. Do you have any understanding or opinion perhaps as to why it was that the Compensation Court sat in for example Maketū and Matatā when that is so far away from Ōpōtiki? I mean it's not now because we can drive there, but back then it made it almost perhaps impossible for Whakatōhea to attend.

A. I mean I agree that transport would have been difficult especially with other hostilities in the area. Obviously they navigates horses in many instances on the horses that they had –

Q. Or waka.

A. – and they weren't able to obtain new ones. In terms of why they were allocated where they are, I don't have any answer to that.

Q. I think this is my last question. In relation to the Battle of Te Tarata is it page 45 of your report. So this occurs on the 4th of October 1865. Is it clear from your research that the battle took place on Ngāti Ira's land? Do you recall?

A. To be honest, I didn't spend a lot of time assessing where hapū boundaries began or ended.

Q. Okay.

A. Yes.

Q. Perhaps I could just take you to page 45. It's the third substantive paragraph and you say: "On the 4th of October the native contingent with support from other units began attacks on three pā: Te Tarata, Te Puia and Ōpekerau…," and then you've got: "…which were occupied principally by Ngāti Ira under the command of Hira Te Popo." You see that.

WITNESS REFERRED TO #A003, PAGE 45

A. I might have a different page number ordering. Did you say 44?

Q. No, 45.

A. Can I have the question again please?

Q. You see the paragraph that starts: "Also, on 4 October the native contingent and then three pā which were occupied principally by Ngāti Ira." Does that inform your answer any better?

A. I mean my understanding of how and where pā ended up they're not always on DoC and established by, from my understanding, in negotiation of many types of negotiation. I can't speak to the reason as to why Ngāti Ira's pā, if they were Ngāti Ira's pā, were there.

Q. If we just look down at the bottom of that page, it does look like a lot of your references have come from Crosby's *Kūpapa* and Cowan, *The New Zealand Wars*. So, would that information that you've got in

those paragraphs of your report, principally have come from those secondary sources?

A. Yes, I mean a lot of this part of the report is informed by Walker, Crosby, and Cowan.

Q. Okay. So, you didn't have the opportunity to look further at other resources to inform this information?

A. I mean some primary sources but most of them it was more verification of what was uncovered in those secondary sources.

Q. Okay. Well, you might not then be able to answer this question. It's kind of a question of clarification. But the second sentence in that same paragraph you say: "Cowan suggests there were also Ngāti Tama…," and then you've got: "…(of Tūhoe)." Is that a mistake?

A. Yes, that's Cowan's (inaudible 10:05:00) he used that descriptor, so –

Q. So he's saying that Ngāi Tama-

A. – yes, I was careful to use his language.

Q. Okay. So he was saying that Ngāi Tama are of Tūhoe and not of Whakatōhea, is that what you were saying?

A. That's how he identified them, yes.

Q. The last thing was he makes a reference, again the next sentence: "The pā were located near the meeting points of the Urewera and the plains of the Waioeka and Otara rivers." We were just confused by that because the Waioeka and Otara rivers don't meet the Urewera we don't think.

A. Yes, it's there.

Q. So again that is Cowan.

A. Yes.

Q. Thank you so much Mr McLellan.

A. I'd have-

Q. Sorry.

A. No that's okay. You can continue.

Q. I cut you off. What were you going to say?

A. I was going to question whether it was Cowan. I suspect there was but I'd have to dig into it to be 100%.

JUDGE DOOGAN ADDRESSES MS COLE – MIHI (10:06:13)

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – ANSWER IN WRITING (10:06:15)

HEARING ADJOURNS: 10.06 AM

HEARING RESUMES: 10.13 AM

JUDGE DOOGAN:
Kia ora anō **greetings again**.

(10:13) MS FEINT KC TO JOHN McLELLAN:

Q. Tēnā koe **greetings** Mr McLellan. My name is Karen Feint and I appear for Ngāti Ruatakena. My first question relates to the proclamation that was made, which you referred to at paragraph 75 of your report, you say: "Confiscation was implemented in the Bay of Plenty on the 17th of January 1866." You refer earlier in your report to Crown Law advice having been sought in relation to the New Zealand Settlements Act and the Suppression of Rebellion Act. Do you know whether Crown Law advice was sought prior to this proclamation being made on the 17th of January 1866?

A. I don't. I don't know that.

Q. You say on page 76 that the governor had to be 'satisfied' that 'rebellion' had occurred. Are there any supporting papers indicating his thinking?

WITNESS REFERRED TO #A003, PAGE 76

A. I know that would make life very simple. I didn't see any. So what I have provided is more of an educement. I don't know what the right word is.

Q. All right. And then my final question is back at page 36, sorry 29 on your report; I'm giving you the wrong numbers. You referred in that third paragraph on 29 to Völkner as a representative, the governor having been seen to have failed to condemn the execution of Te Āporotanga, after the Battle of Kaokaoroa.

A. Yes.

Q. Are you able to explain the thinking behind that statement?

A. My understand is that Te Āporotanga was killed by a woman whose husband had been killed previously in a different battle. Te Āporotanga was killed ceremonially after the battle taken place at Kaokaoroa. My understanding is it's a place in an area where Crown forces, wider Crown forces were present, so perhaps they could have stopped that from happening. But also in terms of why that…

Q. My question really is why would Völkner be expected to condemn that killing?

A. Sure. His condemnation of that would have been seen as support for his parish would be my (inaudible 10:16:58) there.

JUDGE DOOGAN TO JOHN McLELLAN – REPEAT ANSWER

A. That the people would have expect that Völkner would have been accepted as like their local leader, which he essentially was until he wasn't, that he would advocating for his people.

Q. All right thank you. I have no further questions.

(10:17) MS CARMEN MATAIRA: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā ki a koutou ngā mema o Te Rōpū Whakamana i tō tātou nei Tiriti o Waitangi, tēnā koutou. Ngā mihi o te ata ki a tātou. **Thank you your Honour and to the members of the Waitangi Tribunal greetings. Good morning to everyone.**

(10:18) MS MATAIRA TO JOHN McLELLAN:

Q. Tēnā koe **greetings** Mr McLellan. Can you see me okay?

A. Off and on (inaudible 10:18:19) –

Q. Okay, ka pai.

A. – but I'm sure we'll survive.

Q. I can stand if that's easier for you to see me.

A. It's okay I can hear you fine.

Q. Okay, ka pai. Kia ora Mr McLellan. My name is Ms Mataira and I appear today for the Mokomoko whānau, or one half of the Mokomoko whānau, and that is the Wai 203 claim. Firstly, thank you for your report. I don't have many pātai for you today, however, and in taking into account your discussions this morning with my friends and the overall scope of your

report that you've been talking about, I do acknowledge that you reference a lot of other sources, so my questions are more just of clarification in nature and just wanting to understand a bit more about certain things you say. But on that, I understand that you may not be able to answer some of them and that's kei te pai **that's fine**. I'm looking at Chapter 3 of your full report not your summary and you discuss there the rise of Pai Mārire and you discuss some of the reasons why and how the Pai Mārire came to be in Whakatōhea. I was just wondering above and beyond what you've written there in that Chapter 3 at the start, were there any other reasons for the creation of the Pai Mārire that you saw during your research?

A. You mean as a religion?

Q. Yes, and how it came about and how it was created.

A. I'm not sure I'm comfortable speaking to Pai Mārire outside of the direct context of the report. I mean my report was like using this as a context for the other events –

Q. Yes.

A. – and I'm not sure I'm comfortable answering.

Q. Okay, kei te pai that's okay. Perhaps then your answer may be similar for my next pātai but I will put it to you. You also say that there's similar expressions in the Kīngitanga movement to the Pai Mārire, as in I think you say that both were means of navigating a new and changing world. I was just wondering if you could elaborate on that a bit more?

A. I mean I guess in that comparison we're drawing on subset, if that's the right word, of Christianity, so a Māori adopting Christianity in the format that suits their world view and then the Kīngitanga is to be seen as a similar reflection of the adaption of the British Monarch in terms of New Zealand context who, you know, utilised the power but within a te ao Māori sort of structure.

Q. Ka pai, thank you. At paragraph 3.2.2 you say there: "Mokomoko, a rangatira of Ngāti Patu," and I was just wondering if you'd accept the fact that Mokomoko or you know that Mokomoko also affiliated to other hapū, such as Ngāi Tamahaua and Te Ūpokorehe?

A. I have no doubt that he had many hapū affiliations. Throughout my report I found it really difficult without the sources that were put which are already in-depth, I guess the lack of te reo Māori side, identifying people is difficult and should only be done by themselves really. Where I've used references, it's been references from other people. I haven't identified anyone. I've used how other people have identified them.

Q. Thank you. That's helpful perhaps for some of my following questions. Just a question of clarification more in terms of Wepiha. You reference Wepiha Te Pono throughout your report, is that correct?

A. I think that's correct, yes.

Q. That's the name that has been used. I was wondering and more so just wanted to confirm that, or if you knew, that is the same Wepiha that's seen throughout other reports. I think he was referenced and called Wepiha Apanui. Have you seen that other name for him anywhere?

A. Where multiple names are used for people, without knowing exactly that that's the same person, I wouldn't conflate them. But it's very common for people to have multiple ways of writing their names. Yes, I think they're confusing for historians. It comes through a lot when names start being written down there is a bit more. People think that they become stagnant but that's not really how names work.

Q. Yes, thank you. At page 27 of your report -

(10:24) JUDGE DOOGAN TO JOHN McLELLAN:

Q. Sorry, Ms Mataira. Just on that question, I just wanted to clarify, Mr McLellan. So you are aware that Wepiha Te Pono also went by the name Wepiha Apanui?

A. Sorry, no, I did not know that.

Q. All right.

A. Well, at least I don't know that at this time. I may have known that when I was writing the report.

Q. All right.

A. But, yes, I guess my point was that I'm very familiar with the use of multiple names.

Q. All right. Thank you.

(10:24) MS MATAIRA TO JOHN McLELLAN: (CONTINUES)

Q. At page 27, Mr McLellan, you note there that the Whakatōhea rangatira, Tiwai and Te Ranapia were exceptions who voted against the execution of Völkner. That's correct?

A. That's what it says, yes.

Q. I'm not sure how much you know or have knowledge of my client's position, that being the Mokomoko whānau, but I just wanted to put to you that my client's position is that and always has been that at the time that Te Whakatōhea had resisted demands to hand Völkner over and the execution that Mokomoko also disagreed with that and actually left the seen before it was conducted. My pātai for you is have you seen or did you find any evidence throughout your research that is consistent with my client's position?

A. I mean I think I've read that since. So I mean there's so many versions of what happened and everything is contested.

Q. Yes.

A. I absolutely understand that there's different understandings of what happened that day and I'm making no conclusions as to what or that wasn't my intent to. By omitting that I wasn't attempting to suggest that the reality was otherwise for Mokomoko.

Q. Thank you. I think it then follows, and perhaps your answer will be the same but I'll still ask you, Mr McLellan. In the last paragraph on page 28 you say that: "Mokomoko would be found guilty and executed for participating in Völkner's death. He maintained his innocence throughout his trial and the execution." I just wondered is there a specific reason, and probably now that I'm asking you it would be more about the scope of your report and the intention, but was there any specific reasons you didn't go into more depth about those events that led up to the execution in terms of him being charged, this is Mokomoko sorry, and then executed? I do appreciate that this may be a question for the other witnesses.

A. The reason that Mokomoko doesn't feature strongly in my report is because I understood that his story had been well fleshed out elsewhere,

so I thought my time was better developing the other areas where less time had been spent by the researchers and my position for this inquiry.

Q. Okay, thank you. Just to confirm, Mokomoko could have been researched a bit more into then within this report?

A. As with anything, you give me the time and I'll spend the time on it, yes.

Q. Ka pai, thank you. Just a couple more pātai for you and perhaps another question you may not be able to answer. But apart from Wepiha's kōrero that you discuss and others placed Mokomoko there at the time of the execution, were there any other reasons you could see that aided to the reason Mokomoko was then executed in obviously the amount of time and the research you did look into regarding Mokomoko?

A. Can you restate the question please?

Q. Sorry. You talk about Wepiha and his kōrero on the day and I think one other may have placed Mokomoko at the time of Völkner's execution and then I've just spoken to you about my client's position in terms of their Kōrero Tuku Iho, their oral narrative about this part. I was just wondering and just curios as to whether or not there were other reasons you saw that aided to why Mokomoko was then charged and executed.

A. Yes, okay. I mean in terms of other people placing him there, I imagine that's either through – it's speculative. It would be speculative entirely but either those people were mistaken or they had a grudge to bear for some reason.

Q. Okay, thank you. My last pātai is in your executive summary you talk about the taking of the whenua, the raupatu, those that were killed and those injured, and I just noticed that they were mostly men. I was just interested there if you looked into what happened to the women and children and if this was perhaps not a part of the scope of your report or if there was any reasons why that part was left out.

A. There's no intentional omission of children and women. I'd love to have them included within the narrative in a much bigger way. I think no matter what subject you're looking at pre- sort of 20th century it can be pretty hard to uncover the women's and children's stories within a western sort of lens with written record and stuff. There are some women I mentioned in the figure 16 the table that talks about the land that is from confiscated.

Yes, so it's not intentional. I imagine that with access to again the Māori sources that I would have liked to have had that I would have been able to develop more of that side of things. I think Crown officials were often, especially in colonial times, being pretty blind to women and children in the record so that's where the gaps exist for me telling you.

Q. Ka pai, thank you. I understand that and appreciate that kōrero Mr McLellan. Koirā aku pātai māhau i tēnei wā, nō reira ngā mihi nui ki a koe i o whakautu mai ki au i tēnei ata. Kia ora. **Those are my questions to you at this time and so thank you very much for your responses to me this morning. Thank you.**

JUDGE DOOGAN ADDRESSES MS CLARK, MS WITEHIRA – CROSS-EXAMINATION UPDATE (10:32:35)

(10:32) MS WITEHIRA TO JOHN McLELLAN:

Q. Tēnā koe **greetings** Mr McLellan. Ko Josie Witehira tōku ingoa **my name is Josie Witehira**. You've just heard I also represent Te Whānau a Mokomoko. Our client is Takerei Peck. He's from the line of Kimohia. My questions for you are mostly in relation to Te Whānau a Mokomoko's participation in the Compensation Court or lack thereof. My first one is just sort of a clarification making sure I'm correct on this assumption that compensation was only provided to those who were not labelled rebels or were surrendered rebels. Is that correct?

A. Yes, to be eligible as a rebel you needed to surrender and also as part of that submit to authority the Crown.

Q. Ka pai. In terms of Te Whānau a Mokomoko, I might just point you to my bundle of documents. I'm not sure if you have access to that in front of you or if it can be put on the screen.

A. My tech issues have been quite strong today so we'll see how we go.

Q. Ka pai. I can also just read from it to make it easier for you.

A. I have it up. It's just going to be whether the computer loads it. It apparently it doesn't like live PDFs. What page were you?

Q. We're at page 11 of the bundle. It's the first document entitled *Mokomoko – Our Tupuna* and that's page 8 of that report.

A. What page of the PDF?

Q. It's #E002 is the document number for the bundle.

A. Okay. I don't have it in front of me.

Q. Ka pai.

A. Could you bring it up?

Q. Yes, I might just wait to make sure it's up on the screen.

A. I'll do my best.

WITNESS REFERRED TO #E002 PAGE 11

Q. Sorry, it's page 8 of the first document. It's page 11 of the bundle. Page 8 of the first document.

A. Yes, that's the page I just had in front of me on mine. Is it the same file?

Q. Ka pai, okay. So if you see the third paragraph it starts with: "The Mokomoko family." It says: "The Mokomoko family understand that their tipuna Mokomoko eventually surrendered in an effort to save the Whakatōhea people. They had been advised that if they surrendered there, then their land would not be confiscated." As I understand it, Mokomoko surrendered himself and of course he was executed as a result but the whānau continued to face the consequences of his surrender. Would you accept that having experienced this would mean that they would be weary of participating in the Compensation Court if they had an understanding that it may not have led them anywhere in the first place?

A. In terms of motivations for how people and what drove them to be and able to be part the Compensation Court processes it's not really something that I did cover in my report. But speculatively, yes.

Q. Ka pai. Thank you. If I could then turn you to the evidence of Tuiringa Mokomoko that's number 3 in the document bundle. This is at page 10 of his evidence, page 180 of the actual bundle and it's at paragraph 35. Yes, so the last sentence there it says: "I have the heard the criticisms made of Mokomoko, that 'he was the one who brought raupatu to Whakatōhea,'" and that paragraph he's talking about the whānau experience of feeling the stigma of being labelled rebels. They felt that quite heavily, especially directly after the raupatu. Would you

also agree then that this would have made them less likely to want to bring themselves forward to the Compensation Court?

A. Yes. I mean I imagine that if you don't have your support of the community, if that's the case, then presenting yourself in the Compensation Court environment is going to be a very unfriendly one.

Q. Ka pai. I also noticed in my friend Ms Cole's cross, when you were talking about the location of where people were during the Compensation Court process and how that may have made them not able to participate in the process as well. I just wanted to note that Te Whānau a Mokomoko had fled to the Tūhoe territory directly after the raupatu. Would you agree that that would have also made them not able to participate in this process?

A. I don't think that that necessarily excludes anyone from partaking in the process with the right motivation and knowing about it in the right amount of time perhaps the outcome could have been different. But again, it's very speculative.

Q. Okay, yes. I'd also note that earlier you were talking about the Compensation Court process being the only available mechanism to remove the stigma of rebel. And if Te Whānau a Mokomoko were essentially locked out of this Compensation Court process, would that have meant that they would not have been able to remove that stigma in any other way?

A. Yes, I mean I'm not sure that the Compensation Court really did remove that stigma for anyone.

Q. Yes. But in order of like removing the label of rebel from yourself, if you're coming to the Compensation Court and that's the only way of saying: "I am no longer a rebel," in the Crown's eyes.

A. Yes, I'd have to, and I don't know this and I'd have to check, but I'm not sure that the removal of rebel occurred.

Q. Ka pai. All good, thank you. I'm going to move now to the experiences of the wāhine in Te Whānau a Mokomoko. My friend Ms Mataira briefly touched on it and understand that you may not have discussed this in your report but I do have some evidence of Kiri Huia Ratima and it's also in my document bundle. If I could take you to page 265 I believe. Page 265 of the bundle it's right at the start.

A. Paragraph 31?

Q. Yes, paragraph 31. It just runs over from paragraph 31, yes. This is discussing the experience of the wāhine in Te Whānau a Mokomoko. It's quite a heavy subject but it discusses the sexual abuse that occurred during the raupatu and the impact that that has had on the wāhine intergenerationally. But in terms of the question that I have for you, I understand that you discussed the participation of wāhine in the Compensation Court. Am I correct in assuming that the process was essentially the same for wahine, that if they surrendered themselves or did not participate in any sort of military action against the Crown, then they were also eligible to participate in the Compensation Court process?

A. That's my understanding. There is a specific part, and which court is going to escape me now and which one of them. I don't like referring to these wāhine as wives but the wives of rebels which is how they're referred to in the documents, the wives of rebels there was a question as to whether they'd be eligible for compensation. There was a back and forth in one the Compensation Court sessions in which it was decided that, yes, as long as they surrendered to the authority of the Crown they would be eligible.

Q. Yes, I believe it was at page 131 of your report where you were discussing that.

A. Yes.

Q. Thank you.

A. Okay. I mean you know what I'm talking about.

Q. Yes. In light of that, even though the process was essentially the same that they had to surrender themselves. In terms of the experiences of the wāhine of Te Whānau a Mokomoko having-

(10:43) DR GRANT PHILLIPSON TO JOHN McLELLAN:

Q. Sorry, can I just pause it there for a moment. I'm not aware of any evidence of any women having been required to surrender and take the oath of allegiance. Is that what your answer was Mr McLellan that that same process applied to women?

A. I may have misspoke.

Q. Well, I just want to check exactly what the question was and what the answer was there.

A. Yes. So it was a reference to what was discussed in the court. What I saw wasn't examples of that. It was discussion of it I think.

(10:44) MS WITEHIRA TO DR GRANT PHILLIPSON:

Q. Yes, I believe it's not necessarily in relation to the oath of allegiance but more bringing themselves to the court and testifying and saying: "I was not involved in," yes.

A. That's not surrendering then.

Q. Okay.

A. Yes.

Q. Ka pai. Aroha mai I had thought they were one in the same.

(10:45) MS WITEHIRA TO JOHN McLELLAN: (CONTINUES)

Q. In terms of the experience of the wāhine in Te Whānau a Mokomoko, if you see the evidence that I have in front of you where they discuss their sexual abuse, I think it's from paragraphs 31 to 33, they say at 32: "She described their absolute fear of the Pākehā and that she could not travel alone that they had to travel together." Would you accept that they would then not have the ability to participate in the Compensation Court or they would have a fear to participate in the Compensation Court because of this abuse?

A. I think that makes it quite clear, yes.

Q. Thank you. My last question is just in terms of the capacity of Judge Mair. It's more of a question of clarification. On page 105 of your report I believe you discuss Judge Mair and you state that he was part of the colonial forces. I just wanted to know if you have any information on what capacity this was in, if he was present in Ōpōtiki during the military invasion or if it was some other capacity?

A. I'd be surprised if he hadn't been through Ōpōtiki. I can't speak to that off my head but I'd be surprised. I think he was based in Tauranga for at least a period of time. To be 100 percent accurate, I'd definitely have to look into that. I can't speak to it off the top of my head.

Q. Okay, ka pai. Thank you those are all my questions. Thank you so much for your report and all of your hard mahi. I really appreciate.

JUDGE DOOGAN ADDRESSES MS CLARK – TIMETABLE (10:47:33)

(10:47) MR SINCLAIR TO JOHN McLELLAN:

Q. Tēnā koe **greetings** Mr McLellan. Is your microphone on?

A. Yes.

Q. Yes, no, I saw your movements but I couldn't hear you. Thank you. I'm here today appearing for Wai 87 Whakatōhea raupatu claim, also the Wai 1794 Tūrangapikitoi claim. I've got a few general questions regarding Whakatōhea as a collective of all its constituent parts, that's hapū, whānau, uri **descendants**, and blood kin groupings, so my questions are very general.

Now if I can take you to page 11 paragraph 2.2.1. My questions to you Mr McLellan largely focus around the Ōhiwa harbour the jewel in the Crown I guess of the time for Whakatōhea being an area replete with resources shared by a number of iwi. At paragraph 2.2.1 you state there that there are "numerous iwi in the nineteenth century" and "Lyall describes the general boundaries of the iwi and hapū surrounding Whakatōhea as follows" and you've noted there a number of iwi "Tūhoe, Ngāti Awa; to the east Ngāi Tai and Whānau-ā-Apanui" and as we scroll down you've got a map depicted there and we've got that map in the bundle of maps at page 5. You've got a map there Mr McLellan and it's got a number of iwi, can you see that?

A. I have it in front of me, yes.

Q. Yes. And you state in your text just above the map that the map overlooks Ngāi Tai. Do you see that? Ngāi Tai are not depicted in this map, is that correct?

A. Yes, as far as I can see.

Q. And it says "among others". You state there "among others".

A. I do.

Q. What would you mean by that?

A. I think that's a capsule to be safe.

Q. Okay, thank you.

A. I understand that there's a lot of contestation around those things.

Q. Yes, there is and other jurisdictions as Ms Feint has brought to your attention. Now if we go further down the page at the bottom of page 12 we see that historian Ewan Johnston states that the "Whakatōhea's western boundary was a highly contested area" and "from the 1820s Ngāti Awa, and Tūhoe all had some claim to Ōhiwa harbour" and Ūpokorehe are noted there as well. The question I want to ask is Ngāti Awa and Tūhoe are clearly iwi in their own right having a substantive core heartland. But Ūpokorehe mentioned there in that context would have been mentioned there as a hapū aligned to another iwi. Would that be fair to say? The other iwi of course being Whakatōhea.

A. In this instance, as I feel like I mean I've tried to signpost it, this is Ewan Johnston speaking and I'm just including that.

Q. Yes. I just wanted your opinion on that that was all. So if we move on to the next paragraph, it's clear that the harbour was heavily contested and tribal boundaries were dynamic. You'd agree to that wouldn't you?

A. That's my understanding, yes.

Q. Yes, and you've noted below their Ngāti Awa, Tūhoe, and Whakatōhea.

A. (No audible response given).

Q. If I can take you to page 95. This is a period after the raupatu of course. It deals with a number of issues, being prisoners, rebels who have surrendered. It's quite a nice graph you've set out there figure 9 and it's Return of Whakatōhea tribe from Mr J A Wilson's census of 1866. Now a number of hapū are mentioned there. You have the page up in front of you Mr McLellan?

A. I do, yes.

Q. Yes. A number of hapū there, and I want you to focus on Te Ūpokorehe hapū. Now at the end of that graph, we've got the number 40 and I'm taking that's 40 men, women, and children who have surrendered, and then you've got 80% there. Now that 80%, does that mean 80% of the hapū numbers or is that 80% of the rebels? I can't really tell.

A. So my understanding would be total hapū is 50 which is the number in the left-hand column just left of the 40 and…

Q. So at that time in 1866 the total number of hapū members would be 50, is that correct?

A. That's as per Wilson, yes.

Q. Okay, thank you for that. It wasn't long after that that lands were made available at Ōpape Reserve and many of the Whakatōhea hapū were relocated there, and Ūpokorehe being one of them.

A. Yes.

Q. Would that be correct?

A. They were entitled to head over there. Whether or not they took them up on that, I can't speak to that.

Q. Yes, thank you. At page 95 in the final paragraph there, it says that there is no hapū rejected from accessing Ōpape Reserve, you see that? In a sense, whether they took up the offer or not, the availability of the reservation was there for those members of Ūpokorehe. That would be correct, wouldn't it?

A. That's my understanding, yes.

Q. At the next page, page 96, we've got another map there and it's well set out. We've got a number of reserves: Ōpape Reserve, Awaawakino Reserve, and Tōrere Reserve. As we go down, we note also that there was a reserve set up Hiwarau Reserve in the Ōhiwa harbour district. You're aware of that as well, aren't you?

A. I am. It was outside of the Inquiry District when I was looking at it, so I don't have it. But continue.

Q. All right. So you were aware of the Hiwarau Reserve that was set up and Ūpokorehe were also relocated there.

A. Yes.

Q. Yes. Okay, thank you. My final point, which I'd like to make on behalf of Whakatōhea and its constituent hapū really, is that at page 10 there's a statement there which today Ūpokorehe perceives itself as an iwi in its own right. Now you'd have to agree with me that your report doesn't really establish that, does it, at that point in time?

A. I mean my intention in the report wasn't to reveal who identified as what and when, and maybe my report would have been laid out differently if that was the intention.

Q. Yes, I understand that. But I'm really talking to the evidence that's been provided by yourself through this report.

A. Often in the sources that I used for this report Ūpokorehe were either not mentioned at all, or assumed to be included within Whakatōhea.

Q. Seemed to be fluid within Whakatōhea was that your words or included within Whakatōhea? Is that a yes?

A. I lost sound just for a couple of bits. I may have missed the question.

Q. Sorry, I didn't hear you properly. Did you say "fluid within Whakatōhea" or "included within Whakatōhea"?

A. Included.

Q. Thank you Mr McLellan. That ends my questions.

(10:59) MS ZWAAN TO JOHN McLELLAN:

Q. Thank you Mr McLellan for your report. I act on behalf of some Te Ūpokorehe claimants and I will just be asking you some questions about that. I appreciate your report was written prior to the Ōhiwa harbour being included in this Inquiry District, so it doesn't touch in great detail on the main part of the rohe, but I've still got some questions for you. Following on from what Mr Sinclair was just talking to you about, on page 7 of your report you were discussing the different kind of groups within this Inquiry District, and you say there that: "Some claimants maintain that Ūpokorehe was an independent iwi throughout," and remain so. Do you accept that it's up to iwi themselves to self-identify whether or not they seem themselves as an iwi or a hapū?

A. Yes. I think that where I say is actually from a submission.

Q. Yes. Is it also correct to suggest that your report is not discussing or trying to make any kind of report about what iwi are in this Inquiry District? That's not the focus of your report?

A. That's not the intention.

Q. No.

A. That's correct.

Q. Just jumping forward. I don't have many questions for you so hopefully we can get through them before the hīkoi makes too much noise. On page 99 of your report you are discussing the reserves –

A. Yes.

Q. – a specifically Hiwarau and Hokianga Island and you indicate there how important these lands are to Ūpokorehe, especially given that a lot of their original rohe had been taken. Do you know what steps, if any, the Crown took to establish the identity of the people who were awarded lands in Hiwarau and Hokianga and whether or not they were able to establish they were from Ūpokorehe?

A. I'm not sure I can speak to the exact process. I'm sure it changed but there was I believe ways to contest that. Like so if where Wilson was discussing the settlements with people, there was potential for sort of discussion as to different claimants within that area. I imagine that we have had claimants in essence that land were more tenuous they would have been revealed in amongst the larger discussions that were had there. But I didn't have a forensic look at the way each block was allocated. Hopefully that's discussed further in the later report.

Q. Yes. In your view, given the importance of these specific reserves to Ūpokorehe, what would you say the impact would be if they were awarded to people that were not from Ūpokorehe?

A. I think it's a further insult to what's already happened.

Q. Thank you. My final question for you is that, given the limitations you had at the time of writing your report is specifically around the boundaries not including Ōhiwa harbour, do you accept that this limited your ability to report accurately or extensively on the impact of raupatu for Ūpokorehe?

A. I mean, yes, but not limited to them.

Q. Yes, thank you. Thank you Mr McLellan those are my questions.

MS COLE ADDRESSES JUDGE DOOGAN – CROSS-EXAMINE WITNESS (11:04:17)

(11:04) MS COLE TO JOHN McLELLAN:

Q. The reason I was so confused Mr McLellan earlier on, it was because I had written down the paragraph reference in your summary as opposed to your substantive report.

A. Okay.

Q. So, do you remember I asked you earlier about this matter of benefactors and whether or not that included –

A. Sure.

Q. – all people or just perhaps the men. Can I take you to page 103? In your summary, it's at the very back of your summary on the last page paragraph 5.29 and 5.30. It's also page 142 of your substantive report and you talk about Ngāti Ira hapū of Whakatāne were awarded two sections in trust around Ōpōtiki with 64 named benefactors. Do you see that?

WITNESS REFERRED TO #A003, PAGE 142

A. Yes.

Q. Are you able to clarify for us what is meant by benefactors? Are we talking all people or just the men or?

A. With that sort of numbers it's not just men.

Q. Do you know where you got the information from? I couldn't find anything in your report that footnoted it.

A. Do you have the page number again of the major report?

Q. Sorry, it's 142 in your substantive report and there's no footnote.

A. Yes, sure. It's in our conclusion area. There's going to be a reference…

Q. I went back to that too and I couldn't see anything.

A. Okay. I presume the language like benefactors wouldn't have been my own and that I would have borrowed that from source. So the source in this instance – I can have a look over the break and try and pull it out.

Q. Thank you.

A. Just to clarify that, am I just looking for the source and to clarify if it was (inaudible 11:07:08)?

Q. It's to clarify what benefactors actually means in terms of whether it's population, total population, just men, and presumably your source is going to provide that information.

A. Yes. Hopefully it's one of the source that I still have access to (inaudible 11:07:28).

Q. Okay, I'll leave it with you. Thank you.

JUDGE DOOGAN ADDRESSES MR HUNT – CROSS-EXAMINATION TIMING (11:07:36)

JUDGE DOOGAN ADDRESSES COUNSEL – ADJOURN (11:08:14)

HEARING ADJOURNS: 11.08 AM

HEARING RESUMES: 12.22 PM

TECHNICAL ISSUE – NO AUDIBLE RECORDING FROM 12:22:44 TO 12:32:02)

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – MIHI, CROSS-EXAMINATION (12:32:16)

(12:33) MR HUNT TO JOHN McLELLAN:

Q. Tēnā koe **greetings** Mr McLellan. Can you hear me all right?

A. Tēnā koe. It's quiet but if I'm not speaking myself we should be okay.

Q. Right. Now I'm going to ask you questions effectively covering the matters chronologically in your report and I will take you to your summary and your answers to questions of clarification. So just to check, you have those in front of you?

A. I do, yes.

Q. Just for the record, those are #A003(b) and #A003(e). My first questions relate to your chapter 2 which are historical context and I want to acknowledge that as you say in the report that's intended as a higher level sort of contextual overview of the matters it covers. That is correct, isn't it?

A. It is.

Q. What I want to ask you about concerns population in the period 1840 to 1865. Now you might not be familiar with it, but one of the issues in the statement of issues that the Crown and claimant counsel have given the Tribunal for the inquiry to look into, ask what the Māori and Pākehā populations were in that period 1840 to 1865. Now in your report and this

is at page 15 of your main report, you say that: “Economic growth from 1840 to 1865 was accompanied by an increase in the population of Ōpōtiki,” and you cite Professor Walker in relation to the numbers he gives. Do you have that?

A. I do have it in front of me, yes.

Q. Now I also wanted to ask you about this because you also referred to Professor Walker’s numbers in one of your responses to a Crown question of clarification around whether you located any primary or secondary sources which address Whakatōhea population figures.

A. Yes.

Q. You said you didn’t cite any figures. Sorry, this is your answer 10 at paragraph 10.3 of your responses to questions of clarification. I’m sorry this is a lot of jumping around so I’ll limit that as much as possible. You say-

DR GRANT PHILLIPSON TO MR HUNT – #A003(e) PAGE 7, PARA 10

A. I have it in front of me. What was the question?

Q. And so you refer to Wilson Senior’s population figures and that’s 1,200 in 1842 and by 1850 this had increased to 2,550 and you note that that’s based on Professor Walker’s text. Did you dig into the primary sources any further that Professor Walker based these numbers on?

A. I didn’t. Being based in London without my treasure trove of National Library and the Archives, –

Q. Yes.

A. – I didn’t have a chance to get into further than the files I already have and that wasn’t included in those.

Q. The reason I ask that, and you might not have Professor Walker’s text in front of you but in the page 50 that you cite he says that, this is Professor Walker, he says: “As far as he could ascertain, Wilson estimated the adult male population at Ōpōtiki at 400,” and multiplying that figure by three, he arrived at an overall population of 1,200 for the district –

A. Sure.

Q. – and that's in July 1841. I just wanted to tease out some of the sort of difficulties with that statement. We don't know the boundaries of the district that Professor Walker is referring to, do we?

A. No. That seems fair that, yes, we won't know that.

Q. Yes.

A. Unfortunately, I was unable to get my hands on the book when I was replying to your answer so I only had what –

Q. Yes.

A. – my immediate text was.

Q. I've also not been able to source a copy of that book, but Professor Williams seemed to have one yesterday. That's incidental. So, Wilson's calculation I mean it's pretty hard to know if that provides any accurate total estimate at this vantage point I think.

A. Is that a question?

Q. That's a question. Is that fair?

A. Well, if that's the context at how it was established, yes, I'd understand that that was tenuous.

Q. Okay. Now the next thing I wanted to ask you about, this is on page 11 of your main report, and you say: "By the early 1860s, government officials described Whakatōhea as occupying the 'coast from Ōhiwa to a point called Tirohanga." It's just a question of clarification. I think when you say "by the early 1860s" you're not referring to the period before 1860 or the early 1860s are you? Is he frozen?

A. It's referencing to something in the AJHRs from 1862.

Q. Okay. I suspect that might be one of the Resident Magistrate's report of their visit to the area. Does that sound about right?

A. C Hunter Brown –

Q. Yes.

A. – visiting Urewera.

Q. Yes, Brown. The reason for that clarification was just our understanding is that there were no visits by Crown officials prior to the early 1860s to the district and I wanted to check that was right. Is that your understanding as well?

A. Did you want rise up the differentiation there for me?

Q. The differentiation in terms of – all I'm asking is that it's your understanding that there were no Crown officials that visited the district prior to the early 1860s?

A. I mean what I cited as the earliest that I was able to identify, yes.

Q. Okay, thank you. Now I did have some questions around the Whakatōhea economy as it's addressed in your report but I think, given that Mr Walzl addresses those matters in detail, I'll leave those.

A. Okay.

Q. The next thing I wanted to ask you about is – we're still in chapter 2 of your main report – I think the heading is "New Zealand Wars" and on page 17 you say "that the actions of some individuals and hapū during this time helped shape the colonial authorities' perception of Whakatōhea as 'rebels'. Do you have that?

A. Yes. Is it on page 17 did you say?

Q. It's on page 17 and it's the first paragraph top left below 2.4.

A. Sure, okay. Yes, I have that.

Q. Now the first question is just one of clarification. Could you clarify the period that you're referring to here?

A. So, yes, it would be the events probably up to the Tairāwhiti tauā.

Q. Okay. Now I looked at your report again during the break and you don't appear to return to this proposition in that section of the report explicitly at least. Does that sound fair?

A. If you're (inaudible 12:43:14) the chapter I'll take your word for it.

Q. Now what I wanted to clarify, so you later say at page 78 – actually, no. Perhaps what I'll do, I'll invite you. If you can recall, who are the colonial authorities or officials that you had in mind when you were making this statement?

(12:43) JUDGE DOOGAN TO MR HUNT:

Q. So just remind us of the statement you're referring to.

A. So the statement-

Q. This is the one about those individuals shaped the perception of Whakatōhea as rebels.

A. Yes.

Q. All right.

(12:44) MR HUNT TO JOHN McLELLAN: (CONTINUES)

A. Sure. Yes, I think I would have just been speaking in a very, very broad sense of the government itself and its representatives, including the military.

Q. Okay. What I'm trying to tease out is how this relates to the later treatment of Whakatōhea is in rebellion in terms of the confiscation. So, you later state at page 78 of your report that: "The exact activities or events which allowed Governor Grey to be satisfied that rebellion had occurred in the Bay of Plenty are not apparent from the sources consulted. Now, was the earlier statement also referring to officials perceiving Whakatōhea as in rebellion at the time confiscation was implemented in the district?

A. I think what you're referring to in '78 is specifically in regard to post-Völkner within that sort of former period in which post-peace proclamation and pre-confiscations.

Q. Okay.

A. You said page 78?

Q. Page 78, yes.

A. Yes, I'm pretty sure I'm probably meaning specifically within the period in which that rebellion could end up leading to confiscation of land so it would be within that period.

Q. Okay. So you're distinguishing between the pre-peace proclamation periods and the post-proclamation periods, is that right?

A. In that instance, yes. Grey needing to be satisfied the rebellion that happened had to be judged on activities within that period for it to lead to confiscation so that's what's at hand there.

Q. Okay. Now I was going to address it later but I might ask you now. You might recall that Ms Feint, in relation to this question of Governor Grey being satisfied that Whakatōhea had engaged in rebellion, asked you if you had located any supporting papers on which Governor Grey had been satisfied about that. Do you recall Ms Feint asking you that?

A. I recall the question, yes.

Q. And you said "you did not see any". Do you recall that?

A. Yes.

Q. I just want to clarify when you said “you did not see any” you were meaning within the scope of the sources you consulted for your report, is that right?

A. Yes.

Q. Thank you. Back in the pre-peace proclamation period, this is page 18 of your main report, you say that: “The iwi’s (or Whakatōhea’s) attempts to assist the Kīngitanga in the defence of the Waikato and to establish their own defensive fortifications helped frame perceptions held by colonial officials that Whakatōhea were rebelling against Crown authority.” This is another question of clarification. Can you recall what reports of defensive fortifications by Crown officials you’re referring to there or what records of fortifications?

A. Not off the top of my head. I presume it would have been referencing Tarata, but off the top of my head I can’t place the documents.

Q. Okay. So you think it may have been Te Tarata and the Ngāti Ira.

A. I mean, yes, it's the one that’s talked about most often and the timing likely lines up. It's probably explored further in Walzl’s report.

Q. Okay. I was going to ask you if you’d had a chance to look at Mr Walzl’s discussion of Te Tarata but I take it perhaps not in any great detail.

A. Yes, not at a level all that I think would be worth your questioning but by all means if you want to ask.

Q. No, that’s all good. I'll move on. The next topic I wanted to ask you about is the events just preceding Reverend Völkner’s murder. Now, you say at page 26 of your report that Reverend Völkner returned to Ōpōtiki despite threats from Whakatōhea that he would not be safe. Do you recall that or you have it in front of you?

A. It's in front of me.

Q. Then you also say that Reverend Völkner’s wife, Emma, remained for her safety in Auckland. You have that as well, yes?

A. Yes.

Q. What I wanted to – in particular the comment about Reverend Völkner’s wife you've not given a footnote for that and there is – before I put to you

some primary source material which gives an opposing view, can you recall what that was based on that comment? What source?

A. I can't actually see it on the page. But I've seen multiple sources discussing and that the assistant, or the person they had with them from Whakatōhea, a women, and it's going to escape me, that she had told them of the risks and so that was one way that they knew. Yes, unfortunately, her name escapes me and the source is not coming to mind either. But I'm happy to take that away, if necessary.

Q. No, I know what you're referring to and the name escapes me just at this moment as well. Sorry, to give you the reference to that sentences it's the middle paragraph under 3.2.4 the final sentence of that paragraph.

A. Sure. In regards to the letter.

Q. Relating to Reverend Völkner's wife.

A. Sure. Okay, the very last sentence.

Q. So what I was going to ask you about is Thomas Grace in his journals, which I believe were reported in the AJHR, he said that: "Before leaving Auckland for Ōpōtiki and while on the passage Mr Völkner frequently assessed his confidence in the Ōpōtiki Māoris and that he was rather sorry that Mrs Völkner was not with him and fully intended her to follow by the next trip of the vessel." Did you cite that source while you were producing your report?

A. I'm definitely familiar with that source, yes. I had read that at some point.

Q. Okay. But you wouldn't revise the statement in your report about Reverend Völkner's wife staying behind in Auckland?

A. No.

DR GRANT PHILLIPSON TO MR HUNT – COPY OF DOCUMENT

(12:53) JUDGE DOOGAN TO MR HUNT:

Q. As I understand those two, they're not inconsistent so Grace's entry seems to confirm that Volkner's wife has remained in Auckland. Is the issue you're raising as to whether that's a safety concern?

A. So the issue whether that was out of a safety concern, yes, –

Q. All right.

A. -- and whether Reverend Volkner had any concerns for his safety –

Q. Right.

A. – and if so, if he disregarded them.

Q. All right, thank you.

(12:54) MR HUNT TO JOHN McLELLAN: (CONTINUES)

Q. But I don't think I need to take that any further, unless you Mr McLellan had any comment on Völkner's frame of mind in returning to Ōpōtiki despite being aware of or having concerns for his safety?

A. I mean in that setting I'm sure Völkner would have been pretty keen to maintain face in front of his colleagues but I have nothing to base that on other than knowing that men can be men.

Q. Okay. In terms of "maintain face", do you have in mind sort of a conception his CMS Missionary colleagues and maintaining face regarding the relationship or number of converts he had in Ōpōtiki that sort of thing?

A. Yes, part of the job is maintaining a congregation and making sure they have maintained respect and allegiance with your leadership I guess.

Q. Okay, thank you. The next topic I wanted to quickly ask you about was the Crown response to Reverend Völkner's murder. Now you had said in your main report and this is page 37 paragraph at the bottom of the page the first sentence you said: "There was no real Government response to Völkner's death (or murder) until September 1865," but I see in your summary of your report you've slightly softened that, and that's at paragraph 3.11, where you refer to the Government's initial response to Völkner's murder and you're talking about the May 1865 expedition involving Fulloon and others to the Bay of Plenty. Can I take it you're not putting forward the proposition that the Government effectively did nothing in the March to September period and then launched the expedition?

A. No. I mean obviously Fulloon was actively engaged before then. I think it was inferring that, yes, nothing was happening on the ground essentially for those in Ōpōtiki in regards to a Crown response.

Q. So, sorry to tease that out, you're saying nothing on the ground in Ōpōtiki in terms of the Crown for example sending an envoy to talk to the people on the ground or something like that?

A. Yes, talking would have been nice. Yes, exactly that.

Q. Yes. No, that is helpful thank you. I did want to ask you something. My learned friend Ms Peters who questioned you first this morning, and this is still in the realm of Crown response to Reverend Völkner's murder, she asked you about the Suppression of Rebellion Act. Do you recall that?

A. Yes, I'm not sure I recall the question but I remember it coming up.

Q. I think the question related to the sort of consistency with the guarantees of te Tiriti, but I'm not asking you to comment on that further/ What I did want to raise with you was, now you do refer to that Act at page 72 of your report under the heading "Other Legislation" and you sort of give some general detail about when the Act was passed and what it provided for. But I wanted to ask you to clarify, are you aware of the Act being applied within this district?

A. (No audible response given).

Q. And I think, if I could help you. If you refer to your general description you say: "The Act suspended the right to trial before imprisonment and established that military courts would be used to trial all who are charged with rebellion." So I think we can take it that that didn't happen in this district. You agree with that?

A. Yes.

Q. Okay, thank you that was all I wanted to ask about that. The next thing I wanted to ask you about was the use of martial law in the district. Now you refer to the proclamation of martial law on page 38 of your report and so that's martial law is proclaimed for Whakatāne and Ōpōtiki districts and you go on, on page 39, refer to Professor Walker's suggestion that "there was an 'unstated assumption' under martial law that all of Whakatōhea was considered guilty for Völkner's death". Do you have that in front of you?

WITNESS REFERRED TO #A003, PAGE 39

A. Was that at 39?

Q. Yes, 39 the second paragraph from the top.

A. Go ahead.

Q. So I just wanted to tease out, you've not come across any evidence that there was an intention for every individual in the district to be tried by court martial, have you? Is that correct?

A. No. I still (inaudible 13:01:46).

Q. And you've not set out in your report any evidence about the Crown's decision-making leading up to the proclamation of martial law in September 1865, is that right?

A. It didn't go into in immense depth, no.

Q. Yes. I mean that would involve just basic questions of why martial law was used and how it was conceptualised by Crown officials, which would be helpful context I think for the Tribunal in this inquiry. Is that a fair statement?

A. Yes, no, all context is good –

Q. Yes.

A. – if it's situated appropriately.

Q. Now one of the questions we asked you about martial law in the Crown's questions of clarification was your statement at page 58 of your main report that Attorney-General Prendergast likely took advice from the British Government before ruling but also advising the court martial process was illegitimate in New Zealand. Do you recall that?

A. Yes, I recall the question. You already had an answer to the question that follows.

Q. Yes. So this is to give reference for the record you provided the answer and it's in paragraph 18.3 on page 12 of your responses to questions of clarification.

A. Yes.

Q. And you said you'd based that on Ms Binney's *Encircled Lands* or the statement on *Encircled Lands* at page 93. Do you have that in front of you?

WITNESS REFERRED TO #A003, PAGE 93

A. I have that in front of me, yes.

Q. So the reason I'm bringing it up again is having looked at – I shouldn't say not the Binney report the Binney book *Encircled Lands* –

A. Yes.

Q. – I looked at that and the book itself doesn't give a footnote for that statement that Pendergast was likely acting under advice from the British Government. So, can I take it you didn't dig into that any further in terms of other primary or secondary sources?

A. No, I had to rely on my footnote. Again, I couldn't access the book to verify the footnote but I would have liked to.

Q. Yes. But again, and I think you'll agree with that because I'm going to use the word context agree with this, I imagine what Binney had in mind would have been the fact that up to this point martial law had been used in New Zealand I want to say up to four or five times and also across the British Empire in the 19th century. Are you familiar with that and accept that that's broadly correct?

A. I'm not sure how many times they've been used but I was aware that it had been.

Q. But it's more than likely that officials when designing the proclamation of martial law for this district in 1865 more than likely had in their minds the use of martial law prior to that and their objectives and what exactly proclaiming martial law in a district would have meant. Does that sound fair?

A. Are you asking whether the people that imposed the law knew what it meant?

Q. Knew what it meant but also what they based that on how martial law had been used previously in New Zealand and-

A. Sure. I would be very surprised if they weren't basing it on past experience, whether within in New Zealand or further outside the envelope, whether that was their direct experience or whether that was through text or through verification through writing with the office in UK. I'm not sure.

Q. Thank you. The next thing I wanted to ask you about was moving to the invasion and the conduct of Crown forces during the invasion of Ōpōtiki from 8 September 1865. Now you say, this is page 43: "There is evidence that the occupying party led with violence on their arrival in Ōpōtiki." Now I think we know at least from the instructions, and stop me if I'm moving

too quickly, we know from the instructions given by Defence Minister Atkinson to, I believe it was Brassey, yes, Major Brassey (and you've set these out on page 41 of your report) that those instructions said that apprehension of the murderers of Völkner was the key objective. Is that right? You recall that?

A. Yes.

Q. And that: "If the forces were attacked upon landing they would use their best judgment but no opportunity should in that case…," and sorry I'm reading from the instructions: "…be lost of inflicting summary and effectual punishment upon the attacking force." But then the instructions go on to say that: "Should you succeed in landing and establishing yourself without opposition you will at once summon the tribe to surrender the murderers within a given time." So the issue I'm sort of getting at is at least the instructions themselves seem to indicate that it had the objective of apprehending the murderers of Reverend Völkner and that the idea being the force would be able to land without opposition and then somehow summon the people of Ōpōtiki, but that objective effectively fell apart when the invasion occurred and then in the steps that played out from 8 September onwards. The question I'm asking is did you get any sense from your research for your report why there was this disconnect between the instructions given to Crown expeditionary force and their conduct once they hit the beach once they landed at Ōpōtiki?

A. I mean the soldiers being used are essentially militia who know that they are in line for the lands if they're successful in driving the people off, right. So that's an inference. I haven't seen specifically that written down. Although, obviously during the documentation there's primary evidence of soldiers talking about the pillaging et cetera and enjoying that aspect of it. But the end goal of knowing they were going to get that land may have been a driving force. But again, yes, speculative.

Also, some of them were quite inexperienced in the engagement. Obviously, some of them were very experienced but some of them would have been inexperienced and that probably doesn't help at this point if there was an attempt to have a disciplined forced.

Q. Thank you. Now moving along from the invasion itself to – I'm sorry I'm just getting the echo there. Now we have the invasion 8 September onwards and then you moving forward in time to post the Battle of Te Tarata and then at page 46 you refer to Walker's you use the "claim" but we'll say "statement" that after the Battle of Te Tarata, Whakatōhea realised resistance was futile and subsequently large groups began to surrender. I just wanted to clarify I don't think you were using or referring to Professor Walker's statement there to suggest that Whakatōhea were acting or had made a decision about surrendering as a unified collective. Presumably it was group, or we might not even know and tell me if that's the case, but given it was groups coming in and surrendering – you're on mute.

A. Am I still on mute?

Q. You're good, go.

A. Okay. I think you could piece together exactly who Walker's talking about. I obviously haven't here and there'd been some references to the make-up of – I mean it's discussed somewhat below of that larger group. So in different examples you're going to have the names of who and the breakdown of who was surrendering, but in terms of the unified action and doing so I'm sure much of it was like guided by who was congregated together and in what groups they were gathered in at the time. I don't think they had strict hapū lines or there would have been other factors like, yes, where they were located when they fled, where they re-grouped later and other ways that people congregate together.

Q. And so that question of surrender takes us to the next topic I wanted to ask you about which it relates to paragraph (b) of your commission which was to address the Crown treatment of those who surrendered to the military. I've just read that out so I don't need to take you to the commission itself but that's on page 1 of your report just for the record. Just broadly speaking that concerns the treatment of those who came in and sort of surrendered in October and largely by November of 1865 that's right?

A. Can you repeat the question?

Q. Sorry, I'm just framing the group that we're talking about. Those are the people who came in and surrendered beginning in October and had surrendered by November 1865. Is that right?

A. I'd have to go through to know exactly when the numbers line up. But, yes, towards the end of that year and into early the following year probably.

Q. Just broadly speaking, and you've sort of addressed this at 3.24 of your summary, but what happened I think what we broadly know is that people came in after surrendering and they took the oath of allegiance. Now Dr Phillipson earlier raised the question of whether women were required to take the oath of allegiance. Did you come across any direct evidence of the actual (and I think this would be records from Crown troops reporting on the process) evidence on the process of how the oath of allegiance was taken or when this was done or which group just those sorts of details?

A. I can't recall coming across anything that wrote down any form of ceremony or the exact steps that were being taken. The way that I think it's probably been framed and my writing follows the writing I guess that I was seeing which talks about groups coming in and then submitting to the Crown's authority and so there's women and children in amongst there those groups. I can't speak to whether or not they themselves had to individually do that or whether rangatira got to say that on their behalf and whether any of those rangatira were women.

Q. Or if rangatira took it, then maybe the soldiers treated a group as having taken the oath of allegiance. We don't know that right now.

A. Been assumed.

Q. Now you also say, and this is 3.25 of your summary, that those considered innocent were sent to Ōpape or Tōrere. I just wanted to tease out a couple of issues in relation to that statement. The first one is just a small question of clarification. I think what you're meaning there is those considered innocent of the murder of Reverend Völkner rather than innocent of rebellion. Is that right?

WITNESS REFERRED TO #A003, PARA 3.25

A. Yes.

Q. Now the other point I wanted to tease out is we seem to have a bit of a gap in the timeline in that Ōpape Reserve was not established or arranged by Wilson until at least April, or not until at least, until April 1866. That's right, yes?

A. Yes.

Q. These groups had surrendered sort of October and November 1865 as we discussed and this is sort of just an open question because I didn't see it in your report. Did you come across any evidence of what happened to those groups in the period between those two dates and events?

A. There was I think maybe in one part of my report I suggest that or the record indicates that the forces were providing a bit of land for them to some of those that had come in to grow some crops. I can't point you to exactly where that is in my report, I know it's in there, but the specifics of that were so vague that it doesn't give us a lot. I hoped that it was able to pull out a bit more through more in-depth research but nothing in what I saw said much more than things like "awesome team I sent them to Ōpape" and that might have been in regards to the number of years in between or the time in between. My understanding is that some people had already gone to Ōpape, regardless of whether they were Ngāti Rua, because it was an area that was a little bit out of the way of some of the other fighting.

Q. Yes.

A. Some of them may have already been there but who and when unfortunately I can't speak to that.

Q. Okay, thank you. Now jumping ahead a few months from November to the confiscation in January 1866, I just had some follow-up questions in relation to one of your answers to our questions of clarification. Now this is on page 12 and it's paragraph 19 and sorry it's not so much the confiscation rather than Wilson's arrangement for reserves and/or out of Court settlements of compensation court claims. Now we asked you about your statement, sorry, the Crown asked you about your statement that negotiations between Wilson and different rangatira across the

Bay of Plenty resulted in the ceding of most of their land to the Government. You recall that?

A. Yes.

Q. And then we asked you to clarify what you meant by ceding in this context and then your answer was that: "In this instance, ceding refers to Wilson gaining agreement from rangatira to give up areas of their territory to the Government." Now before I ask my question, I just want to clarify, we are talking about areas of territory within the confiscation boundaries, is that right?

A. Yes.

Q. We don't need to get into the legal issue of what the legal question of the status of the land but I'll just put it to you that the New Zealand Settlements Act said that land in the confiscation boundary was deemed to be Crown land. The question I wanted to ask you is if the land was Crown land what were you getting at in terms of Wilson still gaining agreement from rangatira to give up areas of their territory within the confiscation district?

A. Well, obviously and because they're still on the land you expect that it is their land.

Q. I guess what I'm asking is did you have in mind any sort of evidence of Wilson still thinking "I need to negotiate and/or get agreement from these groups" for the Crown to exercise authority over that land. Is that what you had in mind?

A. Absolutely. Yes, that's in some of the primary sources from Wilson.

(13:24) DR GRANT PHILLIPSON TO JOHN McLELLAN:

Q. Can I ask a question there? I thought when I read that you meant he was asking them to agree not to seek reserves in that land because he's negotiating reserves. But that's not what you meant?

A. Sorry, I missed that Dr Phillipson.

Q. I thought when I read that part in your report you meant that because he was negotiating with him about reserves he was getting their agreement not to seek reserves in certain portions of their customary land. But that's not in fact what you meant.

A. It might very well be what I meant when I wrote it and maybe not what I considered it to mean when I came back to it after the Crown's questioning.

JOHN McLELLAN ADDRESSES TRIBUNAL – ANSWER IN WRITING (13:25:29)

(13:25) JUDGE DOOGAN TO JOHN McLELLAN:

Q. Just while we're discussing it. The other way of sort of asking, just picking up on Dr Phillipson's point, is the issue what Wilson was trying to get is an agreement to the areas over which the reserves would be established rather than they would not be. Is that your understanding of the sources?

A. It wasn't my understanding when I went back to this piece in my writing and I guess following on what was just suggested I can go back to this if necessary.

Q. All right, thank you. If you wouldn't mind perhaps doing that and just providing a written response.

JUDGE DOOGAN ADDRESSES MR HUNT – CROSS-EXAMINATION TIMING (13:26:31)

(13:27) MR HUNT TO JOHN McLELLAN: (CONTINUES)

Q. Mr McLellan this was a question arising from something Ms Cole asked you about and it was the Compensation Court process and how notice was provided to claimants. I looked in your report and on page 106, and this is just to refresh your memory, under 5.4.4 you refer to the gazetting of notice for the Ōpōtiki Compensation Court sittings. I just wanted to invite you, if you wanted to add anything in terms of your response there, as to how notice was provided of the Compensation Court sittings to claimants?

A. Yes, sure. I mean if it talks of it there that it's gazetted but it doesn't always mean that those in all parts of the country are getting sight of that. Often the gazette was obviously replicated in local newspapers but then

you still had to be able to access the local newspaper and/or somebody to relay that information through to you, yes.

Q. Yes, sorry, I'm not meaning to suggest that the fact of the notice in the gazette meant the owners received it. I was just giving you the opportunity to provide further information about how the notice processes were done generally.

MR HUNT TO JUDGE DOOGAN – FINAL QUESTION

Q. Mr McLellan this was also arising from some questions Ms Cole put to you about why claimants were not in the area when Wilson was trying to negotiate out of court settlements for compensation claims and your comment and response was sort of that Māori in the area had been scattered. Do you recall that?

A. Yes.

Q. Now I wanted to ask you about that in relation to Ngāi Tai in particular. We're not aware of any evidence that Ngāi Tai left Tōrere at the time or had been scattered from there. Is that your understanding as well?

A. The Ngāi Tai portion of this report is very minimal. They're not something that was rarely captured in most of my research so I'm not sure I'm well placed to speak to Ngāi Tai.

Q. That's true. Thank you for that and thank you for taking my questions.

RE-EXAMINATION FROM MS HOLMES-MUSTART – NIL

HEARING ADJOURNS: 1.30 PM

HEARING RESUMES: 1.36 PM

JUDGE DOOGAN:

Kia ora koutou. We might resume.

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – TESTING CONNECTION (13:37:01)

(13:37) PRUE KAPUA TO JOHN McLELLAN:

Q. Kia ora Mr McLellan. I just had one little question for you. I noticed in your introduction, you refer to yourself as a Pākehā historian. I'm just intrigued to know what a Pākehā historian who whakapapa to Ngāi Tamahaua is, or what your definition or limitations or how you would describe yourself?

A. Conditioned. Whakapapa is complex, right. So, yes, I grew up Pākehā and in I guess what middle New Zealand sees as Pākehā when they use the term and the Māori side of my whakapapa has sort of been more of a, you know, journey and working at the Tribunal and my work as a historian has sort of developed my understanding of what that means and where I do come from. My Whakatōhea side is a bit more limited than my Ngāti Kahungunu side. And obviously, difficult to explore perhaps during this during the inquiry et cetera. So, yes, it's complicated but maybe it's a short story.

Q. I guess the issue in that description I guess the question is for you is there some any limitation in relation to your perspective?

A. I mean, yes, if you're asking if that meant that I was looking at things through a particular lens, I don't think so. I mean I understand what undertaking historical work with integrity looks like and I feel like I brought that to this report and did the best I could in the time with the resources that I was able.

Q. Kia ora. Thank you Mr McLellan.

(13:40) DR GRANT PHILLIPSON TO JOHN McLELLAN:

Q. Tēnā koe Mr McLellan.

A. Tēnā koe.

Q. It's Grant Phillipson here. Thank you very much for your report. As you say, written some time ago now so I appreciate that some of the details may not be fresh in your mind. I've got quite a number of questions and I may put some of them in writing depending on timing et cetera. So turning to page 30 of your report footnote 163 –

A. Yes.

Q. – you've got your source there for Clarke his book on *Hauhau* or called *Hauhau* was the source for Father Garavel's view that you've quoted in there. I was wondering what was Clark's source, do you know? How did he know what Father Garavel's view was on this?

A. So, great question Dr Phillipson. I don't have the book to hand.

Q. No.

A. Yes.

Q. And you don't recall who he was relying on?

A. I don't recall, no.

Q. No, okay, thank you. And also on the same page there's the paragraph starting: "A different motivation for Kereopa," do you see that paragraph?

A. I do.

Q. And you've got: "Patara suggested that Kereopa anticipated and relished the possibility that Völkner's death would encourage colonial forces to attack Whakatōhea, as traditional enemies of Te Arawa." Again, that's to Clarke and you may not know but I wonder who did Patara suggest that to?

A. Again, –

Q. You're not sure.

A. – yes, I don't have it in front of me and I can't speak to it.

Q. No, okay.

A. Yes, large sections of this are, as you have seen, drawn from Clarke and relied heavily on, just as I was building context for those later chapters.

Q. Yes. Okay, thank you. It's pages 32 to 33. So we've got the letter to the governor that the Whakatōhea Rūnanga sent, or the Rūnanga of all those who were there at the time, and the posthumous trial of Völkner. Do you think it's significant that the accusations made against Völkner at the trial, as it was called, bear no relation at all to the reasons given by the Kōmiti or the Rūnanga in their letter to the governor?

A. I mean at the top of my mind I can't remember at which date that letter was dated so it is possible that they're thinking (inaudible 13:43:28).

Q. I see. I don't know if there is a date on that letter. Yes, 6th of March.

A. Okay, so not much later.

Q. No, not much later at all. Do you have an opinion on that?

A. No, I don't have an opinion on it.

Q. No, okay, you can't assist us with that. Thank you. On page 39 I've got noted down the last three lines of the second paragraph which should help, there it is: "An example of this can be seen in the treatment of members of Ngāti Patu as rebels, despite it being known that they were not involved in the killing of Völkner." I'm wondering how did the Crown know that Ngāti Patu were not involved? I wondered if it was because of Tiwai Piahana that's my guess as to why the Crown would know that but I just wondered what your understanding was.

A. I mean that would make sense. I mean I'm footnoting Wai 1775-

Q. Yes, I think that's a statement of claim.

A. Yes, it would likely to be a statement of claim.

Q. Yes, so you don't have anything to add to that?

A. No, I don't.

Q. You refer to the passage of the Indemnity Act 1866 which I think is very significant. Do you know if there was any protest about that or concerns raised in Parliament during the passage of that Act about how extreme its provisions were?

A. I went through Hansard on a few things but I can't place that I went through it in regard to that.

Q. Okay, thank you. In pages 53 to 54 of your report you're talking about the period 1866 to 1868 and I wondered how confident you were in describing everybody involved as Pai Mārire adherence, so all these different groups who are attacking or doing different things.

A. I did my best not to do any of that myself and only used that reference where others had used it before me.

Q. I see.

A. All those should be footnoted.

Q. So wherever you say that you're relying on an ascription of Pai Mārire identity given by others. Is that correct?

A. From a source that's claimed that. Most of my sources would not be the people themselves labelling themselves. Yes, in most instances that would be what you're suggesting there.

Q. Yes, we have direct evidence at the time of the arrival of Pai Mārire of the degree of support it was given but we don't have, I don't think, any direct evidence about how long or how intensively that support continued after that. Do we? Are you aware of any?

A. No. I mean even when Whakatōhea and others are heading inland with Pai Mārire we don't know on what terms they are doing that. Are they doing that together or are they doing it as one? Sorry, I can't speak to that.

Q. You don't know.

A. Yes.

Q. Right, thank you. It's just interesting that everybody says that's what they were at the time.

A. Yes, somewhat loosely it's used as a slur.

Q. Yes, thank you. On page 66 in the second paragraph. Are you there on that page?

WITNESS REFERRED TO #A003, PAGE 66

A. I am, yes.

Q. Yes. "The colonial authorities decided to confiscate the lands of Whakatōhea 'rebels' following the military occupation of the district." I'm wondering, and this is partly from Mr Walzl's intensive research, whether the decision to confiscate land or the intention was actually much earlier than that. What do you base that statement on that you've made there? Is it simply that January 1868 proclamation?

A. Yes. Maybe the term there would not have been made the decision but to maybe formalise the decision.

Q. Formalised. Okay, thank you that is helpful. I'm just going through putting 'w' next to them for writing. Page 98 on the third last line of page 98 you say that most of these late claims still went on to be heard by the Compensation Court. I was wondering if you could tell us how many didn't and what happened to them? I could put that in writing if that would be-

A. Yes, I don't think I'll have an answer for that to be honest. I can't recall of there was hard lists that I saw to be able to differentiate. But, yes, happy to have a look.

Q. Okay, I'll put that in writing. Page 101 this is about the six-acre reserve that was supposed to be set aside I think for all of Whakatōhea to ensure their access to the Ōpōtiki harbour. I'm wondering if we take from your statement about this that you were, so this is the last two lines of the second to last paragraph: "Research for this report has been unable to identify the reserve in the schedules of awards." Do you think that that six-acre reserve was never granted? They never received it. You couldn't find it in the schedule.

A. I mean it's quite possible. It's possible that it also got divided up into awards to individuals so that could be one outcome.

Q. I see.

A. It's possible that it was Wilson who sorted it out at a different period that escaped me that falls outside of the timeframe.

Q. Yes. You finished in 1874, is that right?

A. Well, it's '71, yes. But then '74 encapsulates that last sentence.

Q. Yes. When you're saying "the schedules awards" you mean by 1874.

A. Yes.

Q. All right, okay. So I'll put that question to Jane Luiten then. Now you were earlier asked by Ms Feint I think whether the Compensation Court had any Māori advisors and I just wanted to note that the Native Land Acts at the time had both provision for Māori assessors to sit with the Court and also for the Court to empanel Māori juries to decide questions of fact. Was there any provision like that, nothing at all like that in the legislation that set up the Compensation Court at the same time?

A. Not that I saw.

Q. Was there any right of appeal in that legislation from the decisions of the Compensation Court?

A. There is until there isn't. So, at some point they make a change that makes them all final.

Q. I could put that in writing.

A. Yes, let's get that in writing and I can give you a proper answer.

Q. Yes, okay.

A. Yes.

Q. I'm just wondering this because we've got all this emphasise on the killings of Völkner and Fulloon, but did the Crown ever take any action in respect of the killings of Bennett White in Wi Popata that you talk about?

A. They seem to be sort of in the margins and they don't get discussed again very much at all.

Q. "In the margins", so do you mean by the secondary sources?

A. No. In the records that I was looking at, it certainly didn't have the same cultural impact I guess that –

Q. Right.

A. – (inaudible 13:54:51) from the wider settler community. I guess it wasn't a driver in the same way that Völkner and Fulloon's murders were.

Q. Yes, okay. So you didn't see any action?

A. Yes.

Q. On page 115 you've got a statement that you said: "No obvious cases of successful claims for compensation by Māori women with rebel husbands were identified." I wasn't clear what you meant by "obvious cases" how you assessed that?

A. Because of the time limitations, I wasn't able to delve very deeply at all into the awards.

Q. Right.

A. So I couldn't sync up the limited record from the Compensation Court to the awards and link them to a specific case about the Māori women with rebel husbands.

Q. I see, thank you.

JUDGE DOOGAN TO DR GRANT PHILLIPSON – CLARIFICATION

Q. Thank you Mr McLellan. We can put that question to Jane Luiten as well. Just my last question, and I'll put the rest in writing, there aren't many more, is on page 126 there are five lots awarded under the fourth clause of the Confiscated Lands Act 1872 and I wondered what that referred to. I thought it may be the awards that were promised to individual rangatira by Wilson but I just wanted to check whether that's correct.

A. That would check out. But where are we on 127?

Q. Page 126.

A. 126.

Q. Yes, the last paragraph: “Schedule 11 included five lots awarded under the fourth clause of the Confiscated Lands Act 1872,” and I didn’t have time to look at that Act so see what that clause was.

WITNESS REFERRED TO #A3, PAGE 126

A. What was the question sorry?

Q. What were those five lots? I suspected that-

A. What size they were?

Q. No, what were they and who were they awarded to?

A. Is that not discussed at the bottom of that?

Q. Yes, it is. My question about that is those lots awarded to those people is that the ones that Wilson promised individual reserves to rangatira? I was just checking that that’s what those were. Is that correct that’s what those five were?

A. Yes.

Q. Yes. I just wasn’t sure of the exact match-up of names. Thank you for answering all my questions and for the useful nature of your report. It’s been helpful. Thank you.

A. Tēnā koe. Look forward to those written questions.

Q. I’m sure you do. Who wouldn’t.

(13:59) DR ROBYN ANDERSON TO JOHN McLELLAN:

Q. Tēnā koe **thank you** Mr McLellan. It’s Robyn Anderson here.

A. Tēnā koe.

Q. I’m sorry to keep you up so late but I don’t have many questions you’ll be relieved to hear. However, I do want to go over something you were discussing with Mr Hunt for the Crown and that was the question of the Crown considering Whakatōhea to be in rebellion which you do discuss at page 18 of your report also and which seemed to pre-date, if I understand what you’re saying there, pre-date the killing of Völkner.

WITNESS REFERRED TO #A003, PAGE 18

A. Sorry, where abouts on 18 are we?

Q. Wait a minute. That’s in paragraph 3 towards the end I think. No, right at the end: “The iwi’s attempts to assist the Kīngitanga in the defence of

the Waikato and to establish their own defensive fortifications helped frame perceptions," that statement.

A. Yes.

Q. Am I right in thinking that you haven't found Crown sources of people or Crown officials assessing Whakatōhea to be in rebellion prior to the killing of Völkner?

A. That's correct. Yes, I haven't seen anything that would suggest that.

Q. Right. But if they were thought to be in rebellion, does that affect your perceptions of the importance later put on the killing of Völkner as a reason for invading and confiscating territory?

A. I mean my view would have been that the best outcome following what had happened would have been for a bit more sort of strict arrival of those forces when they arrived and for those discussions to have been had. But maybe that's just my take on law in general rather than anything deeper.

Q. Right.

A. Yes, I saw no evidence that prior to Völkner that the Crown perceived them to be in rebellion. But I mean there were some representatives from Whakatōhea in Taranaki observing or they have said to have been over there observing and I think some suggestion that some of them may have been at Rangiaowhia. Whether or not the Crown officials knew that I'm not sure.

Q. All right I'll leave that there. That's something I might explore with Mr Walzl tomorrow or further with Mr Walzl. Just while we're still on page 18 and looking at your expressions in paragraph 3 you've got phrases like "suggest support" "apparent support" "likely carried weight" and I just wondered whether you had some doubts or uncertainty on your part regarding the allegiance to the Kīngitanga or the width of support within the Kīngitanga.

A. I think that much of those terms of phrase are me trying to distance myself from other historian inferences.

Q. Could you just repeat that, I couldn't quite hear?

A. Sorry. Essentially, I think a lot of the qualifying language that I've used, especially in sections like this, is more to do with the fact that I'm relying on other authors to do the analysis for me.

Q. All right. Okay, thank you. We're still on that page. Do you consider Völkner to have been a Government agent?

A. I guess I'd have to see a definition of that but I'm sure the Crown supported him in many ways. How much support you get from the Crown before you become one of the agents I'm not sure that's something I've considered before. He was providing intelligence. He certainly wasn't a Whakatōhea agent.

Q. Right. Maybe a different way, do you think Whakatōhea were justified in considering him to be a government agent?

A. Yes.

Q. Okay, all right thank you. In pages 35 to 36, do you know who informed Smith of the persons involved in the killing of Fulloon in the week between the killing and the drawing up of the warrant?

A. I don't. But there would have been as always many people travelling to and from around the bay. No, I don't have a solid answer for you on that.

Q. There seems to be some question about whether he was exceeding his authority. Do you know whether he was ever reprimanded?

A. You're referring to Smith?

Q. Yes.

A. I didn't cite anything that would suggest that.

Q. Okay. There's some suggestion on page 37 that the violent history between Te Arawa and Whakatōhea as one of the reasons for, you say, capitalising on their involvement with the killing Völkner and Fulloon. Can you expand on that statement? Are we talking more recent history of conflict or were you referring to something that goes back generations or decades?

A. I mean it's pretty recent. I mean they've literally been fighting each other within the year so I think that that's probably the most at hand sort of example.

Q. Yes.

A. I can't speak to how far back that goes.

Q. All right, thank you. I might ask Professor Williams about that. At page 41 we've both Atkinson and Grey sending Brassey instructions. Who actually is in charge of military matters of that nature at this point?

A. I don't actually know the answer to who has command of who in that instance.

Q. All right, thank you. At page 56, this is when Grey changes his approach to the execution and whether he needs to be informed and give his expressed permission and he changes his mind on that. Did you find anything that explains that change of attitude on his part?

A. I did not cite anything that delves into that from his actual perspective.

Q. All right.

A. Unfortunately, I didn't see anything.

Q. Okay. Almost there. Pages 57 to 58 you talk about "accessory before the fact" and I'm not quite sure what an "accessory before the fact" is and there might be an explanation today. Do you know what that was referring to at the time?

A. Whenever terms like that are used I'm borrowing them from somebody else.

Q. Okay.

A. Yes. So that would be from maybe language borrowed from within one of texts that's within there. I can identify that if needed.

Q. All right. My last question. At page 116, can you expand on your statement that Wilson was organising opposition to claims he didn't support? Do you know anything about the nature of the claims that he didn't support and why he didn't support them?

A. Is that 116?

Q. That's my reference that I've got written down.

A. Yes, at the bottom, okay. Yes, I'm just citing the Ngāti Awa report there so they obviously delve into it in some way. I can't recall the exact example. But there were instances that I can recall and I can't remember which court –

Q. Yes.

A. – but when Wilson was aware of – actually, sorry, I can't be sure that it's not an out of court settlement that I'm referring to out of my example.

There was an example where Wilson is dealing with some outside claimants that are trying to get in on the land in Ōpōtiki I think, but he doesn't want that to happen mainly because that complicates his ability to cut that up for military settlement and also the little bits that he wants to have allocated to Whakatōhea. So, he makes sure that Whakatōhea were there to speak to their claims and I guess in that instance he already either wants to prejudge the outcome or he feels like he knows there's more of a story and he wants to reinforce the outcome. But his exact motivations other than wanting to ensure that the military settlement was easy outside of that I'm not sure.

Q. Sorry I'm going to ask you a further question. When you say "outside claimants" you mean non-Whakatōhea claimants?

A. In that instance, yes. Somebody that he has identified as being an outside claim I guess. So he's using his own values at that time.

Q. All right. Well, those are all my questions and thank you so much for indulging us. I'm sure the Judge will say the same but it's obviously getting very late for you so thank you very much.

A. Tēnā koe.

QUESTIONS FROM JUDGE DOOGAN – NIL

JUDGE DOOGAN ADDRESSES JOHN McLELLAN – MIHI, QUESTIONS IN WRITING (14:13:42)

JUDGE DOOGAN ADDRESSES MS COLE – QUESTIONS IN WRITING (14:15:39)

JOHN McLELLAN ADDRESSES JUDGE DOOGAN – BENEFICIARIES NOT BENEFACTORS (14:16:15)

JUDGE DOOGAN ADDRESSES CLAIMANT COUNSEL – QUESTIONS IN WRITING (14:17:00)

JUDGE DOOGAN ADDRESSES TONY WALZL – TIMING UPDATE (14:17:42)

MS CLARK ADDRESSES JUDGE DOOGAN – TIMETABLE UPDATE (14:17:53)

MS FEINT KC ADDRESSES JUDGE DOOGAN – HĪKOI (14:19:06)

HEARING ADJOURNS: 2.19 PM

HEARING RESUMES: 2.50 PM

JUDGE DOOGAN:
Kia ora koutou. **Welcome back**.

JUDGE DOOGAN ADDRESSES MS GORDON – MS HOLMES LEADING WITNESS (14:50:16)

MS HOLMES-MUSTART (CALLS)
TONY WALZL (SWORN, #A030-(a)-(e))

Tēnā koutou anō e te Kaiwhakawā me te Rōpu Whakamana i te Tiriti o Waitangi. **Greetings again your Honour and the members of the Waitangi Tribunal.** Counsel's name is Natalya Holmes and I appear as counsel assisting the Tribunal commissioned witnesses this week.

Q. Tēnā koe. Could you please state your full name for the Tribunal?

A. My full name is Tony Walzl.

Q. Could you please confirm that you were the author of the Tribunal commissioned report entitled *War and Raupatu 1840-1871***?**

A. Yes, I was. Yes, I am.

Q. Kia ora. Ngā mihi. Kei a koe te wā. **Greetings. You have the floor.**

MIHI

Kia ora koutou the Tribunal and all the lawyers and the claimants who I know who are all with us in spirit both at the hīkoi and online.

The presentation summary I think takes a little bit longer than 50 minutes, so there are some parts where I will be able to skip some paragraphs of the summary.

REFERS TO #A030(b) PAGE 3

The War and Raupatu Report has been written in accordance with the research commissioned recorded in Memorandum-Directions of the Tribunal dated 23 July 2021. The Project Purpose was to provide further research on the period leading up to and including the war and raupatu. A list of specific research questions and issues to be addressed were identified in the research commission. This presentation summary will provide an overview of the findings in relation to these questions and issues. The report provided evidence in relation to all of the research commission's questions and issues with the exception of those on confiscation and compensation which already were fully dealt with in Jane Luiten's report on the 19th century administration of raupatu lands. Aside from the questions/issues in the Project Brief for the commission, there are additional findings in the report relating to pre-1865 land transactions and their processing by the Old Land Claims Commission.

Pre-1865 Land Transactions

Prior to 1865, two significant land purchases took place within the Inquiry District. Situated on the west and east side of the Waioeka River, these purchases, involving around 20,000 acres, were completed in 1840 by CMS missionary John Alexander Wilson. One of these purchases was for a CMS mission site, while the other was a private purchase for Wilson and two other missionaries who were stationed at Tauranga. There is comparatively little detailed contemporary evidence on these purchases and some of the evidence that is available is problematical. Within the report, there has been a close consideration of the available evidence. As a result, a proposed sequence of events was arrived at, and this is set out in the report at pages 1051-1052. The conclusion reached is that the missionaries participated in a fraud by claiming as their own the land purchased on the western side of the Waioeka River that initially was intended for the CMS mission. As part of this fraud, deeds were

forged as to the dates they carried (27 and 28 January) as Wilson, the signatory to both deeds, was not in Ōpōtiki at the time but had returned to Tauranga. The missionaries then made payments on the land transactions in March 1840, after the date allowed by proclamation, but recorded these on the deeds as if they had been paid in January.

Putting aside the Pākehā paradigm of legality, where do the transactions sit in relation to customary land tenure? The first aspect to consider is the possible nature of Wilson's discussions with Whakatōhea at Ōpōtiki. The Pakihi purchase (which was the CMS mission station site) was large. Usually mission stations are a few hundred acres only, but Pakihi was estimated at 4,000 acres (and eventually found to be 11,470 acres). The land included in this purchase lay between the Waioeka and the Waiotahi Rivers and stretched from the coast back into the hills. The size of the transaction is explained by Wilson having been instructed by the CMS to implement a new policy of purchasing as much land as possible to be held by the Society in trust for the former owners. Although the specifics of this policy, and how exactly it was to be operationalised in a future colony, had not been worked out, the idea of purchasing land to be held in trust was put forward to potential vendors within the context that Māori were in danger of all their land being acquired by speculators and that one way they could protect themselves was to enter into a trust transaction with the CMS. Despite those of Ōpōtiki having not previously been involved in a land transaction, word probably would have reached them from the north that dozens of land transactions were occurring there as the result of the land purchasing boom that took place in 1839. So the warning may have been considered quite seriously especially when coming from a trusted missionary source.

When it comes to considering the Ngaio land transaction, which at the time of negotiation was being acquired privately for the three missionaries, it is harder to ascertain the possible understanding of vendors as there is no mention of the transaction at all in Wilson's journal. Presumably, Wilson would have made some distinction from the trust land of Pakihi but it is not clear whether this differentiation would have been appreciated. After all, the same person was

making both arrangements, the persons he was acting for were also missionaries and, as Treaty historiography and past Tribunal findings indicate, the Ngaio purchase, from the Whakatōhea perspective, would be proceeding on a basis where mutual benefits were expected to occur within the context of an ongoing relationship.

That these land purchases at Ōpōtiki can be seen more within the context of customary land transferrals than as absolute sales is shown by available evidence. In the aftermath of the purchases being complete, areas on both sides of the Waioeka continued to be occupied and utilised by Whakatōhea at Ōpōtiki. Areas within the purchase boundaries were cultivated, wood was utilised from certain stands of bush, while flax was harvested right across the large swamps that were located on the land. As was revealed before the OLC Commission, various claims for payment were still being raised over the land and, subsequently, when the Pakihi Block was surveyed, one group of owners simply excluded around 5,000 acres of their land from the transaction. The transactions, therefore, were not full and final when completed in 1840.

Old Land Claims Commission

This might just be a useful point for me to record an error that's in the report. A very embarrassing error. It's to do with the proclamation date.

I picked up the issuing of the proclamation date that no more purchases should happen after a certain period. I picked up on it, it was signed on the 14th of January 1840. It was issued on the 19th of January 1840. I went along on the track of the 19th and, yes, didn't get off that track, but the operational dates for the Old Land Claims Commission is the 14th.

Now I mention that date 18 times in the report, so probably subsequent to the hearing I will do an errata and point out where they all are. A substitution of 14 for 19 would most work across the report where it appears. It doesn't affect the findings but it does have implications. So if anyone wants to ask me what those implications are during questioning, you can do so and I'll be able to talk to them

then. But I thought I better do a *Mea culpa* on that one. I would have put an errata before then but I only just discovered it in the last day or so. It is a real 'dur' moment, so sorry.

CONTINUES #A030(B) PARA6

Old Land Claims Commission

As a result of the Crown's Old Land Claims policy and processes, the land transactions that Wilson negotiated with Ōpōtiki Māori were converted from agreements that were subject to customary law into titles derived from the Crown that supposedly were independent from the original landholders.

There is a good deal of Treaty historiography which has pointed out a range of generic and systemic problems within the OLC process. The rest of that paragraph effectively goes through the various findings of the historiography in regards to that process.

Paragraph 8. Aside from these general and inherent difficulties with the OLC process, the way in which the Commission dealt with the CMS/Wilson transactions at Ōpōtiki added further layers of specific and localised problems. Clearly, the Commission was not equipped to deal with the outright fraud of the Ōpōtiki transactions as it had no mechanisms to deeply investigate the claims brought before it. Instead Commissioners relied on sworn testimony being true (not dishonest), on signed deeds being legal in the details they recorded (not fraudulent) and they relied on presented written documents being authentic (not fabricated). On the other hand, in relation to the Ōpōtiki transactions, the Commission did not pick up on several obvious inconsistencies, such as deeds bearing dates that were different from claims of when purchases allegedly took place. The Commissioners were not the only ones at fault in relation to the Ōpōtiki claims with other officials including the Governor playing a role. A list of problems with the investigation of the Ōpōtiki claims appears in the report at pages 1055 to 1057. They included that the application for the Pakihi claim was accepted well after the due date; that Pakihi had ongoing protests over specific pieces of land that were ignored by the Commission; that Pakihi had a current complaint about payments not being sufficient; that Ngaio, despite

having been reoccupied, was found to be a bona fide purchase; the reserves of all flax swamps in Pakihi was not recorded in the Commission's findings; that the Governor, for Pakihi, ignored the formula for valuating payments and awarded the full 3,840 acres being claimed; that, for Ngaio, despite the Commissioner recommending against a grant, the Governor ignored this and recommended a grant be made.

As a result, the OLC Commission process failed in its duty to properly investigate the Ōpōtiki transactions and it did not adhere to its own rules. This was not the worse part, however. It was the Crown's OLC processes of scrip awards and the retention of surplus (i.e., unawarded) land that would eventually cause the most significant impact in the district. When the missionary Brown, in the 1840s, chose to relinquish his award and take scrip, his interest of 853 acres was assumed by the Crown. When, in 1852, the Pakihi block was surveyed and found to be of 11,470 acres in area, the Crown retained the additional 7,630 acres over and above the 3,840 acres awarded to the missionaries.

These developments were soon communicated to Whakatōhea at Ōpōtiki by Wilson within the context of land disputes he was having with the local people. He used the Crown's presence on the land through the scrip exchange as a threat to curb what he saw as 'bad conduct' by Whakatōhea in relation to the Pakihi Block. Furthermore, the acquisition by the Crown of a huge amount of surplus land appears to have been communicated to Whakatōhea by the Government surveyor (and that would have occurred in 1852). It is the submission of the report that much of the recorded Whakatōhea anger towards the Crown recorded from the beginning of the 1860s, included references by Whakatōhea to their land having been taken away by the Crown, referred to the scrip and surplus land claims of the Crown in the Pakihi block which had been long known of. The Crown's claims motivated and radicalised Whakatōhea in the allegiances they held and the actions they began to take in the early 1860s. When Whakatōhea told Völkner in 1864 that they were fighting to stop their land being taken, it was the Crown land claims that they were referring to. And when the Pai Mārire message accused missionaries of stealing land and Whakatōhea

agreed with this statement, it was the Wilson purchase of Pakihi that was in their minds.

The Role of Christianity

One of the questions asked by the Waitangi Tribunal as part of the commissioning direction for this report, relates to the role of Christianity in the district in the period prior to the war.

Christianity was present in the Inquiry District from 1840. From that time two missions – CMS and Roman Catholic – operated within close proximity to each other at Ōpōtiki. In both cases, the missions had times when little resource was put into missionary efforts. The CMS station never had two resident brethren as planned and an ordained minister was not in residence until 1852 and then for two years only. Accounts record how the lack of an ordained minister impacted on the progress of the mission. From 1854 until the arrival of Völkner in 1862, Ōpōtiki was serviced only by a visiting minister once every six months and for a few days only. As for the Roman Catholic mission, the station was staffed by resident clergy until 1850 when the Marists generally withdrew from missionary work in the north. Thereafter, it appears that only visiting priests ran the Catholic mission at Ōpōtiki.

Both the CMS and Catholic missionaries evaluated the progress of their missions concluding that they had not been as successful as hoped. Numbers who had converted were not as high as expected, attendance at services and schools were not as numerous or regular as expected, and the depth of belief among those who had converted was doubted. The respective missionaries needed to find scapegoats for what might have been their own failings. They did so in two places.

Firstly they blamed each other for undermining their respective teachings. There is no doubt that the competition between the two missions was strong and that some fierce arguments over doctrine would be had. The language employed when arguing over doctrine is somewhat shocking. These diatribes were played out in public before parishioners who then subsequently adopted

similarly fierce language when supporting the religion they had chosen. On several occasions disputes over doctrine came close to physical violence. Despite this, there is not enough information available to fully assess the extent that sectarianism divided the Whakatōhea community at Ōpōtiki. While there are several examples suggesting this, (such as during the signing of the Treaty, the incident over Chouvet's house, and in the records of some hui held), there are also examples of the community meeting or acting together to discuss significant issues without there being any indication of a rift (e.g., when various local public works were being considered, when hui were being held to go to war in 1864, and when a powhiri was held to welcome Pai Mārire, when responding to the invasion by Crown soldiers).

Another matter to consider when assessing the impacts of sectarianism on the success of the missions is that aside from those who did choose a Christian religion to follow, there is a rather significant and persistent group who remained non-Christian. As at 1850, after a decade of the presence of the two missions, 27% of the population remained non-Christian and later records record a 'slipping backwards' in the Christian community. The explanation for this may very well lay in sectarian competition and the vehemence of debate may lie behind a record "hardening" of attitude amongst both religions.

The second feature blamed by missionaries to explain why their missions were not succeeding as well as hoped for was the alleged obsession of their parishioners with trade as people were away from the stations at Pākōwhai for long periods of time when tending their inland cultivations. The missionaries also claimed that trade focused the minds of parishioners on worldly rather than spiritual matters. There is no doubt that trade was a significant feature at Ōpōtiki, one that grew over time and required significant commitment of resources and time from those involved. Therefore, the missionary record of what they say is an intense focus with advancement and progress is probably correct. Whether this equated with less spiritual intensity as claimed by the missionaries is not possible to assess.

There is a further matter to raise when making an assessment of the possible impacts of Christianity in the Inquiry District. The evidence on Wilson's land purchases reveals a controversial origin and an ongoing troubled relationship over the use of the land. Wilson initially dealing in January 1840 with only one group of owners resulted in an outcry which required him in March 1840 to acknowledge the interests of all claimants by the signing of a new deed with representatives of all hapū and leaving the rangatira to distribute the payment among the 'thousand claimants'. Despite the land transaction having been concluded, the experience seems to have caused sufficient rupture for all Whakatōhea at Ōpōtiki to ask Pompallier, when he visited soon after, to compile a document declaring that all persons had interests in land but that no more land transactions should occur.

Furthermore, it appears that Whakatōhea at Ōpōtiki continued to come into conflict with Wilson in relation to this land. This conflict seems to have arisen in cross-cultural misunderstandings over land transactions. Māori actions presumably reflected their cultural perspectives and understandings of what the transactions were – not a sale but a right for Wilson and the CMS to occupy. In Wilson's view, it was simply 'bad conduct' that had been occurring almost since the land had been purchased. From Wilson's perspective Whakatōhea tried to repudiate their purchases by reoccupying the eastern Ngaio block, and by continuing to use resources on the Pakihi block. To exacerbate matters, the Roman Catholic priests directly criticised Wilson's purchase as evidence that he was primarily motivated in his own interests. To make matters worse, Wilson's threatening of Whakatōhea with possible Crown action would not have enamoured him or missionaries in general to the people of Ōpōtiki.

Further evidence that the CMS were not favourably viewed by Whakatōhea is seen in relation to the Ngaio block. Wilson noted in 1844 that Ngaio was becoming reoccupied by its owners. Therefore, when the CMS hierarchy sought to use occupation as an opportunity to divest themselves of this land, for which they could not get title, they also sought to have their purchase money repaid. Although Whakatōhea agreed to this, their viewpoint about the CMS mission was revealed when they initially refused the CMS request for a small

plot of land being made available for a mission station. Ultimately, the CMS made the retention of a mission station a deal-breaker which Whakatōhea had to accept for the CMS to give up their claims to Ngaio. This may have been another source of resentment.

Given Wilson's behaviour on Pakihi and the CMS actions over Ngaio, it would not be a surprise that support for the mission waned, especially when the CMS could not even commit resources to place a resident missionary in the district. Not unexpected, then, by the late 1850s, congregations were reported by visiting missionaries as being surprisingly small, after almost two decades of effort. And by 1860, when Crown officials visited, angry hui raised a question over the value of missionaries especially as, at Ōpōtiki, it had resulted in claimed land takings. Despite the efforts of Völkner to repair much of the damaged relationship of the past, when the Pai Mārire ope reached Ōpōtiki in 1865 and lectured on the evils of missionaries, their tendency to acquire land and their role as a gateway for the Crown to acquire land, they found a receptive audience among Whakatōhea.

One of the questions asked by the Waitangi Tribunal as part of the commissioning direction for this report, deals with the participation of Māori in the Inquiry District in the commercial economy in the period prior to the war. There is a comparatively large amount of source material available on trade, although it essentially comes from Ōpōtiki with only the occasional mention of Ōhiwa or Tōrere. Evidence on trade in Ōpōtiki comes in the form of a series of statements made by missionaries and officials after 1840. This record indicates that working at the production of trade goods occupied a significant amount of time, that it brought an increased standard of living and that an infrastructure was beginning to rise. In addition, a quantitative newspaper shipping sample has been used to gain an idea of the volume and nature of the trade being shipped out of Ōpōtiki from 1840 to 1860s. For reasons noted in the report, this sample should be seen as providing a minimum indication of the true volume of trade.

A key element of the participation of Ōpōtiki Māori in trade was the ownership of vessels. The remainder of this paragraph records the various numbers of vessels that were being spoken about over the years.

Paragraph 23. The quantitative newspaper sample also provides insight into the trading economy at Ōpōtiki by recording the types of goods exported and their volumes. Again, the rest of the paragraph provides figures in regards to that trading economy.

Paragraph 24. The qualitative evidence about cultivations and shipping clearly indicates that trade was becoming an integral way of life for Ōpōtiki Māori. Again, some quotes there that effectively reflect that statement.

Paragraph 25. It is difficult to evaluate exactly how well Ōpōtiki Māori with the increasing involvement in the trading economy. The newspaper shipping sample has been used as a basis to showed there is no year after 1850 when the exported goods recorded in the sample earned less than £800. Using this very minimum indicative sample, it has been calculated that between 1850 and 1864 goods with an indicative value of £27,408 were exported out of Ōpōtiki. It is much more difficult, however, to know what the products actually earned for Whakatōhea. One reference indicates that the traders at Ōpōtiki were paying to Whakatōhea around two thirds the wholesale value of the goods, which was still seen as a good return.

On the other hand, by 1860, limitations on the economy were increasingly being recorded. Ships and other machinery were not being serviced, necessary replacement parts could not be obtained or the expertise to repair things was not available. There is some record that in places the soil was becoming exhausted. There is also the comment that expertise was needed to better process goods in a way that might create added value. By 1860, the greatest complaint from Whakatōhea was that trade was not regulated and that middlemen traders were unfairly impacting the value of payments being received.

Despite the limitations that were present in the local economy, and although Ōpōtiki Māori may not have been receiving optimal returns for their participation in a trading economy, it was the view of observers that Whakatōhea at Ōpōtiki appeared to be prospering. The rest of the paragraph provides examples of that prospering and it also provides some evidence of the building of infrastructure.

Paragraph 28. After 1860 the fortunes of Whakatōhea would reverse. Ships were sold off or boats and waka were destroyed in the war. Food supplies were consumed by armies of other groups who had passed through the area on their way to the western areas of warfare. The traders fled and a blockade was put in place by the Crown. Remarkably, however, when the Crown soldiers occupied Pākōwhai in September 1865, they marvelled at the wealth they saw in terms of food, stock, and goods. Either Whakatōhea had quickly bounced back, or the wealth had been built up before the 1864 war had not come close to fully dissipating.

Relationship with the Crown prior to 1865.

The next question asked by the Waitangi Tribunal as part of the commissioning direction for this report, is to provide comment in the period prior to the war in respect of the engagement that had occurred between the Crown and tribal leaders, including the nature and subject of this engagement.

As noted in the introduction to this report, although the Treaty was signed at Ōpōtiki and Tōrere early in 1840, there is little indication of a close relationship between the Crown and the tribes over the two decades thereafter. The Crown's OLC policy was rolled out at arm's length, and there is no direct evidence of Whakatōhea at Ōpōtiki interacting with Crown officials in relation to surplus lands or Old Land Claims. Indeed, Whakatōhea discover the Crown's acquisition of land in their rohe through Wilson and a contracted surveyor. For the few other examples of Crown policies being implemented in the Inquiry District (the vaccination of the 1850s), the presence of the Crown was passive or services were delivered at arm's length. The Crown had no judicial official resident in the inquiry area before 1865. It was the introduction of the

Magistrate system that brought Crown officials into the area with annual fact-finding tours taking place from 1859.

Nevertheless, the advent of war in Taranaki in 1860 made the Crown rethink its native policy. Efforts were made to contact iwi and hapū all around New Zealand in order to monitor where their allegiances stood. Following the conference at Kohimārama, rūnanga and assessors were appointed around the country, including at Ōpōtiki and Tunapahore. It appears that those measures were introduced without any close assistance or guidance. When, in 1861, Resident Magistrate Clarke visited Ōpōtiki, he viewed the actions of local rūnanga leaders dispersing justice as overstepping the mark. The issue of heavy fines he equated with muru. Aside from criticise, however, Clarke did little to assist. When H H Turton toured the district, he worked with the local rūnanga to streamline their administration down to a 24-member committee, ensuring that 12 members were Protestant and 12 were Roman Catholic. When Clarke visited the district in December, he found the rūnanga had fallen out amongst themselves. Nothing further is recorded.

In the meantime, Whakatōhea and others within the Inquiry District would consider the Crown's actions taking place in other parts of the country. In 1861 Clarke noted that Whakatōhea had sent their own observer to Taranaki to directly report on the situation there in relation to the war. In addition, they had received several emissaries from Waikato. Evidence from fact-finding missions of Crown officials records the general dissatisfaction of Whakatōhea and others in the Inquiry District over a lack of assistance from the Government. To support their economy Whakatōhea and others needed artisans and tradesmen to repair machinery and boats and to work with their products to add value through additional processing. Whakatōhea proposed that if they made several small sections of land available, would the Government liaise to procure tradesmen (such as a miller, a wheelwright, a baker, a carpenter, a blacksmith, and a leather worker) to come and live at Ōpōtiki. Although Turton thought this a sensible idea, there is no indication whether this request was ever acted on. While wanting new Pākehā to come and live among them, Whakatōhea greatly complained about the influence of Pākehā who were already at Ōpōtiki. These

men were traders who Whakatōhea had learned were buying their produce cheaply from them and selling it at higher prices in Auckland. Whakatōhea wanted the government to appoint a trader who would adopt a fairer approach. Aside from areas where Whakatōhea wanted Crown actions, there were other areas where the Crown had taken actions which were complained of. These included the bans brought in on alcohol, arms and ammunition.

Matters came to a head at a meeting with Crown officials in June 1862 when several strong statements were made. The Treaty of Waitangi was repudiated, all Whakatōhea claimed to be 'kingites', Grey's words were no longer believed, and a sourness was expressed over land that had passed to Pākehā. Although this later comment may been a general reference to land acquisition by Pākehā around the country, as noted previously, it may also relate to the 11,000 acres of land to the west of Ōpōtiki that was claimed to have been acquired by private and Crown interests. Despite these comments, officials advocated for Grey's 'new institutions' with the result that it was agreed that the new systems would at least be tried.

Although, therefore, by mid-1862 there is some basis for the beginning of a relationship, by the end of 1863 all had changed as Whakatōhea eschewed their contacts with the Crown and threw their lot in with Kīngitanga instead. On Christmas Day, the letter brought to the chiefs of Whakatōhea containing an appeal from Wiremu Tamihana for assistance resulted in serious consideration being given to the request. This letter would have been written in the aftermath of the 20 November defeat at Rangiriri and the occupation by Crown soldiers of Ngāruawāhia on the 8th of December when matters at Waikato must have seemed bleak. As Völkner noted: "This letter has unsettled the Natives of Ōpōtiki and up the coast more than any they have had."

As Whakatōhea considered the ramifications of the letter they had received, on the 21st of January 1864, General Carey and 600 troops landed at Tauranga. This brought an additional, localised dimension to the issues being considered. By the 30th of January 1864, a decision was made to fully support the King movement by direct action. On the 5th of February 1864, a Tairawhiti

contingent, including 250 Whakatōhea, headed out westward from Ōpōtiki. Although the Whakatōhea contingent returned in a short time, in early April another contingent of 700 set off and travelled through to Maketū where it was eventually defeated in the Battle of Te Kaokaoroa after which Whakatōhea at Ōpōtiki faced after effects of disease and famine.

Völkner and the Crown

The Waitangi Tribunal posed a series of questions about the impact of Völkner's relationship with the Crown, the role of any missionary reports, what the Crown did with the information, and whether any Crown policies, decisions and actions were influenced by the advice.

There really is no evidence of either CMS or Roman Catholic missionaries being involved in the events leading up to war other than in the following two instances. They are mentioned in the paragraph there which is the letter from Father Garavel and Völkner's seven letters over January and February 1864.

In consideration of the Völkner letters, it can be said that they were written at a time of high excitement and the information given would have been about matters that Whakatōhea would not have wanted the Crown to know. At this time, there is evidence that Whakatōhea at Ōpōtiki took steps (blockading the harbour and roads out of the area) to ensure information did not get out to the wider world. As to the effect of Völkner's information on Crown actions, there is no specific record that it brought change or influenced decisions. From a military point of view, Völkner's letters, despite providing information of troop movements, were probably not timely enough to effect events as they were developing. In addition, the Government had other sources that provided the same information. Völkner's information may, however, have had the long term effect as the letters leave no doubt of the position of Whakatōhea in relation to Kīngitanga, the Government and the war. Henceforth they would be a group to watch.

The Death of Völkner

The Waitangi Tribunal posed a series of questions in the commissioning direction in relation to the death of Völkner, including whether Whakatōhea were involved and to what extent, and who was responsible for Völkner's death.

In the report, the opportunity was taken to study the matter closely. A great deal of effort was therefore put into collecting multiple eye-witness accounts and considering these closely. As the sources do not all agree regarding the details or events recorded, it was also important to form a view on which source could be considered reliable (and which were not). The analysis in the report aimed to recreate an event-by-event reconstruction of what took place between the arrival of Pai Mārire in Ōpōtiki on 24 February through to Völkner's death on 2 March 1865. A summary discussion of these events is presented in the report at pages 509-520 and a bullet-point chronology of events features at pages 1076-1081.

The first of the Tribunal questions regarding Völkner's death relates to the involvement of Whakatōhea in the events that occurred from 24 February to 2 March. As noted in the report, dictionary definitions for the word 'involved' simply means being at and part of an activity or event without any comment on culpability. Therefore, a summary of Whakatōhea involvement would be as follows. For the rest of that page and over the page are the examples that I think would constitute Whakatōhea involvement.

When considering the Tribunal question of who was responsible for Völkner's death, the word 'responsibility' carries the dual link of being the cause of something and being able to be blamed for it. There are several individuals and groups to consider. Again, the bullet points for the rest of the page and over the page go through those groups. We may be discussing those, I guess, during questioning.

JUDGE DOOGAN ADDRESSES TONY WALZL – MICROBREAK (15:28:30)

HEARING ADJOURNS: 3.28 PM

HEARING RESUMES: 3.33 PM

JUDGE DOOGAN:

Kia ora koutou.

JUDGE DOOGAN ADDRESSES MS CLARK – TIMETABLE (15:34:01)

JUDGE DOOGAN ADDRESSES MR LINKHORN – CROWN CROSS-EXAMINATION (15:34:40)

(15:35) TONY WALZL: (CONTINUES)

CONTINUES #A030(b) PARA 43

Crown Decision-Making

Among the series of questions posed in the research commissioning direction was one asking what discussions and decisions took place in the six months between Völkner's death and the attack on Ōpōtiki and how did the Crown justify a military response? Crown officials immediately and always thought that the response to the situation in Ōpōtiki would be a military response. Thereafter, discussions about the Crown taking action in Ōpōtiki were always about the sending of an armed force. Presumably this was on the basis that the force might be facing a whole community of Pai Mārire converts as suggested by the information that was coming out of Ōpōtiki from the beginning.

Initially, of course, the Crown response was shaped by the information that despite Völkner having been killed, there remained several hostages held at Ōpōtiki. The Crown acted quickly. The first news of the events out of Ōpōtiki was received by officials on the 6th of March. By the 9th of March, however, although officials were certain that the news of Völkner's death was true, they were getting various reports about the location of the hostages. On the 10th of March, therefore, a ship was sent to the East Coast to find out more as Turanga was believed to be the place where the hostages were being kept. When it was learned the hostages had remained in Ōpōtiki, a diplomatic mission

was sent there. However, it was only the result of a series of accidental circumstances, that a rescue was achieved.

Thereafter, as early as April, Crown Ministers stated their intention to send a force when they had one to hand as all resources were committed at the time in the Whanganui campaign. In the meantime, the Crown issued the April Proclamation against Pai Mārire, continued to gather information, (as with the May cruise of the *Eclipse*) and waited for developments in Whanganui to reach a point that a military force was freed up. This became available by July and the Government announced their intention in Parliament in August to send an expeditionary force. No evidence has been located of discussions or other decisions taking place over the six months between Völkner's death and the attack on Ōpōtiki. The matter was as simple as stated above. The killing was learned of; the intention was reached to send a force when one was available; when one became available one was sent.

If there was written communication between Crown officials and Whakatōhea at Ōpōtiki it has not been discovered. Yet evidence is available from the March and May voyages of the *Eclipse* that it was not difficult to make contact with those onshore at Ōpōtiki and hold discussions under a flag of truce. These examples raise the question of whether some sort of diplomatic mission, where the Crown communicated its objectives to those at Ōpōtiki, would have been quite possible and easily achieved had the decision been made.

While it was always clear that a military force would be sent, the aim of the mission is not discussed in detail before instructions are given on the eve of sailing. Instead, often with a lack of clarity, government members generally indicated that the mission would be to capture the murderers of Völkner. There is never a clear idea stated, however, who the murderers were or how widely those who resided at Ōpōtiki were implicated. At times, the 'murderers' were seen as being a very small group of a few individuals. To meet any eventuality, from August, the Government designed a bespoke policy (with supporting legislation), and began to describe Ōpōtiki not as a war, but a police action. As the real situation at Ōpōtiki was not known, the Crown policy right up to the

sailing of the expeditionary force seems to be to send a large force, (just in case), to secure the area and then undertake investigations to identify who would be deemed to be the culprits of the murder. Initially, the area would be secured by physically containing the population which was more in accordance with a police action. As the legislation indicated, this was about arriving in the area, declaring that the culprits be turned over and then implementing a process from this point. It is argued in this report, that it was only on the very eve of the expeditionary force sailing that the receipt of intelligence that all at Ōpōtiki were committed to Pai Mārire led to the decision to undertake a full invasion to firstly gain submission as the priority. The idea was for the army to go to Ōpōtiki unannounced, militarily occupy the district (fighting if required) and only then begin investigations at that point. The passing of martial law was to support this force in its intended judicial activities once at Ōpōtiki.

Crown attitudes and actions towards Pai Mārire

The Waitangi Tribunal posed a series of questions as part of the commissioning direction in relation to Pai Mārire and the role that Crown attitudes and actions towards Pai Mārire played in the war and confiscation. When Pai Mārire first appeared officials around the country investigated the attributes of the religion primarily with the aim of determining whether it was a force for peace or whether it would in some way contribute to the wars that were being fought. Once Pai Mārire adherents became engaged in fighting, the phrase “Pai Mārire fanatics” was increasingly used by officials and politicians. When bands of prophets spanned out from Taranaki the matter was deemed as serious. The Crown did not understand and therefore feared the objectives of those who supported the Pai Mārire faith as it was seen that the new religion could quickly convert whole formerly Christian populations.

Although violence from Pai Mārire soldiers on the battlefield was expected, the killing of Völkner seemed to indicate to the Crown that Pai Mārire adherents might act against civilian populations in outlier areas. The question of what to do about the new religion came very much to the fore. As there was also a concern that adoption of the religion might be spurred on by the Völkner killing, the Crown’s policy toward Pai Mārire soon emerged as complete opposition.

This was reflected in the Governor's April Proclamation declaring the intention to curb the religion's spread. The war being fought in Whanganui and South Taranaki was seen as one way to deal with the new religion. Enemy combatants being fought against were labelled as 'Hauhau' even where this was not necessarily the case.

Despite the victory gained in Whanganui and South Taranaki, it was understood that the religion was still spreading around the country. Therefore, as at August 1865, dealing with Pai Mārire remained a very current concern of the Crown. Parliamentary rhetoric held that Pai Mārire was "spreading everywhere" and that its object was "the destruction of the European race." In the Native Minister's August 1865 speech on native affairs, Fitzgerald described the religion as one of the "most noxious forms of parasitic life" and a "horrible insanity". Nevertheless, the Native Minister was prepared to consider that there may be gradations in how violent the movement was as he could not believe all adherents were involved in atrocities.

Thereafter, government policy emerged to focus on addressing the 'excesses' of Pai Mārire which primarily meant acting when murders, such as the killing of Völkner and Fulloon, were committed. Therefore, the objectives of the Ōpōtiki expeditionary force did have a component of being focused on addressing Pai Mārire in the district as it was aimed at those Pai Mārire individuals who had committed a crime. Nevertheless, the Outlying Districts Police Act, despite being a warning to Pai Mārire populations involved in murders, was not specifically worded as such, as the described processes would be used to deal with any population that was harbouring heinous criminals.

Although the initial aim was to find and punish Pai Mārire murderers, this report has argued that in respect of the Ōpōtiki campaign it appears that a change occurred within the Government's objectives in the final moments before the campaign got underway. Prior to this, all policy devices in relation to the campaign and the military strategy outlined in the 4 September instructions from the Defence Minister reflected a clear process of going to Ōpōtiki, demanding the murderers be handed over, and then taking action (including taking land) if this did not occur. Instead, the military strategy that was unleashed at Ōpōtiki

was direct military invasion without notification or negotiation with politicians soon speaking in Parliament that there would be (rather than could be) confiscation at Ōpōtiki.

To account for this change, this report has looked to the Agassiz statement. Received just before the expeditionary force sailed and shown to officers who would lead the troops, the information in the Agassiz statement effectively implicated all of Whakatōhea at Ōpōtiki presenting them as being fully immersed as Pai Mārire and exhibiting the most aggressive traits including fighting with the Crown's native allies and promising death to all Pākeha. Whakatōhea at Ōpōtiki were now being presented as a 'lawless' Pai Mārire community that needed to be dealt with. This is never specifically recorded as an objective of policy in any document. It does seem, however, to be the basis of the last minute change in policy and practice associated with the Ōpōtiki campaign. It also might explain why any terms for surrender included the requirement of a promise to give up the Pai Mārire religion.

The Ōpōtiki Campaign

Several commissioned research questions dealt with various aspects of the Ōpōtiki campaign. The answers to these are recorded as pages 1093-1096. The following conclusions relate to the questions about the Crown's military strategy at Ōpōtiki.

Originally, the action at Ōpōtiki had, in accordance with the instructions issued, an objective of quickly catching the murderers of Völkner. This was to be achieved through a night manoeuvre aimed at surrounding Pākōwhai Pā and then asking for the murderers to come out. If this did not happen, then the processes of the Outlying Districts Police Act would be used to commence investigations and take the land of those deemed guilty. As noted above, however, on the eve of the Force sailing, the receipt of the Agassiz statement apparently resulted in a (official or unofficial) change and Pākōwhai was simply invaded from the sea in broad daylight. The strategy had changed from one completely focused on being a police action to catch murderers, to one where

a supposedly belligerent Pai Mārire community was to be subdued by military invasion before any quest to identify murderers would begin.

After several days of weather-related calamity, the force landed, occupied an essentially abandoned Pākōwhai and focused on provisioning and fortifying their position. Few engagements occurred thereafter. Those that did, such as at Tarata on 5 October, resulted from opportunism rather than a planned strategy.

Another strategy in place was of negotiating with Whakatōhea. This was soon adopted although it was very organic in its development with the officers of the Force finding their way through trial and (mostly) error. Although the army maintained a readiness to fight when opportunity or necessity arose, negotiations with Whakatōhea to surrender themselves and the murderers was an ongoing feature of the mission. Despite not having a clear idea of who were seen as the 'murderers' of Völkner, or of describing or defining who they were during negotiations, the surrendering of the culprits was always a key focus of negotiations (along with the requirement that any man signing an Oath of Allegiance declared to give up the Pai Mārire faith.) Once surrendered, however, those who came in were released on their own cognisance.

Alongside negotiations, and the occasional fight, another strategy adopted by the expeditionary force was to destroy any resource that Whakatōhea potentially could utilise to hold out against surrender. The evidence shows that when the Crown force arrived Whakatōhea got away with few of their provisions.

Within a short time, the tactics of negotiations and scorched earth (combined with fairly significant losses at Tarata) resulted in widespread surrenders. By the end of October, an estimated 350 Whakatōhea had surrendered. Not all came in, however. Under leaders such as Hira Te Popo and Te Iki, an estimated 150 persons ultimately refused to surrender despite an initial intention to come in. Furthermore, several of the known Pai Mārire ringleaders still remained in the area and evaded capture. The second phase of strategy,

therefore, in place by October 1865, proceeded with a somewhat reduced Crown force seeking out a reduced guerrilla force. The third phase, that came into being over 1866 and 1867, arose when Urewera began to ally with the fugitives to the point that the military settlement underway at Ōpōtiki was under threat. Forces in the area were built up again. From 1868, Te Kooti was in the area and all activity was directed towards his defeat and capture.

Crown Motivation for Confiscation

The commissioning direction included a question about the Crown's motivation for confiscation within the Inquiry District. The confiscation of the land of 'rebels' who fought against the Crown was a long standing policy since the first Taranaki War. Over the years, however, views changed and developed regarding the purpose or objectives of confiscation, the extent of lands being taken and the extent of land the Crown intended to return to rebels.

When the expeditionary force headed to Ōpōtiki, it was not a given that land there would be taken. The Weld government, during the 1865 parliamentary session beginning in July, had tried to draw a line under fighting rebellions and taking land. Instead, the expressed policy of that Ministry was that land would only be taken in the future to punish those who committed heinous crimes such as murder. Although the Peace Proclamation of September 1865 granted an amnesty to all former combatants of past rebellions, those who had committed murders of civilians were not included. The Crown declared its intention to come after these people. In this context, confiscation became a tool in the pursuit of criminals – a threat that if the people among whom the murderers resided did not give up them up, within certain timeframes, their land would be taken to provide compensation to those who had suffered loss or harm but also to provide funds to establish and support a police force to bring 'law' to the district. The Outlying District Police Act was passed to enable this. The Act came into law very much with the situation at Ōpōtiki in mind. An expedition was sailing to capture Völkner's murderer and if Whakatōhea did not hand the murderers over some of their land would be taken under this new Act.

As noted above, on the eve of the expeditionary force departing, a radical change occurred in how the area and its people were perceived. This also resulted in a change of motivation for the Crown taking land in this district. With the whole community being viewed as being belligerent Pai Mārire, who were not distinct from the murderers, land confiscation was no longer a threat to gain a result, but a planned part of punishment. The Pai Mārire community needed to be attacked, their lawlessness brought to an end and their land taken.

The theory that this change of motivation and intention came into effect on the immediate eve of the departure of the Ōpōtiki expeditionary force cannot be proved by pointing to a specific piece of evidence or instructions. It can be shown, however, in the way officers such as Brassey and McDonnell referred in a matter-of-fact manner to the taking of land in the district as something that was imminent. In addition, by the 28th of September the Native Minister noted that land was to be taken to pay for the expeditionary force and that a military and then civilian settlement would be established in the district. By the time the Weld government's term ended in mid-October, it was not a question of whether land would be taken. By this time the motivations and role of land confiscation had returned back to those that were in vogue when the Settlements Act was in operation – punishment and military settlement.

The Weld Government, however, had eschewed the use of the New Zealand Settlements Act as a vehicle for the taking of Māori land. On the other hand, any intention to utilise the Outlying Districts Police Act, (with its processes of warnings and protections), had all been rendered moot by the all-out invasion that had taken place. Possibly this is why the Minister, on the 28th September, was saying that the land would be taken on the "principle" of the Outlying Districts Police Act. Which provisions would still be utilised in the changed circumstances at Ōpōtiki remained unclear. Just over a month after the sailing of the Ōpōtiki expeditionary force, the Weld government was no more. When land in the Inquiry District was taken it was by a different government and under different legislation than that intended by the Weld Ministry. Stafford's government was not hampered by a commitment to the Outlying Districts Police Act.

Land in the Inquiry District is then taken through the use of the 1863 Settlements Act which had mechanisms allowing speedy action in taking land. Despite the Outlying Districts Act being an awkward and possibly clumsy legislative vehicle, it had some built-in protections. They are listed in the following bullet points.

By using the Settlements Act, all these protections were lost. Why then was this Act used? Available evidence indicates that the speedy and instant taking of land was needed as the acquisition of land in the Inquiry District (and in Whakatane too), had become part of a deal between the General Government and the Provincial Government where the former would transfer to the latter the administration of confiscated land in the Auckland Province. Initially, this long term objective had meant to be only about Waikato lands with the General Government keen to get rid of an onerous administrative task that had got bogged down. As part of his agreement to take over the administration of these lands, however, the Auckland Superintendent made as a condition the taking of land around Ōpōtiki and Whakatane. The boon that Auckland would receive was that these additional lands, combined with the confiscated lands of Tauranga, would provide the Provincial Government with new lands to solve the problem in Waikato of there not being enough lands suitable for settlement to fulfil the commitments already made to military settlers. Another advantage was that, on paper, as worked out by Whitaker, the sale of Ōpōtiki and Whakatāne lands – after meeting all the commitments of survey and other costs; the compensation to Pākehā and loyal Māori; the creation of a place for surrendered rebels; and the allocation to military settlers – would actually turn a good profit for the province. Furthermore, it was thought the newly settled land would address all the security problems being faced in these troublesome areas.

MS CLARK ADDRESSES JUDGE DOOGAN – TIMETABLE UPDATE

(15:56) MS CLARK TO TONY WALZL:

Q. Kia ora Mr Walzl. I, nonetheless, do have some questions for you and they concern the old land claims. So if I could, and I will come to that question of the date at the appropriate time, but if I could just generally talk with you about how this process works. We seem to have a couple of levels in the process. The first level is the court itself, the Old Land Claims Commission. Perhaps I should call it a Commission. And then the second level is the Governor who ultimately makes the final call. Is that correct?

A. Yes.

Q. The governor makes the final call. He can either agree with the decision of the Commissioner or he can make another decision. Is that correct?

A. It seems more that the Old Land Claims Commission was a Commission of Inquiry to essentially identify and form a view on whether land transactions had occurred, sales in their view, and to apply a scale of payments that they had on how much the value had been paid and then make a recommendation on how many acres under that payment scale could be awarded. My impression is that (I'm just wanting to make sure that I am right on this) effectively once they had used that word that a bona fide purchase had occurred, that meant that the native title had come to an end. And all of that land, therefore, was Crown land from that point because the title had been extinguished by a British citizen.

Even though the Commission made recommendations on how much the payment of scale would allow people to have, it seems that that's where the Governor came in. The Governor came in to either accept the recommendations, or in some cases he used the latitude to increase them et cetera. I am trying to rack my brains as to whether the Governor once he got like, for example, a finding that a purchase hadn't happened, would actually say: "No, I think one had."

I'd have to maybe have a little bit of a think of that overnight I think because I've got a funny feeling that it happened in some form. Not an overt form but in some form it might have sort of happened.

I suppose Ngaio is a bit of an example in a way. I mean that was outside of regulations and therefore the Commissions could not find any other

way than saying that “a purchase hadn’t happened in the right timeframe and therefore they couldn’t recommend having a grant”. And of course, the Governor effectively said, even though that’s the case, he would still recommend that a grant should happen.

Q. Yes.

A. I mean there’s an immediate and pertinent one on quite a high level –

Q. Yes.

A. – where the Governor could effectively come in, even though there were rules on all this that purchases shouldn’t happen after the proclamation et cetera, he still recommended that a grant should take place. It didn’t simply because of administration and all that but, yes, that was his recommendation. It looks like he can come in at many levels and I guess he’s taking the Commission more as an advisory body rather than he has to then follow their findings.

Q. Right. The Commissioner makes the final decision effectively is what you’re saying?

A. No.

Q. Sorry, the Governor makes the final decision.

A. Yes.

Q. Thank you. Just to pick up on another point that you made there, you referred to the fact that the land became Crown land –

A. That’s my understanding of it, but I’m not-

Q. – but a Crown grant to the purchaser concerned had not occurred. That could not occur until a later point in time.

No, that’s right. It required first of all a finding that the title had been extinguished. My understanding of it, and like I said it’s probably a legal thing there, but my understanding is that once that was decided because the land had been purchased by a private citizen it now lay with the Crown and it was the Crown’s discretion on how much of a grant it would give to the citizen who bought the land. I mean the Crown in theory could have said: “We’re not going to give you any, even though you bought it,” and I think this has happened. Now, where did that happen? That happened. I know, I just dealt with it at a MACA hearing. In the Poor Knights Island, Polack so-called purchased the islands and there was all sorts of trouble

with the purchase. The Crown effectively said: "We're not going to give you a grant," but the Crown then later on then went straight on to lease the islands because it regarded it had the title. Yes, so the title becomes my understanding is Crown land for the Crown to decide how much to grant to the applicant.

Q. In that particular instance, it sounds like they-

(16:01) MS FEINT KC TO JUDGE DOOGAN:

Q. Judge, if I may intervene? Some of the matters that the witness is addressing are matters of law and they were considered by the Supreme Court in the *Wakatū* case. Rather than confuse the record, it might be better if the witness stuck to matters of historical fact. Because my understanding is the Commissioners could make a recommendation that the land had been purchased on fair and equitable terms and then the Governor had to decide whether to accept the recommendation, and it is the acceptance of the recommendation where upon the customary title of the land is extinguished. And if that recommendation is not accepted, then title is not extinguished. But Mr Walzl is right that there's other case law from the period and I recollect that Poor Knights case was one in which there were some irregularities. There's certainly case law on the topic anyway.

Q. All right. Thank you Ms Feint. I think it's going to be difficult to some extent to separate out the pure matters of law from the facts discussed in this report. My suggestion at this stage anyway is that we simply allow the questioning to proceed and that if there needs to be some clarification of the actual legal framework, it's something that we can and should be addressed in submissions from counsel. But it's going to be very hard to draw a line as to what's a matter of fact, given the need to traverse the actual content of these particular claims in this district. At this stage, anyway, let's see how we go.

(16:03) JUDGE DOOGAN TO TONY WALZL:

Q. Mr Walzl, I'm sure you followed that discussion.

A. Yes, and if I could just add? If I did give the impression that when the Commission said that there was an extinguishment and it went to Crown land, I actually probably didn't mean that. I completely agree from my understanding and recollection, it's only when the Governor confirms it as well that it's regarded –

Q. Yes.

A. – so I may have given the wrong impression there.

Q. All right. Thank you.

(16:04) MS CLARK TO TONY WALZL: (CONTINUES)

Q. In this particular case, at what level was the decision of how much land to award in the case of the Pakihi and Ngaio transactions? Was that decision made at the level of the Commission or was it made at the level of the Governor?

A. Well, my understanding is that the Commission makes a recommendation based on the application of their formula. They had a payments formula on how to value goods. Hardly any of these goods were paid in cash and so they were paid in goods. So they had a formula on how to convert those goods into a value and then once they got that value, they then converted that into an acreage, and their recommendations were based on the application of that scale.

Q. Yes.

A. But then it was at that stage the Governor could change that recommendation –

Q. Thank you.

A. – which effectively in Pakihi he did. We can look up the exact amount but the amount was – I think the claimed amount was because of the estimated acreage was 3,900 (inaudible 16:05:41) the goods brought it up to 2,900 and something and so the Governor sort of said: "Well, you can have all you're claiming," so he's gone and bumped it up the recommended grant.

Q. In other words, there was an inflation from the usual formula that applied. There was an inflation in this case and they actually got a larger area of

land based on the usual formula and the goods that they gave evidence that they had paid for the area.

A. Yes. I mean I think the Governor felt he had wide discretion in this. I mean that payment schedule was always sort of an estimate anyhow. It was based on the value of goods in Sydney at a certain time et cetera, et cetera. There's various things I think in the Old Land Claims Commission legislation that give that sort of wider discretion I think. My understanding of the Tribunal findings is that in the past there is general discussion about how it was geared, from the settler point of view, to effectively recognise transactions that had happened and to do it in full. But I think where it came more and I think when the Governor sees that there's not much of a gap, I think it was like about 800 acres in Pakihi, it's like: "Well, I don't have to apply the formula so strongly." But in some cases of course the gap is thousands and thousands of acres and in that case they might not feel that you could grant a person who'd purchased and paid a tiny amount couldn't grant them a large amount of area.

Q. Yes. So it would be in discussions with the Commission that they would agree the boundary of the area that had been purchased and then this formula could take place to essentially award them either the whole area if they'd paid an appropriate amount or a smaller area within the boundary based on the formula that we're just discussing here.

A. Yes, the boundaries are always taken from the deeds.

Q. Yes.

A. Because surveys weren't expected at this stage. Surveys were expected before a grant was made but not necessarily at this stage. And often the boundaries in deeds were very vague and the effort was never taken to nail them on the ground or find out exactly where they were. The Commissioners would always say: "Within these boundaries as described in the deed, we recommend that so many acres be granted," and then the Governor would come in with his decision.

Q. The rest would be pocketed by the Crown. Is that correct? The additional acreage over and above the apparent-

A. Yes, the ungranted land, yes, within those boundaries.

Q. Yes, within the boundaries but they were effectively looking: "Did they pay a fair price," and they get the area that was for the fair price and then the Crown pockets the surplus over and above the apparent fair price.

A. That is correct. I suppose just on the word "fair price" it's just: "Yes, what price did they pay –

Q. Yes.

A. – and what does that translate into," and that's what they get and whatever's left over is what the Crown gets.

Q. Thank you.

A. Again it's says "within those boundaries" though and that's why with Pakihi everyone thought: "We're dealing with a 3-4,000-acre property," and when it was actually surveyed it was a 20,000-acre property.

Q. Yes.

A. Sorry, 16,000-acre property.

Q. Okay.

(16:09) DR GRANT PHILLIPSON TO TONY WALZL:

Q. Sorry, it's Dr Phillipson here. Can I just interrupt to also suggest Mr Walzl, there's a statutory maximum on how much people can be granted.

A. That's right.

Q. It's not that they could be granted-

A. Yes, I'm sorry that slipped my mind.

Q. Yes, it's quite an important limit-

A. It's about 2,500-

Q. But the Governor could exceed that if he decided.

A. That's right, yes.

(16:09) MS CLARK TO TONY WALZL (CONTINUES):

Q. The Commission didn't take the role of delving into the veracity of these claims. Is that correct? It seems to have been something of a tick box. Provided you could show certain things they wouldn't delve into the veracity of it, but they would say: "Yes, there appears to have been a legitimate purchase here." Is that correct?

I mean there is legislation associated with it and we can go there if we need to. But (inaudible 16:10:36) you can say that they needed proof that a purchase had occurred and so a deed is important. It's not absolutely necessary. There was latitude a deed not to be present. But in theory a deed would be the evidence that a purchase had occurred and that payments had been made. The deed of course records signatures that effectively would indicate that it had occurred. The second aspect though was that you needed to bring witnesses along from among the vendors who would effectively say that: "Yes, that had occurred and yes we still support it," and that would be the sort of standard of proof.

Now there has been lots of Tribunal investigation of that in different places as to what that really meant: how much did they enquire into it; those witnesses were they questioned; were hampered by a record left by the Commission, which is not a verbatim record, it's a formulaic sort of record. I mean there's quite a lot I can sort of say on that and we will I guess if we need to. So there was definitely a standard that had to be met so it wasn't quite a tick box, but that standard was rather low.

Q. Okay.

A. Certainly when it comes to questions of "what did purchases even mean from a cultural point of view and how did Māori view them and all that sort of aspect" and questions of "are Māori damaged by that land going out of their possession" like none of that was looked into it at all.

Q. Yes, thank you. In this particular case, it looks as though all the boxes were ticked, except for the problem of the date of the deed. From my reading, he tampered with the date but it still wasn't enough to get him in front of the cut-off. He was still over and above the cut-off date in the case of both of the deeds. Is that correct?

A. I mean it is to a certain extent. I mean I guess I'd argue a little bit that I don't think the boxes really were ticked. I mean there were so many loose ends like aside from the date-

Q. "Ticked" in inverted commas.

A. Well, for example, like one of the witnesses effectively said: "We got this reserve that all the flax swamps could still be used," which if you look at the map that's in my report it's like a massive amount in Pakihi, and yet

the Commission doesn't record that in their findings in any way at all. There's questions of how groups were still opposing specific areas being sold and that doesn't get resolved. There's a number of things they weren't ticked off. They were left hanging and unanswered and yet they still made their results. That's why I find the issue with the Commission that there were a number of things that were before them that were brought before them that they should reasonably have brought up or enquired into or raised that they ultimately didn't before they made their recommendations.

Going back to the dates. Yes, the two aspects is one having dates on it that were different than when the transaction happened and the second one is effectively giving the impression from the deed that all payments were made again before the cut-off date as well, when by their own evidence the payment was made in March and at later dates. That's another one of those issues that's overhanging that the Commission doesn't seem to worry about.

Q. So they overlook these matters. They don't appear in the final decision of the Commission and they don't make the Governor aware of certain quite pertinent matters that you've just pointed out. Is that correct?

A. Yes, no, I mean the whole file would go to the Governor. The Governor sees their report and the evidence is usually attached so the record is in front of the Governor. I mean the Governor would be as aware as they were. I suppose if the Governor had an enquiring mind as well, he might have picked up on some things.

I mean there's the other whole question as well not even raised in this report because it doesn't happen but in theory there was a Chief Protector of Aborigines was meant to be there to look out for Māori interests and they were meant to have a role where they watched out for things. In many of the Old Land Claims they don't even appear; don't make any comment; they don't get a sign-off. That's sort of the case here there's no sign of them. But, yes, the Governor did have all that sort of information in front of them.

There were lots of things not followed up, and this would have been on the file the Governor had too, when they sent in their application after the date –

Q. Yes.

A. – and they explained that: "No, we sent it in beforehand but I guess it didn't arrive so we're sending it in again," and the official sort of recorded: "Okay, well, we'll let it go ahead but they are going to have to prove that they sent it in first." Well, that was never followed up either.

Q. Thank you. In this case, the Court or the Commission said they recognised the issue in particular with the date, but they chose to recommend to the Governor that the claim be awarded and they said it was to be awarded on the basis of full and quiet possession. Essentially they took the view that Mr Wilson had been in full and quiet possession of the block and for that reason they overlooked the problem with the dates and made the award. Is that correct?

A. Yes, that's in the Pakihi block.

Q. Pakihi, yes.

A. Yes, they did. You know I've looked at quite a lot of Old Land Claims over the years and that idea of full and quiet possession featuring in a report is comparatively rare. He framed his whole claim up with that because he's come along with it's called a memorandum but effectively it's a journal showing that he had that full and quiet possession. Again, you don't normally see it. Normally it's a deed. It's a straightforward matter. But he was completely aware by this stage that the dates on the deed 27th and 28th put him out of line with the 14th of January proclamation.

Q. Yes.

A. He was trying to show that at that time he was in full and quiet possession. In my report, because I got that date wrong and thought it was the 90s, I sort of almost gave him the benefit of doubt because I did say "at least in his diary that he supplied to the Commission at least a deed was signed on the 17th" so at least the deed was signed, so I guess you could say that was full and quiet possession. But when you actually look at the 14th date and look at that journal it's very, very little. Like an agreement had been made and he was working on the mission premises so like one day's work

on the mission site seems to be what the Commission finds a full and quiet possession.

Q. Yes. He'd only arrived in town two weeks prior.

A. Yes, that's right. Indeed, it's odd to see that. You hardly ever see that. I mean there was a general Tribunal view in various findings that the Commissioners were there as much as possible to smooth over the settlers getting an award or claimants getting an award. I mean that's a fairly good example they bent over backwards to come up with that result.

Q. Yes. In the case of the Ngaio block the answer of the Commission was no –

A. Yes.

Q. – but hand it to the Governor and the Governor says yes.

A. Yes. They say no but they do say that they think a bona fide purchase had happened. So they are saying "we think it had happened but because of the rules we can't make a grant; we aren't able to make a recommendation for a grant". Because again, I mean Wilson didn't supply them with like a diary showing it was (inaudible 16:19:59). They had no, thing they could point to, to say: "Oh, well, it was occupied or in quiet possession and stuff." They didn't have the same latitude it appears. They still found that a bona fide purchase had happened but they didn't have the vehicle to be able to say that they recommended a grant.

Q. Are you aware of a matter that Luiten actually raises that there appears to have been some sort of prior discussion between the Commissioner and the Governor regarding the fact that the Governor was aware that the purchase had not been completed prior to the proclamation but he said: "Proceed and I shall be disposed to view it favourably?" Are you aware of that prior contact between the Commissioner and Governor?

A. Yes, it's in my report. What I think it refers to is that at a later date when Wilson is trying to get the grant he provides that information to the Governor, the Governor then, the Governor had changed by then to Governor Grey, and let him know that at the time of the hearing the Commissioner read out a letter from the Governor that said what you were saying. It wasn't so much a conversation the Governor like sent a note to the Commission to say that he'd be favourably disposed of that so

that's what he's referring to. The trouble is though when you look at it on file where that appears that actually appears with the mission claim; it's not on the Pakihi file. And either Wilson knows that or once again I mean it's turning out that Wilson is inclined to not tell the truth, so either he's not telling the truth to Grey and saying: "Fitzroy sent a letter to the Commissioner which the Commissioner read out saying he'd be favourably disposed." But that is on file in the CMS claim not the Pakihi one.

Q. Okay. So he was using it during the hearing by the Commission to essentially support the claim he was making.

A. No. It's just that later on when he was talking to Grey he was saying: "I got a thing from where the Commission effectively said the Governor was supportive of this." But, yes, apparently it happened after. He said: "After the hearing had been given and the evidence had been given the Commissioner read out that letter to him from the Governor."

Q. With regards to the flax swamps you make the point that it's quite clear under the deed I believe that the flax swamps were reserved to Māori.

A. No, the deed doesn't record it. The first time we find out about the flax swamps being a promised reservation is when the witnesses give evidence. The Whakatōhea witnesses give evidence in the claim. They're supporting the claim and they're not doing it as a complaint. They're just saying: "Yes, and of course all the flax swamps were promised to us." So it's not in the deed at all and that of course to me is yet another problem where such an important thing like that wasn't recorded in the deed.

Q. Thank you. And of course, it's obviously not recognised of mentioned by the Commission either, so either way they're not being preserved for Māori.

A. No, it doesn't feature as part of the report. The Commission had it's sort of a practice. They had this truncated practice. They seemed to have this practice that if a complaint was brought up they would record it in their report.

Those two witnesses effectively said: "There were two places that are regarded as having not been sold by their owners," and so when they say

that aspect of it, that gets included in the Commissioner's report. They say: "Yes, a purchase had happened except for these two exceptions." I've seen that before they do that. If ever a specific complaint is mentioned they will record it. They never investigate it. They never find out how big. There's never any evidence of it. There's no evidential record on it.

So they don't go and sort of say: "You mentioned this place: how big was it, where is it," they never do any of that. But they go through the formulaic thing that once they've got a complaint they do at least record it. So they record complaints.

I've seen this before where someone says: "We didn't sell that bit," it'll be in their report. In Pakihi those two places are in the report but because the flax swamps aren't sort of a complaint as such, the flax swamps don't make it into their report, even though they are as significant in my view.

Q. Yes, and you have conveniently provided in the map book a map of the flax swamps.

A. Yes.

Q. That's for the record at plate 14.

JUDGE DOOGAN TO MS CLARK – CROSS-EXAMINATION TIMING

Q. I think you've made it clear that all these matters that we are discussing they end up in the report and they do go before the Commissioner and they can form part of the Commissioner's consideration as to the final award that they'll make.

A. Sorry, do you mean Governor?

Q. The Governor, thank you. Yes, Governor.

A. Yes.

Q. Thank you. Okay. In this particular case, both the Ngaio block and the Pakihi block are awarded by the Governor. Then in the case of the Pakihi block very quickly Archdeacon Brown sells out his share and the Crown becomes invested in that particular block. Is that correct?

A. Yes. Just to correct that terminology. There was an option within the Old Land Claims paradigm to take scrip and scrip is where you effectively, so if you've a favourable recommendation instead of saying: "Well, I'd like it within those boundaries," you could sort of say: "I would like it somewhere

else or as an amount that I can use to buy land somewhere else." He didn't actually sell it. He just chose to take scrip for the amount of award that was his share of the recommended grant 863 acres I think it is.

Q. Thank you. And then the next stage is that there needs to be a survey of the block and this takes place sometime after the confirmation of the award by the Governor or is it shortly after or sometime after?

A. Yes, it's not an uncommon process for there to be quite a gap between the hearing and the recommendation and then people will have to go through various stages: they have to provide the original deed; they have to do a survey; they've got to do a number of things before they can actually get a grant. It's not an usual thing for it to happen sometime later. In this case, it got delayed because of three people being involved. And then Brown sort of taking the scrip and what form was the grant in. And for a while, Wilson wanted to take scrip and then we found out that would be difficult because his grant was now still tied up with Stack, the other remaining missionary, he decided that: "Well, I'll have my share awarded on the ground," et cetera. After all of that, it was by 1852 that a survey happened and the surveys rarely happened. I mean because it's a large piece of land the survey only really happened because Wilson sort of said to the Government: "You've got an interest in here," which they thought was only 863 acres. "You've got an interest in here, how about you do the survey and then take the cost of doing the survey out of my grant," and so the Government agreed to do that. Because normally it's up to the applicant to do the survey but the Government in this case did a survey because it had an interest and that happened in 1850 – I need to check that date.

Q. Yes.

A. It was over by the 28th of February 1852. I'll check but I think, yes, around 1852.

Q. Thank you. It was at this time that we find that the Pakihi block is actually 11,470 acres and the Crown takes the whole of the excess over and above the amount that had been awarded by the Governor. So that was a worthwhile survey for them to undertake, wasn't it?

A. Yes. They actually find just by following the boundaries around it was actually 20,000. Sorry, it was 5,000 acres more but one group completely would not let the surveyor complete that part of it. So that 5,000 it's a bit unusual that it dropped out really because there had been a finding that the purchase had happened and so it's odd that they let that 5,000 drop out. But the surveyor effectively said: "I'm not allowed to do that 5,000," so they did what they were allowed to do or what they were able to do. As far as the Government from that stage having that land on paper they did. As a concept and on paper they had an interest in that extra land. I mean they didn't take any steps to actually do anything about it but on paper they had.

Q. I think you said that was even a surprise to Stack and Wilson that the Government took the entirety of the excess for itself the entire excess acreage that was discovered under the survey, even they didn't expect that the Crown would take that. Is that correct?

A. Yes. I mean when there was extra acreage Wilson was quite delighted because he just thought he'd get the third share of it. Well, they weren't quite exactly equal third's, they were unequal thirds, but he thought he'd just get his share of the extra because even he didn't understand the surplus lands rule. But he was told that: "No, your grant still is the same. It's the Government that gets all the excess."

Q. Thank you. At this stage, he still doesn't have a Crown grant, does he?

A. No.

Q. No.

A. Doesn't get one before the war.

Q. No. Let me know if this is going outside of your purview, but it's not until the raupatu occurs that Wilson sees his opportunity to get a Crown grant. Is that correct?

A. Yes. I mean Jane Luiten has done it in more greater detail, but my understanding that his son, who is now the Commissioner, effectively gets the Crown grant for the family.

Q. Yes, the new generation of Wilson gets the Crown grant.

A. Yes.

Q. Okay. I think I will leave my questioning there and I'll follow on with Ms Luiten tomorrow. But have you explained it sufficiently the issue of the date in the way that you wanted to?

A. The proclamation date?

Q. Yes, the incorrect date.

JUDGE DOOGAN TO MS CLARK – TRIBUNAL CLARIFY DATE

Q. Thank you those are my questions.

A. Okay, thank you.

(16:33) MS WITEHIRA TO TONY WALZL:

Q. Tēnā koe **greetings** Mr Walzl. Ko Josie Witehira tōku ingoa. **My name is Josie Witehira.**

A. Kia ora.

Q. I am one half of the legal representation for Wai 203 Te Whānau a Mokomoko.

A. Āe.

Q. My friend Ms Mataira might have some questions for you tomorrow, if I don't cover everything off, but just warning you now.

A. Āe.

Q. My first question, I just wanted to put something to you about Wepiha Apanui or Te Pono his evidence against Mokomoko.

A. Āe.

Q. You note on I think it's page 460 of your report, you're discussing the evidence of Wepiha Te Pono. It's at paragraph 3.339 and you discuss the fact that the reliability of his evidence was brought into question because of his potential implication in the death of Völkner, as well. I just wanted to bring your attention to one of the reports in the bundle of documents that I filed. It's the first document titled "Mokomoko – Our Tipuna". At page 9 of that document, page 12 of the bundle. This is #E002, sorry.

A. Yes I have that.

Q. Yes. So it's right at the top there the first paragraph it says-

JUDGE DOOGAN TO MS WITEHIRA – HARD COPIES #E002

Q. So this is the first paragraph here, it says: "There had been a history of disputes between Mokomoko and Wepiha over the tribal boundary near the Maraetotara stream. The section of land between this stream and the Ōhiwa harbour being vital if Ngāti Awa were to have access to the rich food source of the Ōhiwa harbour."

JUDGE DOOGAN TO MS WITEHIRA – KEVIN WERE (AUTHOR), WAI 894

Q. So I just wanted to ask if you would accept that, given this information that Wepiha's testimony against Mokomoko would also be unreliable on the basis that he would have his own personal interest in testifying against Mokomoko potentially and gaining land from his, yes?

A. Yes. I'm not sure if I mentioned in my report that I was aware that there was animosity between the two. I may have that in there already. But I didn't know the detail of it until I saw your bundle that there was quite a history and Mokomoko's role on the Ōhiwa harbour and that role he was playing as a guardian et cetera. I think I was already aware that there was some such animosity between the two.

I mean Wepiha Te Pono was probably partly motivated by the fact that others were accusing him of having a role and so he was wanting to defend himself. But then he ends up putting like all of the blame on to one particular person which is Mokomoko and I mean this clearly is an important background in regards to understanding why.

There were two witnesses that are unreliable. There's him and the Portuguese chap, Jahus. I never knew what the motivation for Jahus is but the motivation for Wepiha is here.

Ka pai. Yes, thank you. The next set of questions I have for you is just in terms of Te Whānau a Mokomoko and their distinct experience of the military invasion. I think it's at page 737 of your report. You discuss the raid on Mokomoko's two pā at Paerata and Maraerohutu. It's from a quote. But I didn't see, I might be wrong I may not have noticed, much more detail about those raids in particular and the impacts that that had on Te Whānau a Mokomoko. Is there a particular reason why you didn't go into too much detail on those particular raids?

WITNESS REFERRED TO #A030, PAGE 737

A. Yes. The material there on those raids is exactly the story as recorded by soldiers. As far as I know, that's the full extent of the documentary record left by soldiers in regards to that. I have to say, I wasn't aware of this record and since you filing it, I've looked at it. Plus, I've also listened to the cross-examination over the last couple days and there's obviously a completely different counter-story, a shocking counter-story. I mean it really does raise the question. I think the question is always raised as to whether the soldiers' stories are telling everything, yes, it's always a question. I mean it's the question with any source but it's a question with this. But this is one incredible example of how different the soldiers' accounts are to an oral traditional which is horrendous and very, very specific, closely held.

Q. Yes, thank you.

A. I mean I wasn't aware of the other source –

Q. Yes.

A. – and there was no evidence of this in any of the soldiers' accounts.

Q. Ka pai. Yes, that's okay. I did want to then point you to the evidence of Tuiringa Mokomoko. No, that's not where I'm point you. Sorry, it is the second document in my bundle of documents. Sorry, my brain is in hīkoi mode. This is entitled *Wai 203 and Wai 339*. This was also filed in the Urewera Inquiry. If I take you to page-

A. Sorry, I'm not just there yet.

Q. Sorry?

A. I'm not just there just yet.

MS HOLMES-MUSTART TO MS WITEHIRA – CLARIFY PAGE NUMBER

A. Thank you.

Q. No, sorry, it's 42 of his report. Aroha mai, it's page 64 of my bundle.

WITNESS REFERRED TO DOCUMENT #E002 PAGE 64

A. Okay.

Q. Ka pai. So down right at the bottom there is a paragraph that says "According to Were" it says: "The surrender of Mokomoko and loss of the other men in the battles left the hapū defenceless. The women were hunted like animals by the army and had acts of violence and degradation committed against them when captured. They endeavoured to shelter in

the bush on Tūhoe land, living in fern roots and berries, but were eventually forced to leave as a result of pressure on the Tūhoe and their army." I just wanted to ask you, if you would agree that the experience of Te Whānau a Mokomoko was quite distinct from wider Whakatōhea in regards to how they were targeted in the raids and were displaced as a result of that.

A. I mean, again, the specifics that are mentioned in this evidence again aren't reflected in any of soldier records at all. Certainly, if this is the perspective of the whānau as to what they faced, then it is quite an extreme record as well. Especially considering when you look at the official record. I mean it's almost an amicable thing. It shows that Mokomoko surrendered in a somewhat amicable way. And within a really short time he is saying: "I will help you guys out to finish your job and all that," and so from that you actually get that the whole process was very amicable. It's almost a surprise when suddenly whatever weeks later he gets arrested. This is a complete different experience than that record.

Yes, that seems to be the case. The next set of questions I want to ask you is just in terms of the label of rebel. This is more general but I wanted to flesh out some of the impact that Christianity may have had on that label. I know that you speak to the experience of the Christian missionaries in Ōpōtiki prior to the raupatu but I wanted to bring your attention to a couple of quotes that you put into your report. The first one being on page 182 you're quoting Father Louis Rozet.

A. Yes.

So it's right down at paragraph 2.40 and it says: "The natives of this country are like big children." And then later you go on to quote another father, August Chouvet.

WITNESS REFERRED TO #A030 PARA 2.40

A. Chouvet, yes.

Q. Chouvet thank you on his view on the Whakatōhea people. This is on page 192 of your report at paragraph 2.64.

WITNESS REFERRED TO #A030 PARA 2.64

A. Yes.

Q. Where he says: “Here the people are childlike, if they have childlike malice they also have simplicity.” And later on, a Crown agent rather than a Christian missionary, J A Wilson, at page 213 you quote him.

WITNESS REFERRED TO #A030 PARA 2.119

Q. You quote him as referring to Whakatōhea or Māori in the district as the heathens. I just wanted to see if you would agree that these Christian ideals of Whakatōhea being “childlike” would have created hierarchy or othering in their mind and would that have continued on through the Crown’s psyche to when Mr Wilson was there and he viewed them as others or less than? Would you agree with that?

A. I’m sorry, you mean second Mr Wilson, Crown Agent Mr Wilson?

Q. Yes.

A. Well, the first part of the question I suppose. I mean because in both cases the people who are commenting have lived among the community and presumably had a capacity to speak the language as well, and yet somehow still wasn’t able to understand how the community worked seeing them in a certain way. I’ve forgotten the name but I think it was Joan Murch in Muriwhenua sort of mentioned and she was talking within land transactions how, even if Pākehā can live among a Māori community for ages, speak their language and know their customs, they still don’t know what really makes that community tick or how it works, really.

Q. Yes.

A. I think the first part of it is this is showing that. That to see these people who are grown up to sophisticated people with their own laws and all that as children. They might be children and inexperienced in Pākehā ways but they’re not children. So that is the first part of it. The second part of it is a bit of a long trail between where we get to the second part as Wilson Junior Crown Agent seeing them in that sort of way. I probably couldn’t comment on making that link so easily. Other than to say, however, that Wilson Junior was an adult in the 1850s and he was the one who was experiencing the bad conduct that his father writes about and what they saw was atrocities as against their cattle being killed and their property and all of that. He definitely would have had a view of Whakatōhea from his own experience as a private person trying to farm there. Although,

again, I've not got the specific evidence on how that must have influenced him as a Crown agent making decisions about Whakatōhea in the area, there must have been some impacts from his own private experience which seems to be really unpleasant.

Q. Yes.

A. They say “from two years after the purchase right up until now” like eight years from their point of view sort of torment, I don’t think he’s going to forget that when he’s got the chance to consider how to allocate land and deal with the population. Yes, but there's no specific evidence on that. But I'm not able to so much comment on how he viewed them whether they were like his children or whether there were levels and that sort of thing but there's certainly that other aspect.

Q. Ka pai that’s okay. Yes, I think I was more getting at the sort of continuous othering that Whakatōhea experienced by Pākehā that were in their communities but I think you definitely touched on that in your answer.

A. Yes. I mean you are right. Like even those visiting Crown officials like when they see a rūnanga in place in the 1860s they say: “It's not a very rūnanga and we need to reorganise it and make it smaller and they need to do different laws and all that.” I mean again these are grown people who found their own rūnanga and they say: “It's not good enough you should do it that way,” so it's a similar thing. That’s the othering in saying that their own choices aren’t good enough.

Q. Yes, ka pai. This is my last question really. I just wanted to point you to the evidence, again in my bundle, Keri Ratima. This is on page 10 of her evidence. It’s page 264 of the actual bundle. It's at paragraph 30.

A. Yes.

Q. It's about midway where it says “the Mokomoko elders” that’s where the sentence starts. “The Mokomoko elders recall being blamed for the land loss and the poverty that the people found themselves in. This became part of the heaviness that descended on the family of Mokomoko through the generations. The children would hear it, the grandchildren would hear it, and it just plants itself in the very depths of your heart and it holds.” From reading that, would you agree that this othering that begins in the experience with Christianity going right through to Mr Wilson through the

raids and as a result of being labelled rebel just continued throughout the generations and impacts Te Whānau a Mokomoko up to today as we see in this evidence?

A. Yes, I mean I'd seen this paragraph before because I think you addressed it to one of the other witnesses and so I think it came through then. I mean I thought when we were sort of talking about “othering” we were generally talking about all Whakatōhea in regards to missionaries and stuff and I think that’s there.

I think this paragraph here is a whole new other thing. Because I mean this paragraph here, I think, if I'm reading it right, is that the whānau were being blamed by their own people for it for all that had happened which of course wasn’t the case. But it goes to show you the sadness of all Whakatōhea needing to find someone and then of course the effect on the family is completely spoken of here. Yes, it is an “othering” but it's an “othering” at another level specific to this whānau because their ancestor got executed and blamed for the killing.

Q. Yes. I think I was trying to get at, I understand that Te Whānau a Mokomoko have felt “othered” within Whakatōhea and that it is their own people. So I think I'm trying to connect the Crown’s “othering” of Whakatōhea and Te Whānau a Mokomoko as part of Whakatōhea to that generational impact.

A. Yes.

Q. Yes.

Q. I suppose one other, it's not in my report but it will be in my next one that I'm currently working on which is on the socio-economic, and it's about the experience. It's actually recorded by the Inspector of Schools around about the 1880s or so. It was to do with Whakatōhea children who were going to school and which were going to their own school, but to do that they had to pass apparently Pākehā areas and stuff like that. The children in there were sort of taunting them: “You're all losers. You were beaten in a war.” The stigma went right across Whakatōhea and laid on them heavily and then here’s another level even higher for a particular whānau within that. Yes, I mean that’s the only example I found but still thought it was a pretty heavy one, especially for the inspector.

Q. Yes.

A. Because the Inspector of Schools, and like you'll see it in the other report, but in the wider report he's saying that in this area there's a lot of prejudice against Whakatōhea. Like I said I mean they lost the war you thought there wouldn't be any prejudices but no that seems to get labelled on them at another level, yes.

Q. Yes. Okay, well, thank you very much for your report. That was all my questions. I really enjoyed reading it. Thank you.

A. Thank you.

JUDGE DOOGAN ADDRESSES TONY WALZL – MIIH (16:56:51)

JUDGE DOOGAN ADDRESSES TE MINENGA – MIHI (16:57:01)

MIHI (PROFESSOR TOM ROA)

KARAKIA WHAKAMUTUNGA (PROFESSOR TOM ROA)

HEARING ADJOURNS: 4.57 PM

HEARING RESUMES ON WEDNESDAY 20 NOVEMBER 2024 AT 9.02 AM

(09:02) PROFESSOR TOM ROA: (MIHI)

Mōrena katoa. Kei taku rangatira e Kura nō roto o ngā ata, otirā te tīmatatanga o tā tātou hui, ka riro māku ngā karakia, māku ngā mihi, heoi anō he mihi tēnei i ngā pae maunga Te Whanganui-ā-Tara, otirā ngā mana whenua o te takiwā tēnā koutou. Kia inoi tātou. **Good morning all. To my chief Kura, in the morning and at the commencement of our hearing, it is my responsibility to give karakia and to acknowledge everyone, so I acknowledge…Wellington and the local iwi of this region greetings. Let us pray.**

KARAKIA TĪMATANGA (PROFESSOR TOM ROA)

(09:03) JUDGE DOOGAN: (MIHI)

Mōrena koutou. Tuatahi, he mihi tēnei ki a koe Ahorangi Roa, nāu i whakawātea te ara tika. Ka mihi hoki ki a koutou kua huihui mai nei ki te rā tuatoru, nau mai. **Good morning. Firstly, I want to acknowledge Professor Roa for clearing the correct pathway. I want to acknowledge and greet everyone gathered on day three, welcome back.**

Welcome to all the new counsel who have joined up today. Mr Moeahu tautoko ana ahau **I endorse elder** matua Tom's mihi to you, welcome.

JUDGE DOOGAN ADDRESSES MS TEREI-TIPENE – TIMETABLE

(09:04) BARNEY TUPARA: (MHI, APPEARANCE)

Taihoa. Tuatahi, he mihi tēnei ki a koe e te pāpā te rangatira Professor Tom Roa, nāu i whakatuwhera tō tātou hui, te nohonga o te Taraipiunara i tēnei ata. Tika tonu ka tuku whakamoemiti ki te runga rawa hei manaaki, hei tiaki ēnei ngā kōrero e pā ana kei waenganui i a tātou i roto i tēnei rūma, i roto hoki tēnei whare e tū ake nei. **Just a minute, firstly, I want to acknowledge you the elder and chief Professor Tom Roa, for it was you who opened our hearing of the Waitangi Tribunal this morning.**

Tika tonu ka tuku whakamoemiti hei whakatika hoki ngā whakaaro, ngā whakaaro mōhio tonu ngā kōrero me ngā whakahoki ō inanahi kei mua i te Whare Pāremata. He inoi whakaaro hoki mō rātou ka tū kei mua i te kāwanatanga i taua wā. **It is correct and right that we give thanks to Almighty God to care and these discussions that are taking place in this room and in this building standing here. It is also appropriate that we give thanks to address the views that we know all of the discussions and the haka from yesterday that were before the House of Parliament and we want to pray for those who stood before the Government at that time.**

He mihi hoki ki a koe e te rangatira Kura, e noho ana ki te taha o ngā rōia mō te Karauna hei kaikawe kōrero, hei kaikawe whakapapa, hei kaikawe tikanga. Kei te mihi ki a koe e te rangatira. **I also want to acknowledge you Kura as you sit alongside the Crown lawyers to convey their kōrero, whakapapa, and their tikanga. I want to acknowledge you chief.**

E te Kaiwhakawā, koutou ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi kei te mihi ki a koutou huri noa ki te whare. Ko Tupara e whakakanohi ana kia whakaae mai ki a koutou e te rōpū e whakakanohi ana i tēnei rā ā-tinana mō ēnei: nā Wai 2066 Takaparae Papuni te kaikerēme ko ia ō Ngāti Ruatakenga, me Wai 1789 Bella Savage ko ia hoki o Whakatōhea, Ngāi Tamahaua me kī Te Whānau ā Harawaka. Ngā mihi. **To your Honour and the members of the Waitangi Tribunal I want to acknowledge you and to everyone in the house. Tupara appearing acting in-person for Wai 2066 Takaparae Papuni is the claimant and he is of Ngāti Ruatakenga, Wai 1789 Bella Savage of Te Whakatōhea, Ngāi Tamahaua, and the whānau of Harawaka. Thank you.**

JUDGE DOOGAN ADDRESSES TE MINENGA – TRIBUNAL PANEL (09:06:02)

(09:06) MS CHELSEA TEREI-TIPENE: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou katoa. Sir, I'm obliged to thank my learned friends for starting ahead of me yesterday. I'm aware that the timetable went a bit ahead and I'm grateful to my friends at Wackrow Panoho for starting out.

(09:06) MS TEREI-TIPENE TO TONY WALZL:

Q. Tēnā koe Mr Walzl.

A. Āe, kia ora.

Q. My name is Ms Terei-Tipene and I appear alongside my colleague, Dr Downs. We are counsel for Ngāti Ngahere. However, we are the ones that have a bit more of a generic approach to the cross-examination, having supposed to have lead you out yesterday.

A. Right.

Q. Before I start questioning, I have to say it's quite a privilege to be here to have a discussion with you today. I've read a lot of your work across the inquiries and a predominant amount of my work being up in Northland.

A. Yes.

Q. When I saw that the opportunity was there to have a discussion with you, I was excited to be able to take that up.

A. Thank you very much.

Q. I'd like to start really around kind of the very front part of your report, where you're talking about the sources that you used to be able to provide us with the narrative that's within the report in relation to the different things that are happening. In the source discussion at your page 22, and I do kind of intend to kind of have more of a discussion and not really take you to your report, assuming that you're aware of its content, but if what I am asking you you're not quite sure if you need a reference I do have it. You talk about two overall deficiencies to the source collection resulting from the fact that the sources come from Pākehā and that those Pākehā are located in or focus on Ōpōtiki. That's at your page 22.

WITNESS REFERRED TO #A030, PAGE 22

A. I'm sorry, I will probably always go there.

Q. No, that's cool.

A. Yes, it's just an old habit.

Q. I just actually wanted to clarify, first, are you saying that the deficiency in the source collection is that the sources are predominantly coming from Pākehā or are you saying that of the sources that are from Pākehā the deficiencies are a lack of individual or group identity and focus on Ōpōtiki?

A. Yes, I mean I think it's both. I mean in some places you will get like a lot of outward correspondence from chiefs that might indicate how they are thinking et cetera, but because there isn't that relationship with the Crown you don't have much outward information coming out at all. Most of the sources tend to be more Pākehā than I would have expected in other places so it's partly that.

And then the second part of it is that I think, as mentioned in the first bullet point at 0.15, for some reason which was a bit surprising for me, like especially when you're dealing with missionary sources, I mean it hardly ever mentions people's names. I mean groups is a different thing. That often doesn't come up like if you're looking at missionaries they don't sort of say: "I went off to see Ngāti so and so." You don't often see that but certainly people's names.

But Wilson hardly ever recalls them. I think I mentioned somewhere that there's this really weird thing about Wilson that when he talks about his day-to-day business or whatever at the mission station he hardly gives any details, but when he goes off to Te Kaha or what not he writes screeds and screeds and screeds. So that's what I was referring to. To a certain extent, they are oddities; they're not the norm.

Q. Thank you for that because that was what my next question was. It was you know, is it common in kind of a broader historical context, which you touch on at the beginning of your report, for there to be a lack of specificity when identifying individuals and groups in the source material?

A. Yes. Well, I mean if you've worked in north and you'll see when those missionaries write about their chiefs and stuff they'll mention people's names all the time but hardly ever get mentioned here.

Q. Ka pai. You make reference to that, that he does provide detail in other areas. Do you have any views around what some of the reasoning for

the lack of naming of individuals and then even less again of hapū why that might have been the case in relation to Ōpōtiki?

A. As I said hapū is – or, in fact, actually he does mention hapū. I mean when he purchases the land he mentions it's from Tamahaua and I was rather surprised at that that he has mentioned it. And then when he goes up to Tōrere he mentions that the local people of Ngāi Tai and I was rather surprised because often missionaries don't name hapū.

But any reason for it, no, not really. I think it was just his personality as a diarist. Like, yes, he doesn't have long entries. I mean I say the same with Davies as well. He was a short diarist, a journal recorder as well. I think it's just the personal nature.

I mean you could speculate that there's something else going on because of his history with the local people. I mean it would be for people to consider that. I mean if his indication of his letter to Grey when he's talking about his relationship with the local people and talks about (inaudible 09:12:31) position and bad conduct may be you could draw something from that but I mean that would be speculative to do it. There's no obvious reason why he writes that. I think it's just how he is as a diarist, a journal keeper.

Q. In relation to that is the lack of individual identity is that the case right through the source material in the period of time that you report is for, or is it really kind of more in that earlier period when we're talking about missionaries?

A. Again, it sort of certainly happens when the soldiers are leaving a record during the invasion so there's a bit of that as well. I mean they're just talking about fighting the natives and the natives are here and there. I mean some names do come out. When there's lists like people who signed the Oath of Allegiance they'll record names but they tend to not really identify hapū or people; they probably didn't know who the hapū were. The Crown officials when they finally start touring in the early 1860s, yes, I mean they're recording names. Turton and things, yes, they are. But that's again a very small record just three tours left by three officials. Other than that because there's not that contact and relationship there's not much of a record, no.

Q. What do you see as being the impacts of a lack of capacity to be able to identify individuals in the source material? I guess I'm referring to, if you don't know who you're talking about or who the narrative is about, then to what extent do you know about them as a people and the impacts that that's having on them when you're engaging with them in any capacity?

A. Sorry, when you're talking about impacts, are you talking about the impacts on Pākehā at the time or are you talking about the impacts on me in writing this report?

Q. I'm talking about the impacts on the narrative with a lack of capacity to identify individuals.

A. You mean for all of us here or?

Q. Yes, like what does it do to the narrative?

A. Right, okay. Well, I mean it certainly makes the jobs of all you counsel who are representing hapū groups very, very difficult because the impact on hapū is I mean we only get just a fraction of it. It's very, very hard to assess. Yes, I think that would be the major impact you don't really get a clear idea. I mean there are exceptions of course but still generally speaking you would think you would have got more detailed information and you'd be able to know: "That this hapū was here and when there was an attack that was their village that was attacked and therefore the consequences for them must have been this." But with this bland overview of things you just sort of don't know. It's harder. That's one I can think of. I think that's the only one I can think of at the moment. I mean it's a good question and I'd like to answer it fully but not another one jumps to mind just yet.

Q. Ka pai. No, thank you.

A. It might come out in questioning.

Q. Yes. That was a thought that I had in terms of how does it impact the narrative of the report when we look back.

A. Well, considering the importance of hapū, and I was watching Professor Williams on Monday and he was sort of saying how important hapū are as the body that's making decisions on resources et cetera, considering they're so important to not have that information about them how they are each impacted, yes, I think that causes quite a difficulty.

Q. Ka pai, thank you. Just going over to your page 23. You discuss the challenge presented by the source material because it includes falsified documents and evidence presented around missionary land claims and Völkner's murder which added a complexity to try and get a real narration of the events. Again, kind of zooming out and taking a bit of a wider historical lens on it, is that common for documents to be falsified at this period of time?

A. Yes, I mean the two main areas of falsification are around with Wilson around the purchases that's one and then of course the testimony given on what happened during the murders and stuff like that, Völkner's killing. Yes, I have to say I mean, as you said, I've been doing this for a while and it's really unusual and there were so many things in here that were really unusual to come across. I mean especially like in that missionary area I was very surprised by that. I mean you do see examples of different people who are doing different things in front of the Old Land Claims Commission but usually the missionaries you'd assume they're comparatively straight-laced in their claims and so I was surprised at that. I mean so surprised that I probably spent far too much time on it in this report because I almost can't believe what I'm sort of seeing so I go over and over it again and what not so sorry about that. So that's surprising. And then the other side of it is that testimony. I mean I don't know how many accounts we have of the events there. I think there must be more than 30 which is unusual and it would be great if they all were the same but they're not.

Now a lot of people when they see that sort of thing they'll just say "it's conflicting accounts" but I didn't want to leave it there. I thought it was really important to like almost forensically go through them all and see if you can form an opinion on them because I mean it's something I like doing personally as well.

Again, a lot of effort got put into spelling them all out and weighing them all up and forming a view on those accounts which often you don't need to do you know get down to that level but I felt it was important. There were questions on that about Völkner's killing and who was responsible. Yes, I mean this is like one of the most difficult things I've done and I've

been kicking around doing these things for a while so they made that more challenging.

Q. Well, you actually kind of went into what my question was and that was really around the implications of dealing with falsified documents of that nature. I guess I was wondering, even though it's a huge job, but is it confined to like the burden of cross-referencing and trying to corroborate other sources of evidence, or are there other limitations on top of that that you had to navigate because of the nature of the documents that you're dealing with being falsified?

A. Well, for example, one implication from the documents being falsified in the context of Wilson's purchases is that it then made it difficult to know exactly what was true. "When was a deed signed?" I mean things that you would never have to think about. A deed's signed that's it. "But when was it actually signed? Was there a deed signed? Were there payments made?" As soon as you get your evidence undermined in a situation like that, something you can't rely on, someone said something and you've now got proof that that probably isn't true, it then just puts the cat amongst the pigeons as to so what's true.

Again in here, I just put up so many scenarios. "This could have happened or this could have happened or this could have happened." And then at the end I form the view on what I think happened but I still would say "it's down to that" is what I think happened and that's often something you don't need to deal with. I think that was the main flow-on effect that, yes, you start getting into that ground. I hope that I keep using language that reflects that when things aren't certain I say they're not certain, yes.

Q. I can confirm on my read of the report that you do that. You do, do that quite succinctly throughout the report around like the limitations of the source material or the conflicting views that exist. I was just interested to kind of tease out your views around how difficult it is to kind of manage that type of difficulty with source material.

A. Yes, like I said, it's an unusual situation I felt.

Q. Coming to my last lot of questions in relation to sources, I come down to your paragraph 0.17 on the same page and then over page 24 and here

you're talking about your cultural expertise and express a caution around personal frames of reference and paradigms of understanding. You mention particularly Pai Mārire where cultural motives and customary values might not have been well understood. I guess I'm interested to know what that means for the narration provided in the report.

A. Well, I was just checking where have I said this here.

(09:23) JUDGE DOOGAN TO MS TEREI-TIPENE:

Q. Sorry, Ms Terei-Tipene. Can you just clarify that question. You're asking Mr Walzl to clarify what he thinks the implications of these issues are for his report?

A. Yes. Because he talks about being quite careful about viewing things like Pai Mārire from a particular frame of reference or paradigm of understanding.

Q. Yes. But I think that my question was simply this, that having made those qualifications or explanations of the approach to the sources and the report, isn't the question of implications or how that then plays out really a matter not for the author of the report having made these reservations but really a matter for what others make of the report, including the Tribunal?

A. Yes Sir.

Q. So what can Mr Walzl properly say more than he's already said here is my question?

A. Well, potentially, perhaps if I ask my next question after that.

Q. All right, thank you.

A. If that still doesn't alleviate that question, then I'm happy to-

Q. All right.

A. Because I understand what you're saying which is kind of why I was interested in his perspective in relation to the fuller picture I guess.

Q. Okay, thank you.

(09:24) MS TEREI-TIPENE TO TONY WALZL: (CONTINUES)

A. If I might say, yes, I think I was getting where you were going to and I was able to answer it. But we'll hear that next lot of question.

Q. I guess what I was kind of coming to was you've said that because the source material is largely coming from a Pākehā paradigm, does that mean that the Māori motivation and reasoning for aligning with something like Pai Mārire isn't equally represented in the report?

A. Yes, I mean absolutely. Absolutely and more. For a Pākehā historian to have an idea of the motivation of tangata whenua groups, they either have to spell it out in writing themselves and leave a record of it, or a Pākehā has to report on it and leave a record of it. And seeing we don't have that here, the first part of it anyhow, what the motivations for Whakatōhea are, not only with Pai Mārire but at many points, can't be established by the written evidence link that's available. It's almost to complete the picture what I believe you would need almost is a tikanga scholar, who now having had the written record hopefully accurately laid down and documented in this report, would look at that and say: "I think that's what's happening here. They went from here to here, I know why they've done that."

I mean firstly there's two levels. There's the local tikanga people who sort of say: "Look, they went from here to here. We know this place and they've gone there for that reason," so that's the local thing. But then even at that academic tikanga aspect they'd sort of say: "Well, what they're doing here, when they say they're doing this, this, and this, and it appears like in a Pākehā paradigm to just be that: "No, what's really happening here is this is happening here." It's not even just that we don't know the motivations but it also means that that overlay of interpretation of what might be happening isn't in here.

Q. Yes, thank you. I mean another component of that might be, for example, the Ngā Kōrero Tuku Iho hearings that we've had in that that is a layer of kōrero from the claimants' perspective. But certainly you would agree that those different components would create a more fuller picture of the narrative associated with things like Pai Mārire and that there is a fuller picture that exists. It's just not completely in your report.

A. No, that's right I would completely agree with that.

Q. Ka pai thank you. In kind of keeping along the same theme of Pai Mārire and the killing of Völkner having discussed kind of frames of reference,

would it be fair to say that in what you have read that the Crown interpreted and understood Pai Mārire from its own western paradigm of understanding?

A. I mean, yes. I think the way I reflect it in the report is that when it emerged the Crown really wanted to know whether it was going to be a force for peace or a destructive force from the Crown's point of view anyhow. We can go to them if we have to, but there are different references. It would have been even interesting to do a wider study, but virtually every sort of magistrate in every area was writing in what was happening in the area. They were trying to gauge what's this all about, what does it mean and whatnot. Sometimes at the beginning they thought: "No, this is peaceful and there's a good message here and I think we're going to be okay." But then when it suddenly changed I mean they were seriously confused.

If you look at Fitzgerald's speech that he gives in Parliament when he's talking about Pai Mārire he's saying: "I've talked to so many people and I've talked to other Māori as well and experts and stuff like that and even they don't know what's going on," and stuff like that. So they are declaring that they don't really understand it at all.

Yes, but some of the actions that we've seen it's almost: "I don't care what the reasons are and we're not going to tolerate those. I don't care what the paradigm is, if people are getting killed it's our job to stop that sort of thing." Yes, I mean they virtually declare and it's in the report that they don't really know what it's about or what it's trying to achieve or what it's saying or anything.

Q. In relation to that, and I picked up on kind of you saying like that they don't care about what te narrative was, that they saw a religious movement that was associated with radicalism and violence and so then they felt when it progressed to a killing that they felt that they had to do something about it. That decision to feel like they had to do something about it, would have been done like without regard for any of the possible cultural motives that might have been in the purview of Whakatōhea at the time.

A. Yes, I mean they brought their own paradigm which was a law and order one, and in that paradigm they have their views on what are crimes. They believe that crimes had been committed and so they were acting against

them. In some other cultures some of those things might not be seen as crimes. Even if it's killing it still may not be seen as a crime if it's done within a cultural context that everybody understands. I mean there's an interesting question that we might have about why I used the word execution and the Crown brought it up in questioning as compared to the killing of Völkner, and we can talk about that if we need to. Yes, they had a paradigm and that paradigm was crossed and therefore, it didn't really matter what the motives for it were they needed to respond. I mean they're acting in accordance with their paradigm and their understanding of their duty as well. It's not an anti for the sake of being anti. But yes, it's certainly coming from their paradigm.

Q. Coming to have the discussion about the Crown-Māori relationship which you've already kind of touched on a little bit. You say in your introduction of your report at page 14 that for much of the years between 1840 and 1871 that tangata whenua of the Northern Bay of Plenty had little interaction with their Treaty partner. And then there's various points throughout your report where you're talking about little indication of a close relationship in the first two decades after the signing of the Treaty. But by 1861 and kind of 1862 Whakatōhea at Ōpōtiki are not satisfied with their relationship with the Crown noting that the Crown wasn't assisting them with their local issues and needs. As a consequence of that dissatisfaction, the Treaty of Waitangi was repudiated and all Whakatōhea were said to be Kingites. What is meant by the Treaty was repudiated in that context?

A. Well, we literally have that as what I think are three or four words recorded by a Crown official. We don't know really what they said or what they might have meant but I suppose if we're moving into the opinion part of it, my opinion would be that they were aware that they had a relationship with the Crown from signing the Treaty at least on a piece of paper they signed it. When that happened again we don't know much about that signing but presumably it still indicates an intention to do something together otherwise they wouldn't have signed it. Given the heightened level of complaint recorded by those officials as well as my thesis that's throughout the report that I believed that their knowledge that the Crown

held some of their land and had some of their land they'd had that knowledge since 1844 when Wilson started mentioning scrip and that's the Crown was here and stuff like that. I'm guessing that at that particular hui and probably in the passion of the hui because it seems like the officials even comment on how explosive that hui was; there's a phrase in here.

It was obviously an impassioned one so within that context. But they were always saying: "Well, the only connection we've got with the Crown is this thing the Treaty so we'd rather not have that." So that's what I think the repudiation meant. I don't think it's a deep thing of saying "we're repudiating partnership" et cetera. "It's just that we've got this one connection and we're really annoyed at everything and so let's get rid of that one connection and we'll repudiate it."

The interesting thing though is I think it is something that's said that is said within the context of a hui because the hui carries on and the officials still work with them and at the end the position they end up in is that: "Okay, we'll try these new institutions after all." I think it's a record at a hui; a positioning statement and stuff like that, however, I still don't think it was just hui jargon. I think there was something behind it. My opinion of it would be what I've just said, the only connection they have got, they'd almost rather not have as a statement in a hui to make.

Q. Yes. And so, yes, I'm kind of following the chronology, or the timeline of the Crown-Whakatōhea relationship in the latter part of 1865, basically go from 1840 to the kind of 20 years or so, not a lot of interaction or relationship and then we got into the 1865 period and then it seems like it's all on. The Crown, on the back of the killing of Völkner, invades Ōpōtiki and shortly after confiscates land and we see hapū being relocated. Is that kind of interaction with like tribal groups something that you've seen, the way that the Crown interacts with Māori common, to go from a period of sustained almost like barely any relationship to very involved, declaring war or bringing war to their doorstep and then confiscation, dislocation?

A. Well, I mean there's several parts to that, I guess. As for the first part of the nothing that happened before the everything that happened, yes, I mean it's unusual considering that they did have officials comparatively

close in Tauranga and Maketū I think that it doesn't seem to be that connection through to Ōpōtiki. I mean, yes, I just found no evidence of it and looking at the Crown's current position of statement, I mean they seem to have accept that as well. I mean I imagine if there was that material it might have come out but I couldn't find it. I do find that a bit unusual having two officials there and it's not that far so there's that. So that's one thing.

I think the second thing is that there probably was more contact than what we do have record of. Someone mentions, I think it might have been Völkner, mentions that Whakatōhea had written several times to the Government saying, from 1860 when Taranaki broke out, they were at pains to say that: "Look, we're not part of this, don't worry about us, we're not jumping in et cetera." They did send observers but Völkner or someone says that they sent several letters to the Government and I've never seen those so there probably is some sort of a record there.

There's also for example I think when Clark goes he records that he'd been there the year before and there's no record of that either. I think there is some sort of a level of contact. I just couldn't find the record for it.

Having said that, I still don't think it's anywhere what it's like if they'd had a resident person there. The local Tauranga Māori would be having a far deeper connection with the Resident Magistrate and Civil Commissioner than Whakatōhea did. Even though it looks like there's no contact, I think there probably is; we just don't know what it is.

Q. Right.

A. But it's still way, way, way less than would normally be the case. It would even be more so further up the coast you go to Ngāi Tai. Definitely when Clark went to Ngāi Tai they said they'd never had a visit from an official and he said they'd never had a visit from an official. And then she went further up the coast to Te Kaha and stuff they hadn't had much either.

Yes, it is generally true that there wasn't that relationship and contact but it wouldn't have been as bad as it looks by the documentary record I think.

Q. Āe.

A. Okay. Now the next thing of going to that next phase is that usual? Well, I mean it's an extreme event that killing really did rock the Pākehā world as to its occurrence. That's why I sort of put in the newspaper comment that I did and I had to stop doing that by the way. I mean there's thousands of articles on it; it just was there all the time. I think in the end I said: "Look, I've just given you the first month here to give you an idea of what not." But it just carried on and on and on. It was really big news. I mean really big news. Like I said, we got nowhere close to covering the amount of articles that there were. It's too long now that I've forgotten the amount of record. Like if you put a search in for Völkner and you look at a certain period, there's 10,000 articles or something beyond the ability to be able to research it. So it was a major, major, major issue so we can't underplay how major an issue it was. I think that going from nothing to that is because it was really viewed as a big issue.

Q. You say that "it was a big issue" and you actually mentioned it previously where you said in some cultural perspectives are killing within a cultural paradigm could be completely not acceptable but it was a part of-

A. Understood or-

Q. Do you have any views about why it was big news at that time? Was it the nature of the association with Pai Mārire being violent and radical? Was it kind of opportunistic in terms of wanting to make an example of something that was happening that they thought was out there?

A. Yes, I think there's several aspects as to why it was big news. I think part of it is some sensationalism in the reporting. I mean there was some incredibly weird thing came out from the newspaper, which are in my report, about the eating of entrails and drinking of blood. It got very sensationalist quickly. That made it more horrifying than actually– like those things didn't happen, so that was part of it in the public eye.

I think the other thing is that I mean at any time it would have been sort of shocking. But I think within that context of Pai Mārire rising at that time, you really do get the feeling of Pai Mārire rising the way it did. It's almost like the Crown thought it understood its opponents and why they were doing things and now suddenly we've got a new group with new motivations and they don't understand it. I think it was really shocking for

them to think: “How are we going to deal with it,” and they eventually say: “Yes, we don’t know to deal with it.”

I mean the other thing they say: “Chiefs were talking to they don’t know how to deal with it.” There’s examples of what would be seen by them as traditional chiefs, a group will come into an area and then suddenly, even though the chiefs beforehand will say: “Well, when they come here we won’t have anything to do with this.” It happened over in Tūranga for example, the chiefs were talking there and saying: “When it comes into this area, we won’t have a bar of it, we’ll send them packing,” but they came into the area and it just spread like anything again and the chiefs had to fall in line there. And so (inaudible 09:43:43) whole formally Christian populations just change completely. They just couldn’t understand what was behind at all.

So, at a time of great fear I think and confusion for them, there is this particular murder as well, and a rather shocking one. I mean I think the fact it’s a minister probably adds to it. The fact that it looks like their own parishioners did it probably adds to it. It’s something that happened or you could say “right time or the right place” but it’s the opposite “the wrong time at the wrong place” made it like many times worse I think.

Q. Thank you.

JUDGE DOOGAN ADDRESSES MS TEREI-TIPENE – MICROBREAK (09:44:28)

HEARING ADJOURNS: 9.44 AM

HEARING RESUMES: 9.49 AM

(09:49) MS TEREI-TIPENE TO TONY WALZL: (CONTINUES)

Q. Kia ora anō. I was just talking to Dr Downs and saying that the thoroughness of your answers have truncated a lot of my cross- examination as you answer the kind of next couple of questions that I have which has been super helpful.

A. Thank you.

Q. I'm coming up to kind of switching gears again to touch on the legislation the law side of things. I'm interested to have a bit of a discussion about the Outlying Districts Police Bill Act because it was the key piece of legislation, at least initially, for dealing with the Völkner situation and even more so that Ōpōtiki was going to be the first place that it would be implemented. I'm just wanting to get clear about what it was. We see the emergence of the Outlying Districts Police Bill in an attempt by the government to kind of pivot away from identifying acts of rebellion and sanctions of confiscation and a move towards bringing criminals to justice. For example, those that commit murder like in Völkner's case. Is that correct?

A. I mean, yes, it is. I mean I think the Weld Administration was trying to draw a line under all that had happened. "Let's just forget about all that, no harm and no foul," sort of thing. "To declare that everything's forgiven in the past and from now on we're not dealing with rebellions and stuff like that. We realise it's political so we want to have a new leaf sort of thing. But in the future, we still have to punish heinous crimes sort of thing so we've still got to do that. So I think they just wanted to do a rebranding exercise. I mean some of the newspapers saw it as that eventually. It's like: "Well, no difference really, it's just a rebrand." But I mean I genuinely think they believed it was a difference or they were hoping it would be a difference. I mean I think one of them even sort of says that: "Look, this isn't going to change things just by using those words and the peace proclamation and stuff but it's a start." So one put one regime aside but to still say they still had a duty to address crimes and things like that, yes.

Q. In the source material that you did kind of look at, in relation at least to the Weld Government, when you say like they were kind of "all is forgiven" or kind of "we want to restart again just forget about the past," are they referring to "all is forgiven" for their part in the confiscation too? Are you able to kind of differentiate that or is it the rebels "we forgive the rebels"?

A. No. I might have been a bit loose with the term "all is forgiven", because effectively they said: "Anyone that had fought against us we're not going to punish you." I suppose it is "all is forgiven" in a way.

Yes, no, it's definitely more I think just removing from people with whom they didn't want to fight anymore because they believed they had won a victory and Taranaki was over and Whanganui was over. It was almost I think to give them an assurance that: "We're not going to keep coming after you, prosecute you for crimes, or hold you to account for what happened there". I think it was wanting to make a statement like that, yes, to give that sort of reassurance at one level.

The other part of it also was to say "We're not going to do that wholesale confiscation like we had," right. I mean the weird thing is, although they said that, they then, as I noted in my report, in a couple of places actually did go ahead but I suppose they saw that as old business. Well, that's how they would have wanted to have packaged it: "That's old business, we're just finishing it off. So we'll do these proclamations taking this extra land in Taranaki and extra land in Waikato." But that's not the way of the future. It seems to be something like that but it's not talking about their own role.

Q. Right.

A. Yes, it's the others. The other people.

Q. Yes.

A. The other side.

Q. Thank you. In relation to the Outlying Districts Police Bill in instances where people who were living in the vicinity of a suspected murderer was presumed to be, if they were not given up, then their land would be taken to do various things, like compensate victims and offset the cost of establishing a police force in the areas. Is that kind of like the general intent of the policy?

A. In regards to confiscation or the whole policy?

Q. Of the Outlying Districts Police Bill.

A. Yes. I think the policy is to say that like: "We still have a duty to do and we'll do it; you can't commit crimes there'll still be consequences for that; and that for old crimes that have been committed they're still on the books as well; that peace proclamation still lists those old killings; they're not part of the peace proclamation." Because the peace proclamation is part

of the Bill. It's part of the policy; one comes first and the other is being developed.

Q. Right.

A. In a way, the Outlying Districts one is for the future. The peace proclamation is to put a marker and then the Bill's for the future. Yes, so it's to deal with the future. Tony talked so much that he forgot a little bit what the question was. Can you just remind me what the last part of it was, sorry.

Q. I was just seeking like kind of clarity around the intent of the policy. It was where there are instances where there is a murderer –

A. Yes.

Q. – and if they're not given up, then the land of those that were harbouring those people would be taken.

A. Yes, that's right. Okay, back on track. Yes, so part of it was to say: "We still have a duty to punish criminals and we will," and the other part of it was that: "We needed an instrument to assist us to accomplish that. That implement is the threat of confiscation but we're not going to do it like we used to do. Not just whole districts. It's justified. We're going to do it in a targeted manner so rest assured we're just not going to go in there." They had all sorts of other aspects in there, that they would investigate so thoroughly that anyone who was innocent their land wouldn't be taken. They would investigate so thoroughly that they'd work out how guilty they were and then take land proportionately. In a way, it would have probably been almost impossible to have achieved in the way that it was written but that the intent is certainly to say: "No, we're not just doing this broadly. We're doing it really targeted. It's a really bespoke policy here."

I mean I think they would assume that in most places a committer of a crime could be a member of the community that they were then threatening. But of course in Ōpōtiki according to their belief initially they thought it was different. They thought an outsider had committed a crime and so in that situation they were going to be threatening people who in theory hadn't committed the crime that their land would be taken if they didn't give up murderers from the outside. But I think the way it was meant to work from thereon in future is it would be a better tool because they

would know that someone committed a crime in an area. They'd go to that area and they'd say to the wider people: "You know who committed the crime here, give up your person or you'll pay the consequences."

Q. Yes, you touched on kind of what my next question was. It was really applying that kind of policy and the intent of the policy to the Ōpōtiki situation. It was that the people within that vicinity would in expectation of giving up the murderers (and presumably they would be the people at Ōpōtiki that would do that) and if they didn't, then their land would be taken.

A. That's right, yes. But only to that certain extent to compensate the victims and to set up a police force.

Q. Yes. And then I think you've kind of touched on it, kind of like leaped to the end result. But I mean it wasn't, at least if you're talking about the situation that was unfolding in Ōpōtiki, it wasn't clear, was it, like who the murderers were or how they might be identified from essentially the immediate aftermath of the killing right through to the passing of the Act and then the invasion of Ōpōtiki. There's a level of uncertainty about who we're talking about when we're saying: "Who are the murderers and how are we going to identify them."

A. I mean, yes, that's a theme throughout. I mean not only amongst officials but amongst the media that's commentating as well. It very much wax and wane. It's literally a wax and wane in that it does change; it never is a progression. Sometimes people, media or officials, are viewing it as like a very small group and they might just have two individuals that they might know about Kereopa and Patara as being the likely murderers and maybe some people with them. Sometimes you get: "It's a really small group and it's not really Whakatōhea," but then in other cases people will say: "No, it will be the whole community. They would have all been in on it probably." So they wax and wane.

And then there's the whole question of "what's murderers" as well. I mean to be a murderer what part of it? Sometimes you're getting the impression it's people who actually did the deed. But when the peace proclamation I think talks about aiding and abetting and aiding and abetting is very wide. I mean often just being present and not doing anything can be

constituted as aiding or abetting. So not only did they not know who were the individuals who did it, as in have a really good idea of who they were and how far it was, they never really expressed clearly what being guilty of a murder would be: how broad it was; did you have to actually do the deed or did you just have to be there and not say anything.

That's a persistent theme from the murder and it goes all the way through the year and it goes all the way when the troops land. I mean they used, and I have them all in here, different definitions when they're communicating with Whakatōhea as to give up the murderers. There's never ever a clear understanding of who they are and there's never a clear message communicated in documents on what they're after in my view.

Q. Yes. Like through reading the different things that were kind of put forward whether it was by Crown officials or in the press you kind of can see that the fingers pointed in a number of different directions, whether it was Pai Mārire, generic terms like "Ōpōtiki natives" or "murderers of the district" and then actual naming of Whakatōhea you can see that they're actually blamed by name. And then as you mentioned, it's unclear about whether we're talking about individuals or a tribal group and the lack of specificity would have impacts within it in terms of how various actors at different points in time would choose to try to execute this. For example, tried to execute the instructions that they're given when they're going to go and invade exactly what is meant by the instruction.

A. Yes.

Q. I'm interested just to kind of take a slight side-step in relation to kind of like the lack of specificity and kind of like the generalisation that is used in relation to like the term "murderers" to look at the wider context in which the Crown officials used non-specific language and whether that was reasonably common. For the Crown to be identifying culpability amongst natives under the legislation under the New Zealand Settlement Act, like whether that was non-specific language for that kind of thing too when you're talking about rebels. Is it this similar kind of lack of specificity?

A. Well, when you look at the documents I think there is that lack of specificity and I think that's because they really did not know; they still did

not have a clear idea of who did what so they didn't know. I think that's why there's that lack of specificity in the documents leading up. Despite the terminology moving and changing, I do think there was sort of a belief. I mean Fitzgerald when he's talking about Pai Mārire, for example, he sort of says: "Well everybody could be Pai Mārire but I don't believe everybody would be guilty of doing a crime of the extreme forms of it." He more or less sort of said: "Look, there's religions here, I don't think we're going to be able to get rid of it now," despite Grey's proclamation in April which sort of was about getting rid of it. "I don't think we can get rid of it but look, not everybody's extreme so we need to sort of sort out who are the people we need to deal with." In a way, that's what Outlying Districts I think is trying to do.

Even though the language does get loose because when Grey starts using "aiding and abetting" in the peace proclamation you're throwing it wide open again. But the Act itself or the Bill is all about finding out in great detail who are the people and taking the time to do it. As I said, it would've been a high standard.

Had it played out in the way they thought, that they would land sort of surround a village, have the murderers given up, if that didn't happen you can imagine that Pākōwhai would've still been surrounded and they would've brought the Act in and it would've been an investigation of 500 people to find out: "Well, what degree were you involved and therefore do we take your land at all?" Because they can't take the land of the innocent, it says it in the clauses. "Or if you were involved a little bit, do we take a little bit of your land?" I think they were wanting to show that they wanted to be precise but the Act would've been almost impossible to implement. They wanted precision. They didn't just want to have a blunt instrument but I mean it didn't turn out that way anyhow.

Q. Yes, and you've actually touched on kind of something that I was wondering in terms of kind of the practical application of the Outlying Districts Police Bill. You know they would arrive in Ōpōtiki and apprehend the murderers and whether there was any consideration given if those people couldn't give them up because they didn't know where they were or whether that had even been kind of considered when they

were discussing the Bill itself, whether any thought had been given for the fact that there was the chance that they might not even be able to do what the Bill was intending then to do.

A. Yes, I mean that's a good point. I mean it seemed that there was a presumption that the murderers were still in Ōpōtiki. They got information from Agassi just beforehand that they were there but all that policy had been brought into effect before then and so in a way I suppose it was an assumption that they would be there. I mean I hadn't thought of the point you raised but it's quite possible they could've landed and Patara and Kereopa they did seem to know those names. They might not even have been there, so the people might not actually have been able to do it so what would they have done then. Yes, I never thought of that aspect of it but I think they assumed that they were all still in that village and in amongst that village was the murderers. But there was no specific information that really showed that.

Q. Right. And so kind of going back to focussing in on the proposed application of the Outlying District Bill in Ōpōtiki. When you're identifying who would be the ones that would be giving up the murderers because it was in like essentially their district, their rohe, we are talking about Whakatōhea that would be giving up the murderers, aren't we?

A. I mean it seems to be, you know, it has to be that. You know it must be predicated on that to give that instruction. I mean they don’t say it specifically but that can only be the case that the officials were thinking they would land there and Whakatōhea would give up the Pai Mārire outside murderers.

Q. In kind of the next step that if the people of that district can't give up the murderers and then they follow through with the specific kind of execution of taking land because they haven't been able to give them up, is it possible that land could be confiscated from tribal groups who had the occurrence of murder in their rohe but they themselves were not involved in the incident?

A. Yes. Just before I answer that one. I mean it's an interesting point you’ve raised because that's a grey area. I never thought about the “can't” rather than the “won't give it up” because Police Districts is all based on: “If they

won't give them up, then we'll start bringing all the clauses in." But if they sort of said: "We can't, they're not here. We can tell you who they are but they're not here," I don't know what would've happened then. I don't know if they would've proceeded with the Bill; they might've accepted that word. So it wouldn't necessarily have happened on the "can't give them up" part. There's one other implication from that too is that the inference is that let's say they were there and let's say Whakatōhea had sort of said: "Right, we're going to give up you and you," and they send them out and that's the view and the consensus of all inside that "they are the murderers and we're sending them out." This is all the hypothetical thing.

Let's say there were two more inside who were Whakatōhea and they would be seen as murderers. In theory the troops would not know about them because they hadn't been told about them. What would happen if the two who were sent out said: "Hang on a minute, there's two more in there that you haven't brought out," but they're relying on the consensus of the people. There's the other aspect of that, if there were other people involved, I guess they all get forgiven. It's all part of that peace proclamation where everybody is forgiven, except for the murderers. Yes, it was a complicated thing to see if it would have actually worked out. But in answer to your question, yes, it would have been Whakatōhea land that was taken.

Q. Right. And so kind of following the series of events that occur specifically in Ōpōtiki, we have this new law and that's to replace the old way of doing things run rebellion and land confiscation. But then we also have Fitzgerald, which you touched on earlier, saying that the Government intended to take lands at Ōpōtiki whether the murderers were given up or not and that that land was to pay for the Ōpōtiki expedition. What happened here in terms of the kind of pivot back, it would seem, to kind of the old way of doing things?

A. Yes. It's my belief, and I've put it in the report, I say there's absolutely no specific proof. There's only Fitzgerald's speech on the 28th of November for example in the records of the soldiers. My belief is that, despite the instructions that were given, despite the policy instruments that had been put in place, the Peace Proclamation and the policy implements that were

about to be brought in place (because the Outlying Districts Bill wasn't an Act yet at that time; it was a Bill and well advanced and so everyone knew about it but it wasn't an Act yet), despite all of that, I do believe that the arrival of the Agassiz statement. I think it's the 15th of August statement, but it definitely had arrived. There's definitely evidence that, before the troops sailed, the officers had dinner with the Minister etcetera and they saw that statement.

Because State, in one of his private letters, mentioned elements of that statement. You know the hanging of two pigs and one of them is called the Governor and the other one's called someone else, the Prime Minister I think or something and that they are at war with their allies. The whole community is Pai Mārire and now they all are. "It's so bad, me, who hung around all this time, even I had to get out". I believe that changed things. Instead of it being seen as: "We think there are only some murderers there and a wider tribe of Pai Mārire but not murderers," I think it changed where they were sort of saying: "No, that whole community is effectively Pai Mārire and none of those instruments that we had all lined up in the instructions we can't sort of bring those into effect in the same way." So that's what I think the Agassiz statement changed.

Like I said, there's no proof that new instructions were give or verbal instructions were given and things change but just the way they sort of acted thereafter. There was just no attempt now to try and land surreptitiously whether at night or anything. There's no attempt to try and carefully surround a pā and bring the murderers out. It was just full on invasion.

And you've got a Minister already talking about in Parliament. I think I use the phrase, he sort of said: "We're still going to confiscate land on the Outlying Bills Principle because they had made such a fuss that this is going to be the new legislation. We can't use the old one." But he is talking about they are going to confiscate the area to pay for the expedition and to set up a settlement there.

Like you said, it's gone back to the old rule. The only thing that happened that's changed in that two-week, literally two-week period, is the arrival of

the Agassiz statement and I think that changed from a police action to a need to take care of an entire Pai Mārire extreme community.

Q. It also, I guess, kind of assisted in the decision to kind of revert back to the New Zealand Settlements Act which was ultimately used because the Government changed as well and so they no longer had that; were wedded to kind of try and stick to that Bill that they had talked about so much. Is that the case?

A. Yes, I mean I think that's right. When the Weld government was still in, they had moved his position they are not going to confiscate and confiscate wider but they had made such a point of the Settlements Act that they wouldn't have been able to use it. They still had this new instrument the Outlying, and that's why he sort of said: "We will still take it on the principle or the Outlying Districts one," because they couldn't go back to that old Act having made such a fuss. "We're not going to use that anymore." So had they stayed in, it would have been interesting to see what would have happened, whether they would have used the New Zealand Settlements or whether they would have tried to use the Outlying Districts Bill. But, as you are saying, just as it happens the Government changed and that Government it wasn't wedded to the Outlying Districts Bill at all so they were able to use the Settlements Act.

Q. Mr Walzl, I am very appreciative of your time today and for answering all my questions. Again, I just want to reiterate the privilege that it was to be able to have a discussion with you today –

A. Thank you.

Q. – and thank you for your contribution.

(10:16) MS COLE TO TONY WALZL:

Q. Tēnā koe **greetings** Mr Walzl.

A. Kia ora.

Q. Now the last time you met me, I was counsel with the Crown. I'm not anymore just to be very clear.

A. No, yes, when I saw it on Monday I sort of thought, yes.

Q. Who is that person? What's she doing sitting there?

A. Yes, I hadn't computed. So thank you for the explanation, yes.

Q. No problem. Can I pick up at that last very point. This Dr Agassiz, or however we pronounce his name, who is he? Like, why is he so important? Why is statement so important? Why was it taken effectively as gospel? Is it because he was a doctor for example or do we know anything more about this fellow?

A. I think I've got stuff in my report as much as I know. I probably didn't know as much about his as I could have. I think he is a doctor in that he records that but essentially his role there was as a trader. I mean, as far as I know, I think there's still an Agassiz family amongst Whakatōhea, I might be wrong on that. Somewhere along the line he married in but I don't know if he had at the time he was a trader, although that was quite a usual thing but I'm not 100% sure of that. But he certainly was a trader.

Q. Right.

A. Whereas everybody else left after Levy and all that escaped and they all cleared out. I think the only ones who were left were Samuel Levy, Agassiz, and Hooper. I think they were the three pākehā who were left there at the time of the Völkner murder. After the rescue happened, I think Hooper and Levy left, and Agassiz made the decision to stay on and in the statement he says: "It's because I had so much value in stuff." He was going to take the risk because he didn't want to lose all his property –

Q. Yes.

A. – and so essentially he stayed from March all the way through to August. He's an eye witness to all of that time and at a time when no other information was coming out of the area he was an eye witness. When he finally decided to leave and he got to Tauranga he gave his statement. I think he gave a statement and it was seen as a reliable eye witness statement of a person who knew the community, could speak te reo, and was an eye witness account of what had happened. I think that's the importance of it to the Crown.

Q. "To the Crown" very good point and I shouldn't have cut you off then. The section that I'm looking at in your report is 4.215 which is on page 606 and it talks about him having provided the statement of James MacKay at Auckland and he was one of the European's in Ōpōtiki at the time of

Völkner's murder and appears to be the only one who remained when Grace, the Levy brothers, and the crew of the *Eclipse* escaped in March. The fact that you've explained to us that he was possibly married in, one can't help but be sceptical that he was making these statements in a very self-serving manner, because if he could foresee what was going to happen and he was somehow interconnected with the Whakatōhea in the area and you talk about the fact that he couldn't afford to lose his property and that was why he stuck around in addition to 10 horses, a bullock and five cows, he estimated he had around £600 of produce and good. If he was seen as connected at any way, whoosh, that would have been gone, right?

A. "Gone" as in taken by Whakatōhea or taken by the Crown?

Q. Taken by the Crown.

A. I mean that's an interesting perspective to put forward. I certainly hadn't thought of it. I mean I'm not saying it's unreasonable but I do think it's speculative.

Q. Of course.

A. I have to say, I think in this report, I think the detail of what he's recorded I think he was a good source.

Q. For who? A good source for who?

A. As far as a source is concerned, I think he's a reliable source for the reasons I've said. But you are right I mean there's no evidence of it but it is quite possible that he might have been sort of saying all that so the Crown would recompense him afterwards. We don't know.

Q. No.

A. But I took him as being quite a good source. I also saw some of his actions, like when he gave evidence later in the trials and how he acted with the whole Levy and Grace controversy because they sort of hated each other and whatnot.

Q. Sorry, what did they do to each other? Did they go against each other?

A. Yes. When they were both captives, Grace the missionary and Morris Levy who was the captain, they really didn't get on to a spectacular point and they wrote two different versions of their relationship. Agassiz and Hooper came in and sort of said: "No, look, everything that Grace is

saying we saw it and we trust Grace's thing and that Levy is writing a sensational or not correct version." Yes, so I feel that Agassiz is a reliable source. However, the motives you're talking about I mean they could very well be present. There's just not evidence of it.

Q. Right. Now back to my actual questions. Well, first of all, I should say, you brought out the true nerd in me in terms of reading this. Because, despite it being as lengthy as it is, it was an absolutely fascinating read so thank you for the level of detail which of course you are renowned for.

A. Thank you for that comment by the way and I'm glad you enjoyed it because it's a ripping yarn.

Q. It's a ripping yarn.

A. I mean it's a terrible yarn but it's a ripping yarn.

Q. Yes, absolutely. It appears from a couple of the answers you gave to Mrs Terei-Tipene that you are familiar with the Crown's statement of position that's been filed in the inquiry –

A. Yes.

Q. – and of course the settlement deed and the historical account et cetera that's come before our time here sitting today.

A. Yes.

Q. It is an unusual aspect of this inquiry, would you agree, that there is an existing settlement with all of that information contained in it?

A. Yes, very.

Q. Yes. My question was, has any of that content of the historical account or the Crown's statement of position or the concessions that it's made in this statement of issues, which of course have come after your report but prior to your presentation, has any of that influenced the way in which you have interpreted events or presented your summary yesterday and today? Has that come into it at all, or you've just relied solely on the historical facts that you've been able to find through your research?

A. Well, I mean it obviously didn't affect the report because that's all post the report.

Q. No.

A. The summary, no, I don't think so. The summary is not a summary I'd normally write because normally a report isn't this large and so there was

a timeframe put on the summary. My first cut at it sort of it was an 80-page summary and then I had a second cut and it was a 40-page summary and to get it down to 20. By the time you're getting down to 25 the nuances and the details you're not really going into anymore and so you're making larger statements. I still think those larger statements are reflecting or they were meant to reflect – I say at the beginning of the summary that I made certain findings and I'm trying to reflect the findings in the 25 pages not necessarily tell the narrative of what happened because I can't in that phase.

Yes, so I don't think they affect the summary but they certainly have affected how I've prepared for the hearing. There was some really good points raised in them that I had looked it up and thought about and stuff like that and it may very well come up in questioning. Yes, I've formed a view in preparation for today's appearance.

Q. Well, that's terrific. Because at the end of my set questions that I've written for myself, I did want to take you to some of the specific issues in the statement of issues that the Tribunal has. Well, obviously, it has to make decisions about these things but not things that are matters of law or anything. They're just to glean a sense of what your perspective on some of those things are.

Can I start, even though I've been going for five minutes, page 504 of your report. I find it remarkable in that what you say there is that, despite all the frustrations at their treatment by the Crown, the quote is: "Despite the anger recorded by officials, Whakatōhea at Ōpōtiki were still prepared to restrain themselves from active opposition to the Crown during war and were still prepared to work with their Treaty partner and trying the new administrative institutions that were being proposed at this time." Why I found that so interesting, I suppose, is because it did seem like they were very much on the end of a raw deal and yet you've observed they were "prepared to restrain themselves". Why is it, do you think, that this was so by this time? So we're talking about the early 60s.

A. That's a good question as well. I mean there might be two components to it. One might be that by the time these tours of the officials are happening you know there had been war in Taranaki for example; there

hadn't been war in Waikato but they'd seen a war in Taranaki, so they had seen the propensity or the result of what happens when the relationship goes wrong. Part of it would be: "Well, you were wanting to have a relationship with these people so that that doesn't happen," so that's one aspect I think. I think another aspect that I think has to be taken into account is they had this awareness that hanging over their head was a possible Crown claim to their land and so you would imagine that they would possibly want to have a relationship to work through that, if they had to. I mean this isn't anything I've written about but now that you've asked me my opinion I'd say both those would be factors.

And then I think the other factor would just be a general thing, that you just see for all Māori groups all round New Zealand at all time, a desire to work with on the one hand a Treaty partner. But I mean, even if you hadn't literally signed a Treaty, you'd still be wanting to work with the Crown to gain a better future and to participate in a modern economy which clearly they were very interested in. It just seemed, even though they had a pile of complaints, there was still a desire to a positive ground to manage problems that might be arising and to have a better relationship in the future.

Q. Do you think that the Crown subsequently took advantage of that to its own betterment and to the detriment of Whakatōhea?

A. You might have to clarify a little bit more what you might mean by the Crown taking advantage of it. In what way? You see the timeframe is sort of short. This is '61, '62 and then things go to heck in '63 and '64 and then it goes further to heck with the killing Völkner. It's almost like there wasn't timeframe for anything to settle; things just went off on a huge run. The Crown didn't move with alacrity put it that way. I mean those tours were fact-finding tours and they were reported on and they even got reported on in the press. But I felt that in the things that they brought forward of their problems to the Crown they were quite specific and they asked for specific remedies in regards to the trade which was the most important thing to them. They wanted a regulated government trader in place and they were happy to give up pieces of land so that they got an expert who would further their economy.

Q. Yes.

A. I mean they were really sophisticated things to ask for and make. I think they were utterly brilliant. I think it's Clark or it might have been Turton but whichever one, he goes back and said: "I think they're really good ideas" but it doesn't happen. It doesn't happen in five months or six but there's still plenty of time for it to happen. It didn't happen with alacrity. As far as I could see, there's no evidence of it happening. There wasn't really sort of any urgency you felt too. "Now that we've got a connection and relationship let's really get it going." Because you have to remember that those officials I mean their reports appear in a whole series of reports where officials all around the country are going. It's a consultation process, almost very much in the modern way of consultation where you just go and talk to people and whether you follow-up on it I don't know. So they are taking advantage of it.

Q. Can I get you to throw into the mix the machinations of what was happening within the politics of not only Federal but at that Auckland Provincial level in terms of the wanting of the land. If you've got a sucker that you can go and put pressure on because you've actually got an established relationship or where there's some level of trust that can be abused, can't it, to the advantage of the person in the more powerful position or the party in a more powerful position?

A. I mean the answer to that is yes, of course, in theory but there isn't evidence of it. I suppose if you ask, my opinion would be that I mean the government was so mired in the conflicts that it was involved with at the time, its big plan on the agenda was the Waikato invasion. Although you're probably right that long term they probably would want all the land eventually –

Q. Yes.

A. – or open up settlement all over the place, I don't think that area was high on the agenda that they had other things. You know over '63 Waikato war –

Q. Yes.

A. – and then Tauranga they do a pre-emptive landing there to try and block that off as at '64. Yes, if the events had played out possibly what you're

saying is correct. But I think that first contact is not at that level of saying: "Right, we've got these guys under our control now." In fact, if anything, I mean the officials all came away. They didn't like Whakatōhea. They sort of said: "They're doing things wrong here and they're making all this fuss and they are troublesome fellows," and all that sort of stuff.

So that's why I say I think it's the very beginnings of a relationship. I don't think based on that the Crown would now say: "Ha-ha, our plans are working are working out." Had nothing happened over the next decade might have unfolded that way but that's all speculative. I think there were other agendas in front of them.

Q. Okay. What you've just described to me sounds very much like tall poppy syndrome. Whakatōhea were doing remarkably well. The Crown didn't like that at all and they had to bring them down a peg. Doesn't history tell us that that's exactly what happened?

A. As a historian and a witness, I have to sort of keep sticking to my knitting –

Q. Fair enough.

A. – and my knitting doesn't really go that far I'm afraid.

Q. Okay.

A. I mean you could say that that's a general view that you would hold of the whole thing. But here I mean there's no evidence that those officials, when they toured didn't like the fact that Whakatōhea were trading and doing well. So that tall poppy thing trying to cut them down I don't think they didn't like it and it would be less tall poppy as in "they're doing well you want to cut them down". I think they disliked Whakatōhea's independence. They disliked that they were already declaring themselves associated with the King movement; they didn't like that. I think they disliked that they wanted to see the rule of law and order come in and that's what Grey's institution was about –

Q. Yes.

A. – and Whakatōhea was doing it their own way and they didn't like that. So there was a lot they didn't like about them but I just wouldn't say it's tall poppy.

Q. Okay. In terms of the change of government when the Weld administration fell before the end of the 1865 cession and Stafford comes in, are you able to summarise the differences between those two administrations and the consequential effect of those different administrations on Whakatōhea, broadly speaking, perhaps I should say for the Māori in the region of the North-Eastern Bay of Plenty?

A. Well, it's such a short time in a way. I mean like they come in November and the confiscation happens by January so t's a really short time. A bit difficult to say what's the difference between those governments. But in that very short period, I mean it was interesting because Weld when his government resigned because of a blockage on finance things that they had and they sort of said: “Well, we might as well step down,” they actually recommended the new government. They sort of recommended Stafford and they came in as a caretaker government until elected. It's a thing of politics in those days. They didn’t have the party system as they have now. It was personalities and stuff so he recommended Stafford.

The similarities, there was a long-held objective of handing the confiscated land over to the provincial level. Weld had that idea and Stafford had it too and it was agreed to in Parliament under that government. There was a lot of similarities I think. But it's just so hard like in a two-month period to say what's the difference between them. In the two-month period you’d almost say, there doesn’t seem to be much difference.

Q. Okay. I had got the impression that it was the Stafford administration that effectively led to the wholesale: “We’re just going to go in and not differentiate between those who have participated in the murders,” to more of a situation where it’s: “Everybody is guilty unless they can prove that they're innocent.” That was the impression that I’d got from reading that that was the difference between the two administrations but perhaps I was wrong with that.

A. Okay. Yes, the invasion happened under the Weld government and on the 28th of November, Fitzgerald, who is part of the Weld government, he’d already changed to a view that: “We’re going to confiscate and set up a settlement there.”

Q. Okay.

A. He had already moved away from the targeted thing.

Q. Right, okay.

A. And when Stafford came in the military campaign carried on. Stafford doesn't say, that government doesn't say specifically what they were going to do with the Ōpōtiki confiscation. You don't really hear anything. It's the Weld government that had said it. Stafford doesn't really say anything but then that initiative gets grabbed by the Provincial government who sort of come to him in December and it leads from there.

Q. Okay. Can I take you to page 797 of your report and this is section 5.251 talking about 27 January 1866 when Stafford was giving a speech to supporters in Nelson and he raised the subject of the confiscation of lands and explained to those gathered why he had taken these steps –

DR GRANT PHILLIPSON TO MS COLE – #A030, PAGE 797

Q. – and you say, so this is Stafford talking: "There is a difference between conquering the natives for the purpose… of taking their lands and the taking of it as a necessary consequence of these and similar outrages. I do not believe we should not take land under any circumstances – on the contrary, but a few days since I advised the Governor to take the land of the natives at Ōpōtiki who were concerned in the murder of Reverend Völkner. I consider it was wise and proper to do this. It would be a mere act of weakness on the part of the Government to refrain from confiscating the native lands under such circumstances. Such confiscation is justifiable and wise, partly as a mark of signal punishment, partly that it will secure the means of preventing occurrences of the same atrocity, and partly that it would enable the Government to some small extent to recover the cost of suppressing outrage." What that leads me to, I suppose, the question of the powers that be that those who were making the actual decisions as to what was going to happen once the forces were on the ground or after they were on the ground, what information did they have or what information would they have received concern in Whakatōhea's involvement in the killing of both Völkner and Fulloon which justify supposedly the invasion in the first place? What

level of information would they have had that implicated the whole of Whakatōhea?

A. Thank you for pointing that out by the way. I had forgotten that. Because this is February so this is a post-confiscation explanation of why they did it and that reflects pretty much where Fitzgerald had got to, even though he's a different government on the 20th of November. So thank you.

Q. Right.

A. But what information did they have that all of Whakatōhea were guilty? Well, as I mention in my report, it was always an intended thing that: "These murders would happen so we need to send a large force because we don't know what we're facing," so it was always going to be right from the beginning that they would send an army along. Now, as to the information on what that army would do when it got there and who would they be looking for, as I was trying to say before, they didn't have good information on that. They didn't know. I think I used the phrase that the Weld Government sort of says it should be like a police action.

Q. Yes.

A. "Just cordon everybody off and then we'll work it out from there and we'll find out on the spot who are the people." But they didn't have that information beforehand I don't think and so the intention then was: "Well, when we get there, we'll find out who's guilty and anyone who doesn't cooperate who is guilty we'll take their land; who we find out to be guilty we'll take their land." But, no, they didn't have that information before they went.

Q. No, okay. That leads me to the attacks at the three pā. Te Puia Pā, I gather, is the first of the pā that was attacked. I understand from I think it's page 732 of your report, you refer to Te Puia Pā, there was a Ngāti Ira village at the foot of the pā. It's in the quote at the top of that page where it's coming from James Cowan the last sentence: "Hira te Popo's village, the present headquarters of Hira's people, the Ngāti Ira tribe, was at the foot of the hill fortification." So we're on Ngāti Ira country?

A. Okay. Yes, it certainly says that there. I'll just point out that the quote is from Cowan so it's a secondary source.

Q. Yes.

A. Yes, I guess, I would say I'm not sure if the soldiers would've known that at the time, but Cowan is saying that later on, yes.

Q. Okay. In short, the soldiers, as you call them, are hunting out Hauhaus as they refer to them. That's right?

A. Yes.

Q. My question is how did they differentiate between Ngāti Ira, if it were them, people defending their pā as contrasted with people who were Hauhau, or did they just take a random: "You're all in our sights, we'll shoot you down if we see you?"

A. Yes. Well, I think that by the time – that's why again I go back to the Agassiz statement –

Q. Yes.

A. – I think the views had changed and so everybody was an enemy now.

Q. Yes.

A. They're an enemy until they're not.

Q. Yes.

A. "If they come and sort of attack us, we'll respond." There had been a little incident before this one where riders had come up and opened fire and whatnot, and we can talk about that if we need to, so they thought: "Well, we've landed; we've secured all our stuff now. No one's surrendered." Although I believe that that was an attempt to come to them but anyhow according to their view no one had come to them.

Q. Yes.

A. "We still have an enemy in front of us. Our objective is still to bring down a Pai Mārire community. There is a pā that's close that we can get to." Because they could see all the young ones up in the hill so they didn't know how to get to them but they could get to that one. "It's part of our thing to carry on fighting," so they just went in against an enemy that are known to be held up in a pā.

Q. I might point to paragraph 61 of your summary paper where you're talking about the Crown's motivation for confiscation and you don't need to go to it. You had observed that: "Although the Peace Proclamation in September of '65 had granted an amnesty to all former combatants of past rebellion, those who had committed murders of civilians were of

course not included." It leads to the same question of how did they differentiate between or was it, in fact, any effort made to try and differentiate between?

WITNESS REFERRED TO SUMMARY #A030(b) PARAGRAPH 61

A. Yes, I mean that's a really good point because people who were rebels were forgiven but people who were murderers were being sought. If they're landing with a full force and going against a pā, the implication must be that they are assuming that they're all murderers in there –

Q. Yes.

A. – at that stage.

Q. Yes. When the force did arrive in Ōpōtiki they landed after the bad weather. Although I've seen dates of 8th of September, the one that I think was the most accurate was on page 719 of your main report where it's the 11th of September where they actually finally get the taniwha. I think the stories are that the taniwha was protecting the people on the land by having the ships constantly grounding et cetera. It's ironic but we shouldn't say anything more about the date September the 11th. So, the force landed at Ōpōtiki after the bad weather and you say that they occupied an essentially abandoned Pākōwhai.

A. Yes.

Q. Where was everybody? Because, as we understand it, there was little to no forewarning and certainly no explanation as to why the force was coming. Where had the people gone? I'll let you answer the question.

A. Yes. Well, I mean by this stage because they had shown up several days before and they'd been observed and they had been skirmishing and all that –

Q. Offshore.

A. – and so my view would be that they all left. Certainly, all the women and children and non-combatants would've left and those who were opposing them sort of melted away. By the time they got to Pākōwhai, apart from the unfortunate person who was in a whare who was shot, –

Q. With the shotgun over his lap.

A. Over his lap, yes.

Q. Yes.

A. – it seems like they had all left, yes, because they had enough time to leave.

Q. But literally just a matter of days from when they saw the vessels arriving offshore. Is that what we're saying?

A. Yes. I mean you get the impression, especially considering the impact of the scorched earth policy, that as soon as they saw the ship and they saw the landing craft and stuff. I mean Pākōwhai isn't a sort of defendable pā. I mean essentially it's called a pā but I mean really it's a village and you know it's not a defendable position. I would imagine that, like I said, non-combatants would've left straight away in a hurry because I don't think they had supplies and that's why the scorched earth policy had so much impact. So I think they would've fled and the people who were left behind to do the fighting fought for a few days until they felt it was wise to retreat into the hill pā as well.

Q. Okay. I do note that in the Crown's concessions, there is a concession by the Crown that it accepts that it sent forces to attack Ōpōtiki (inaudible 10:48:02). Sorry, I'm referring to the statement of issues in a Crown concession it's at page 5 of the statement of issues. The Crown makes the following concessions: "In relation to the attack by Crown forces on Ōpōtiki in September '65…," yes that's right: "…it accepts that it sent forces to attack Ōpōtiki without sufficient prior warning or explanation to Whakatōhea. The invasion was unjustified and injustice and was in breach of Te Tiriti o Waitangi." So there's no disagreement amongst the parties about the insufficient warning –

A. Āe.

Q. – and the evidence, the historical evidence plays that out very clearly for us.

A. Āe.

Q. Yes. And of course once they get there, there's the extensive looting, destruction of property and, as you say, the scorched earth for which there can possibly be no excuse or explanation. Can I just ask about, I know that I'm very short on time, the battle of Tarata. Is it clear from your research that that battle also took place on Ngāti Ira's land?

A. Yes. Of course I had no benefit of any of the traditional landscape material while I was writing so I had no understanding of hapū positions or boundaries. I'm not quite sure with that material having been out that I would still have that in a minute way because I've heard of overlapping boundaries et cetera. The thing about Tarata Pā was it was newly constructed and I vaguely remember that there's this association that when pā get put up as a newly constructed pā. It's a warfare thing and it's not like: "This is our pā," so it could be put up by a wider group to try and achieve an objective.

Q. Okay.

A. And so I'm afraid I guess the answer is I don't know where Ngāti Ira's boundaries are so I couldn't really say, I'm afraid. I mean if Ngāti Ira say that, then I wouldn't dispute it.

Q. Thank you. In terms of the Pākihi purchase, again, there's been a Crown acknowledgement in relation to that. And Pakihi, the answer you've just given may actually be an answer to this as well, it affected multiple hapū. As I understand, my instructions Ngāti Ira and Ngāti Patu are on the western side, Ngāti Rua and Ngāi Tamahaua are on the eastern side of where Pākihi is. My question was whether or not your research revealed anything about what the sellers knew or understood that sale to mean?

A. I mean I deal with this in the report in two ways. I mean there's a large historiography now on that concept of what any Māori land seller before 1840 would have thought a purchase meant, including the most recent one from the Northland Inquiry where they have viewed the most extreme examples of purchasers right up to 1840 being done by people who could completely speak, te reo experts, being done in a land rush way where all sorts of innovations have come in with the purchasers. The question is: "Well, surely in this extreme situation people must have understood a sale is a sale," and that Tribunal still came up with the view that: "No, still not here," and the main reason is because it's still customary law that's in place." So I bring that broad concept because I would agree with it and I think that's the case.

I was interested to hear, I hadn't quite made the connection myself, Professor Williams the other day making the point that: "Oh, considering

there was no Crown official there and looking at the history Ōpōtiki was under tikanga effectively right until 1860," and I think that's a very good point. So I think you've got to look at the transactions within that context that, even though nominally there was a Crown law in place, it wasn't really being implemented in that area in any way.

And then the final thing is there is so much which is quite rare but there were specific instances here of people taking actions in regard to that land that would indicate that they did not understand a sale had taken place i.e., and we get all that Wilson himself who talks about "eight of the best pieces of land and my purchase had been just resumed" this is on the Pākihi side. I mean all of Ngaio was resumed but even on Pākihi eight of the best pieces resumed. He actually says: "They come in cut waters as they please to build boats." He said that they cultivate where they wish and then there's evidence that when their stock went to places and broke tapu the stock were shot. I was surprised to see that even when so-called native pigs and dogs killed stock, which you would have thought Wilson might have had a claim to go to them and say "under utu, can you recompense me," his complaint was that he didn't even recompense there. And then the final thing of course is that one group withdrew 5,000 acres from the survey when the surveyor came to survey it.

So, all of this is indicating that they did not see or understand that as a final purchase that it was still within their purvey to interact with that land as and when they needed.

Q. I just have two more questions and then I'm finished. It's picking up and going back in time again to when that purchase happened so pre-1865 land transaction and I'm particularly looking at your summary document paragraph 2. The conclusion reaches that missionaries in the fraud et cetera and we've already heard about the fraud from the deeds et cetera. I wanted to ask you the extent to which Wilson himself, and it is as I understand Wilson Snr effectively, benefitted from these fraudulent or other land purchases and what I'm asking really about for that is they are supposedly a CMS purchase; it's a purchase for CMS, but in your report and in other places we see references to "his land" and "his purchase". Can you just explain that?

A. Yes. I mean it was a really tricky aspect for me to deal with in the report. In that, all the evidence from the time, contemporary to when the transaction happened in January, in my belief indicates that on the western side he bought land for the church for the CMS as a station and on the eastern side he bought some additional land for himself and the two other Tauranga missionaries and they were sort of done at the same time. There's more to talk about but we won't get into that. I'll just try and answer your question. So what then happened in my belief is that – and he therefore ran the mission from Hikutaia which is on the western side. It was known as the mission place and in theory that would be quite right because it's the land purchase for the CMS in theory. But I believe that at a later time they did a swap and I posit that that later time was in March when they went back to do new payments. I think they drew up two new deeds; they swapped.

Q. Right.

A. Those deeds were signed. From that time, those deeds and the western land was regarded by Wilson as his and the other two missionaries and when he claimed it that's how he claimed it.

Q. Okay. When that purchase was looked into, can you comment on the nature or level of official interference in the Commission's decisions?

A. I mean Fitzroy had clearly seen the file and had clearly worked out that both purchasers were after the proclamation and therefore were not valid and therefore he wrote that letter to the Commission saying that "he would be favourably disposed towards them". Although Wilson later records that that was read out after the hearing, the Commissioners obviously would have received it before the hearing so they would have already known presumably. I mean you'd have to have evidence to say that someone ran into the thing and handed it to the Commission, we don't have that; we just have it being read out. It was obviously delivered to them and they presumably saw it for them to read it out after the evidence had been taken. So that seemed to be the most specific interference with the Commissioners doing their work.

Q. Do you have a comment as to whether or not that was an appropriate interreference?

A. I want to be cautious on this. I guess I'll put this in the words of my understanding. My understanding is that the Commission was meant to be it had rules and they were meant to follow them and come up with a finding and then it went into the purvey of the Governor to make a final recommendation and then certain things had to be followed before a grant was given. With the Governor coming in beforehand it means that he's already expressing a view to the Commission on what's going to happen so, yes.

Q. Okay. My very final question and hopefully it's a quick one, fair price-

(10:58) DR GRANT PHILLIPSON TO TONY WALZL:

Q. You said "the Governor would make a final recommendation", do you mean a final decision, or who was he making a recommendation to?

A. Yes, well, I use that word simply because on his comment on the Ngaio deed, and I should just get it because this is why I use that phrase, because normally I would view it the way that you're saying, but I'll just quickly find it.

Q. Sorry I thought this would be a quick correction. So it may be that this could be dealt with later Mr Walzl.

JUDGE DOOGAN TO DR GRANT PHILLIPSON – ADJOURNMENT

A. Yes, I'll have a look at in the break. But I've got a funny feeling he says something like "I recommend this for favourable consideration" and I sort of thought that's an odd word for him to use. But I will double-check it in the break and get back on that one.

Q. Thank you.

(10:59) MS COLE TO TONY WALZL: (CONTINUES)

Q. If I could just quickly ask my final question before we go to morning tea.

A. Okay.

Q. – and it was just about fair price, so the fair price that was paid. Now this is probably something that has been covered in many Tribunal inquiries so it's quite possibly coming from a position of ignorance on my part. So who determined the fair price?

A. Fair price.

Q. Thinking about Wilson's transaction.

A. Well, as far as fair price, yes, it's stepping through the situation was obviously Wilson proposed a payment to the people and that was accepted. So there's that concept of "was that fair" one party proposed it and the other party accepted it, so there's that aspect that at the time everybody was in agreement with it presumably. I mean the Commission comes in and essentially they are not trying to indicate a fair price they are just trying to translate what the goods that were paid are worth and they need that so that they can fulfil their thing of making a recommendation on how many acres to be granted. So I don't know if the question of fair comes in there. It's a technical exercise.

The only other thing we have on fair price is the 1898 petition that's written. That very much is about those people are saying: Well, when we bought the land, those old men were told that iron hoops and all that are a good price but we learnt later on that they're not," so clearly in 1898 they didn't think that. And also when the people were interacting with the CMS over repaying the money back, I think there's a comment there – I beg your pardon, no, that's not correct. Sorry, Tiwai I think in the Compensation Court makes that same sort of comment. "We were paid for this land but we didn't know then and we were paid in stuff that in hindsight wasn't fair." So they are the only comments I've got on fair, but the Commission's job wasn't to find a fair price. It was just to translate a technical; it was a technical exercise.

Q. Thank you.

JUDGE DOOGAN ADDRESSES TONY WALZL – AGASSIZ STATEMENT, AJHR SOURCE DOCUMENT (11:02:21)

HEARING ADJOURNS: 11.04 AM

HEARING RESUMES: 11.28 AM

JUDGE DOOGAN ADDRESSES TE MINENGA – AGASSIZ STATEMENT, CROSS-EXAMINATION TIMETABLE (11:28:08)

(11:29) TONY WALZL: (RESPONSE)

Excuse me, your Honour. I looked in the break just in regards to the question raised by Dr Phillipson. Yes, sure enough. I thought in regards to the Ngaio purchase that Governor Fitzroy sort of made a recommendation that the grant should be given but the word “recommendation” isn't there. So, yes, I was mistaken in that and he just says “let the grant be prepared” so it is a decision.

JUDGE DOOGAN ADDRESSES MS FEINT KC – MS UDY LEADS CROSS-EXAMINATION (11:29:20)

(11:29) MS UDY TO TONY WALZL: (CONTINUES)

Q. Tēnā koe e te Kaiwhakawā, otirā ki ngā mema o te Taraipiunara katoa. Tēnā koe Mr Walzl. Ko Ms Udy tōku ikoa. Ko au tētahi o kā mākai rōia mō Ngāti Rua**. Greetings your Honour and members of the Tribunal. My name is Ms Udy. I am one of the counsel for Ngāti Rua.** I have a few questions for you from more of a Ngāti Rua perspective. Just to clarify before we begin, have you had a chance to review the evidence of Dr Te Riaki Amoamo that was presented in the second week of hearings earlier this year?

A. Excuse me, I have looked through all of them but not in a way of closely reviewing. So I'm familiar with it but not reviewed in that way that I'm familiar with them.

Q. Ka pai that’s helpful to know. I might first start by asking you some questions about Völkner and particularly, what we might say, is your relatively strong conclusion that he was acting as a spy for the Crown. That certainly accords with the evidence that was given by Dr Amoamo that the oral history passed down to him by his kaumātua was that Te Whakatōhea understood Völkner to be acting as a spy for the Crown. You refer particularly to the seven Völkner letters in that early period of 1864 as being some of the key sort of documentary records of that. Just as a preliminary question, are you aware whether this is the entirety of his correspondence with the Crown, or are these just the surviving records?

A. Yes, they sit in a little collection of their own in the Governor series and there aren’t any other documents so they are there is a little collection. I

did have a little bit of an effort in the Governor series to see if there was any more on the one hand but also if there was any response and stuff. The Governor series is a tricky old series to move through and it's been made more tricky now that archives have changed all its signing aids and stuff; it's harder and harder. So I had a little bit of (inaudible 11:31:50) to see if there was anymore and I couldn't find any. However, Völkner himself indicates – I mean we can look it up, if we need to, but I think he indicates that he'd sent some more off. Like I think he says at point he suspects some of his stuff hasn't got out so it seems like there may have been some more in that same time period. But before that time period whether he was providing information there's not any evidence of that.

Q. Ka pai. Would it be fair to conclude that he would have been having some form of communication with the government sort of from that entire time period that he was based in Ōpōtiki whether formally or informal communication of some sort?

A. I think so only because I know that he interacted with Governor Grey over the building of the church. He got a church built there that I think it was roughly opened in the beginning of '64 and the Governor contributed some money to it. I've never seen the correspondence on that either but clearly they were at that sort of level of communication. I think there is also evidence that when he went up to Auckland he would visit the Governor but nothing specific; you just get that impression. I mean he was there from '62 onwards. I wouldn't say that he would be a constant communicator to the Governor but there were some connections that we don't have evidence of such as the church.

Q. Thank you that's helpful. At around paragraph 3.150, you refer to Völkner's account of Te Whakatōhea declaring their support for the Kīngitanga in early 1864 through that series of hui and you describe his narrative as being one of surprise at perhaps a sudden change from the previous position of Te Whakatōhea as being one of peace. You suggest that that was either Völkner was turning something of a blind eye to the events around him to be surprised by that change or that it may have been that Te Whakatōhea was sort of deliberately hiding or obscuring their true views from Völkner prior to 1864. I just wondered if you had any

thoughts on why Te Whakatōhea may have been seeking to obscure information from Völkner even before becoming more actively involved in conflicts in support of Te Kīngitanga?

JUDGE DOOGAN TO MS UDY – PARAGRAPH 3.150

A. Right. Sorry, can you just say the last part of it again?

Q. Sure. I'm just sort of wondering if it was in fact the case that Te Whakatōhea was sort of attempting to obscure some of their views or information from Völkner –

A. Yes.

Q. – what might have made motivated them to be doing that, even before making that decision to more actively become engaged in the conflict.

A. Okay. Well, I think it's difficult to know the relationship like in great detail between Völkner and Whakatōhea because he doesn't have a journal for example and so we don't have great details. We just have various letters. But considering he does record when it comes time to consider that letter that arrives on Christmas day that they absented themselves to have that hui on that matter and they did it twice. He wasn't allowed to go to either of them. Before that letter arrived there had been several other arrivals of emissaries from Waikato and Kīngitanga emissaries. I mean we don't have specific details on it, but you can imagine that if they were arriving and talking about a highly political subject as well that they might have removed themselves to have that conversation as well. You know he's there from '62 onwards. It's a heightened sort of a period of consideration for Whakatōhea; a very serious one. If their tendency was to remove themselves to have these conversations in January and February '64 they quite possibly could have done it beforehand and that might account for how he was sort of so surprised that. So they weren't discussing that sort of stuff in front of their minister.

Q. And so perhaps as a follow-up to that, would that indicate then that even at that time period there was a lack of trust in terms of Te Whakatōhea's attitude towards Völkner?

A. Yes. I mean I wouldn't say "yes" to that lightly. It needs to be considered because there's no specific evidence of it but I think it might be reasonable to say that. Because, first of all, as is in my report, they had

that problematical relationship with missionaries because of Wilson's purchases and all of that and so they had already formed the view that something had gone wrong with the missionaries and somehow potentially the loss of land was threatened and in place and the way they talk about it in '61 and '62 just before Völkner came they were sort of talking in heightened terms about how they felt about Pākehā in general and the Governor and everything. Him showing up, as nice as he might be, I think I'd say: "Yes, they didn't trust him." Not because of who he was just because he's a Pākehā amongst them again at a time of heightened tensions around the island. So I think I could say yes to that based on that.

Q. Thank you that's very interesting. I think you go on to sort of discuss that certainly post that 1864 period that your view is Te Whakatōhea were aware that he was passing information to the Crown or that he perhaps wasn't very covert in doing so. I think you refer to, is it, the example of Wiremu Kingi sort of deliberately giving Völkner information knowing that it would make its way to the Governor. Do you have any views on how Te Whakatōhea would have come to know that he was passing information? Perhaps for context, Dr Amoamo's evidence was that the oral history passed to him was because they knew this because they were intercepting his letters. Does that accord with your understanding or is there anything else that might shed light on that?

A. Yes, I mean I think that thing with Wiremu Kingi tends to indicate like it's the worst-kept secret sort of thing that if you want to get information to the Governor you go to the missionary; it's going to end up there. I think there were several places around New Zealand where missionaries were known to be reporters of what was happening and sometimes directly to Government and sometimes not. So I think that's partly, it seems like there was a feeling of that. But in addition to that though he records himself that his letters had been intercepted and I mean it got to a point that when he tried to leave he was stopped from leaving. He just wanted to go to Tauranga and they wouldn't let him leave and some Pākehā who was carrying a letter for him got turned back as well.

There's no specific evidence, written evidence. It's interesting the oral tradition confirms it. There's no specific written evidence that they found a letter but I think there's a good chance that they did find a letter. Of course, I suppose the question is whether they would be able to read it being in English.

Q. That is an interesting question.

A. I mean they could read written language of course but written English language I'm not sure.

Q. Yes, it might be something to think further on thank you. At paragraph 3.155-

A. I'm sorry, I'll just add to that.

Q. Of course.

A. I think the mere fact that they saw a letter with the Governor on it they'd know that much. Sorry, carry on.

Q. Do you mean to say that they would have viewed that with suspicion?

A. Yes, the mere fact that there's a letter to the Governor from the minister would go a long way.

Q. Certainly. At paragraph 3.155, I believe, you suggest that – 381 I think is the page number – Völkner may have felt that it was his duty to pass information on to the Crown whether or not the Crown had specifically asked him to do that. Do you have a view on why Völkner as a missionary and as a German missionary no less would have felt that it was his duty to pass information on to the Crown and why, for example, he wouldn't have felt a more overriding sense of loyalty to his flock?

A. Yes, I'm just finding the paragraph where he literally explains why. It probably won't take me too long. There we go. Yes, so I'm not sure what order this is. It's the letter of the 16th. It's paragraph 3.95 at page 350. Yes, and it is his letter to Grey. This is a letter dated on the 16th. The quote there, just to read it out for the benefit of everybody he says: "As there is no Government agent in my district, to inform you of the movements of the Natives here I think I should be wanting in my duty to you if I did not make known to you what happens around me relating to the present disturbed state of the Natives." I mean the rest of it's quite interesting too because he says: "But as I have reason to fear that it would

interfere with my future usefulness in the sense in which I am engaged if it were publicly known that I give such information to you, I therefore humbly but earnestly request your Excellency to receive my accompanying letters as private communications to yourself and not to publish my name." Not only is he saying he feels he has a sense of duty because there's no Pākehā there, he also sort of is aware that he wants to be kept secret. He doesn't want it to be known that he's performing that role.

As to the part of your question as to "Why would he feel a greater duty to the Governor than to his community," I mean he uses that word "sense of duty" and I guess what that means is essentially – yes, it's just hard to find the right word. I mean he definitely feels a sense of duty. Exactly what that means and how that plugs into the duty that a private citizen has towards his Government to inform them of alien or warlike activity, it's something to do with that. But I couldn't comment further on that; I don't know about that. But he definitely says that he feels it's a sense of duty because he's the only one there.

Q. Thank you. I suppose would the corollary of that then be that at this time there very much was a sense of missionaries being associated or part of the private or the Government as opposed to being there purely for representing the church. Like there wasn't much closer sort of alignment of objective or views at that time.

A. I mean I don't think it goes so far as that he thinks he has a close link with like the Government per say or that he's a government agent. He just thinks that as a British citizen he has a duty to the Government to warn them of like an eminent danger that's happening so it's more the sense of a citizen. I don't think it's because he's a missionary. It's that duty of a citizen to keep a Government informed in dangerous situations.

I mean we can go to it if we need to. There was in one of the parliamentary debates afterwards where someone sort of says: "As Völkner was killed and he was working for the Government shouldn't his widow get a pension?" I can't quite remember how that turned out; we could go to it if you want; but it was interesting that someone had still started forming that view. But I don't think he saw himself like that. I don't

think he saw himself as a Government agent. Just someone who was a citizen in a place where he was seeing things that he thought the Government should know about.

Q. And indeed, you also say at paragraph 3.157 that there was a general view among Māori at that time that clergy were reporting to the Government on Māori movements. In your view, would that likely to be for the same reasons that there was a general sense within missionaries that as citizens they should be reporting information back to the Government about goings on?

A. Yes. Well, I think so and I don't know if in the Māori understanding it would be as citizens but I mean I think they just see it as Pākehā that they will all flock together when in times of danger. And of course the one you are alluding to here is this is when Ngāti Porou is passing through and they are sort of saying: "We're aware that all missionaries are just reporting and if you do it you'll be in trouble," and stuff like that. I mean the only difference is that for Māori I think they would be quite surprised that somebody who was in their close confidence and was meant to be working closely for them might be doing that. That might be quite a surprise for them I think.

Just the year before he had done that whole thing where he had tended to their ill and they had made comments that they were very grateful and all that. So it might have been quite a like on the one hand assuming it would happen but quite surprised that a missionary would be doing it.

Q. Yes. Perhaps picking up on that, Dr Amoamo's evidence was that Te Whakatōhea felt betrayed by Völkner acting as a spy. And so going back to our earlier conversation that there was likely a general sense of mistrust towards him as a missionary when he came in to the community originally, is it fair to say there's quite a nuanced relationship going on here then with him nonetheless having a certain role or building that relationship with the community and perhaps building more trust that was then ultimately undermined by him passing this information on?

A. Yes, I think so. I mean I think he was aware that when he got there, aside from the whole land purchase thing, he was aware that people were a bit a cagey about missionaries because there hadn't been a resident one for

ages, so already I think they felt a little bit betrayed that they are Christians and they haven't got a resident missionary who only comes to visit and stuff. He was aware he had work to do to get good relations with his community. I think he worked hard to do that. I think he believed he had achieved it. He heard from them that they were grateful. When they went off to war for example he would say prayers with them and they accepted that; they didn't tell him to get away in the time of war and all that. It was nuanced that he had built it up. But I also think there's all sorts of bits and pieces of information that suggests that he may have been not as perceptive as one might want or sorry that he might not have been perceptive as one might expect. I mean his Mair coming back when he did when he got off the boat, even though it was a comparatively angry crowd, he was trying to shake hands with people.

Yes, he might have been a little bit naïve one suspects. I think it was nuanced. I think he was reporting what he was hearing. I think there was a bond et cetera but I think he might have been mistaken in how deep that bond was.

Q. One of the seven letters that Völkner sent in that early 1864 time period, I think it is the letter dated the 15th of January, included a sketch of a ground plan for the pā defences at Rangiaowhia and Dr Amoamo's evidence was that he considered that to be significant, although he didn't draw any inclusions as to whether or not that letter in that sketch played any role in the subsequent attack on Rangiaowhia the next month. You also conclude that Völkner's information was probably too slow to be of much military use to the government in terms of things happening very quickly on the ground. But I wondered if you had any comments on whether you see there to be any significance of him sending that sketch of the defences at Rangiaowhia?

A. Yes, and I supposes it shoots home to that comment about naivety as well. Like he might have thought that he had a sense of duty and it's one thing to generally report what you see and you know they're having this meeting and what not but I mean that's getting hard core into military tactics and he's really sort of stepped the mark into like full on sort of spy

reporting on military issues now. But like I said, whether it had an impact or not but nevertheless.

Q. When you say perhaps his naivety was or that was a step further for him in terms of giving that type of information, are you suggesting that he perhaps wasn't necessarily intending to betray Whakatōhea in that way but was being drawn into the needs of the time in terms of the information he could pass on? Like I'm just sort of thinking around his intention.

A. Yes, I mean the link with that pā that he sent the plan for is I think Wiremu Kingi said that what the broader plan had been is that Whakatōhea would occupy that pā and leave the people in it so that they could go and fight somewhere else; they were going to garrison it. So you could say "he's just handing it on because he's got information about an enemy that's got no relationship to him and passing that on to the Crown" but if that garrisoning is right, then Whakatōhea would have been in it. If the Government had attacked it, then his people were being attacked. But I don't know if he would really have just differentiated. He felt he had to get information, any information he got he handed on and might not have been aware of the ramifications of it; thought it all the way through what it could mean.

Q. Thank you.

A. Because I think he'd be horrified if he thought his own community would end up being shot to pieces by the Crown in a battle. I don't think that's his nature but on the other hand it's like "well that's what's going to happen when you send military information about people".

Q. Thank you. I might move on to some other topics and maybe just going back a couple of decades. One thing that's interesting about the signing of the Treaty in the Ōpōtiki district is the Crown agents relatively short visit there. I think it was over two days that it was discussed and then signed. To your knowledge, is it likely Te Whakatōhea would have been aware of some of the wider debates around the Treaty? Obviously, there were several days of debate in the north. Do you have any views on how that might have affected what they understood themselves to be agreeing to when they signed the Treaty?

A. Yes, no, I hadn't considered that too and it is a good point. I mean it is a month after the original signing essentially, isn't it? No, sorry, I beg your pardon several months after the original signing.

Q. I think it was May so a couple of months.

A. May, yes, and so several months after. They had contacts in the Bay of Islands from several of them having been held as prisoners there. They're the ones who sort of came back and brought Christianity first down et cetera so they had links there. There is evidence at a later stage when they were trading. They were trading directly into there but their trading hadn't really started at that stage. So there is a good chance that they had heard of the signing so I think you could say as much as that for sure. Of course what they'd heard, we don't know.

Q. Would you agree with Professor Williams assessment that from a practical perspective the Treaty had no real impact or a minimal impact in the region between 1840 through to 1860?

A. Yes, I mean I did hear him say that and I mentioned a bit earlier on that when he was saying that over that period that was an area that was still very much under tikanga and I hadn't thought of that and I do completely agree with that. I suppose in answer to my other question I sort of said: "Well, the Treaty was almost like a placeholder." They signed it and they expected something but then nothing happened essentially for two decades so by the time those officials came they were saying: "We might as well just throw it up, we repudiate it," although they then still showed a willingness to do something at the end of the day. I mean they were obviously aware of it. I mean they were aware that there was a potential for a relationship. But you see when I then consider when they got the news from 1844 onwards that the Government had acquired land in the area and stuff like that that would've put a serious strain on the relationship and any view they might've had of the potential of the Treaty to be this or that would've seriously come under question I think. Of course it never got resolved because there's still no contact.

Yes, I think considering all that I've said, I think that any relationship that the Treaty was promising or indicating might happen would have been under some serious question over the whole of that period. Yes, so I

would agree after all that that I don't think the Treaty would've had as much of a presence there and during that period.

Q. Ka pai. At paragraph 3.124, and I'll just find the page number so that's page 364, you refer to a letter written by George Graham in 1866 about Te Whakatōhea's motivations in joining the Te Tairāwhiti tauā eventually leading to the battle at Kaokaoroa. Graham's account of Te Whakatōhea's motivations were that really the antagonism that Te Whakatōhea showed to the Crown and Pākehā was more due to the Crown's growing alliance with Te Arawa as opposed to Te Whakatōhea's particular views towards the Crown or Pākehā in general. I don't think you draw any specific conclusions about Mr Graham's letter in this characterisation of events. I just wondered if you agree with that characterisation or do you discount it? Is there anything to be said for that perspective?

WITNESS REFERRED TO #A030, PARA 3.124

A. Yes. Sorry, I'll just check something first. I'm sorry about this. I just need to have an essential piece of information before I answer that.

Q. No problem.

A. Right, okay. Yes, sorry about that. Okay, so Graham in this period, it was after the findings of the trial for the murderers of Völkner and he was raising questions about whether some of the evidence had been correct and then after that he was raising the question that there should be clemency shown for those who were found guilty so it was within that whole scenario. He presented this type of information in regards to it along the lines of: "These things occurred during an extreme time and that people who formerly hadn't caused any harm or shown inclination to cause harm did so and these are reasons why," and there are several listed in what you've just shown me.

I found that he had a lot of reasons why, apart from just these ones here that you've mentioned or that we were looking at, he had a lot of reasons why. In theory, some of those he's got from talking to the prisoners because he did visit and talk with them so in theory he's got some from that. In theory, some of it is wider and his opinion on the events that had played out. In a couple of examples, and we can go to them if need be, I

felt that his reasons were incorrect because there wasn't a factual thing to support them; I can't remember what those ones were. But on the other hand, there are other ones that I think are believable and supported by other evidence.

The ones that you've just pointed me to about losing confidence in the Government when the troops were sent to Tauranga I think that was one. That was a major factor they were considering before they made the decision to go.

I think the one about arming the Arawa was another. There is other evidence about "we believe to exterminate them" that does come up elsewhere as well, where they say that there was a general view that they had heard that Governor Grey had sent a dispatch that effectively said "we're going to do that".

In this case, I think that those three things that he's raising are reflected by the rest of the evidence as well.

(12:03) JUDGE DOOGAN TO TONY WALZL:

Q. Thank you Mr Walzl. I just wanted to clarify one part of that discussion. My recollection from some of the material, it was Graham who interviewed the prisoners prior to the execution of Mokomoko and among other things it was Graham's recommendation for clemency for Mokomoko. Is that correct?

A. Yes, that's right. That's what I was looking up, your Honour.

Q. Yes.

A. Because I sort of thought well I need to be sure of that and so I just did a quick check and, yes, it was Graham who was doing all those things that you mentioned, yes.

Q. Thank you.

(12:04) MS UDY TO TONY WALZL: (CONTINUES)

Q. Picking up on the battle of Te Kaokaoroa. The Ngāti Rua Chief Te Āporotanga was murdered while having been taken prisoner at that battle and it's fair to say that this was essentially a killing of Te Āporotanga by Crown troops, in the sense that Te Arawa, who were

responsible for the death of Te Āporotanga, were acting for the Crown in that battle and in holding the prisoners from that battle?

A. Yes. I mean that phrase of saying “they were Crown troops” is a significant one. I mean one of the characteristics you need to say “they're Crown troops” are they would be in the pay of the Crown. I think in this case I don't think they were at this stage yet, but they certainly were close allies of the Crown. In this engagement, not all are, or there were some hapū that were on the other side, but generally speaking they were their allies.

It is interesting that, just over the page at 3.125 paragraph, when Graham’s talking about it, I mean the point he makes about that killing is he says that: “A few days afterwards the Chief Āporotanga, while our prisoner was murdered.” I suppose, even if you felt that Powell weren’t literally Crown troops, he felt that was an action that took place under the Crown. I don’t know what the law on that is but he seems to be saying that essentially because it was an action that took place under the Crown that he was “our prisoner” even though I don’t even know at the time if any Pākehā officers were present or not. So that’s the view he formed and I think that’s probably as far as I can take it because it’s quite a significant question about whether they were Crown troops or not.

Q. Thank you that’s certainly a useful perspective on what Graham is saying there. You talked earlier with Ms Terei-Tipene about the role of Pai Mārire and particular the sort of Crown concerns about the spread of the Pai Mārire religion and the impact of the Agassiz report on the eve of the invasion. In your report, you suggest that Te Whakatōhea were particularly open to the message of Pai Mārire because at least in Völkner’s accounts they considered their defeat at the battle of Kaokaoroa and the fever that broke out a year later was sort of divine punishment for their sins and for not perhaps being strict adherence to the Christian faith at that time. So that’s one perspective on why the message was well received. I just wondered, given that that is quite a religiously charged perspective, do you have any other views on how Te Whakatōhea’s relationships with the already present missionaries

might have impacted on their willingness to hear Kereopa Te Rau's message?

A. Your relationship with the missionaries. Just on the example that you raised just so that we've got all the information in front of us. Völkner of course and they definitely do say that they felt it was divine retribution and then they sort of say comments like: "We are grateful to the Lord that any of them survived that he brought any of them back because we could have lost a whole lot more." There is the comment that: "Because we haven't been Christians enough, we've turned away from it." So that is all recorded by Völkner and it seems to reflect what they say at the time. There is another record, and again I can put my hand on it, if need be, but it's in here, where between that time and when Pai Mārire came, they seemed to have formed like a question mark over that Christian god. It's almost like on the one hand within the Christian tenants it's like: "Okay, we get it, we've transgressed and we've been punished," but then I think there's a record somewhere in the report where they sort of say: "Well, what sort of god is that that would punish us so badly," because it was such a bad thing; it was the disease and the starvation; it was a terrible thing they saw. So I think they started losing faith in that aspect of Christianity and I think that's recorded somewhere where they say that. Especially when Pai Mārire then came along and said: "The missionaries are teaching you an aspect of the religion," which it's recorded that they say that: "That's not the true aspect of religion, god is far more and we'll tell you what he's like and that's a better one." So there's that aspect that I think they did have that view for a while, but it seems though further reflection moved them to this doubt that what sort of god would do that to us so that's part of it.

Now going back to your question of anything in the missionaries behaviour that would put them there, I mean I just put that down to those land purchases. I think they were raw and they were still deeply held and when Pai Mārire started saying that "missionaries were here to get your land" I think that rang true as well.

JUDGE DOOGAN ADDRESSES MS UDY – MICRO BREAK (12:10:20)

HEARING ADJOURNS: 12.13 PM

HEARING RESUMES: 12.16 PM

TECHNICAL DIFFICULTIES (12:16:38 – 12:16:43)

(12:16) MS UDY TO TONY WALZL: (CONTINUES)

Q. (audio starts 12:16:43) Crown, so Te Āporotanga was a very important rangatira for Ngāti Rua and their history is that this was a very sort of significant event for them, in the sense that it meant they lost their leader in quite a tumultuous time with a lot of different events going on.

A. Yes.

Q. My question is whether you had any comment or views on how that might have affected the hapū-specific sort of reaction to subsequent events in that time period with the arrival of Pai Mārire and even Völkner passing information on to the Crown?

A. I think it's one of those things that you can say that it would not be a stretch to say that it would have had a very big effect. I mean I'm aware that he was a major chief for Ngāti Rua but also amongst the chiefs of Whakatōhea as well. You've got all the various documents that he participated in, so he is like one of the leading chiefs in a handful of the biggest chief. Yes, so you can assume that the loss of not having that leadership there at a time that then followed when there was a great deal to deal with would have been very, very large at the hapū level and at the whole community level. So I think, yes, it would be safe to say that. But on the specific details of what that really means on the ground and how that might have effected events when Pai Mārire came, we'd have to have information on that.

Again, I mean we were asked a question before by not having that Māori perspective what impact does it have on this report and that's an example. Whereas a tikanga expert would be able to say what the loss of a leading chief like that would mean and they'd be able to talk at it with authority at quite great length because it would just be so obvious. Even though it's

so obvious, I'm afraid I don't know what that is. But it's safe to say there would be a big effect.

Q. Ka pai. There was also some discussion earlier about I guess the nuance of the Crown response to Völkner's death and the launch of the invasion with the apparent sort of change in strategy with the receipt of Agassiz letter and I wanted to dig in with you a little bit about what we can draw from different aspects of the Crown response. You note that it seemed it was always an assumption it was going to be a military response of some kind –

A. Āe.

Q. – albeit that it was originally being driven under the Outlying Districts Police Bill as a response to a crime. But you do suggest earlier in your report at paragraph 3.156 that Te Whakatōhea's decision to join the Te Tairāwhiti expedition was sort of one of the first times that Te Whakatōhea came to be seen as rebellious or troublesome in some way in the Crown eyes. Do you have any views on how that early characterisation of Te Whakatōhea as rebellious in a broad sense would have impacted on the Crown's response to Völkner's death?

A. Yes, I think I have it in my summary. I'm not quite sure it was answered in one of my questions in response, but I do say that the Völkner letters I don't think had a military impact because events were moving so fast. But they sort of would of like really confirmed to the Crown that these people were people to watch I think is the phrase I use. They've gone there in '61 and '62 heard what they had to say; that was a pretty strong comment so they got that. And then in '63 they get the letters that sort of indicate that everybody's in now. And then they see they've gone and fought the battle so now they would definitely be seen as being in the – I don't know if I'd go so far to say as an enemy of the Crown but certainly as people to watch. I think that was definitely already in place and considering all of that happened in '64 and then the murder happens in early '65, there wouldn't have been any other information that would have shifted that view of the Crown towards them.

Q. Is your view then that Völkner's death was actually really just a trigger for an already held view of the Crown about Te Whakatōhea, rather than the

sort of, driving reason for the Crown taking that attitude with the need for a military response for example?

A. I think if they had been people that were seen by the Crown as a group that was always engaging with them and had a positive relationship with them, I mean I think the Crowns position would be "something's happened there and that's surprising for those people to have done that". Considering how they would have viewed them, they wouldn't have been that surprised that something like that could have happened. There is the whole Pai Mārire thing that would also lessened their surprise that it happened because they were learning how that operates or they were learning how that operates and how effectively it can change things. But at the end of the day, I think aside from all the context, a person had been murdered and the Crown saw it as its duty to do something about that and arrest the murderers and the wider view of whether they thought those murderers were troublemakers already or what not.

I mean it can play some element in it but they might have handled things like a different way. I mean if it had happened in Ngāti Porou there had been a murder would they send an invasion force to go and arrest them, no, I don't think so. Possibly that's where the impact comes in that they're thinking that these are people "we don't have a relationship with, we don't know them, they seem to be under Pai Mārire, we better go on the safer side of sending a military force to check things out" so they had to do something. Whether they would have approached it that way if the people they'd seen were people they knew, who were their allies and peaceful people" I don't think so. I think it does have an influence, yes.

Q. You conclude that the Crown was always aware that Kereopa Te Rau and his followers were, I suppose, the instigators of Völkner's murder, so I'm just picking up on the sort of idea that you mentioned the Crown might have been surprised that Te Whakatōhea had been involved if they previously understood them to be loyal or had a good relationship with them. Perhaps, the fact that it was always understood by the Crown that Kereopa Te Rau was leading Völkner's death, is it fair to say then that that negative characterisation of Te Whakatōhea already existing was a

large part of what led the Crown to take a wider view of who was culpable for the murder?

A. I mean I don't know if the Crown did take that wider view of who was culpable for the murder. As I said, they and the media wax and wane between thinking "it's just those two" or "it's just those that came with them" to saying "we think the whole community's culpable" so it really goes sort of back and forth. I really don't think they knew. But like going back to that thing of seeing them as a troublesome sort of, again, you could play that same scenario out. If they were allies that they had a relationship with and a murder had happened would they think "maybe everybody there is involved," they wouldn't. They'd probably think: "Some murder's happened there so we'll go and investigate it in some way." Whereas here it's like: "Because we know who they are possibly everyone's involved," but they hadn't really formed that view up. They didn't have the information to know exactly who did what and in the different statements they made they waxed and waned as whether it's everybody or just a small group.

Q. Turning to the use of the New Zealand Settlements Act to actually effect the confiscation after the invasion and, you discuss that this was obviously a shift with the Stafford Government coming in and sort of abandoning the approach of using the Outlying Districts Police Bill, so a shift from treating it as a crime to treating it as rebellion. To your knowledge, was there any attempt by the Government to actually rigorously comply with the requirements of the Settlements Act in terms of making a firm determination that these people were in rebellion determining the precise amount of land that was required to bring in settlers to keep the peace or was it much more of a convenient sort of legislative tool to effect other objectives?

A. I mean that's a really good question as well that I hadn't considered before. I'm wondering if it's a little bit of both perhaps. Before Stafford had come in, I mean Weld had got to that stage anyhow in his 28th of November speech effectively saying, I'm not sure if he uses the term "rebels" but the mere fact he's saying that: "We need to confiscate land here and set up a military settlement to establish peace in that whole

area," has sort of has got that overtones of that's behind the Settlements Act so he had sort of already got there. I think I mentioned that when the soldiers are there they're just using the word "rebels" all the time. Like I said, I think they formed a view that all the community was Pai Mārire and they were needing to attack that community. It was an excessive one so they needed to deal with all the excesses of it. Even though I don't know if they used the word "were in rebellion" the soldiers always used the word "rebels", so in part I think they'd formed that view and Stafford had no reason to depart from it.

So the question is did they go through the whole thing of assessing whether they were rebels? I suppose the mere way that the campaign had played out would be for them to – even though you might say by landing you're going to get sort of shot at and people are going to go into a military position and oppose you is an obvious thing – and that doesn't mean they were in rebellion; you sort of pushed them into a state where they were in rebellion – but I think the view sort of got, even though it was never recorded, formed that they were in rebellion. You were meant to do the investigation that people had proved that they were before you use that phrase and bring that Act in. So part of it, I think, they'd say: "Well, it's obvious on the face of it that they were," in their opinion that's part of it.

The second part of it though is that I also think there is an element of it being a useful tool. I think that there's those negotiations that was happening with the Auckland Provincial Government. The timing of it means that they had to make a snap decision to guarantee to the Provincial Secretary, that Superintendent that they could give that land to them and there was an Act that would do it and do it fast. So I think there is an element of: "Right, we'll use that Act because that will accomplish it and I can say straight away to Whittaker: 'It's done,' and we can close that deal." So I think there are elements of both. Presumed that they were in rebellion but also a tool that was used on the spot because of the circumstance.

Q. Just picking up on that last point, perhaps then would you agree that those transactions and the desire of the Government to be expedient in that

transaction with the Provincial Government was the driving force behind giving that sort of assumption of rebellion, the formal imprimatur of declaring that to be rebellion for the purposes of, under legislation?

A. Yes, I mean I do think that's correct. I mean there's no proof of it. But that really truncated time where those negotiations were happening, and it was a real pressure house; Whittaker had travelled all the way down and stuff and it all got done in a few days. I think they were an important context to bring it in. I suppose if anyone had any pause for thought, like if the Government thought: "Are they in rebellion," they'd say: "Yes, they are because that's the view we have anyhow," so it would be sort of like that. But I do think that context is what brought it in so quickly, yes.

Q. Would you agree that then is what really affirmed or bedded in that perception of Te Whakatōhea as rebels the use of that Act taking it from an informal sort of understanding to a formal position?

A. Yes, it's formalised didn't it. Yes, I mean by using that Act I mean it had to be to take the land so now they were. If they weren't before now they were.

Q. Thank you. Just to move to a slightly different topic. Later in your report around page 958 you discuss Te Kooti's presence in the rohe in around 1870 and you discuss I think what's characterised as an attack on Ōpape and Ōmarumutu by Te Kooti's followers in which around 170 people were taken away back with Te Kooti. You discuss a variety of reports on that event, including one account that suggests that Te Whakatōhea had warning that Te Kooti was coming. I just wanted to discuss with you the characterisation of that event which is set out in the historical account in the Whakatōhea Deed of Settlement. I think you said to my friend Ms Cole earlier that you're familiar with that historical account. I'm not sure whether we can bring that up. But any rate, at page 69 of that historical account, it suggests that it's possible that Ranapia and others at Ōpape secretly supported Te Kooti colluding in that raid so Whakatōhea "captives" could join Te Kooti without appearing to be rebels or alternatively Te Kooti may have taken the Ōpape people as hostages to discourage Ranapia, Piahana, and others from assisting the Crown against him. I just wondered, in terms of the documents you had seen

accounting that even, whether you had any opinion on that potential characterisation of it being a collusion.

A. Yes. So for that last part for the report, which is part 6, I think I didn't give part 6 the love that I gave the other five parts. There's two reasons for that. One is there were no specific questions on that period to address and answer and I had a lot of questions to address and answer and they took a lot of time to form views on. So what I've done really is I've recorded all the documentation and put it out in as full as I can. You will notice the commentary in that section is essentially a summary rather than commentary so that sort of reflects that.

Q. Yes.

A. Now I saw like there is lots of interesting material there, such as the issue that you're bringing up. There's the whole question of Whakatōhea joining the Crown forces at different times and what were the motivations and you have varying opinions and materials; again, contrary sources. Some people will say they knew you were coming and other people would saying: "No, we didn't and we are terribly upset that our woman and children have been taken away." When it was getting close to the end of the report and I saw that and I thought: "I've got another one." I've had to deal with the CMS thing working out through documents that don't appear to be what they are; I've had to deal with it in Völkner working out who committed the transactions; you needed that exercise to be done one more time and I just didn't have the time. I didn't do it but it should be done. I guess my answer to what you're asking is unfortunately I don't have an opinion because I haven't studied it enough but I do think it is an important issue.

Q. Thank you.

JUDGE DOOGAN TO MS UDY – TIMING

Q. Having said that, my final question for you Mr Walzl, overall how would you asses the causative factors of the raupatu? Just an easy question to end on.

A. I was hoping to get off with a yes/no answer in the end but I guess not. Well, I mean I hold the view in a way that I put quite a lot of stock in the Wilson purchase and the Old Land Claims Commission and normally you

wouldn't, especially because at the end of the day none of the land actually got taken. It should've but it didn't. So you sort of think there's sort of nothing really to see here. But it's very rare that often like from Northland surplus land would be in play and groups wouldn't know for ages. They only came to know in the 1890s and stuff and there were petitions at that time about surplus land because it finally became obvious on the ground but here they knew like really early. Not only did they know really early but Wilson in the way he communicated the Crown's interest in those lands to them, it was in the context of argument and contest over his purchase and this is by his own writing and so he sort of used it as a threat. "You guys stand down, otherwise the Crown's got an interest here and they'll come along." Again, you could sort of say: "At that stage, what would that threat be," but the Northern war had happened and the war in Wellington had happened and so that is a real threat because Whakatōhea would know what the Crown will do if you're offside with them essentially.

I think that that factor and the factor that there was no relationship over the next two decades it's got one of two things. On the hand Whakatōhea made their own way in the world essentially and had to and did so through trade et cetera and so they were empowered in a way. They were empowered in a way that tikanga still ruled in the area as well. So that was an empowering thing because sometimes having a relationship with the Crown was not the best thing to happen anyhow. So they were empowered on the one hand. But on the other hand they were living under this threat of the Crown coming and taking all their land. I think when they used those words – because I thought it was odd that they were using them in the 1860s, what's that about – but I think it's about knowing about that surplus land.

I mean it's a large chunk of land essentially too. It's like from one river to another from the sea to the hills, so it's all of it as far as they knew.

I do think that that just left a factor that put them on a certain path that meant that they didn't have a relationship and couldn't trust a Treaty partner and when the Treaty partners started doing things in different parts of the country that seemed to be almost a sin fulfilling prophecy and

they became worried et cetera. It took well considered paths too. They had so many embassaries from the Waikato they really had to think about it and they finally got the letter and finally joined in et cetera. But I do think that that policy set Whakatōhea's path entrain in a way. Even though it looks like it's only a minor thing and doesn't really count, I think that policy is that bad that it actually put Whakatōhea on a path that they felt they needed to do to protect themselves and make their way et cetera and the Crown never ever modified that by having a relationship with them. Because they had the relationship with them and they could talk about what could've happened. Things were put in place in a way that I haven't seen anywhere else. I think the seeds of raupatu happened on the 17th of January 1840 really.

Q. Thank you and thank you very much for your comments this afternoon. It's been very illuminative.

A. Okay, thank you.

Q. Kia ora.

(12:41) MR SINCLAIR TO TONY WALZL:

Q. Tēnā koe **greetings** Mr Walzl.

A. Kia ora.

Q. I've got two areas of questions for you. One is to deal with the CMS society and the Catholic church and the other area is to do with hapū and iwi relationships and dynamics. My first set of questions is really directed at paragraph 7.21. I think that's on page 1061 I think, so if we can just go to that. As you're pulling that up, I want to look at the effect of the CMS society and the Roman Catholic's at that early period of 1840 to the 1860s and the effect they were having on the interrelationships between hapū and the iwi. If we look at 7.21 you state there that there was competition between the two missions and there is some fairly strong language used there. There is "fierce arguments" "shocking" in fact and "diatribes of doctrine". Could you elaborate on that a bit please?

A. Yes. Well, I mean this appears in a summary and a conclusion part so there is some evidence behind it and there's a great deal of evidence behind it.

Q. Yes.

A. Not only is there a number of examples in numerical terms but there's detailed examples as well.

Q. Yes.

A. Yes, I guess it is strong language. I mean I saw it as well when I was reading it and I thought: “Oh,” but it was. Because the debate between doctrine happened at two levels. It happened between brethren and brethren so priests and missionaries and there's examples of those. When Chouvet arrives he was invited to have a correspondence with Wilson to talk out their doctrine and to record it all. There's letters back and forth that we have that shows that and then the Catholic priests also record some interactions that they had as well so we have it in great detail. And then we have also got examples that the followers themselves would also have the same discussions and they'd get very heated et cetera. The shocking part of it is that there was really no holes punched.

Q. Barred.

A. Like, for example, they would sort of talk about Martin Luther being an adulterer which is a heavy thing for being a founder of a church. There is a terribly weird phrase they use about Mary being a decomposed corpse or something.

Q. Yes.

A. I think that means that she's passed away and she was a human so how can you be following Mary. So these terms were used back and forth quite sort of shocking images and stuff and there's something about pope’s and all sorts of things so they played it out. These were all played out in public as well in front of people.

Q. Yes, that was the point I was getting to, what was the effect and do you have any evidence of the effect on the Māori parishioners when this is played out in public? How did they view the brethren and their institutions?

A. Yes, there’s two aspects to it. I think the followers, like I said, themselves started emulating it so that happened at a community level; there’s evidence of that. There is also evidence of like when one of the priests

sort of said: “We had this contest,” and whatnot and they will say after Wilson left because there was a public one and he stormed off and his people sort of said: “Yay, we beat them!” So there really is this whole competition in that really heated way.

I mean you were saying these questions are all being asked within the context of did it undermine community cohesion. Yes, I mean it’s an important question. It’s hard to form a view because there’s more than religion that binds Whakatōhea together and you can see many joint actions that they still carry on doing afterwards. However, as was mentioned by Professor Williams and as I mentioned, you just never have anywhere else in New Zealand that I know a head to head like that two missions right in the same place going head to head over like a decade or so. To the extent it created divisions and undermine community cohesion, did it create it or was that already there and it exacerbated it? Yes, I really don’t know the answer. There’s not enough evidence on what the hapū were like between each other beforehand. We don’t have that information. We don’t know. But I do think it’s a factor I’ve never seen before. It’s heightened. It definitely is evidence of it having an effect. How deep that effect is and undermining cohesion and having ramifications into the period of the war and the raupatu it’s hard to say.

Q. You see my other point added to that is during that period of time was Whakatōhea’s most prosperous period developing trade and goods, ship building. They really are moving ahead various hapū together--combined on some operations, separately on others. And you can’t get a view of the insidious undercurrent that’s going on with probably one of the most sacred institutions that Māori people are associated with and that would be the church and its spiritual guardian type role. Having said that, you’ve stated that remembering the whakapapa connections across Whakatōhea hapū, how would that have assisted to ameliorate those tensions?

A. Yes, I mean I’m probably the wrong witness to be able to answer that because this again goes into that area where an expert on tikanga would be able to state that better. But I mean it’s not just like the whakapapa. It would be all the tikanga that’s inherent. It would be leadership. There

would be so many factors that would ameliorate that I believe. I think I've seen maybe in some of the evidence that was given where some people who are giving evidence now in the Kōrero Tuku Iho I think it is or maybe it's in briefs of evidence where I think they say "those things were probably more important than the sectarianism" and I understand why they would say that because those things are all important, and I'm not saying that that is not the case. But all I am trying to say is that here we really have this extreme examples of sectarianism. We have examples of it having an effect and so it is hard to know.

The point you are raising is an excellent one too, you know, trades are going on and people are prospering still. There's no great record of serious fights. There's no great record of undermining. People come together when they have to. They come together to go to war together. Yes, so it's a really hard thing to know.

I guess I just want to note that it was significant I believe. I think the fact that having 30% of the population who never converted to either after two decades is a thing I think is important. I think the records of the missionary saying: "Our mission's failed," is important as well. I think it had an element in that.

I mean you're right saying that it's a really important aspect for Māori that spirituality et cetera. I think that sectarianism is an element in it. I suppose taking hold and playing the role that it played in other communities. Therefore, again, I think that's a major reason why when Pai Mārire comes along it gives another option. It's like: "There's a way to express that spirituality; there's another option finally." So, yes, it's a hard one to know exactly where to land on that one.

Q. If I just move on to the activities of the CMS mission juxtaposed with the Catholic church in terms of land acquisition. Can you advance a few details about the differences in the Catholic clergy and the CMS clergy in terms of acquiring land?

A. Yes. Well, there's generally and there's specifically here. Generally, around New Zealand the Catholic church, I couldn't say absolutely, but my recollection of that wider body of information from my participation in this process has been that the Catholic church did not buy as much land

as missionaries. It sort of never did. They tended to just buy enough for a mission house. Whereas the CMS would buy enough for a station and a farm around it to support it. And then at a certain point CMS Missionaries started buying privately for themselves.

So that's a general thing that's across New Zealand anyhow and then specifically here that's exactly how it played out. I mean I've got a lot of them there how when they were just trying to buy a little section for Chouvet to build a house on, it was problematical enough. They struggled enough in even trying to do that. But that's all they did and it's not a surprise that that's all they did.

Whereas the CMS when they came to purchase here they were buying for a station. It would have been a few hundred acres. The missionaries were wanting something for themselves. And then to complicate matters more because this happened in 1840 there was this whole thing that was afoot at the time of the CMS should buy up a whole bunch of land and hold it in trust for people.

Q. Yes.

A. So, all of those things were coming into thing. So, are you comparing the two religions as to their attitude to buying land they're just polar things apart, –

Q. Yes.

A. – polar poles apart.

Q. I note at paragraph 7.24 in the last sentence there it states all Whakatōhea essentially come together and they ask Bishop Pompallier to draft a document. Would you like to make a comment on that?

WITNESS REFERRED TO PARA 7.24, PAGE 1064

A. Yes. Again, this is from a commentary section and it comes at the end of a whole bunch of evidence.

Q. Yes.

A. But it's my view that the scenario that played out there was that Wilson was there on the 17th and 18th of January and made a land transaction. The 1898 petition shows that very soon after the wider community learned of it, learned of its extent, and there was great argument about it. There is a mention of a fight at Paerata which is not recorded anywhere else.

We don't have any details of it, but it sounds like they fought amongst each other over it. Because this thing with Pompallier is happening in the second half of March, so in that short period all of this dissention is playing out, a fight is playing out.

I believe that when the Missionaries came back in March (the first half of March just a matter of weeks before this happened), they were faced with a completely changed situation. They had to essentially re-negotiate new deeds and that's when I think they did to swap. Even though that happened, and it was managed by Chief Wilson records that there were a thousand claimants but the chiefs handed out the thing, so even though a new deal was done and it was recorded and it was accepted, even though that was the case, I think it left a very bad feeling.

When Pompallier came along – and of course they just would have seen Wilson essentially as a church missionary person; it's not Wilson doing this; it's a missionary doing this – so here is another missionary, Pompallier coming along and they are saying: "Can you now do something for us with this deed? First of all, we're going to declare that all land belongs to everyone," which I think reflects that whole thing that they had fallen out amongst themselves terribly over claims because of the purchase. The second aspect is: "That no more land can be sold," and so they asked him to draw up that deed. So it's like they trusted him to be a new intermediary.

Q. Is that the seeds of a Whakatōhea collective land league type of institution would you say?

A. Yes, I think so. Yes, I think I might even use the word "land league" somewhere. Yes, that's what I think. It's like: "We'll never sell any more land again." That's again early 1840 to have a land league in place is astonishing. I think so, yes.

Q. Yes. Because that would precipitate the thinking of those who wished to purchase land that they weren't going to acquire it by peaceful means. Certainly not against this particular group. Would that be fair to day?

A. Well, I think it is. I think it's shown when Chouvet then tries to buy his little plot of land which is 1843-44. It sets off the whole thing again. The

community almost goes to war over it and stuff like that. Even just a small plot of land is now a big issue. Yes, I think it does.

Q. Yes. I'm looking at paragraph 7.21 and you've noted there sort of an activity when the local hapū worked together internally. When I mean internally that's within the internal territories acknowledged by other iwi. There's matters there that they deal with local Public Works, matters such as going to war in 1864, and a Pai Mārire pōwhiri and things like that and of course, as we know, those things carried on into the First World War and so forth and the Second World War where the tribe is acting collectively on matters that are internal to the tribe. Now that's a consistent act amongst the tribe, isn't it, for them to work together in that sense?

A. Yes, within the period that I'm looking at, yes, there's all those examples and the fact of coming together with asking Pompallier. He said they were approached by the whole community. Everyone came and asked him for that so everybody was in agreement with it. So you do see a lot of collective action, yes.

Q. Yes. There was one other thing I was going to ask you about that area regarding the mission. I know it's outside of your scope and the periods that your report's focused on. But this matter between the various religious sectors, it carries on in the Whakatōhea and Ōpōtiki region, are you aware of that?

A. No, I wasn't.

JUDGE DOOGAN ADDRESSES MR SINCLAIR – LINE OF QUESTIONING, BREAK (12:59:16)

HEARING ADJOURNS: 1.00 PM

HEARING RESUMES: 1.56 PM

JUDGE DOOGAN:

Kia ora koutou **welcome back**.

JUDGE DOOGAN ADDRESSES MR SINCLAIR – TIMETABLE UPDATED (13:56:57)

(13:57) MR SINCLAIR TO TONY WALZL: (CONTINUES)

Q. Mr Walzl, if I can take you to paragraph 5.270 of your main report and the focus of my discussion here is, I guess, I'm going to call it the Whakatōhea reset. This is where we have a population displacement and relocation taking place and if note there, Wilson reported to Whittaker on arrangements being made at Ōpape . You see that?

A. Yes I do.

Q. Yes, and he goes on to state that he's assigned this land to Whakatōhea. Now I'm presuming when he mentions Whakatōhea that's all of the hapū that have been mentioned in your report to be relocated to the Ōpape reservation. Would that be correct?

A. Yes. I mean that's how it turned out. Yes, that's right all the hapū.

Q. Yes. Just before I want to move on to the point I'm going to make at three paragraphs down you'll see that one of the hapū named, I've got a typo there, but it's Ūpokorehe (although it's spelt Upokorohi, and I've mentioned this previously with Mr McLellan) that their numbers are quite low and it says that the numbering there about 30 members. They have been relocated to Ōpape as well. Is that correct?

A. Yes, that's correct. Just in regards to that spelling that's how it was spelt in the source so that's why.

Q. Yes.

A. Yes. But that's correct, yes.

Q. Ūpokorehe were also relocated to another reservation in the Ōhiwa harbour, that is correct isn't it?

A. Yes it is, yes.

Q. Yes. Now I had a discussion with Mr McLellan about the number of hapū that were in existence and his report says that over a period of time there were in the vicinity of 30 hapū. The late Dr Ranginui Walker in his work mentioned a number of 22 hapū. You would confirm that wouldn't you?

JUDGE DOOGAN ADDRESSES MR SINCLAIR – CLARIFICATION (13:59:53)

(14:00) MR SINCLAIR TO TONY WALZL: (CONTINUES)

Q. This is what I'm going to put to you, Mr Walzl. Can you give us any clarification on which period of time Dr Ranginui Walker would have been referring to in those 22 hapū?

A. I am aware of that reference in Ranginui Walker's book. I also heard the cross-examination of Professor Williams on Monday where he said that from looking at Land Court minutes he formed the view as well and it was up to that level. But I don't think I came across it. So I'm aware of it and those two sources show that but I don't think I found that in my report. My sources didn't reflect that put it that way, but that's just because it's just my sources, yes.

Q. Yes. Where I'm going with this is you get to a period of 1866 where the reservation's been set up and we're down to six hapū. Have you got a comment to make on that?

A. I haven't in a way other than – I mean what was behind Wilson's allocations and what was his thoughts and all that aspect, we don't really have any evidence on it. Seeing I'm sort of somewhat evidence-driven, I haven't seen any evidence on it. I don't know how those hapū were arrived at, whether they were self-identifying or whether Wilson made the decision to only have six and simplify them, I don't know I'm afraid.

Q. You see that's a decrease in a community of approximately 75% of a community structure that represented various small hapū groups and other entities. You'd agree with that, wouldn't you?

A. Yes, I mean that's the math of it. If there were 22 and it got reduced down to five, then yes that's the math of it.

Q. Yes. And of course that causes all sorts of internal tensions between those groups that are recognised and those groups that are left out. Would you speculate on that matter?

A. I mean I am aware of those tensions for sure but I certainly haven't researched on it and it's probably more for the traditional report authors to comment on I think.

Q. The reservation for the Whakatōhea iwi at Ōpape was originally stated to be land of the Ngāti Rua hapū. Are you familiar with that?

A. Yes, I am.

Q. Yes. Can you comment on the sort of tensions that would have caused to that hapū with a large number of other hapū being placed side by side next to them?

A. I mean clearly it's self-obvious that there would be. I'm just trying to think of any evidence where that's reflected or specifically recorded. But it is self-evident that it would be. I mean if that's their tūrangawaewae and five other hapū are being put on it clearly there would be tensions. I'm just trying to think of any examples where it's recorded. I think there are. I think they are post-1870 and I think I've seen them in the report I'm currently working on, but unfortunately I just can't bring them to mind at the moment.

Q. The reservation was established on very poor land. It was very infertile, wasn't it?

A. Yes. Again, I'm aware of a lot of that from the report I'm working on and this report, yes, I can definitely confirm that because within a short time they all moved off the reservation and came back further south after a very short time. It was just a few months I think because of that reason.

Q. Yes. Usable land there and your report states probably about 200 acres out of the 20,000.

A. That's right, yes. That was a comment that was made, yes.

Q. Yes. My final point on this matter is that do you think that there was an intention to alter the identity and the make-up of Whakatōhea's tribal structure from numerous hapū to a manageable six hapū for the purposes of the Crown control and managing Whakatōhea that was once a fairly significant diverse tribal group to a small manageable number of hapū entities?

A. Yes, I mean I haven't seen a specific overt evidential comment that that's the case but we do see comparable examples. For example, one of the Crown officials touring in the early 1860s looks at the rūnanga and sees that they had 70 members on an adult male rūnanga and in addition had a young man's rūnanga. He sort of said: "No, that's too many," and he

re-formed it. Cancelled the young man's one and re-formed it down to 24. There's an example of the Crown changing a customary structure in order to be what they thought was manageable.

The second example I can think about is that when Wilson did – I'm not sure if it's in my report or whether I'm just generally aware of it but I'll mention it anyhow – I might have read it in Jane Luiten – start recording , or it wasn't Wilson; later officials started recording names for Ōpape people had to pick a hapū. Like if there was five subdivisions and they had whakapapa links to all five they couldn't be reflected. They had to be represented in one hapū and that certainly reflects that same thing of management.

Although I haven't seen any specific about what you are suggesting that management from 22 down to five was it more convenient, I haven't seen anything specific on that. But those two examples show that the Crown did do that during this period.

Q. Just one more point adding on to what you've just raised is the structure of Whakatōhea as six hapū established on reservations throughout Hiwarau and Ōpape, it rather restricts it from developing and increasing in number from that period 1866 to the present day. All I'd put to you and you can give me your opinion on that is that at that period of time from 1866 the Whakatōhea iwi never increased or didn't develop any further from six hapū to the present day. Now, are you aware of any other iwi that are locked in to that type of framework?

A. No, I don't think I am aware of a comparative situation where iwi get recorded as a certain number and then they're locked in. I'll say here that I'm not aware of it, but in the back of my mind I feel as though somewhere around the 1940s when trust boards were being formed. Again for the Crown's interaction to handle settlement money and stuff like that, and I'm not saying in this area. But the same thing would sort of happen, there'd be certain beneficiaries, certain hapū, and then they've been locked in through to today. I am sort of familiar with that but not specifically and not from an early period like this all the way through.

Q. Thank you Mr Walzl that was a fantastic report you did.

A. Thank you very much.

(14:09) MR TUPARA TO TONY WALZL:

Q. I thought I would stand. I don't want to intimidate you or anything like that. But it's a bit hard to see through two or three rows of people to be able to have a conversation with you today.

A. Okay. Kia ora.

Q. I have to say that in preparing for today, I reflected on the first time I heard you give evidence and saw you, and it goes back to the 1990s. I'm not necessarily reflecting on how old you and I might be.

A. I think you are.

Q. But it was the Tūranga Inquiry and you gave evidence on behalf of the iwi there; one of my iwi Rongowhakaata. And of course since then to today, there have been numerous reports, which every lawyer interested in the treaty bar find great pleasure in reading, and of course you have appeared on numerous occasions over the years before the Tribunal. I just wanted to start by thanking you for the work that you have done for our people throughout the motu. Perhaps one day they will write waiata about you, Mr Walzl.

A. Thank you very much.

Q. I would also like to let you know my questions are going to be very much yes or no answer type questions and I know you enjoy that. I'm hoping to get yes's all the way through so I've my pen ready to tick all the boxes. I represent two claimants who are Whakatōhea and I declare for the record also I am also of Ngāti Ira and Ngāti Ruatakena as well. So I obviously have a very personal vested interest in your answers.

I wanted to take you to start off with to page 333 of your report and you will be familiar with this paragraph 3.55. One or two of my colleagues have kind of touched on, or had a discussion with you, in and around that part of your report and I hope not to repeat the questions that were put to your earlier today. Hopefully I can put those questions a little bit more eloquently with respect on a serious note. In your report there, you refer to the Taranaki Tribunal –

A. Yes.

– which referred to the New Zealand Settlements Act 1863 and as follows: "Under this legislation: 'To be lawful, a confiscation had to be referable to

the Act's purpose of keeping the peace and could not have been more than that which was necessary to keep the peace.'" Then in one or two paragraphs on at paragraph 3.56 you refer to the Tribunal's description of some of the main features of the Act and then over the page on page 334 sub paragraph (c) it reads: "The Act gave its purpose as the placing of settlers on the land for the maintenance of peace. Accordingly, by law, the motive was 'peace', not 'land grab' or profit, notwithstanding any true intentions. The corollary, however, was that confiscation was required to be limited to only that necessary for the maintenance of peace." Mr Walzl, do you agree that the confiscation of land for a purpose other than the placing of settlors on the land for the maintenance of peace was contrary to the provisions of the Act?

A. I think I can give you my first yes on that.

Q. Please, thank you.

A. But not just, yes, but if the Tribunal has effectively recorded that and that's quite clear there that yes is the answer.

Q. Thank you. Can I now take you to page 1099 paragraph 7.102 of your report. Again, I'm going to quote some short excerpts from your report and please let me know if I'm quoting out of context in terms of how you might answer the questions I will put to you. But in that paragraph 7.102 you note the following: "The reason why the 1863 Settlements Act was needed to be used, was that the taking of land in the Inquiry District (and in Whakatāne too), had become part of a deal between the Central [*sic*] Government and the Provincial Government where the former would transfer to the latter the administration of confiscated land in the Auckland Province." That was touched on with you earlier today by one of my colleagues.

Then at paragraph 7.103 I'm going to read a very short excerpt: "The second advantage of Auckland Province taking on the administration of the confiscated lands was that, on paper, as worked out by Whitaker, the sale of Ōpōtiki and Whakatane lands – after meeting all the commitments of survey and other costs, compensation to Pākehā and loyal Māori, a place for the return of surrendered rebels and the allocation of land to military settlers – would actually turn a good profit for the Province." My

next question is do you agree that the confiscation of land for the purpose of making a profit or financial gain was contrary to the provisions of the Act?

A. Yes, it's certainly something I hadn't thought about and all those features that I recall here are based in evidence as featuring and of course peace isn't mentioned here and the Act doesn't mention anything about those sort of objectives as being the objective of the Act.

Q. So thank you for your yes answer.

A. So it's the second yes.

Q. Then at paragraph 7.104 you note or refer to: "The Weld Government its belief that all at Ōpōtiki were, by their adherence to the Pai Mārire faith, eligible to be punished by confiscation." Do you agree that the confiscation of land to punish all adherence to the Pai Mārire was contrary to the provisions of the Act?

A. I'm sorry can I just have the question repeated again please now that I've had a bit of consideration. Just the last part of the actual question, yes.

Q. Yes, so referring to the Weld Government's belief that all at Ōpōtiki, as referred to in your report, were by their adherence to the Pai Mārire faith, eligible to be punished by confiscation. My question is do you agree that the confiscation of land to punish all adherence to the Pai Mārire faith was contrary to the provisions of the Act?

MR LINKHORN ADDRESSES JUDGE DOOGAN – LINE OF QUESTIONING (14:16:19)

JUDGE DOOGAN ADDRESSES MR TUPARA – LINE OF QUESTIONING (14:16:44)

(14:19) MR TUPARA TO TONY WALZL: (CONTINUES)

A. Yes, I think I just would say that the reference to punishment is in regards to punishment for the murders and the Crown had declared that they would deal with the extreme aspects of Pai Mārire, such as the committing's of crime. By the time they invaded they essentially had formed a view that all of Whakatōhea were part of that; were implicated

in that crime through being Pai Mārire and having the Agassiz report showing that they were extreme. The punishment is within that context I think. And within that context, as you pointed out, punishment is not mentioned in those phrases there. Yes, that's what I meant by punishment.

Q. Thank you for that clarification. I think that answers the question to a degree. It's fair to say though there were motives other than those provided for under the Act, as referred to in your report, as to why the Crown confiscated land within the Inquiry District. Do you agree with that?

A. Yes. Based on my answers to what we've just talk about, yes.

Q. Yes. Can I now take you to page 640 of your report paragraph 4.306. Again, this was and has been touched on already throughout the day paragraph 4.306 and I will just quote one or two short sentences from that paragraph where you say: "A force would be sent to arrest the murderers of Völkner; where the people in the district where the murderers were believed to be located were threatened with land confiscation if the murderers are not given up." As I mentioned, that was and has been talked about already today. And then the paragraph goes on to read: "That the taking of land was predetermined no matter whether those at Ōpōtiki surrendered the murderers when the expeditionary force showed up or not." Do you agree that the Crown intended to take land whether there was co-operation with the expeditionary force regarding the death of Völkner or not?

A. If you look at it within the context of official instructions the answer is no because that wasn't the official instructions that are recorded right up to the landing. But I have formed the view, and again I have mentioned in my report that I can't point to it specifically, but by words that were made soon after by the soldiers and by the Native Minister that the Agassiz statement had rendered their view of Pai Mārire as something different and if that's true, then from that point they were going to confiscate some land whether murderers were surrendered or not.

Q. Thank you. In some respects you answer to the next question based on what you just said because my question was going to be quite broad

brushed. The question is simply this, do you also agree that the Crown intended to take land no matter what?

A. I'm sorry?

Q. You therefore agree, given what you just said, do you also agree that it was the intention of the Crown to take land no matter what?

A. Okay. So the question before was I think before they invaded was that the intention and I answered on that and after they landed there is evidence that they were going to be taking land.

Q. Yes.

A. No matter how the campaign turned out or whether murderers were turned over things had changed. Yes, I do agree.

Q. Thank you.

(14:24) JUDGE DOOGAN TO TONY WALZL:

Q. Sorry, Mr Tupara. Can I just clarify the two questions here. Mr Walzl, the prior question I think your answer was to the effect that there was prior to the forces landing intentions crystallised close to the departure of the expedition in light of Agassiz statement and that that was a point where you could identify an intention to take land. Is that correct?

A. Yes, and I did say that officially the intention still was not to take land that's the recorded intention –

Q. All right.

A. – and there's no proof before they left that it had changed. But by the statements that are made afterwards, and soon afterwards, like once troops are there and the 28th of November, my view is that it had changed before they departed and my view is because of the Agassiz statement.

Q. All right. Sorry, and then the second was that that was certainly a firm intention no matter what, in Mr Tupara's words, by the time the forces landed, regardless of the outcome of the campaign, there was a clear view that they were going to take land at that time.

A. Yes, that's right because both the soldiers record it and the minister records it.

Q. All right, thank you.

(14:25) MR TUPARA TO TONY WALZL: (CONTINUES)

Q. Down to my last couple of questions. Can I now take you to page 807 of your report and to paragraph 5.280. I think from memory that's where you are providing conclusions or general overviews of you report in a summary form. But there, and I'll quote: "A has been described, the Compensation Court was established under the New Zealand Settlements Act 1863 as way of sorting the 'loyal' Māori in a confiscated area from the 'rebels'." The inverted commas being my words of course. And then at page 808 paragraph 5.283 you note the following: "With a few exceptions, almost the entire population of the Bay of Plenty were considered 'rebels' as almost all had been 'hauhaus'". Again, you touched on this earlier today. Do you agree that the Crown intended to take land whether Te Whakatōhea whānau, hapū, iwi or individuals were in "rebellion" or not?

A. Man you're asking some (inaudible 14:27:18) there. On that one I would have to say no I don't think so, but I'd immediately say that I think they thought they were in rebellion. I think it's a moot point. I don't think there's evidence that they were just going – like if everyone had surrendered and they found out there was nothing here et cetera, would they still have gone ahead because they were Pai Mārire and extreme because of the Agassiz statement, the answer is no. So that leads to that scenario that if there had been notification and discussion beforehand and that matters had been talked about and the Crown had been assured that they weren't the murderers and that the murderers were gone. We had a discussion about that before. You know within the discussion certain evidence had come up. I don't think there would have been at that stage, no.

Q. Thank you. Notwithstanding that, and again referring to the Compensation Court, to quote from yourself: "As a way of sorting the 'loyal' Māori in a confiscated area from the 'rebels.'" I put it to you the Crown knew that it had applied the label 'rebel' to, and taken land from those who had not in fact been in rebellion. Do you agree with my proposition?

A. So the question I take it means that the Crown really knew they weren't really rebels but they used that tag to take land essentially. I think the

answer is the same I think they had convinced that they were rebels. Whether it was rightly or wrongly that's another question. But certainly the expressions they used is they saw them as rebels. What they thought deep down in their heart we don't know.

Q. I'll leave it there. Thank you.

(14:29) MS SWEDLUND TO TONY WALZL:

Q. Tēnā koe **greetings** Mr Walzl. My name is Ms Swedlund and I'm asking these questions as lead counsel for Te Ūpokorehe iwi claims which include the claims on behalf of Te Ūpokorehe, Rongopopoia hapū, Roimata Marae, and the Ūpokorehe Settlement Claim. My first topic is a bit of a discussion around the methodology. In your summary at A030(b) you do not mention Ūpokorehe. Just to be clear, do you acknowledge that the conclusions that you have drawn and the people you've referred to could also be Te Ūpokorehe?

A. I mean it's broad because it goes right across the whole summary.

Q. Okay.

A. In my summary, I use a term "Whakatōhea at Ōpōtiki" because as I mention in my report nearly all the action about which we have evidence happens at Ōpōtiki and the useful terminology for people who are there would be Whakatōhea because that would be the bulk of it and because there were people distinctly over at Ōhiwa that's part of it.

Q. Okay.

A. However, for example, if there are any conclusions in regards to Pai Mārire for example, we have evidence of people from Ōhiwa coming over and being at Ōpōtiki at the same time. So in instances like that, I would say yes.

Q. Okay.

A. I don't have any clear evidence of that when, for example, I'm thinking of another example. When we're talking about trading I found a little bit of evidence of trading out of Ōhiwa. But does that mean that that's the only place that Ūpokorehe traded and they weren't over at the Ōpōtiki side? When I talk about trading out of Ōpōtiki would that exclude Ūpokorehe? I think my answer would be no there as well because I think there is

evidence that Ūpokorehe had rights over that far. Certainly Pākōwhai was a sort of a pan-group trading place. It wasn't about rights any more. It was a modern sort of settlement. Is it possible that Ūpokorehe were part of that trading in Ōpōtiki that I have now not mentioned by that use sort of thing, I mean I'd say yes to that too. Yes, I'd say a qualified yes to it but it wouldn't be completely uniform I don't think. But I can think of those two examples that would certainly support that, yes.

Q. Ka pai. I guess that goes to questions around outside of like in the tribal landscape reports the deficiencies of the sources in being that they are primarily Pākehā and you've identified that, as you said, most of the Pākehā are located or focused in Ūpokorehe and you've already brought up the trade example. Would you also say that the Pākehā accounts of the war in 1865 also focussed largely on events around Ōpōtiki and the surrounding district but not necessarily what happened at Ōhiwa during those times?

A. Just in the question you said "most of the accounts focussed at Ūpokorehe" I think you meant Ōpōtiki.

Q. Sorry, Ōpōtiki.

A. You are, okay.

Q. Apologies.

A. Yes, I would.

Q. Ka pai. And then would you agree that where there is an Ōhiwa focus in these sources it would largely come from when the Crown interests are being impacted in Ōhiwa? For example, when Robert Pitcairn, the surveyor, was killed at Ōhiwa and all of Rakuraku's people they say have been made prisoners by Te Kooti. So that would be an example of where the sources come into Ōhiwa.

A. Yes, I would.

Q. Ka pai. More generally on methodology, you noted the ongoing impact of COVID-19 on your report and you noted that there were limitations at page 17. What are these limitations that you're referring to?

A. Yes, you're right I didn't go on to say exactly what they are, did I? I must have just got used to: "Yes, it's COVID."

Q. Yes.

A. There were a couple. One was for some time I wasn't able to go to archives at certain points and so sources weren't available in physical library locations. And then I'm trying to recall, and I think this is a situation, is that generally when I do a report I would like to meet with groups and I mean there wasn't that opportunity because of it. I mean there is a lot of groups to meet with more than a dozen. I mean I've seen Ūpokorehe's many statements that they wanted a culturally safe research approach and wanted to be part of how it was done and all that sort of thing. When a group just declares that so strongly normally I would have sort of done that sort of style meeting a face to face but I guess it was off the cards. I mean you could say: "Well, maybe I should have sort of picked that up somewhere and done it by other means," and that's partly correct. There was also once the project started the enormity of the written source material made me sort of move more towards: "I need to get on control of that side of it," and so I got locked into that side I think. So I'd say that I mean if there hadn't been COVID at an earlier stage I would have gone out earlier and done at least the first round of hui et cetera, et cetera and that didn't happen and then afterwards the project sort of took over I think.

Q. Ka pai. So you acknowledge that there wasn't a lot of claimant input into the report outside of the usual feedback channels.

A. Yes, outside of the structured ones within the Tribunal, yes, that's correct.

Q. Kei te pai. And also in terms of research, and you've probably heard this raised from Te Ūpokorehe before, so you noted that one particular thing about the report and the subject matter is that it had previously been traversed in other overview reports, in that there was already a known chronology with sources that have been identified and assessed. But despite that, you did largely review primary materials where they were available, didn't you?

A. Yes, I mean that's effectively just to point out the situation that you often don't get that. You're often starting on new research, you don't know what the chronology is, what's happening et cetera. Because of Mr Gilling's report, we had that all very clearly laid out already so we knew who was who in the zoo sort of thing and what happened so it's more a reference to that. I mean primary source material was my main focus, especially

when I became aware of how much there was and how much it can now be accessed. Newspaper articles for example I don't think when Mr Gilling wrote his report newspapers and papers in past was there for example. It was a terrible job to try and do newspapers hard copy, whereas a push of a button now you can be in contact with 10,000 of them. Yes, my focus was primarily primary sources.

Q. Ka pai. I ask this, the reason why is because Te Ūpokorehe have previously raised those concerns that historians in the past have largely used secondary sources as a kind of shortcut, due to timing or budgetary restraints or whatever they find and a result you can often find that a tentative conclusion in a report previously might later be represented as essentially received wisdom in other reports which forms almost I guess an echo chamber is their critique of research. So I was asking-

JUDGE DOOGAN TO MS SWEDLUND – QUESTION OR STATEMENT

Q. I was going ask what steps did Mr Walzl take to ensure that there wasn't an echo chamber effect.

A. Well, if you ask me whether my report was more based on secondary sources or primary, I'd absolutely say primary. Most of the earlier material hadn't seen that primary source material to the same extent so I had to form my own conclusions. I mean although there's always exceptions, especially when someone previously had said something eloquently, I will cite them. Most of the vast bulk of it they're primary-based and my conclusions based on those primary sources is my view of my own work here.

Q. Ka pai. You noted also in your report that you didn't have the tribal landscape reports to rely on. So you would acknowledge that the absence of those reports was quite a significant limitation in terms of context pre-1840, would you?

A. I mean I wasn't doing the pre-1840 situation. But, yes, not having those I mean it really like limited even the post-1840 things and you see things happening you don't know why and I think the traditional landscape might have explained some of those things. For example, why one hapū might choose Catholicism and the other one might do CMS et cetera. I could only record that that's what happened with no idea as to why. Yes, it

certainly undermines or I didn't have available to me some of the explanation that might explain some of the things I was seeing.

Q. So they're lacking the context pre-1840 –

A. Yes.

Q. – explaining the events post-1840.

A. Absolutely, yes.

Q. Ka pai.

A. Especially to do with like land rights and how communities were structured et cetera, yes, all of that.

Q. Āe. Yes, and particularly you've acknowledged that Dr Husbands was commissioned to prepare the report examining the landscape of Te Ūpokorehe. And without Dr Husbands report, would you then agree more specifically that there are potential gaps in the understanding of Te Ūpokorehe's place in the historical landscape that is?

A. Yes.

Q. Ka pai.

JUDGE DOOGAN ADDRESSES MS SWEDLUND – MICRO BREAK (14:41:30)

HEARING ADJOURNS: 2.41 PM

HEARING RESUMES: 2.46 PM

(14:47) MS SWEDLUND TO TONY WALZL: (CONTINUES)

Q. Kia ora anō Mr Walzl. So we were just discussing in terms of methodology. We've talked about the deficiencies in terms of the focus on Ōpōtiki but you also noted that there was a lack of individual group identity identified by the Pākehā sources. Would you agree with me that as well as I guess having a lack of individual or group identity, the Pākehā sources can also potentially misidentify group identities?

A. Yes, I certainly think that's the case. I mean the sources come from different Pākehā groups so if you go to the one extreme of like the media and stuff of course, yes. If you go to the soldiers that came they knew

nothing so whatever they might have said I think they certainly would have. When you get to Crown officials touring through the area they didn't have a long relationship and experience of the area so potentially there as well. Then if you get to someone like looking at Wilson would he have understood the nuances of different group identities. I mean one of the answers I gave to a question a while ago, or right at the beginning yesterday, was along the lines that a person can be a long-standing resident, even a te reo speaker amongst the Māori community, and it's generally been found by people like Joan Metge that they still never really quite work out what's quite going on in tikanga terms, and therefore that could apply to Wilson as well. Especially when he talks about the way people were acting to the land was bad conduct. Well, it's not bad conduct. It's something else is going on there. But potentially, yes.

JUDGE DOOGAN TO TONY WALZL – WILSON SENIOR OR JUNIOR

A. So, I agree, yes.

Q. Āe. Would you agree that it would be more likely for Pākehā, especially those who lived in the area, to misidentify where the group identity is more complex? For example, where there is multiple interlinking whakapapa lines.

A. Well, I think it's the same answer, yes.

Q. Āe. And also in terms of smaller groups, do you think that would also be more difficult to identify?

A. I mean this is all answering at the level of, you know, I couldn't specifically say that because I haven't thought about or researched on it. But given what I have just said, yes, as well.

Q. Ka pai. Would you agree that in communications with the Crown also local Māori might adopt the Crowns own identifiers in their communications with the Crown, essentially meeting the Crown on their level of that understanding?

A. For that one I would probably have to be shown examples I think.

Q. Ka pai. In terms of these limitations also would you agree that another limitation of Crown or Pākehā sources is that they are necessarily an interpretation of the events in te ao Māori through a Pākehā lens? So things might different from the nuances involved.

A. Yes. And again, I mean the really good proof of that is those Crown officials. I mean they're experienced Crown officials and when they look at those rūnanga and they're thinking that the muru system is just about a group of people imposing fines for their own wealth and et cetera. On the hand it could be correct but on the other hand there's no consideration that that's what might be happening as well. So I was rather surprised that they were that extreme that clearly something else is going on there and in their record they gave no inference of what else that might be.

Q. Ka pai. Do you think that would be indicative of the general approach to the district then, in terms of not quite understanding tikanga Māori or Māori society?

A. Again, going through that list that I went through media, yes, soldiers, yes.

Q. Āe.

A. I just gave an example of Crown official, yes. Yes, I think it applies to Wilson Snr as well I think. And "they" at the end of the day is about the round up of the Pākehā commentators you have.

Q. Yes.

A. Yes.

Q. And just lastly another limitation could potentially be the veracity of Māori sources who relayed information to the Crown given the implications for local Māori in terms of the legal consequences for potentially being seen as involved in rebellion?

A. Yes. I mean as you were starting that question I was thinking my answer to that will be the same thing you'll probably have to show me examples.

Q. Āe.

A. But I mean I do have plenty of examples of people giving testimony in courts that differ from each other materially so. I've got soldiers recording someone saying this about who the murderers are and other people are saying this. There's the other aspect of we talked about it before with the whole Te Kooti thing some people saying "they knew beforehand" and others saying "no that's not the case" and all those situations it's information being given to Crown agents or in a Crown process of capturing murderers or trying people et cetera. So I think I would say yes to that based on that.

Q. Ka pai. Another example of this that I would take you to could be Mair's confusion as to the degree of complicity Ūpokorehe had when Te Kooti and his forces went to Ōhiwa in 1869 and the sources for that event was largely Mair's letters to J A Wilson. Correct?

A. Yes.

Q. Our client's will bring evidence –

DR GRANT PHILLIPSON TO MS SWEDLUND – PAGE 936

Q. Our clients will bring evidence that Te Ūpokorehe had invited Te Kooti to Hokianga and helped them build the whare Te Herenga o Te Rā and that he did not take over Whakarae Pā either which is only hinted in Crown understandings of the events. Do you think that would be an example of the limitations of Crown sources when interpreting and analysing events?

A. I mean if there's specific contrary evidence, and I mean again even yesterday there was one in regard to Mokomoko whānau as well, where they have a clear strong oral history on something that's not recorded in sources. So, yes.

Q. Ka pai, kia ora. Moving to my next topic which is tribal identity. So you would be aware that Ūpokorehe identity is a very long standing for Te Ūpokorehe?

A. I am aware of that, yes.

Q. In your report, you refrained from drawing conclusions which would identify Te Ūpokorehe as either a hapū of Whakatōhea or an iwi in their own right.

A. Yes, I do refrain from that, yes.

Q. Kia ora. You would agree with me that this would be a matter for Te Ūpokorehe to work through and not something that you would be able to draw a conclusion to?

A. Me, yes, no, I wouldn't do that.

Q. Yes, kia ora. Moving to the analysis of pre-Treaty land sales and te Tiriti. This is pages 298 to 305 and it's a section discussing a period from 1860 to 1861 where the Crown officials were sent to tour the colony. You describe visits by officials, such as Henry Tacy Clarke and Charles Hunter Brown and their interactions with local Māori. These sources don't appear to mention the specific names of the groups. Were

they overlooked in the historical record or were they simply identified under broader references to Whakatōhea or to natives?

A. I mean, as you see, I tend to quote extensively.

Q. Āe.

A. But the answer to that is what's recorded here is how they were identified. I tried to be pretty inclusive –

Q. Yes.

A. – so I think this pretty much represents the way that they were recording their meetings so whatever is here is the way that they were talking about people.

Q. Ka pai. And so when Charles Hunter Brown describes the delays at Ōhiwa on page 305 and says that: "The Natives are very disobliging and extortionate," do you know what that was directed at? It's paragraph 2.329.

A. What that reference to being extortionate is? Yes, I think it's because to cross Ōhiwa you needed assistance; you needed to be taken across. It's a longstanding complaint from Pākehā travellers, from the missionaries all the way through to here, that the people who did it didn't do it regularly enough and that they started charging too much and et cetera, so that's what that relates to.

Q. Ka pai. In terms of te Tiriti, you are aware that Wi Akeake was the Te Ūpokorehe rangatira of that time and a signatory to te Tiriti. So, oral evidence shows that Wi Akeake went on a hīkoi across the motu and even down to Te Waipounamu to get support for him to sign te Tiriti. Just for the record that is at 4.1.11 transcript on page 56. Did you find any reference to te Tiriti being presented to the district to Ōhiwa earlier than May 1840?

A. No, I didn't.

Q. No. Well, in discussions with my friend, you noted it is likely that Māori in the district knew about the Treaty prior to its arrival in the district. Is that clear?

A. Yes.

Q. Yes.

A. In answer to your question, I hadn't thought about it before, but in answer to the question I would state that view, yes.

Q. Ka pai. In terms of the Pākihi deed, you've already discussed with my friend, understandings in relation I guess to tikanga and authority. In the deed, which is page 73 to 74 of your report, –

A. Yes.

Q. – so in that deed what significance would you place on the fact of the deed recording the transaction as being for kāinga rather than whenua?

A. Yes, I mean I thinks it's something that I do point out as being, yes, I do at paragraph 1.114 to 5 pages 73 to 74, yes, I point out that it was certainly a different thing. I mean I've seen a lot of deeds in my time and certainly a lot of the older ones. I've never seen that before but, as I mentioned, unfortunately in the very last sentence of that paragraph what this was meant to indicate is not clear to me.

Q. Yes. Is that the same for the use of tukua?

A. No, not so much for that one.

Q. What significance would you place on the use of tukua?

A. Okay. Well, how to summarise in five minutes the long discussions of tuku in the Tribunal environment? No, that's not a surprise. It's quite a common thing to see in pre-Treaty deeds. There has been lots and lots of historiography on what tuku means and whether it means something different than sale. I see many explanations on it and I think the Tribunal different panels have come up with different views on it as well. But one that I recall, because I was involved with it, was in the Wairarapa for example. The kaumātua Takarangi Smith there considered what tukua meant and he used that phrase "the giving up" and the opposite of it is "pupuri" to hold fast. So one is like to release. It's not to reject and completely give up but it's to release where "pupuri" is to hold fast. It is to do with the umbilical cord et cetera, all sorts of imagery. So it seems to have a nuance of an understanding that something is happening and sometimes the word "give" is the word that's sort of used or "give over", et cetera. But I think where the historiography generally landed was that it's heavily ladened within a tikanga understanding and it's nowhere near

equating a complete sale and having no authority over land and having no connection to it any more et cetera. It's not an alienation.

Q. Ka pai. And so that kind of use of that word in this deed, you would say, would likely be reflective of the tikanga being the dominant, I guess, mode of social organisation in the district at the time?

A. No, I don't. Because the deed was drawn up by Wilson –

Q. Āe.

A. – and Wilson was really doing his best to describe an alienation. It probably more reflects that Wilson didn't really quite understand the tikanga around the use of such words.

Q. Ka pai.

A. I mean to say the opposite would be that they were trying to give one word to the people and that they were trying to deceive them. It would be to say: "We're only doing a tuku here, don't worry about it," and meanwhile on the other face knowing it was a sale. Considering it was so prominent and it was such a feature in CMS deeds, I don't think the evidence would stack up to quite say that. I think it's just that it was a word that was being used by tangata whenua and they sort of thought: "There's the word that they're using for sale," and it's not and they've misunderstood I think.

Q. Ka pai.

MS SWEDLUND ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMETABLE, BREAK (15:03:22)

HEARING ADJOURNS: 3.04 PM

HEARING RESUMES: 3.27 PM

JUDGE DOOGAN ADDRESSES COUNSEL – INDICATION TRIBUNAL CROSS-EXAMINATION (15:26:55)

(15:27) MS SWEDLUND TO TONY WALZL: (CONTINUES)

Q. Moving to the Pakihi transaction. Wilson referred to people occupying and using the resources of the Pakihi block post-transaction which is at

page 231 of your report. Given the location of the Pakihi block, would you accept an inference that some of these people were likely of Ūpokorehe?

A. When he records that he doesn't record who they are. But I would accept that inference because in front of the Old Land Claims Commission they talk about two pieces of land that was still in dispute. In that case, they mentioned the two groups that were associated with each of those. One was Ngāti Ngahere and the other one was Ūpokorehe.

Q. In terms of the Ūpokorehe experience of war and raupatu, we've already discussed about the Ōpōtiki focus. Kaumātua Wallace Aramoana gave evidence in the Ngā Kōrero Tuku Iho stage of hearing that Te Ūpokorehe was burned in a whare by the constabulary around Te Arakotipu which is sort of right up at the spit of the Ōhiwa harbour, which is at document number #4.1.11 at page 229. He said that the constabulary came to stamp their mark on the people and they used canons from the shore. Have you seen this incident reflected in any documents?

A. So, sorry, this occurred in the vicinity of Ōhiwa harbour?

Q. Āe.

A. No.

Q. No. Would you be surprised to see this kind of atrocity reflected in official records, if it was?

A. Well, we do have sort of two frank accounts and blasé accounts in a way of two atrocities. One of them was of the shooting of the tohunga that's recorded by a number of people and then the other one is recorded of – this is actually similar to what you just mentioned; sorry, he wasn't burnt in his hut; but a man sitting in his hut who wasn't pointing a gun who was then shot in the hut and the hut burnt down around him. We do have two records of it. They weren't recorded in any way like "shouldn't have done that" they were just recorded.

Q. Yes.

A. But whether that means that if soldiers didn't record things it didn't happen, we heard yesterday from Mokomoko whānau evidence of quite strong things that were certainly not recorded in the records. So that's I think as far as we can get with that –

Q. Āe.

A. – off in the written sources anyhow.

Q. Āe. Following this incident, Wallace Aramoana goes to say that Ūpokorehe went back into the hinterland. I'll just take you to page 806 of your report, there's reference kōrero from Mihirangi Koutu to the Native Land Court.

WITNESS REFERRED TO #A030, PAGE 806

A. Yes.

Q. She notes that: "Ūpokorehe sought refuge with whanaunga at Waimana," and so you would agree that the kōrero of Wallace Aramoana that Ūpokorehe moved inland following the attack at Te Arakotipu would accord with that understanding?

A. Yes. It appears so, yes.

Q. Ka pai. Can you confirm whether you are aware that Mihirangi Koutu is the granddaughter of Wi Akeake?

A. I don't have that there. So, no, I didn't realise that was the case.

Q. Ka pai. Our clients will also bring evidence on Te Koopu o Te Pū, when Te Kooti emptied his pistols into a cliff in the Ōhiwa harbour and said "he would use the word of the Lord not violence". Have you seen any documentary evidence of this incident?

A. No, I haven't.

Q. Ka pai. Just lastly, I'll take you some references which refer to an individual called Rushton. Are you aware there is a Rushton that was the brother-in-law of Hemi Kakitu?

A. No, I didn't realise there was that connection.

Q. Kia ora. You refer to a Sergeant Rushton at page 744 of your report.

WITNESS REFERRED TO #A030, PAGE 744

A. Okay.

Q. Is this the same person as Ensign Rushton who was in the district around 1870? That reference would be on page 966 as an example.

A. There we go, there's Sergeant Rushton. Sorry, what was the other reference, 966?

Q. Āe.

A. I mean the names are obviously the same and I'm not quite sure of the link. But, am I wrong is ensign to do with enable, arm of the forces?

Q. I'm sorry, I'm not sure.

A. I think it sort of is. So possibly they are different if one's a sergeant of the army and the other is an ensign in the navy then maybe they are different, or he may have.

Q. Sure.

A. I mean it's a long time afterwards so he may have joined the navy.

Q. Yes.

A. So I don't know. I couldn't assume that they are the same.

Q. Sure. Just to complicate matters further, there's also reference to a Lieutenant Rushton?

A. Right. Has that Sergeant been promoted maybe. Yes, I'm not sure if they are all linked up, sorry.

Q. Sure, thank you. Just last question, the AJHR document from 1862 if that could be brought up on the screen.

JUDGE DOOGAN TO MS SWEDLUND – AJHR DOCUMENT

Q. Just halfway down where the new paragraph begins, where it says: "The coast country from Ōhiwa to Te Kaha."

A. Yes.

Q. It notes that: "The traveller sees comparatively little of this country, the track lying along the beach or within half a mile of it," so it's a source clearly saying that the country is very difficult. Would you agree that after Te Ūpokorehe moved inland to Waimana, the military would unlikely to have encountered them because of the roading being near the sea?

A. I mean they would have to have expeditions into Waimana, which I understood they did at a later period.

Q. They did. Yes, in the 1870s.

A. But considering, if we're talking about the earlier period, they didn't have like strenuous expeditions over difficult country. There wasn't much of that going on. They tended to just stick to the coast.

Q. Ka pai. Those are my questions.

JUDGE DOOGAN ADDRESSES MR TAIT – CROSS-EXAMINATION TIMING (15:35:48)

(15:36) MR TAIT TO TONY WALZL:

Q. Tēnā koe **greetings** Mr Walzl. My name is Zion Tait, and I appear on behalf of Ngāi Tai. First of all, I've been asked to pass on my apologies for Ms Rongo, who couldn't be here today, but who is listening on the livestream. She's also given me her questions to ask. Before we begin, we also want to thank you for your report. It is incredibly detailed and very helpful and it was so fulsome we only have a few questions for you. A clarification question just for the record. I just want to confirm that there are approximately three Wiremu Kingi's that you refer to in your report, the Tūranga-nui one, the Tōrere one, or the Ngāi Tai one, and the Taranaki one. Am I correct?

A. Yes.

Q. Okay, thank you for that. Moving on to the topic of Old Land Claims. Ngāi Tai didn't have any Old Land Claims, pre-Treaty land transactions or CMS land purchases, did they?

A. No.

Q. Okay, thank you. In relation to trade, you mention at page 964 Wi Kingi's whale boats at Tōrere and at page 216 you mention a waka heavily laden with food from Tunapahore. We know at this time Ōpōtiki is the closest trading port. You'd agree though that Ngāi Tai were actively engaged in commerce alongside Te Whakatōhea?

A. I'll just have a look at something.

Q. Sorry. Did you want those page references again?

A. No, it's just something somewhere else.

JUDGE DOOGAN TO MR TAIT – PAGE 964 AND PAGE 210

A. I was just trying to be helpful there but I haven't been able to quite nail it. But I'm pretty sure that when one of those Crown officials, who is touring in 1861 and 1862 and they provide a comment on Ngāi Tai, I think they mention there that trade's important to them at that stage. I'm fairly sure there's a specific reference to them, yes.

Q. Okay, thank you.

A. I was just trying to get us to go there but haven't been able to nail it.

Q. That's okay. You can probably mention that later. Moving on. At page 372 you talk about disease and how that impacted Te Whakatōhea.

I just wanted to ask, do you know if you have any information that talks about how Ngāi Tai suffered around that same time? This is in reference to I believe Völkner's 1864 report on the state of Whakatōhea.

A. I think he said that that particular thing that struck there was localised just to Ōpōtiki I think. So, yes, I don't think we can assume that it was affecting all up and down the coast. Apart from that, I can't think of anything specific there.

Q. Okay. I guess taken outside of that localised event in 1864 just disease in general in that period in the mid-1860s, can you think of any examples of it affecting Ngāi Tai, or any time prior?

A. Well, in preparation for the expected cross-examination today, this morning, I searched my report for "Ngāi Tai" and tried to find all the references. I don't know if I got them all because sometimes there's not the macron et cetera. And when I did that, I didn't see any that were associated with a disease. So I think the answer is no I don't think I do have any.

Q. Okay, that's fine. Now, if I could ask you to turn to page 528 of your report, and I'll give you some time to turn to that.

A. Yes.

Q. At the very bottom of the page, you're talking about who was present at Völkner's death. You quote Natana as saying: "Patara was not present as his death; he was at Tunapahore." More specifically, did Ngāi Tai at Tunapahore take in Patara at that time?

A. I'm sorry, just say the question again.

Q. Did Ngāi Tai at Tunapahore take in Patara at that time?

A. Take in?

Q. Take him in, yes.

A. I know that the reference is that they hadn't travelled to Ōpōtiki because it does seem as though groups from around the district travelled there when they heard that Pai Mārire was coming there, and they definitely didn't travel there and he found out about that and decided to go specifically out there to try and get converts. But I don't think we have any evidence on how successful his mission was. Yes, I'm pretty sure

we don't have evidence on whether he succeeded. But I know he definitely went there to try to achieve that, yes.

Q. Okay.

A. That's why he wasn't there at the time of the murder.

Q. Okay, thank you. Now at page 566 you talk about Grace's escape and you mention Wiremu Kingi. Why was Wiremu Kingi with Grace at that time?

A. That's right because I was thinking now that seems to be contrary to what I've just said. Because the *Eclipse* went and picked him up. The *Eclipse* went on a tour. First of all, at Tūranga because they thought the prisoners were there. And then they came back, and Wiremu Kingi joined that because he was an assessor, in the same way that Tiwai was. Yes, that's why he was there.

Q. Okay, thank you. At page 607 you state Ngāi Tai's position and it's a quote from Agassiz. I can't remember if we landed on a pronunciation. Is it Agassiz?

A. Agassiz, I think, yes.

Q. Agassiz, okay. That is at paragraph 4.220 of your report which is page 607. I'll read that out: "The Chief Wiremu Kingi of…," and it's a spelling error, it says Tumapahore but it's Tunapahore: "…says he will not interfere with the landing of soldiers. He and all his men will be neutral. He will not allow any soldiers to travel towards the East Coast, nor will he permit any Natives to proceed towards Ōpōtiki. He does not object to the soldiers coming to Ōpōtiki, as they will not take land the same as at Waikato, but merely intend to arrest the murderers who have brought evil to this district." Now Wiremu Kingi from there obviously believed that soldiers coming to Ōpōtiki were only coming to arrest Völkner's murderers and would not take the land like they had in Waikato. Is that correct?

A. Yes. That's what that records, yes.

Q. Yes. Do you believe that perhaps Wiremu Kingi was too trusting of the Government at that time?

A. Yes, I'm just trying to think where he would of gotten his information from over that time for him to form that view. This is Agassiz in August and

Wi Kingi was involved in that voyage of the Eclipse. I mean you can see in that statement that he is very much declaring like an alliance with the Crown that he wouldn't stop them. On the other hand he sort of said: "The Crown cannot just cross his land; the soldiers can't cross the land," so he's putting boundaries in. He's an ally but he's still watching after his own territory. Yes, I was just sort of racking my brain to see if I could think of any association that Wiremu Kingi might have had that would have led him to afform that view.

(15:46) DR GRANT PHILLIPSON TO TONY WALZL:

Q. Can I just ask, Mr Walzl. Do you think news of the Outlying Police Districts Bill and the discussion about that had reached that part of the country as a possible answer?

A. Yes.

Q. Have you seen anything about that?

A. Well, of course, this is August and so the Bill hadn't come into the House. I could check that, but if we check the dates I'm not even sure if it had come into the House this early in August the 21st. If it had, it would have got reported straight away of course in Wellington papers, but how long it would take for Wellington papers to get to that part of the country would be quite a question I think. So, no. Based on that, I would say unlikely.

(15:47) MR TAIT TO TONY WALZL: (CONTINUES)

A. To answer the question is I think Wiremu Kingi was very keen to work with the Crown when the officials were there in the 1860s and he had been sort of appointed in charge of the rūnanga. He had passed some laws and when the Commissioners came he sort of said: "Have I done that right," and stuff. He was very keen to be an ally of the Crown. In answer to your question, he would probably like to have trusted the Crown and thought that they would just come and do the murderers and nothing else. I don't know if he's actually trusting of them. But I'd say, yes, within his context of wanting to form an alliance would be thinking the best thing of his intended partner I suppose. Which after all that is yes to your question; I've gone full circle. Yes, I think he was trusting of the Crown.

Q. Yes.

A. Yes.

A. No, yes, that was a very full explanation and I appreciate that. That's very helpful actually.

A. Too full, sorry.

Q. No, that's very helpful. From pages 804 to 814, you talk about the Compensation Court. At page 804 you talk about Wilson warning Kingi not to claim to Tirohanga or he'd confiscate his land for fighting in Kaokaoroa. Would you consider this a good example of the vagaries of the Compensation Court and how the Compensation Court rules changed at the whim of the Crown agent?

A. Yes, I would. The Crown agent being Wilson, and of course in this case it's Wilson Jnr, yes, I think it would. He very much made policy on the spot. I did a bit of research to try and sort of see what his lines of reporting were back but I never really could find them. He wasn't reporting back like minutely and regularly and getting check-offs and permissions and things. He was just doing what he was doing on the ground. Yes, it all came down to him.

Q. Okay. A couple more topics. Looking at the impacts of confiscation on the iwi, have you come across any evidence of Ngāi Tai assisting Whakatōhea with kai and other support after the raupatu, when they were being moved on to their reservation blocks?

A. I feel that there is something there but I'm not quite sure if I can recall it specifically. I do know for example when I think Whakatōhea the people who were with Te Kooti a bit later on when they surrendered they were given the choice where they might like to go to and they chose Wiremu Kingi. He took some women and children who had surrendered so that's one instance I can think of. I also thought that there was a reference in there somewhere that Whakatōhea for a while stayed with him before moving on to Ōpape. But I'm sorry, I really can't recall the specific part of it.

Q. Yes.

A. It may be in there, so if that's there it will be recorded.

Q. Okay.

A. I can think of at least one other reference the one I mentioned.

Q. No, okay. And one final point, one final question. Ngāi Tai haven't claimed they have ancestral connections, strong customary interests to the area to Tirohanga. There were many border disputes between Ngāti Rua, who are the border hapū of Whakatōhea, and Ngāi Tai over that area. Now talking about that, what impact do you think does the confiscation in placing all of Whakatōhea on Ōpape have on Ngāi Tai's customary interests over that land?

A. Yes, in the vicinity of these pages you've just mentioned to me, you do have evidence where Wiremu Kingi is saying to Wilson that his claims go all the way down to Tirohanga. One stage I think he says that and I think at another stage he says Waiaua. He is trying to use that avenue to reassert those claims again because they were obviously held by him. So I guess he would still view it as something that's still live and something that could be still discussed et cetera. But once, I guess, a whole population is put on there and titles given into it, then there's no chance obviously that he can pursue those claims anymore.

Q. Okay, thank you for your answers. Again, thank you so much for the work that you've done and for your time here at the hearing. Those were all my questions. Ngā mihi.

A. Kia ora thank you.

JUDGE DOOGAN ADDRESSES MR TAIT – MIHI

(15:52) MR LINKHORN TO TONY WALZL:

Q. It's 10 to four it's the death zone. Mr Walzl and I are going to shake things up though and keep everyone alert until 5 pm sharp.

A. All right.

Q. How are you holding up, Mr Walzl?

A. I don't think I can face anymore questioning.

Q. Okay.

A. In light of that comment anyhow. No, all good, let's go.

Q. Thank you. Well, firstly, thanks for the report. Thank you very much for the report and the detailed work that it represents to collect sources and

interpret them. It's much appreciated. Just because it's fresh, I'll just quickly start with a point that follows on from my learned friend just then. It wasn't just an articulation of an interest to Tirohanga by Ngāi Tai to Mr Wilson. It was also an articulation that's recorded in that 1862 report from Charles Hunter Brown, isn't it, that the Ngāi Tai interests go to Tirohanga. That's correct, isn't it?

A. That's right, yes.

Q. Yes. I'd just start with what I'd intended to start with, which is a sort of an interesting matter of terminology that I saw from your collection of sources, the use of a group label "Whakatōhea" consistently in the sources from really an early period signalling a group identity. Because we also see hapū names used where there's the importance of distinguishing there, but we plainly see the group name "Whakatōhea" used over and over, don't we?

A. I think when a name is given it's used. I think, like I mentioned before, it's used a lot less than one might expect. I think Wilson Snr for example doesn't tend to use it too much. But certainly when newspapers are reporting about the people at Ōpōtiki they're using that name and Crown officials when they're touring are using that name. Yes, it's being used quite a lot.

Q. Yes, thank you. Perhaps another sort of matter of terminology and a fairly minor matter so I hope to move through it quite quickly. But yesterday you had a very interesting discussion with Ms Witehira about Wilson Snr's use of the term "heathen". In a sense, this has kind of core to Wilson's role and tasks, as he understood it, wasn't it? In that under both his sort of engagement and his theology, he was categorising people into the saved and the unsaved. That was a big part of how he saw himself and his role on behalf of his religion, wasn't it?

A. Well, I don't think I ever saw that word-

Q. Can I give you an example.

A. Yes please.

Q. In his survey, he's cataloguing people as either protestants, papists or heathens –

A. Yes, that's right.

Q. – and so he's literally trying to put people in one of three boxes as it were. That's perhaps for the doctrinal dispute being carried on in some respects in this part of the country as to how the competitive forces of Protestantism and Catholicism are faring. But it's also to sort of mark down what the CMS sees as its unfinished task, as it were, of conversion, isn't it?

A. I mean, yes, it is. Yes, it is. I'm just going back to the question on saved or unsaved. Yes, I'm not a sort of expert in that Christian theology, but I think there's an element in the Christian theology, if I recall, that if the word of God isn't brought to you, then you're sort of saved because you're innocent and hadn't made choices or committed sins within that context. But his job certainly was to convert people and that is a tally of where his job had got to, yes.

Q. I mean it's worth remembering, isn't it, that the CMS was the sort of evangelical end of Anglicanism.

A. Yes.

Q. It wasn't the staid High Church Anglicanism of the Church of England down in Canterbury, South England, was it?

A. No, it wasn't.

Q. It was the more racy version of consequences and circumstances perhaps influenced form the northern parts, wasn't it?

A. Yes. I mean they were certainly were performing the role of a missionary.

Q. And you've remarked on Wilson Snr reflecting on 27% of the population weren't protestant or papist, and seeing this as a significant group. And of course, a huge problem here is that the mindset of Wilson Snr and people like him just doesn't make room for other conceptions of non-Christian religion to be left alone, does it?

A. I mean, no, it doesn't. I mean I think from his point of view, in the same way that he would record "heathen" as not being a success, I think he'd pretty much record "Catholic" as not being a success as well. Like our view of Christian, there was whatever percentage that was left that were Christian, but for Wilson they might not have been Christian if they were Catholic. They're still in that camp of being, you know, they are probably the unsaved, so yes.

Q. And that's just to perpetuate the fight that Henry VIII started as it were.

A. Indeed.

Q. Right. So turning to Wilson Snr's criticism of the attention given to trade and commerce and so on. That's also another indication, isn't it, of a more fiery evangelical version of Christianity being propounded to the local people, than the sort of more moderate C of E protestant work ethic religion where there's plenty of room made for commerce, trade, success, needing to devote time to that. Is that a fair assessment?

A. Yes, I mean it is an interesting assessment. In that case, they certainly said that time spent on trade was time spent away on religion and therefore, it was judged quite harshly. I'm not quite sure if you'd ever see a Pākehā priest talk about his own congregation in that same sort of way, but I mean we're talking in broad speculation. But no, they judged it harsh, being involved in those sort of activities.

Q. Just finally on this, this us and them, this othering point that was made to you yesterday, it's really a step further in speculation, isn't it, though to say how it might have influenced Wilson Jnr? So we're describing the general environment but we have to be careful, don't we, before we say that the othering that's going on here from the monotheists and the Christian evangelicals is having a big impact on Wilson Jnr?

A. I thought I mentioned that within the context that Wilson Jnr was in a position where he was making decisions in regards to Whakatōhea in a post-war and post-raupatu environment. Yet he was the same person who had had a very troubled relationship with Whakatōhea as a young adult man and trying to farm his land. I think that's as far as-

Q. But not in the same doctrinaire way that his father was critical of not enough attention to scripture and worship for instance.

A. No. I mean the only view we do have of Wilson Jnr, the only evidence-based one that we have, is he appears three or four times in those early 1850 where he's trying to get a grant. And of course within that, we don't get much of a view as to what his Christian views are et cetera, or how he might be viewing them. But I think he must have a conversation with his father and communicate what he said to Grey and then his father sort of thought: "Well, he hasn't told him enough," and then

Wilson Snr writes that letter. So there's no evidence. We don't know what his position is like in a doctrine or doctrinaire sort of way et cetera.

Q. Yes.

A. I've never seen him talk about the religious side of things.

Q. Yes, all right. Moving on then to the whole topic of Old Land Claims. There was very useful conversation again yesterday which means there's questions that I don't need to go over or repeat. I thought you were very clear about the respect of institutional responsibilities and that's been cleared up further today, so that's very helpful thank you. And that you also distinguished between institutional claims of mission institutions versus personal claims, concepts of trusteeship that might have been promoted in some respects for transactions, and then of course fascinating discussion about the applicable legal system that's going on here at the time of the transactions. I wanted to put to you though that the concept of having a Land Claims Commission like this was a strong one and links back to the protective influences that motivated the British to seek to make the Treaty. In other words, the kind of circumstances that had led to eventual determination to establish a colony and make a Treaty were in part because of what was going on with land transactions and the institutional and conceptual response to have a Commission to examine all of those is a strong one. But it's how it played out that's the focus of criticism, isn't it?

A. Yes, I'm not sure if I'd really be able to respond to that one in great depth because I took most of my background on the Old Land Claims and just had it in there as context and it was to set the scene. I know there's been a lot of discussion about that and I haven't researched it specifically. If the question is that the Crown was motivated to some extent with the Treaty with a feeling of protection for the people they were having the Treaty with and therefore that was also what was behind the Old Land Claims, as I said, I probably haven't researched enough to be able to say it. But my understanding of some Tribunal findings on it has been more that it was geared more towards the settlers and protecting their interests and finalising what they are. There was lots of protections in there to make sure purchases weren't bad or wrong et cetera, so there

were protections there. But the idea of having the Commission et cetera was to settle titles in New Zealand for the many claimants that were claiming land.

Q. We'll come to the district very soon. But of course, one of the drivers was a revulsion at extravagant purchasers of thousands or hundreds of thousands of acres that were just ridiculous to anyone's sensibilities, wasn't it?

A. Yes. I think in my answer I was sort of saying, yes, there was an element of protection and that was the extreme when the Crown was aware. Yes, so definitely on that side. But the meat and potatoes of it was for all the other ones is if they'd made a fair purchase to make sure that they got a title through the Crown process. But we are talking a bit theoretical here.

Q. Yes, no, let's get towards the actuals.

A. Yes, I haven't researched it.

Q. The residual role here for the Crown is on receipt of the Commission's work. And then, as you've already said in answer to a number of questions, to exercise what amounted to a very broad discretion in substance and effect over whatever the Commission had done or even where the Commission had felt it had not been able to do stuff. That's what I took to be the essence of your answers. Is that a fair summary?

A. Yes. I mean there were rules of course also set up by Crown officials beforehand that the Commission worked to and then the Governor himself would be bound to work within those rules. A limit on the amount of land granted was one and the need for a survey to happen before a grant et cetera, so there is that aspect. It's not just a free ranging Commission and then there's a discretionary power. The Commission worked within a set of rules –

Q. Yes.

A. – and guidelines and stuff like that as well.

Q. Yes. So I've advanced the thesis that the concept of having a commission is a strong one, but as a secondary argument that its application wasn't so strong for the following reasons. And I'll get you just to comment briefly on each because I think this is consistent with answers you have given yesterday. That it was somewhat overwhelmed and under-resourced.

A. Sorry, are we talking about like generally?

Q. The Commission in its operations, and we will come to them when it-

A. Generally within New Zealand, across New Zealand sort of thing you mean not just here?

Q. Yes.

A. Right. Yes, I mean I think that would be a fair statement to say two Commissioner's hearing over a thousand claims it was under-resourced, yes.

Q. And the second, that it displayed a mindset that beyond the most outrageous claims of purchasing whole districts was swathes of country that the mindset was that there must be a practical way to deliver results for Pākehā for the most part. In other words, in application of the concept that's what the Commission ended up behaving like.

A. It must be the hour of the day, I'm not quite getting the question.

Q. I might have gone too fast, sorry. So we're talking about, if I'm presenting a thesis that the concept of having this Commission was a strong one but in an application it turned out not so strong and had flaws, and the second of those being that, although the Commission displayed a mindset that the most outrageous claims of purchasing whole swathes of country would be disallowed, in other respects its mindset was that there should be a practical way to deliver results for Pākehā for the most part. In other words, I think you and I are agreeing that it's a Pākehā-centric operation.

A. Yes. I mean the Commission did have a set of rules so there was sort of certain constraints there. But again, my general awareness of the historiography on it, is that the Commissioners if they felt things were fair and hadn't been pushed too far, they would give the benefit of the dealt to the Pākehā to enable him (and it was usually him) to get a title.

Q. Yes.

A. Yes.

Q. My third identified weakness in application that I think you've just mentioned is that it could be a stickler for threshold rules, such as here with the Ngaio transaction. In other words, this one won't pass our threshold rules; it's disallowed.

A. No, but even with that one they still made a comment, didn't they, that it was bona fide.

Q. Yes.

A. Yes.

Q. And perhaps we'll pick that up though, because I'm talking about the Commission's own operation under its own system –

A. Yes.

Q. – and it then feels at liberty to make a comment to pass on to the Governor for what is seen as the Governor's residual role.

A. Right.

Q. Is that a fair way of describing it?

A. Yes, I think that's fair. Just to go one step back with one of the questions. It's interesting, and it's in my report as well, that at a certain stage, after having heard a number of cases, the Commissioners wrote to the Governor and more or less sort of said: "From what we've seen, we don't really think that Māori intended to sell and be completely alienated from their land." Now they wrote that to the Governor, and I mean we can go to the quote of we need to, but they effectively note that. But you'd think: "If they've said that, then (a) they're going to enquire deeper or (b) they're going to raise that for every single subject," but they never do. So they do seem to be sort of somewhat rule bound.

Q. And their operating instructions are not modified as a result, are they?

A. No.

Q. Right. My next point was going to be to pick-up on something you said yesterday about that they didn't have mechanisms to deeply investigate the claims and to summarise what's going on there. That what the Commission depended on under the resources it had to operate was the identification of problems with transactions by a contradictor, rather than by itself operating completely inquisitorially. That's a fair summary?

A. Yes. And when they got an overt record of an opposition or a problem they would record it, but they didn't deeply enquire into it any further, and part of it goes back to the resourcing you were talking about.

Q. Yes.

A. I mean it would have been interesting – it's very hard to do – but it would have been interesting to find out how many claims they were hearing that day that the Wilson claim was heard and you know it's very-

Q. You think it's a bit like when you look at the Māori Land Court Pānui and you see there's something every 10 minutes.

A. Well, yes, there'd be a big long list in front of them –

Q. Yes.

A. – and they couldn't dedicate in a day or two days or whatever to do that. Part of it is resource and part of it is the process and the nature of the job I think as well, and the rules around it. Because they only had to perform a certain task under those rules and even how they filled out their report was specified; you have to say the boundaries; you have to say this and that so that's what they did.

Q. And so your argument is that it's becoming mechanical.

A. Yes, I do think that's the case. I mean when I reflect on it, yes, I think there's an element of that can be said. Just to throw this into the mix as well, seeing we are talking about it because it's an interesting development is that when the first Commission (the same Commissioners) sat in the Hokianga they recorded evidence verbatim. And if you look at those, it's just incredible, the evidence goes for pages and pages and pages and that's the evidence that was given in front of them, but the applicant paid by page of transcription and all that sort of stuff, so people came away from that loudly criticising the cost of the process. It was after that that you then get these pro forma I believe. It's not just me. I mean the Tribunal has found in several places and several historians have said: "It's just pro forma comments and they all look the same." So when native witnesses come and they say: "Yes, that is the deed and yes, I signed it, and yes, I received the payment." So, one thing is the recording of it, but the question is also raised whether the inquiry was even shaped that way as well. Because I can't imagine that they would have sat back and said: "Look, we've got the whole day, you say all you want to say and we'll record just this pro forma stuff, then that's the end of it." You do suspect that it was even a truncated inquiry and possibly a yes/no type of situation.

Q. So to test that, we'd be looking for evidence of how many claims were being processed in a particular day?

A. Yes, it would be an interesting one.

Q. Yes, all right. So I think this point about becoming somewhat mechanical or pro forma, I hadn't identified in my list but I'm happy to tack it on. The fifth one I have identified related though about our one before about identification of problems. If a claimant could support their claim with uncontradicted testimony from Māori about the bona fides of the transaction, the Commission wasn't going to look more deeply than that.

A. That's correct, yes.

Q. Yes. The Wilson family experience of attempting to get a resulting grant here in Pākihi that's also a part of the illustration, isn't it, about how the concept might have been strong conceptually but poorly executed?

A. This is after the hearing of the Commission?

Q. Yes, taking the whole process, through to the Commission, the outcome from the Commission, the Governor's exercise of residual discretion and then the mechanics of survey and issue.

A. I mean, yes, a number of claimants across the country complained loudly about the process. I mean there weren't many people who got grants quickly. I mean they were often over years and decades in some cases and it was always because you had to do this rule or what not. I mean you can see it in Wilson where, first of all, the grant was made out to two of them and then if you wanted just one a whole grant had to be cancelled et cetera, et cetera. So the final steps before you got a grant were really quite long ones that I don't know if the applicants really would have appreciated that when they were putting that in.

Q. Yes.

A. It's almost like truncated at the Commission end and then elongated at the bureaucracy end.

Q. Yes.

MR LINKHORN ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMING, MICROBREAK (16:16:35)

TONY WALZL ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMING (16:17:19)

HEARING ADJOURNS: 4.17 PM

HEARING RESUMES: 4.24 PM

(16:24) JUDGE DOOGAN TO MR LINKHORN:

Q. Mr Linkhorn, just one quick matter that Dr Phillipson was discussing in the break. When you were saying: "The Governor had a residual discretion once he received the outcome of the Commission," that basically means the final say.

A. Thank you. Yes, submissions on this in the fullness of time of course.

Q. Yes.

A. Yes, I don't need to take that further now.

Q. That's fine. Thank you.

(16:24) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Thank you Mr Walzl. The next topic I want to turn to is the implications of the Crown keeping the surplus land and thank you for your material in your report on this.

A. Right.

Q. I suppose I want to start by asking whether you think this is a conceptual matter for the Crown where it thinks of itself as having the imperium underpinning all tenures where it's concluded that native title has been ended. A pretty easy question. In fairness to my colleagues, I am meaning the factual dimensions of this.

A. Okay.

Q. In other words, can you recall seeing the Crown articulate a conceptual basis for retention of the surplus having made a grant? When I went to think about this, the proposition that I'm essentially putting in front of you, is that conceptually the Crown is saying that native title over the physical area within the boundaries has been extinguished and we, the Crown, have made a grant of land to a successful claimant for a subset of that

area within the boundary and because the native title has been extinguished and we are the source of all titles, goes the mythology of the Crown, that therefore, the rest is ours. Can you recall that being articulated in policy as a conceptual underpinning of it?

A. Yes, I mean I've had a lot to do with Old Land Claims over a long period and so I'm trying to remember if I've seen that or if I've seen that discussion. I can't on the one hand. In me saying that I can't recall it doesn't mean it's not there, that's one part of it. Like, for example, I mentioned the Poor Knights the other day, which came up in a MACA Inquiry, and there they wouldn't give the title to Pollack the purchaser and then immediately leased it out and that's at an early stage in the 1840s already.

Q. Yes, I was very surprised to hear that yesterday because it struck me as potentially anomalous. I had meant to ask you whether in your experience of looking at these things it was anomalous. The reason why I want to suggest it as an anomaly to you is because why would there be returns of land when the conclusion was that the native title hadn't been ended?

A. No, the conclusion was that he had ended it.

Q. I know in that case it was. But in other situations, sorry, is what I mean.

A. Yes, in that case, he concluded that he'd done it. But that he'd broken the rules and did it and therefore, he wasn't deserving of any grant.

Q. Right.

A. So therefore, the title was extinguished and therefore it all went to the Crown.

Q. Okay. So conceptually it's still within this way of looking at it, if you're the Crown that says: "Well, the native title has been extinguished." So my opposite point to put to you is where the Commission or the Crown concludes that the native title hasn't been ended, then there's a return of land, isn't there?

A. Where they conclude it hasn't been ended…

Q. I mean for example-

A. If I just to answer. I mean I don't know if a return of land is correct. It's just that the purchase is not deemed as having taken place and therefore, native title is still in-

Q. Yes, thank you for putting it that way.

(16:29) JUDGE DOOGAN TO TONY WALZL:

Q. Can I also just clarify your previous question. In terms of the available sources for this district, I take from your answer that you didn't find any evidence of a Crown theory or Crown mythology, as Mr Linkhorn's describing it, expressed as a rationale for retention of surplus land? As I understood part of Mr Linkhorn's question was to whether you'd seen that kind of theory expressed in the papers.

A. I'm sorry, your Honour, I thought he meant like as in general or if I'd ever seen it.

Q. Yes, I took that as part of the question.

A. Yes.

Q. But I'm trying to also just follow-up and just be clear about this district and whether there's-

A. No, I certainly haven't seen it in this district.

Q. Right.

A. It doesn't seem to be a widely appreciated point as well. Because when the survey was done, which was quite early in 1852 (I've got to get that date right but I think it's just 1852) and extra land was found to be there, Wilson was delighted because he thought: "If I had a third of the little bit of 3,000 acres I thought was there, I'm now going to get a third of the bigger area," and he just assumed that, so even the British citizen didn't quite understand that that would be the natural result of that happening. He was soon told: "No, that's not yours; you've still got your whatever it is 800 acres or 900 acres and we've got the rest."

Q. Right.

A. So it wasn't even understood then by him. It doesn't seem to be a stated or well-known policy, even amongst Pākehā in this district.

Q. All right. Thank you.

(16:30) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Thank you Mr Walzl. Next topic then is anger at the loss of control over lands from the beginning of the 1860s. In your report and in the summary, you're saying that: "The scrip processes and the retention of surplus lands by the Crown in this district is something that would eventually cause the most significant impact in the district." I've taken that from your summary at page 6.

A. Yes, that's certainly the view I formed.

Q. And you say: "This motivated and radicalised Whakatōhea," on the same page. So I read that and thought this point of interpretation is very important to your views about people within Whakatōhea becoming disposed to oppose the Crown and align with the King.

A. Well, first of all, I'll go back to the summary part. I have explained how the summary has ended up becoming a –

Q. Sure.

A. – a hyper-charged version of things. But having said that, yes, I do think that is my position. We can unbundle it to talk about all the components of it. But yes, it is.

Q. Yes, I want to. I want to come to that, and this is really just foreshadowing, I suppose, by reprising as it were what I think your argument is. Your argument is to see the Old Land Claims outcomes in this district as key drivers for the conflict that resulted. Is that fair?

A. Which conflict are we talking about? The actual invasion or all conflicts. I mean including the conflicts in 1863 when they went across-

Q. 1863 on.

A. Yes.

Q. You've mentioned just before that the survey happened in 1852-

A. And the scrip happened in 1854.

Q. Yes.

A. Wilson was the instrument through informing Whakatōhea that the Crown had an interest here, and at that stage only the scrip land that he was talking about.

Q. Yes.

A. But it was still that the Crown's got an interest in this land and-

Q. Yes. So Wilson's driven to tell Whakatōhea that.

A. I'm sorry, Wilson.

Q. Sorry, Wilson Snr is driven to tell Whakatōhea that.

A. Yes.

Q. But nothing changes on the ground in the 1850s start with that decade.

A. Nothing changes.

Q. Nothing changes on the ground, no one comes to use that land, and Whakatōhea are not interrupted in the use of that land, nor the governance of it under their own tikanga, are they?

A. No. I mean nothing changes in that perspective, no.

Q. Yes. We can say the same through to the early to mid-1860s, can't we, in that no one has come along to bang stakes into that ground and put up their shingle and say: "This was scrip and I've come and got it and here I am under the authority of the Crown."

A. By that time it's scrip and surplus.

Q. Yes.

A. Yes, so from 1852, it's scrip and surplus –

Q. Yes.

A. – but no one does anything on the scrip or surplus.

Q. Yes.

A. Interestingly, when the land official, it's like Surveyor-General or some such land official, realises they've got all that surplus they actually say: "Yes, that's great; we should put it on the market," but there's no further steps but they do say that. But the answer is that no nothing actually changes on the ground.

Q. Not only was there no sort of naïve purchaser turns up, or what have you, but there was no, as you have said many times in this report, effective Crown presence in the area. It's only from sort of 1860 onwards that we even have reports of Crown visitors, isn't it?

A. Yes.

Q. You've mentioned in answers to questions that you heard Professor Williams give his evidence and answers, so I just wanted to pick up on something that he had stressed and check that you agree with that, and I think you will. The Wilson family remained subject to the local

Whakatōhea communities in this period in terms of the practical application of tikanga, didn't they?

A. Yes, they did. Yes, and they weren't happy about it is the other aspect of it.

Q. Yes.

A. But yes, they did.

Q. Yes. No matter what the supposed Pākehā legal status of the surplus Pakihi land was in the 1850s nothing changed on the ground, so far as the practical presence of the Crown in the lives of Māori in the district, did it?

A. Yes. If we're literally talking on the ground as being on the land, then yes it's right.

Q. Yes. Now I had looked at these reports from the visitors Clarke, Turton, Hunter Brown, I couldn't see that it was this local surplus land that was raised with them as the topic, but your report is a mere 1167 pages so I might have missed something there. But I wanted to put to you, as perhaps a quick way through it, that those reports don't record the scrip and surplus land right here in the district as being the big topic of concern, do they?

A. No, they don't. I'm pretty sure in my report I say that there's not that specific link mentioned. And then I raise at some point in my report that essentially, why would that anger against the Crown and the Crown's land policies and the Treaty et cetera, why would it be there in 1861, because they are talking about land issues and all of that aspect.

Q. Yes.

A. Why would that be there if all of those things were the case; the land hadn't changed on the ground; there were no officials there; why would that anger be there. All that had happened in the country was the Taranaki invasion and the anger was so great or sort of disproportionate to that.

Q. Yes. You didn't mean to say just then "all that had happened" as if that was just a little thing. You meant "all that had happened" a massive thing had happened.

A. Well, I guess what I meant when I say that is Taranaki is more remote to Whakatōhea, than the Waikato war that was yet to happen, and the Tauranga invasion that was yet to happen. I guess that's what I mean.

Q. Well, I do want to come to these articulations of concern about land elsewhere and I hope that we'll get to it in today's episode rather than have to hang on for tomorrow morning for it. But just before we do perhaps, before we go into the detail of those visitors and their reports, I suppose, the relationship with the Wilson family and by extension the CMS it's deteriorated by this stage, hasn't it, over the dispute over reoccupation of the Ngaio land and ongoing use by Māori of the Pakihi land, hasn't it?

A. And sorry, what time are we talking about?

Q. We're talking about the late 1850s, aren't we?

A. Yes, the tension possibly in the area had been lessened by – I mean the Wilsons both of them weren't in the area from that time from 1853 onwards.

Q. Yes, thank you.

A. Yes. But up until they left, it was still always there, yes.

Q. Yes. So just jumping ahead, and we will come to this point in a minute about 1860 to 1862, but just having finished with sort of one missionary perspective and then jumping ahead to the next one, once Völkner's in place, I looked also for your work with his sources and didn't see particular mention in Völkner's communications about issues around the Crown claiming surplus land at Pakihi. That's not a feature of what he writes about, is it?

A. No. I mean if the shortcut to all of this, is there any specific evidence that the Crown's surplus land in Pakihi was raised by people is what they were angry about, there isn't. But I mention in my report that there is anger about land and concern that land had been taken and that they were fighting to stop their land being taken et cetera. So that's where I interpolate that why would they be worried about that when that hadn't even happened; there was no threat of it; and that's why I make that connection to the surplus lands.

Because when Pai Mārire come in, they also sort of talk about missionary purchases and they had taken all their land et cetera and again Whakatōhea agree to that. So they never specifically say: "The Crown took our land through surplus land and we're angry," but it's those contextual discussions of land that led me to associate their knowledge of the surplus land and the Crown interest in the district when they had never been there and never paid something or something that was a source of anger for them.

Q. Can I suggest that's an unnecessary speculative jump in light of lots of positive evidence that Māori in the district were sufficiently up in arms about Pākehā getting land elsewhere in the North Island through means that were seen as completely not tika **right**? In other words, we don't need to search for something that's not there about the local driver, when what was happening in Taranaki and later elsewhere was seen as so offensive.

A. No, I don't agree with that. First of all, I mean land hadn't been taken anywhere in the country at a time that they were making those comments. Confiscations hadn't actually happened. So the Crown hadn't taken any land. They'd gone to war with a group who disagreed with Crown purchase, but there hadn't been sort of land taken. When they are talking about land taken, and they are talking about their land being taken and that they will fight for their land. I mean why are they concerned to fight for their land when land hadn't been taken before. So I don't think it is speculative. I think all those elements that I have mentioned as to when they are expressing their concerns to Pai Mārire and to those travelling officials can only be understood within the context that they believed that their land was under threat of being taken or had been taken. The point that no one had actually come on the ground true, but they had been told that it had been taken by the Crown.

Q. Is the sentiment a little bit like this record: "The missionaries work was all a plot plan beforehand to pave the way for the acquisition of land. That the missionaries told the Māori to look to heaven and then whilst they were looking to heaven, stole away the land from them?"

A. Is that what was said at the Pai Mārire? I'm sorry, is it in my report?

Q. Yes, I will come to the reference for it.

A. Yes.

Q. Happy to come to that in a second. But is that the sentiment?

A. I mean, yes, I think so. It's always a (inaudible 16:44:25) thing if you haven't seen the context and where it is, because I don't want to be ambushed with something where you effectively say: "You know who says that," and that would make me look silly.

Q. No.

A. Yes, generally speaking that's pretty much what Pai Mārire; I've seen evidence in my report where that's what they say, and Whakatōhea responds sort of saying: "Yes, we acknowledge that." You're right that has happened.

Q. All right. So let's come to these reports then from the visitors. Now you've got H T Clarke and I wondered if you said 1860 but I wonder if you're really meaning October and November of 1861 –

A. Yes.

Q. – and Turton in November '61 and then this person Charles Hunter Brown in 1862.

A. Yes, Clarke again in November and then, yes.

Q. Yes. This man Charles Hunter Brown has been a Canterbury politician before getting this job.

A. Right.

Q. Did you know that?

A. Not specifically.

Q. Okay.

A. But I think I dealt with Hunter Brown a little bit when we did the Ngāi Tahu claim. I do associate him with the South Island.

Q. Yes.

A. But I didn't know that specifically.

Q. Yes. Just for context, in case it's slipped their mind, this is a task given to Mr Hunter Brown to go around this district and gather views on new institutions and explain opportunities for new institutions, wasn't it?

A. Yes.

Q. The section I just read out before about sentiment is actually from his 1862 report and it's in an earlier section of that report where he's actually talking about visiting another group inland at Tauroa. But in a lengthy report that's one of the most important sources, I'd suggest, in your work and you've used it extensively, he then spends quite a deal of time on the part of his visit that was in this district and he records Poihipi as saying that "so much land has passed into the hands of the Pākehā". But that's talking about elsewhere, isn't it, because it's in the context of talking about conflict between followers of the King and Queenite peoples', isn't it?

A. Sorry, can I just check. We're talking about the Hunter Brown one, are we?

Q. Yes.

A. All right.

Q. "So much land has passed into the hands of the Pākehā –

(16:47) DR GRANT PHILLIPSON TO MR LINKHORN:

Q. Sorry, what page is that, Mr Linkhorn and then we can see it on the screen?

A. Yes. My friend Ms Swedlund had, I thought, filed this but it turns out that it's only a page of it that had been filed. Is that right, yes. This is an 1862 AJHR, Session I, #E009, and obviously the whole report is going to be relevant so we will put that through to you and we can do that this evening. And if need be, I can pick up on details of passages first thing in the morning. But I think for now, I can just proceed with Mr Walzl with these couple of propositions.

(16:49) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. "So much land has passed into the hands of the Pākehā, the only remedy for Māori is land back from Pākehā." This is one of the land back movements right there very clearly articulated in 1862. But he's speaking generally, isn't he, about the North Island. He's not saying: "And it's happened to us right here and we need our land at Pakihi back." Because for all practical purposes nothing's changed for these people in relation to that land.

A. The part I think that you're quoting is this where Puhipi evinced great soreness that so much land having passed into the hands of the Pākehā?

Q. Yes.

A. The sentence goes on to say: "And that the stoppage is powder and grog?"

Q. Which is a wartime restriction, isn't it?

A. Yes, but that's one that affected them. Puhipi was particularly annoyed at that, according to some of the officials because they're saying they'd like to have a little bit of a tipple and so he was particularly annoyed at that. I guess what I'm saying is that there certainly is not a specific reference to Pakihi and it happening here. But if you read that sentence, the first part of it could be seen to be general, but the second part of it is specific to the area. I mean it was round the country, but it specifically affected Whakatōhea, so you could easily say that that first part was also a reference to local issues as well.

Q. And so when he goes on to say that he said that "the Māoris only remedy was to get all their land back again from the Pākehā" that's a general statement.

A. No, that's a general one.

Q. Yes.

A. But the one beforehand is two parts of it and the second part is definitely local.

Q. Yes.

A. You could assume the first part was too.

Q. Yes. Now further on the name is given as Puhipi, but I'm assuming we're talking about Poihipi.

A. You know Poihipi, yes.

Q. He's recorded as saying that: "He and all his people were neither for the King, nor the Governor, but he would stand with his arms open ready to receive ngā mea pono, ngā mea tika, the true and just things. Should the Governor strike him or go against him, he would draw in his arms, and the same if the King struck him."

A. Yes.

Q. Again, there's a statement there about political positioning and positioning in a time of conflict –

A. Right.

Q. – but there isn't a direct link to problems with land in the district, is there?

A. It's not a direct stated link there, no. I mean, as I said, I completely admitted that he doesn't specifically make those comments. But again, going back to the land comment: "He's evincing great soreness that so much land having passed into the hands of the Pākehā." I mean at a conceptual level would you necessarily be that affected when so much land hadn't passed into the Pākehā through warfare? But if you thought it had in your place, I mean it just seems they're personalising.

Q. Well, let's agree to differ on that.

A. Yes.

Q. Because I think in terms of use of time of the Tribunal, I've got my perspective across here and you've commented on it.

A. Yes. Right, indeed.

Q. We've got eight minutes until Professor Roa closes us for the day. So to use that, I want to jump forward to the end of February 1865 when the emissaries of Pai Mārire arrive at Pākōwhai. To the alarm of others, particularly Pākehā others, they're extremely influential at least initially and in the short term in promoting new religious thinking, aren't they? They make accusations about stealing land that are particularly focused on what missionaries are doing that are quite close to that other comment I read out before, aren't they?

A. Yes, they are.

Q. Again, the message being brought from the other side, from the west to the east of the island, is about the damage that has begun with the missionaries and on to the loss of land, isn't it?

A. Yes.

Q. I've got another topic to move to now and I think I will just press on. If we can fit it in seven minutes, great. It's the impact of Kaokaoroa, the battle of Kaokaoroa.

A. Āe.

Q. Can I just be really frank and put to you without wanting to be combative, but to put to you really frankly that you underestimate the impact of this in your overall thesis and argument. In that in reality, it's a very powerful factor in what happened to Māori in the district and Whakatōhea in particular. Can I say this for three reasons and get your comment on each please? First, because it demonstrated to Whakatōhea the Crown and Te Arawa alliance was thoroughly dangerous.

A. I think it did demonstrate that, yes.

Q. Second, that Te Āporotanga's execution, summary execution, was an outrage for something that Whakatōhea went back and said to Völkner was a fight that was being conducted under English rules.

A. That's right, yes.

Q. Third, and most significantly, the leadership vacuum that resulted perhaps particularly from the death of Āporotanga as a leadership but also that the subsequent disease and deaths afterwards. The point of making this third point and asking for your comment is because we will just never know what the counterfactual would have delivered of a response to Pai Mārire if the situation and the impact of Kaokaoroa hadn't been what it was. What do you say to that?

A. The third one started with talking about the loss of that particular chief. So when you're talking counterfactuals, are you saying that had he been in there, there might have been a different reaction to Pai Mārire or are you saying that last part when you're talking about Pai Mārire is it from all three factors?

Q. Yes, let's break it up That's very useful let's break it up into pieces. So the loss of the rangatira Te Āporotanga the counterfactual is that his influence on the arrival of Pai Mārire might have led to different outcomes; his influence on his own people.

A. Yes, counterfactuals we're accepting that we can never prove it but that proposition has been raised. Well, a couple of things I suppose that I would disagree with that or not necessarily agree with it is a better way to say it. First of all, there were other chiefs there from other hapū as well who were significant chiefs. While there is no doubt that there would have been a gap in leadership as a result of one particular chief not being there,

and a very prominent one at that, I mean other chiefs had their own mana within their own hapū as well; so there's that. The second aspect of it as well and what I mentioned before is that in many districts, and Tūranga as an example, and there was some mention in here of places where it occurred as Kereopa and Pataka were coming as well, where chiefs were against the entire thing and we were saying to the Crown: "Don't worry about it. We'll handle it. We'll control our people. It won't happen," it still happened anyhow. So I think in considering those two specific pieces of evidence, and while I completely acknowledge that his loss would have left a hole in the leadership, like there was still sufficient leadership there and the leadership of the chiefs doesn't seem to matter when it comes to Pai Mārire and how they influenced populations.

Q. Before we get to the death and disease part afterwards, can we just deal with two more matters then, that arise from what you've just said there. The prominence of the loss of Te Āporotanga is completely understandable, but the losses for the tauā were very substantial, weren't they, in that battle?

A. Yes.

Q. The impact on the group is not just a loss of one rangatira but a number of important people, because they were the doers and leaders in that sense of being warriors, weren't they?

A. Yes, they were warriors.

Q. And then the second factor that I want you to comment on please, are the sources, typically as recorded by Völkner, where they say to him and he reports: "We won't be doing that again. We're not making peace with the Government but we won't be doing that again."

A. All right.

Q. "We won't be doing the fighting."

A. I recall that, yes.

Q. What do you say to that then? Can you comment please on whether this changes your view at all about the severity of the impact of the outcome of Kaokaoroa on Te Whakatōhea that they so plainly said to Völkner on a number of occasions that he's reported that this had changed their views on going up against the Crown again.

A. I mean, yes, they did say that. Sorry, so the wider question you're casting now were that would change my views on the impact on Kaokaoroa? Well, it's always good to have a break at the end of the day because I obviously will be hitting the report again tonight because I didn't think that I had underplayed it. I thought it was an important part of the sequencing of the decline that sort of happened that they found themselves pulled into. I mean they made decision-making that went into it, but there was a whole series of events then. You know they went, they were terribly beaten. Afterwards there was the disease and then there was a famine. So, overnight I will look at the report to see if I really downplay it. I wouldn't have thought I did. But you've formed a view that they have. I would say it is all-significant for all the reasons you're talking about. But the question then comes: "Like, what led them to be in that position in the first place, politically to be in that position where they were open to those messages and made the decision to go?" I think it was a massive impact.

Q. All right, thank you very much.

MR LINKHORN ADDRESSES JUDGE DOOGAN – ADJOURN, MIHI (17:02:40)

JUDGE DOOGAN ADDRESSES TONY WALZL – MIHI (17:02:43)

JUDGE DOOGAN ADDRESSES ALL COUNSEL – TIMETABLE (17:03:09)

KARAKIA WHAKAMUTUNGA (PROFESSOR TOM ROA)

HEARING ADJOURNS: 5.04 PM

HEARING RESUMES ON THURSDAY 21 NOVEMBER 2024 AT 9:00 AM

(09:00) PROFESSOR TOM ROA: (MIHI)

Mōrena katoa. **Good morning all.**

KARAKIA TĪMATANGA (PROFESSOR TOM ROA)

(09:01) JUDGE DOOGAN: (MIHI)

Āe, tēnā koe matua Tom, nāu i tuku atu ngā whakamoemiti ki tō tātou kaihanga, nō reira tēnā koe. Ka mihi hoki ki a koutou nau mai. **Thank you, elder Tom, for it was you who gave thanks to our creator, and so thank you. I want to also acknowledge everyone. Welcome.**

JUDGE DOOGAN ADDRESSES TONY WALZL, MR LINKHORN – MIHI (09:02:06)

(09:02) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Mr Walzl, kia ora anō. Let's continue, if we might.

A. Okay.

Q. I wanted to move next to the topic of Völkner's motivations and also his influence on the community. There's not a lot really for me left to address after your exchanges with other counsel and the points you made about his correspondence with the Crown. You make the important point that other sources had provided the same information to the Crown but I want to pick up on what might be sort of some primary motivations. Because in answer to some questions yesterday, you stressed his sense of duty as a subject and he was naturalised in 1857 as a subject and we can take from that that it was a conscious commitment to New Zealand more than the United Kingdom probably, wasn't it, given his German origins?

A. Yes, I mean that would be a good point. Yes, I would agree with that.

Q. And by 1864 then, some seven years on, he didn't need to sort of anxiously demonstrate that as someone from the German states he wasn't a threat to the British. In other words, he wasn't needing to

anxiously demonstrate that he was all right and not some dangerous foreigner.

A. Yes, no, that was the impression when he was talking about duty that it was, yes.

Q. Yes. And of course, we need to remember that in these Victorian times with Albert having died just a few years previously, you could argue that Anglo-German relations were at their strongest really, weren't they?

A. I think so. I don't think there's any conflicts around these times either, so no.

Q. Yes. So coming back to primary motivations, it's Völkner's belief in the colony, isn't it, that's motivating his reporting. The sense that he has that the colonial authorities should know what is happening in this more remote place.

A. Yes, I agree with that.

Q. That includes when there's disruption and unrest across the North Island in the early 1860s in a state of much heightened anger and hostility towards Government than there had been in the 1850s, right?

A. Of course, yes. I will just add, because I noticed it this morning and it's part of what you are saying as well, is that there were passages, before he wrote the letter, he also recorded that as different things were happening and people in his district were moving towards, he was actually advocating for the Government. He was sort of saying: "Well, the Government is your friend and Grey did actually build that church," et cetera, so he was even advocating for them as well.

Q. Yes.

A. Yes.

Q. I mean his primary role was to bring the word of God to the community and to administer to a congregation, wasn't it, but we can say that but at the same time not taking anything away from a sense that he might have had of been an interlocutor between the colonising authorities and explaining the colonisers to the local community. Is that fair?

A. Well, I think it is and I mean just from his writings and stuff. He is far more compassionate I think in his writings than Wilson's quite sort of aloof in the few things we have, Wilson Senior, and even the other ones but he

really does seem to have a compassion. So I think he would have felt compassion for his community as well that they might be heading down what he thought was the wrong path to an end that might be not a good one for them.

Q. Yes.

A. So I think there were several motivations at play.

Q. Well, I think those are very strong points in your comparison with Wilson and perhaps others even. As a missionary, he is a less arrogant missionary than many. Is that fair?

A. Yes.

Q. So you used the word naïve yesterday to describe him and I suppose the recorded observations of others about him suggest that he's intensely Christian or Godly to the point of being unworldly. Is that fair?

A. Whether the naïvety comes from his intensity or Christianity or whether it's just his personality, I mean it's a good question.

Q. Well, can I give you an example?

A. Yes.

Q. He deciding to go back in March 1865, his frame of reference is that he's seeking to fulfil God's purpose for his life, isn't he?

A. I'm sorry, the last part was?

Q. His frame of reference in choosing to go back is that he's seeking to fulfil God's purpose for his life. In other words, it's not out of concern for himself and his mortal body.

A. I'm not sure. I mean is there a passage in my report where – is he the one who records that he went back and in that passage does he record why he went back? I'm just wondering about that because if there is maybe we should go to it. But I mean, although to a certain extent that's at play, I got more the impression that when people were warning him of danger, he really didn't think there was a danger because he had evaluated his relationship with the community and did not think that that community would be dangerous to him. So the specific points you are raising, I just don't know if I've seen them reflected in the evidence.

Q. Right.

A. That (a) he was going back because his job was to spread the word of the Lord, and (b) that was more important than his own mortal safety. Yes, I hadn't thought about that, and I don't think I've seen it.

Q. Right.

A. The impression I more got was just that it's like "no that community would never harm me" or "we've gone through lots together".

Q. So, let's come to his influence on and relation with the community. His reports show his own sense of making progress with his congregation at Pākōwhai and the community in general but we need to be careful not to overstate his influence on the people because they remain their own decision-makers, don't they?

A. Yes.

Q. They decide when to say stuff in front of him and when to move off and say stuff in their own hui, right?

A. Yes, absolutely.

Q. The next topic I wanted to move to was the extent of adherence to Pai Mārire and the significance of that. You've said that the Pai Mārire emissaries were welcomed and invited to stay and you then note that there was conversion on mass to Pai Mārire with few exceptions. I wanted to check with you whether you think that was perceived by the people then as an neither/or situation in terms of conversion. What I mean by that is to ask whether conversion at that point didn't mean complete abandonment of existing precepts of Christianity as the communities were practicing it did it, and that's because Pai Mārire was an independent Māori Christianity that would deliver people from Pākehā domination, but it wasn't a completely different thing from the Christian precepts that these communities had been engaging with for decades by this stage.

A. I mean that's an interesting question as well. As I was saying yesterday, I'm not as familiar with all the tenants of it to be able to comment on it, but I can say enough to know that it is the same God. I think it's more bent towards old testament God than a Christ God. Because I mean there's that whole thing when there's exchanges from Patara with Levy sort of saying: "You're a Jew that's great, that's our God too," sort of thing,

there's that sort of interchange. So that's why I just want to be careful and labelling it a Māori form of Christianity. Because on the face it seems that way, but I think there's more an old testament aspect to it which is possibly not Christianity. It's more Judaism in a way. But again, like I said, I'm not an expert on it. But it's in the same tradition put it that way.

Q. Yes.

A. It's not a completely new thing. Here's a completely different God we're talking about that European's wouldn't be familiar with.

Q. Yes.

A. Yes.

Q. Just to be clear, my focus in these small bracket of questions is more on the impact on the community and the perception by the community than the proselytising by the emissaries, let alone the messages of violence by the party which as subsequent scholarship shows isn't actually part of the religion. So we need to contrast, don't we, the point that there might have been a form of conversion on mass, but there certainly wasn't participation on mass in Völkner's actual killing, even if there was a degree of compelling people to participate in hui leading up to the killing and then the actions that were performed after Völkner's body was taken down and brought back.

A. I mean I guess that's like quite a huge question I think with four or five components.

Q. Should we break it up?

A. Yes, please.

Q. Yes.

A. Even if we start with the mass conversion part just first.

Q. Yes.

A. I remember that part so I can answer that part and I mentioned it in the report. The style of that conversion is like really intense, high activity being drilled all sort of day and night. If you're talking about what's the depth of conversion you only learn that over time. But we are in a short time, it's a short time before they got there and a short time before Völkner came in, and in that there's a high intensive period and it seems like the whole community got involved with that. Like they willingly entered it, but

there was probably not a breathing space to anyone to stop back and reflect et cetera. So that's what I would say the conversion was up to the time that Völkner arrived. I got that first part of the question and that's hard to see that conversion. Now carry on with the next one.

Q. The party that had arrived and they welcomed –

A. Yes.

Q. – and yet we see, don't we, that there are elements of insistency from bullying from them to Hector and the local community into what should happen with Völkner and how wide the participation should be. And yet, while some voices speak up against it and maybe many voices stay silent, there's definitely not a mass participation in the killing. The best evidence is the studied absence of people like Mokomoko and the Catholic community, isn't it?

A. Again, sorry, a lot of components to that. No, I did get all of those. Yes, okay, after considering it over some time and at some length, the position I got to as far as a participation was concerned, I put a lot of emphasis on the three hui and a lot of emphasis on the fact that Kereopa called the three hui and sought to get an endorsement to kill Völkner. I think that was really important. I don't think he got that endorsement.

Q. Yes.

A. There was one source that suggested that maybe the chiefs agreed to it but I don't think that did happen because he had to call a second hui to try and get the endorsement and then he called a third one on the day of the killing.

Now when seeking to get that endorsement, he was casting a number of threats, violent threats, spiritually violent and physically violent threats. They were of a high magnitude against the whole community, women, children, the whole thing. Within the context of calling those hui and seeking to get an endorsement of his objective, he was using high threats to achieve it, and yet he still did not get that endorsement.

Some people could sort of say is that silence permission? Well, I really don't think it is. I think there's strength in that silence. I think the fact that they would not give it was a real strength. So that's why I formed the view

in the end that Whakatōhea as a community did not give permission within that sort of that tikanga sense for it to happen.

Then as for the actual physical proximity to it, the other part of your question, yes, I mean not only Mokomoko but most people I think moved away. Nearly all those who gave evidence moved away and they were significant chiefs, like Tiwai et cetera. I considered, oh, is that just them sort of saying and they actually were there. But I formed the view that no I think they did; I think there was. There's a record from some person that they all went and like hid under a tarpaulin and were crying; they were so sort of upset that it was going to happen.

So I did form the view that a number of people moved away. I also questioned greatly whether there was a large – it was actually a large crowd around. The sources that say that are a bit dubious.

Q. Look, can I just interrupt you there. We're still talking, aren't we, about the point leading up to Völkner's death-

A. Sorry, I moved on to the participation. So the point leading up was the hui part that I'm talking about.

Q. Yes. Can I ask you just to clarify for the Tribunal your own sense of physical proximity. When the sources talk about Völkner being led away to the tree et cetera –

A. Yes.

Q. – do you have a sense of the physical proximity of that to the preceding hui?

A. Yes. I mean if it's important enough, we can go to the report and look at the maps and what's said about it. But I don't think it's far. I still think in terms of yards, only a couple of hundred yards maybe or so.

Q. Yes.

A. Yes.

Q. And then after Völkner's body is taken down from the tree, it's brought back to the church, isn't it?

A. Yes.

Q. Carry on please with your answer at that point about the extent of community participation forced or not.

A. Just moving back to that physical proximity. When they were in the church the church could sort of hold about 500 people and my understanding it was packed in there. So there was a lot; hundreds of people in that church. The point I sort of raise on that question of physical proximity, this is to the execution just to finish off that discussion, people hauled out of that church, filed out of that church. Because physical proximity comes to that whole question that the Tribunal was asking about participation and responsibility so I did consider it. I more or less sort of said because there were 800 people, it is said, were in Ōpōtiki at the time of all this and there was still 500 in the church at least, when you have those sorts of number of people and they are filing out in the space between the church and the hanging, there's bound to be physical proximity. Not that people have gone there to literally watch but even just the milling out et cetera, but there's going to be a physical proximity of some sort.

Sorry, going back to the church part of it is that, again, when Völkner's body was taken back I mean the people were called to the church to be there. Again, my understanding is the church was full.

Q. Yes. Do you have a sense of people been compelled to participate rather than-

A. Yes.

Q. I mean there is no way in which this is a celebratory act on the part of most of those people, was it?

A. No, there's evidence of compulsion there as well.

Q. Yes.

A. Again, with the whole strong use of words and yelling out. You said in a few things that Kereopa does is that he singles out people who he knows really were against something and then makes them particularly do it.

Q. Yes.

A. That happens in that church after the hanging.

Q. I mean it does rather circle us back to the discussion we had yesterday about the leadership of the community and standing up to Kereopa or not, and possibly the aftermath of Kaokaoroa and the disease that followed. I don't want to sort of have to go back and re-open that. I just perhaps

make the observation there before moving on to the next topic about how intact was the community, I suppose, is the question.

A. I mean I see that they were. I mean, first of all, the first little inkling that you get of that is when Kereopa arrives and Patara was there as well and they're sort of berating people and they sort of say: “Right, now send all your Europeans away, they don’t need to be here, why have you kept them here,” and all that. The people sort of said, I think the phrase is: “If they do no good they do no harm.” So they did not conform to what was quite a strong instruction because they had a relationship with the people and a commitment to them, so I see that as a strength of leadership.

And then I also think the various treaties that certain chiefs made in specific individuals ones. I mean in the face of imminent danger to themselves really. Anything could have happened to them by going afterwards and pleading for his life at different times and I think that’s a strength of leadership.

And then I do think that silence in the church is strength of leadership as well to not conform –

Q. Yes.

A. – where the whole community is under the threat. I mean you would have thought the chiefs would. I mean they didn’t voice anything because they were under threat but they are protecting their community. So, yes, I do see that as all strength of leaderships continuing.

Q. Okay, thank you.

A. The thing I forgot to mention yesterday of course too is that his son, Āporotanga’s son was involved in all of these events and there's a photo of him in my report, so there was a successor to step into his place. Not with the same level of experience but he did have a successor.

Q. The next topic I wanted to move to was Crown decision-making in 1865 towards what became an invasion. If Völkner’s murder was a criminal justice matter for the colonial authorities in the immediate aftermath of it becoming known, it was, as you note I think, one where Crown officials always thought there was going to be a military response. I just thought it was worth getting out for the Tribunal some of the wider circumstances of the time. First, as you've noted, even if the terminology came a little

bit later, this was very much what was going to become to be called an outlying district where there was concern for the safety of Crown officials after the aukati had been laid down, wasn't it?

A. Sorry, at what time are we sort of talking about?

Q. We're talking about once Völkner's murder comes to notice –

A. Yes.

Q. – there's a criminal justice matter for the colonial authorities as to how to respond to a murder.

A. Yes.

Q. And you have said, as far as Crown officials were concerned, it was always going to be a military response.

A. Yes.

Q. And just a few points of context here-

A. Can I just go one back on that?

Q. Sure.

A. The military response part doesn't mean – there's no evidence to show it would be like a military response like as an invasion.

Q. Understood.

A. It was clear though that they felt they needed to send a military force.

Q. Yes.

A. Like a large number of armed people because they didn't know what they were facing.

Q. Yes.

A. So whether once they got there, it would be a police action or full invasion that was never discussed at that time because-

Q. Well, they knew there was an aukati, didn't they?

A. Yes, they did.

Q. And they had-

A. Sorry, would they have known that? I'm not sure if they would have known that. When would that have been communicated to them? I'm just trying to think who records that. Yes, I'm sorry you are correct because I think it gets recorded by Grey when he gets rescued his diary goes into the papers. Yes, they would have known that.

Q. As a sort of second point of context, if we think about Richard Hill's work, there's no police force of the kind that people take for granted now.

A. No.

Q. And then there's also the political debate and the practical organisation at the time and I think you've noted some of this in your report. If you go to people like Ron Crosby's work on the *Kupapa* book about the withdrawal of imperial troops, the policy of self-reliance, making self-reliance an actual thing.

A. Right.

Q. It was hardly a well-oiled machine self-reliance in March 1865, was it?

A. No.

Q. And the whole East Coast situation from the point of Völkner's death onwards in the East Coast was very dynamic, wasn't it? That's a polite word in terms what then happened in Ngāti Porou.

A. Yes. Because I was just going to say in those days when they used the East Coast they meant the Bay of Plenty as well. But now you're talking about what we now see as the East Coast, the Tūranga area and stuff.

Q. If we move eastern-south and southwest from the events here that whole region becomes one of high uncertainty and a lot of activity for the rest of 1865.

A. Yes, that's right.

Q. And yet the eventual military response when it did come was preceded by some visits and I think you label them elements of diplomacy even in that as well as intelligence gathering. So let's come then to Dr Agassiz influence on the Crown plans at the point of invasion.

A. Right.

Q. This is again another I think very important point of interpretation that you've taken in your report. You're saying that Dr Agassiz was hugely influential in effect and that what he informed the officers of the invading force about the threat that Whakatōhea posed changed the approach and made the Crown's posture much more aggressive. And then you've already talked about this with other counsel and I think that report was filed with the Tribunal yesterday from the AJHR.

A. Right.

Q. From your report, I note that you say: “This was a key document. Dr Agassiz spoke te reo. He knew the people. He was the only European left in Ōpōtiki.”

A. That’s right.

Q. And you say at page 862: “You conclude that he’s a reliable source.” Now Dr Agassiz tells the Crown that Ngāi Tai under Wiremu Kingi are going to be neutral, doesn’t he?

A. He does, yes.

Q. That turned out to be accurate.

A. Yes.

Q. But the extent of adherence of support for Völkner’s killers that wasn’t accurate in the event, was it?

A. I'm sorry-

Q. The extent to which Dr Agassiz says that the whole community is in support of Völkner’s killers that wasn’t accurate, was it?

A. When you're saying “it's not accurate” are you talking to how it then played out and the various evidence that you get during the invasion and comments that they make on how they view Kereopa?

Q. It's one thing for him to say it –

A. Yes.

Q. – but was that accurate at the time? He said it, but was it accurate?

A. But when you're saying “it's not accurate” what are we talking about there? I mean how are we knowing it's not accurate? By statements that were made after the invasion where people are prepared to give up the killer.

Q. Yes, I'm not asking you at this point to say how is the Crown to comparatively evaluate the message it received.

A. Yes.

Q. It's just a very simple point of saying “he said this”.

A. Yes.

Q. “He said the community supports Völkner’s killers” that wasn’t so, was it?

A. I think it was.

Q. You think at that point the community did support Völkner’s killers.

A. He said that the community was significantly – I'll just pause there.

(09:29) JUDGE DOOGAN TO MR LINKHORN:

Q. Mr Linkhorn, just while Mr Walzl is having a look at that. I am just looking at the AJHR and I just wonder if we could focus a little bit more of the relevant parts which you say carry that particular inference. Because in my quick reading of it, there's a lot in that report about the situation in August. There is recording that Dr Agassiz whatever it was there when Völkner was murdered but specifically saying that the community supported the killers is not quite the way. It's talking about these more contemporary situation when you have a whole-

A. Yes, sorry, if my questioning sounded like I was meaning that Dr Agassiz report then goes on into a later period that's my mistake, sorry.

(09:30) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Mr Walzl, how would you sum up what Agassiz is reporting about the community's view of Völkner's killers?

A. Yes, I mean that's why I paused and had a read of it myself. Because I was just thinking I don't think in the Agassiz report they actually say. They don't make that statement "we support Völkner's killers" I don't think. I was trying to read it really quickly; it's quite big. I think what the report shows is that the whole community is Pai Mārire and engaged in Pai Mārire activities which include: fighting allies of the Crown, still doing rights in a major way, still being defiant. Yes, so I don't think Agassiz does say that they are still in support of the killers or didn't specifically say that.

Q. Yes.

A. The question on whether that is accurate or not, I mean I don't think it comes into play because I don't think it says that.

Q. Then just to be clear for the Tribunal, I'd really like my question to be about Mr Walzl's view on what Dr Agassiz is saying and meaning in this report about community viewpoints on Völkner's killing. So the Crown relies on it and of course the Crown is responsible for that, isn't it? But as events unfolded after the invasion Dr Agassiz was soon exposed as unreliable and poorly informed, wasn't he?

A. You will have to direct me to something to – like I'm not quite sure what you're meaning in that. Can I have an example?

Q. Yes.

A. Yes, please.

Q. Yes. So, Commanding Officer Brassey, he was soon very annoyed with him. He'd appointed him as a guide on the basis that he was a local expert, hadn't he?

A. Again, can you take me to the reference in my report for that please? I just want to see exactly.

Q. Can I make-

A. I'm aware of it. I just want to sort of see it.

Q. Yes. Can I just make the six points and then we'll go to the source and you can comment on it. The six points that I took from it, seven sorry, he'd appointed him as a guide on the basis that he was a local expert, Brassey had appointed Agassiz. He dispensed with him within a week; he said he had less local knowledge than soldiers had acquired in a week; he said he couldn't speak a sentence of Māori; he said he was unfamiliar with Ōpōtiki; had him arrested for drunkenness and had him shipped off.

A. That's quite a collection.

Q. That's a collection. You're familiar with all of those things?

A. I'd like to see the source though.

Q. Dr Gilling #A004 page 76 for all of that.

A. What's the original source behind that please?

Q. Well, I think from Dr Gilling's report, I'll just go to that, it's Brassey to CDM 14 September 1865, CD65/2850. This is Dr Gilling's report pages 75 to 76 which is #A004 on the record and the footnotes there.

A. I'm just trying to find where the-

DR GRANT PHILLIPSON TO MR LINKHORN – #A004, PAGE 75-76

(09:34) JUDGE DOOGAN TO TONY WALZL:

Q. Can you recall off the top of your head Mr Walzl whether this is a source you're familiar with or have seen?

A. I am aware of the guiding aspect. Those six elements I don't recall just yet.

Q. All right.

A. So I'm trying to see whether it does appear in my report –

Q. Okay.

A. – whether I've considered it or not that's the first thing. So that's why I wanted to know exactly what the reference was.

Q. All right.

A. And I'll look it up in my report and try and see whether I've covered it and what I make of it. I am aware of the general tenant of it. Some of those specific points I'm not aware of and some of them I'll be surprised at. I mean the word that he couldn't speak te reo that's very surprising because I don't know how he got on in the community when no one was speaking English and he was living there for years.

Q. All right.

A. So that's why it's significant. I wouldn't sign up to those six points unless I'd seen the original source. I want to see have I looked at it and what did I say about it et cetera.

Q. All right. So we've just brought up on the screen the extract from Dr Gilling's report and we'll just give you a chance to read that.

TONY WALZL REVIEWING #A004 REPORT

TONY WALZL ADDRESSES MR LINKHORN – CLARIFICATION (09:38:12)

MR LINKHORN ADDRESSES TRIBUNAL – WITNESS RESPOND IN WRITING (09:38:21)

JUDGE DOOGAN TO TONY WALZL: (CONTINUES)

A. I can make an initial comment just on materials itself. So the part that's been put to me about had less local knowledge than the soldiers already acquired that is Dr Gilling's words. I'm not saying they're wrong, but they're paraphrasing so again it would be good to see the source on that. Now he is useless for a guide and he does not speak of Māori that's quoted so that's from the source. We know that that's the source and then the other problems et cetera because they are the two most significant ones. I have a strong doubt I mean that he does not know a

sentence of Māori when he's been in the community for years and has to work as a trader. I guess my initial view is that if Brassey has formed that view, is Brassey correct? As for the local knowledge, it just seems a strong view to have made and unlikely, so I would need to see the source.

Q. Thank you for the preliminary response. But I think as Mr Linkhorn proposes, we'll give u an opportunity to have a look at the source and provide a written response and then Mr Linkhorn can carry on to his next.

A. Right.

Q. And just in the course of the written response, it would be helpful also if you could just clarify what we know and what the sources tell us of the period of time Dr Agassiz was resident in Ōpōtiki. Because I see from one of these references in this passage that it might have been from earlier part of 1860. I'm not sure what the position is, but if that can be clarified as well that would be helpful.

MR LINKHORN ADDRESSES JUDGE DOOGAN – FILE SOURCE MATERIAL (09:40:59)

(09:41) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Moving on. You are aware though that the Ngāti Awa report-

A. Sorry, if I could just make one final comment with that as well. Aside from whether how Agassiz might turn out to be as a reliable source they certainly took his word for it when they saw his statement at the time.

Q. Absolutely. My final point was going to be reliable or not as a guide, reliable or not as a source and statement, our important point here is your one that it influenced the nature of the Crown response at the time.

A. That's right.

Q. So we agree on that.

A. Sure.

Q. You're aware that the Ngāti Awa Tribunal report took a dim view really of the veracity of Dr Agassiz statement.

A. Yes.

Q. I think they said it was lured hearsay account over which great caution or some such.

A. Yes, I am aware of that. There's a number of things that were in the Ngāti Awa report. They formed a view because of course they were looking at it from the Ngāti Awa perspective and within all that context. So there's a number of places I end up are different in that report and I didn't feel I needed to in this report go through that because I understand where that Tribunal was looking at and its scope of inquiry. But I didn't see anywhere near the depth of evidence that I presented so I never went through that aspect. But I am aware that they said that.

Q. Right. So this Tribunal is going to be able to do a more thorough job than that Tribunal is your point there?

A. This Tribunal has more primary sources in front of it, yes.

Q. Moving on to the invasion in September then and back to the arrival of the Crown forces. There's no pā laying. There's no initial back and forth where they're under a white flag or not to ascertain and scope out intentions by military people, is there?

A. No there's not.

Q. There's no diplomacy involving local rangatira and that's to contrast it with other places, isn't it, where communities or different tribal groups in the area might have different allegiances and so therefore someone who was a senior leader and friendlier to the Crown might be somewhat of a go between. There's nothing of that happening here, is there?

A. Well, not only that, there actually already had been two instances where that had happened.

Q. That's the March till August period, isn't it?

A. That's right, yes, where they had sent diplomats who were allowed to land and go and discuss –

Q. Yes.

A. – and where they had landed under a white flag of truth and there had been discussions. They had no evidence that the community would have rejected it had they tried it.

Q. Yes.

A. Quite the opposite.

Q. But for some reason the Crown's military people at that time thought the point of all of that was over.

A. That's not the view I have.

Q. About the views of the Crown's military people on the ground.

A. Yes.

Q. Right.

A. No, that's not the view I have. In the report, we know the Agassiz statement was shown to the officers and, as I say, we have no specific evidence that on that evening when the Defence Minister was meeting with them and showing that report that he either officially or unofficially changed the instructions. The instructions are as the written instructions that hold. The point that I make or I think happened is that that changed the mission and so there wasn't that same intention to go and arrest murderers when the military came. The intention now was to deal with a Pai Mārire community and that was excessive.

Q. Yes. But just so that we are clear, as to the military commanders on arrival didn't think they should be pausing to parlay or have any form of negotiation themselves, did they?

A. I think when the military commanders evaluated the likelihood of those instructions, the feasibility of landing at night and all that, that that was an unlikely thing to be able to achieve. And then the question is why didn't they parlay instead? Because the instructions essentially were to go and arrest the murders and to do it without bloodshed, even though the next part of it is do it by landing et cetera. Okay, they worked out that's not going to work and so they were the instructions. Like my belief is that if they were still the instructions that were standing or what they were operating under, then they would have thought: "Well, how can we arrest the murderers without bloodshed when we can't do a night manoeuvre because it's not going to work." I believe that if that was still the instructions, then they would have proceeded with the flag of truth or some attempt to communicate to shore. But that's one of the reasons why I don't think they were the instructions anymore. I believe that the objective had changed. The objective was to confront a Pai Mārire community and subdue it first before moving on to finding the murderers. So I don't think they're making a decision: "The flag of truth wouldn't

work." I think the landing that they did is an indication that that's not the mission anymore.

Q. Well, this is very significant, isn't it, because most of the interpretations rely on the written instructions and are to the effect that the forces didn't follow their instructions and your evidence to the Tribunal is that the written instructions were overtaken with oral instructions that the forces did follow. Have I got that accurately in summary?

Well, I mean I say it far more cautiously than that. I effectively say, and I absolutely acknowledge that there is no evidence of it before they landed, there's nothing where people refer to and say: "The instructions are changed, they are now this." There's no evidence of that so I completely accept that. But judging by the actions they took and by comments that soldiers made afterwards, immediately talking of confiscation for example, and the comment of the Minister in the House on the 28th of November, which is also talking about full confiscation et cetera and setting up a military settlement and bringing the area under peace, and yes looking at the actions they took, I posit that something had changed. And then I say the only thing that seems to have changed here is we have evidence that they received the Agassiz statement; Stack recalls it in his letters and I think that's the difference.

Q. Can I just check that what you've just said means, we're hanging this on three sets of sources: (1) the Agassiz statement, (2) a November statement by a Minister to the House, and (3) the comments by soldiers not officers.

A. Officers.

Q. Officers?

A. Yes.

Q. Right. So those three things are what-

A. Several comments by officers about the confiscation of land.

Q. Yes. But within those three brackets of sources that's what we're hanging this on?

A. I mean we know that they saw the Agassiz statement because State writes to his wife.

Q. Yes, I think that was number (1).

A. Sorry, I thought the number (1) was the statement itself. Okay, this number (1) is that they saw the Agassiz statement and we know they saw it. Then, yes, okay.

Q. Number (2) the November statement to the House by a politician.

A. Yes.

Q. Number (3) several statements by officers.

A. Yes. I guess number (4) is the actions they took. Because the actions they took landing a landing craft in broad daylight is not trying to achieve without bloodshed the arrest of the murderers.

Q. Yes.

A. There's no way that would ever lead to it.

Q. Mr Walzl that's sort of enforcing a presumption of following instructions. We're trying to determine what are the factors that might suggest the instructions had changed. So that fourth one is a very weak one at best, isn't it?

A. Well, I mean to explain what they did you have to go to a presumption that those officers had disobeyed instructions and I think that's an equally large step to make.

Q. Okay. So presumptions on either side then about whether they obeyed or disobeyed. Can I circle back then though to the parlaying. It's notable, isn't it, that there's no senior political figure appears on the scene as occurred elsewhere. There's no McLean turning up at the last minute to sort of lead a negotiation, is there?

A. No, or during the campaign. Although, I mean I would have to really think whether that was a norm anyhow for a politician to accompany a military campaign and be on-hand to take action so I'm not sure.

Q. Well, it certainly occurred later in the year, didn't it?

A. Sorry?

Q. Later in 1865, didn't it? It occurred around the East Coast region, around Tūranga. It occurred later on around Hawke's Bay.

A. Is that right? So when there's an army force a politician has gone there and is on hand.

Q. You're not aware of those things.

A. No, I'm just not aware of it that's all.

Q. No, okay.

A. I mean if that's case, then, yes, no, it didn't happen here.

JUDGE DOOGAN ADDRESSES MR LINKHORN – MICROBREAK (09:51:35)

HEARING ADJOURNS: 9.51 AM

HEARING RESUMES: 9.57 AM

JUDGE DOOGAN ADDRESSES MR LINKHORN – CROSS-EXAMINATION TIMING (09:57:51)

(09:57) JUDGE DOOGAN TO MR LINKHORN, TONY WALZL:

Q. So just in the interests of time, in terms of our questioning as well, on this last discussion you've just been having around the instructions and what happened when the force landed and the extent to which there's a departure from instructions or a change of instructions, and this is really just to save us going into the same area, if possible, could Mr Walzl also just consider, or be asked about, what the sources show in terms of the discretion given to the military officers? So, a separate issue as to whether there's any change to instructions but, were their actions consistent with discretions they had within the terms of the instructions, if you follow my point. So if you have any further discussion on that topic-

A. [Mr Linkhorn] Mr Walzl, why don't you address that now? Thank you.

A. [Tony Walzl] I'll just need to look something up in regards to that.

A. [Mr Linkhorn] Perhaps, while Mr Linkhorn's doing that members of the Tribunal might we posit a hierarchy. What were the instructions? What was the extent of discretion within those instructions? Were the instructions varied? If so, how? Was it in writing or orally? And then we get into whether the instructions whether varied or not were followed and within our understanding of permissible discretion.

Q. That's helpful. Thank you Mr Linkhorn.

(10:00) DR GRANT PHILLIPSON TO MR LINKHORN:

Q. Tēnā koe **greetings** Mr Linkhorn. I just want to ask, you said that previously it was presumed that the instructions were disobeyed. What source were you referring to there? Was it still Dr Gilling's report?

A. I can't just bring to mind Sir what I'm relying on there. I suppose if I just put it up as follows which is that the written instructions are clear on their face about what was to happen first and that plainly didn't happen.

Q. Right, okay. Thank you.

(10:01) JUDGE DOOGAN TO MR LINKHORN, TONY WALZL: (CONTINUES)

A. [Tony Walzl] Okay. Now I'm sorry, I've forgotten the exact wording of the point again.

Q. [Mr Linkhorn] Mr Walzl, Judge's question was what the extent of discretion to officers in carrying out instructions.

A. [Tony Walzl] Right. Well, I think at some point in the report I sort of say that it's hard to evaluate military strategy or actions taken on the ground as I don't have military expertise. When something happens, this is generally, that we might look at today and think: "Well, that was a mistake et cetera," we can't really tell unless you're a military expert and know that a frontal attack is what was done et cetera. I think that's the same with the instructions. The discretion of officers in the face of instructions, whether that's a norm in military action or not, is something I don't know about and therefore wouldn't be able to comment on too extensively on that.

Q. [Judge Doogan] All right.

A. However, there is some mention in the instructions about discretion. But that is regards to the landing in the instructions that the Defence Minister says: "Well, it would be a good idea if you maybe landed at night and surrounded the pā."

Q. Right.

A. But then he sort of says: "But that's completely up to Captain Hope," because before the landing Captain Hope was the commanding officer; Brassey was put under Hope's command until he landed. So there is some actual evidence of discretion in regards to the landing. But other

than that, the broader question of whether a military officer has the capacity to make decisions on the ground contrary to instructions, I don't have the expertise to know whether that's the norm or not.

Q. All right. So we can perhaps also give you an opportunity to consider it more fully and answer in writing. I'm just really noting the page 701 at paragraph 5.25 where you set out, I'm not sure if it's the complete instructions or some of the instructions. And at the top of page 701, "If you should be attacked either upon landing or afterwards you will act according to the best of your judgment but no opportunity should in that case be lost of inflicting summary punishment." And then again: "Should you succeed in landing and establishing yourself without opposition you will at once summon the tribe. If they do so, you will abstain from all active operations, await further orders from me." So it's partly a question of interpretation of the instructions themselves and then the matter of fact as to what happened. To be clear, I'm not inviting you to address a theoretical question as to the extent a military officer might have discretion, but I'm really going to what is the nature of discretion implicit in, or expressed in, these instructions and then what happened.

The hierarchy of questions Mr Linkhorn suggested is quite helpful, so perhaps if we use that summary of the issues as a way to invite you to provide a written response that would be quite helpful. Thank you.

A. [Mr Linkhorn] That would be very helpful, thank you, Sir.

Q. All right.

A. [Tony Walzl] I suppose just the last thing to add is that when considering the instructions too is that they are predicated on a certain presumption as it starts off that their aim is to arrest the murderers without bloodshed and then everything else is predicated on that. The "without bloodshed" part, a suggestion is made to do the night landings and that might be a way to do it and whether that was practical or not. But the question then arises is that when that can't be shown to be effective in the way that the instructions suggest, do the instructions still hold? Because the situation on the ground in other words has changed, is an officer still bound by those instructions, or is it: "We're going to have to come up with something new," so there's that question I think too.

Q. Yes, all right. Thank you.

(10:06) MR LINKHORN TO TONY WALZL: (CONTINUES)

Q. Just moving on slightly then. You say that there were negotiations for surrender soon, but when you say "soon" that's 15 September, which is eight days after the landing, isn't it? Sorry, after the force arrival, I'll put it that way.

A. Well, first of all, I'll just check a couple of things.

JUDGE DOOGAN TO MR LINKHORN – CLARIFICATION

Q. Well, perhaps to seek your agreement Mr Walzl that we're talking 15 September was when the first negotiations for surrender were.

A. That's what I'm just checking because I don't think it is.

Q. I've got something out of paragraph 57 on page 22 of your summary.

A. Yes, I'm just going to the original source material. I'm just trying to locate the date. Here it is here I think. Okay, right. First of all, I guess when I would say "soon" it's from once the army was in place soon after, and the army wasn't in place, yes, hadn't landed and secured the landing until essentially the 11th so to me the gap between the 11th and the 15th is soon. The second aspect is that on the 14th a group of riders came up under a flag of truce, even though that didn't turn out to be a negotiation, the fact that the officers came out to meet them shows that they were prepared to have a negotiation so there is evidence that they would start that quite quickly. They were open to it on the 14th and the first one's on the 15th only four days after securing the landing.

Q. Yes, and meantime a great deal of violence has occurred.

A. A great deal of violence?

Q. Or shall I go back up a step?

A. Yes, please.

Q. Meantime no requests to attend a hui was-

A. From the officers, no. There had been no formal. In fact, both of the two examples I just gave the 14th and the 15th are of Māori coming in, rather than officers like going out under a white flag themselves, yes.

Q. And there's been violence in that period.

A. That's right.

Q. Yes. So remembering that the Crown knew in advance that Ngāi Tai would be neutral, what were the sort of things that stopped the Crown from seeking help from Ngāi Tai to negotiate with Whakatōhea? Was it the earlier Ngāi Tai support in 1864 for the Kīngitanga, or was it some other factor, or do we just not know if it's removed?

A. Yes, we just don't know. I mean you could speculate on that and that could be one for example. Another one could be they might be aware of the tensions between Ngāi Tai and Whakatōhea. But yes, it's just never raised as to whether we should go in and pick up Wiremu Kingi. Of course they did do that on one of those cruises of the *Eclipse*.

Q. Mr Williams was talking about, Professor Williams?

A. Isn't it the May one? Yes, there was a cruise on March which was to rescue the remaining prisoners and then there was one in May as well. Wiremu Kingi and Tiwai were picked up to be part of that so they had used him in that diplomatic mission.

Q. Look, I just need to move quickly now in terms of time remaining because I must be coming up to the end of it. So just one more topic and then if I have time for a few minor points I'll raise those as well. That's the use of the Settlements Act is this next topic. You outlined to us yesterday the change of Government, the change of policy, the use about Outlying Districts legislation, and you pointed to a Stafford explanation given to a public meeting in Nelson about confiscation. But the sources overall show us, don't they, that the purpose or Government justification, I'll put it that way, for use of the Settlements Act was a response to the invasion being classed as rebellion not confiscation because some people killed Reverend Völkner.

A. Yes, I mean I think that would be right and even Fitzgerald's speech under the Weld Government on the 28th of November he's not talking about confiscation in the context of punishing a murderer. He's talking about in the context of needing to bring this area under control and the inference is because they've been in rebellion and were back to the circumstances that the New Zealand Settlements Act would be used in.

Q. Yes. Just quickly then, you mentioned, this is just adjacent to this really, some motivations for Auckland Provincial officials essentially to achieve

provincial goals from land confiscation. It's notable, isn't it, though that Whittaker who was the Superintendent and Haultain they told Wilson to leave the land east of Ōpape to Māori. They told him that and it's significant, isn't it?

A. I'm sorry, significant in what way?

Q. Well, I might be skipping a little too quickly here because of time left –

A. Right.

Q. – but yesterday you were at pains I think to point out the provincial objectives and motives for administering confiscation to meet other provincial goals. And yet. at the same time, we have this evidence of the Superintendent and Haultain telling Wilson to leave the land that's to the east of Ōpape. So they themselves were putting important qualifiers on how much land should be sought for confiscation, weren't they? In other words, your point about 'turn a good profit' that objective is qualified by this.

A. I mean when we say 'east of Ōpape' I mean what point. I mean there's Waiawa and then there's Ōmarumutu and then there's Ōpape. So you're talking like the northern edge of what became the Ōpape Reserve when we were talking about that? Because they didn't confiscate east of that, did they?

Q. I mean the Ngāi Tai lands were made subject to the district definition.

A. Initially, yes.

Q. But the instruction from Whittaker and Haultain to Wilson is to leave alone, to not seek the lands east of Ōpape, wasn't it?

A. Yes, it was.

Q. That qualifies somewhat the 'turn of good profit' objective, doesn't it? Because it means that the politics of support, neutrality, rebellion of communities comes back into it, doesn't it?

A. You mean, they didn't take those lands because they regarded Ngāi Tai as an ally?

Q. Yes.

A. Well, yes, I think that's true. I'm not quite sure how it relates to the profit aspect of it. Because I mean those lands that are east of Ōpape aren't exactly settlement style lands anyhow. There's coastal strips and high

hills behind, as Ōpape is as well. The profitable area of that land that was taken is the land to the left of Ōpape really. I mean and that's what they were talking about when they were talking about profit. Yes, I accept that they didn't take to the east of it because it was in recognition of an ally, but I don't think that undermines the profit and thingy part of it because I don't think they would have made much profit out of that.

Q. Thank you. Just finally, earlier on in your report when you're talking about trade and so on, you make mention I think a couple of times about indignation around Ōpōtiki about the prices that local traders were charging for goods that they brought in from the bigger markets and that's really the context for the complaints of the locals, isn't it? Because you say that there were complaints, or you say that they were urging on the Government that they should buy dear and sell low. But the point really is that the locals were concerned that they were being ripped off locally by the people selling to them, compared to the prices of Auckland, wasn't it?

A. I would have to check that because I thought it was an opposite complaint and it would take a while to check that. Again, as you're pointing to the time thing so maybe it is something for writing as well. But my understanding of what the complaint was that they came to learn that the traders got high prices for their produce in Auckland, and yet had paid them low prices for it. I didn't think it was the traders selling to them. I thought it was them selling to the traders.

Q. Well, I think the context is opposite and perhaps that's something we'd follow-up in writing if it was important.

A. Right.

Q. Yes, I've got some more points but I'll leave them there in the interest of time. Thank you.

A. All right.

Q. Thank you very much Mr Walzl.

A. Thank you.

RE-EXAMINATION FROM MS HOLMES-MUSTART – NIL

(10:18) DR GRANT PHILLIPSON TO TONY WALZL:

Q. Tēnā koe Mr Walzl.

A. Hello.

Q. I just wanted to start by saying what an impressive piece of scholarship your report is and we're very appreciative of that. And as you said, the forensic approach you used answering the Tribunal's questions is very much appreciated.

A. Thank you very much.

Q. I have a lot of questions. I'm going to put most of them in writing because there are points I need to know about more for the report but they are points of detail rather than significant issues in that respect. So thank you in advance for your forbearance in answering those questions.

A. Right.

Q. I just wanted to start with what might be one of the consequences of there being no relationship between the Crown and Whakatōhea before 1862, '61 and '62. Do you know if Whakatōhea or Ngāi Tai were invited to the Kohimarama Conference and the opportunity that that conference gave for a strong dialogue between the Crown and Māori about the Treaty and about how things were going to develop from then on?

A. No, I'm afraid I don't know that. The sources around Kohimarama and exactly how it worked and things like that are quite slight. I did try and make an effort to see if I could find something on that and I couldn't find anything on that.

Q. Well, maybe I'll ask it differently, did they attend the Kohimarama Conference?

A. Again, I will say no here and now. And if you could maybe include it in the written questions, I'll double check that particular one.

Q. Yes.

A. But my understanding is no.

Q. Yes.

A. But I don't want to say that wrongly, if I'm incorrect. But no, I don't think so.

Q. Okay, thank you. I think that is quite significant. I just wanted to ask, you suggested that the Pai Mārire force that arrived in Ōpōtiki was not armed

but you also said that Patara as he came into the welcome was holding horse pistols. What is the significance of that, do you think? It's quite a display of arms as they come in, so what does that mean?

A. I mean, in addition, they were accompanied by a force of Ngāti Awa who were armed and that force was quite large, like 200 people. I mean the emissaries themselves the 20 or so that came were reported as not being armed but there was an armed force as part of the party. As for the imagery of the horse pistols, I'm afraid I don't quite know. It is clearly an important aspect and it gets commented on, but I'm afraid I don't know the significance of it.

Q. Well, I guess, I was asking whether that suggested that perhaps they were armed.

A. All the evidence is that the emissaries weren't. But like I said they did have an armed escort essentially.

Q. Okay, thank you. Now one of the really big issues, and I've really struggled with this in all the evidence, is what is the actual evidence that Völkner was warned not to return and ignored those warning? Can you point to what the actual evidence is that that occurred. Because we know that anything from the arrival of Pai Mārire, Völkner and Grace left Auckland the day after they arrived, so Patara's letter and any other warning from them on couldn't have reached Völkner. What were the warnings that he did receive?

A. I can say that I am quite sure that there were warnings. I can't bring to mind exactly where they are in the report. It is something I would be able to report back on after the break to find them. Because there are I think two specific records of him been warned, so I would be able to come back to you on that after the morning tea break with where they are in the report.

Q. Okay. Well, one of them might be that Grace's statements at the trial of Völkner but that's not specific either. So thank you I'll will hear from you later on that.

A. Yes. I also just remembered can I bring up – yesterday you brought up a point in answer to one of the questions, I said there was an indication – so when they came back from Kaokaoroa and then faced the disease and

then famine, there's various comments on how they viewed Christianity, I'm just picking up on that point. I had mentioned that at first they saw it was a punishment but they were grateful that they were spared et cetera and they put it down to maybe the punishment was because we went on the path of war et cetera. And then I made the comment but there was also evidence that before Pai Mārire came there was some evidence that that attitude that Völkner had recorded had almost moved another step to a scepticism in the God that would do that and you wanted to know the source for that.

Q. Yes.

A. So I have found that so should I give that to you now?

Q. Yes, sure.

A. Yes, so just before I forget. All right. At paragraph 3.146, it is a letter written on the 22nd of January 1865, so very close to Pai Mārire coming in and after that year it was all over. The text there in the last two paragraphs is: "The worst is that none of the calamities which befall them lead them to the source where wisdom, help, peace and rest alone is to be found. I cannot get them to reflect on what has befallen them during the passed [*sic*] year and they exhibit great carelessness about the future while the word of God seems to make little impression if any upon their heart." So it sounds like they are no longer getting that same solace in Christianity as Völkner was recording before.

Q. Yes, thank you that is very helpful. It struck me as important why, even when they're over at Tūranga, Patara over at Tūranga, there's such a huge emphasis on Hori Tupaea and his safety and his freedom. Do you know why everybody was extremely concerned about that and made that a term of releasing Grace?

A. Yes, I think the specifics of it, I would have to recall. But my understanding is that he had been arrested by the Government within the context of some action in the Tauranga area and it was believed that he was still been held by the Government. In actual fact, he had been released but that doesn't seem to have been known and therefore people were wanting to seek his release because they saw him as one of their allies. So I understand that's what that's to do with.

Q. Okay. Because there were others as well, and I wondered why the emphasis was on him. I wondered it if was perhaps because some of their time was spent in Tauranga when they had to leave for the musket wars but I'm not sure about that.

A. No. Because I mean I think the arrest took place within the context of his conflict with Arawa, so he was sort of like a kindred ally against Arawa –

Q. I see, yes.

A. – seen in that sort of way. Again, I'd be able to get a more comprehensive answer on that and send me your questions in writing.

Q. Okay. You're volunteering to answer more. Thank you I will put that because it seems an important point.

A. Yes. I'll easily be able to get to that because it came up in the whole Motiti MACA hearing and stuff like that.

Q. I see.

A. Yes, I know quite a bit about it but just not here. Not quite here and not now.

Q. Okay, thank you that would be helpful. I wanted to ask you about, this is on page 585 of your report, martial law hadn't been proclaimed and the raid on the kāinga that seems to be called Penau, I'm pronouncing that correctly, P-E-N-A-U, and two of the local people were killed in that. Do you think that raid was covered in Grey's instructions? This is that second expedition of the *Eclipse*.

A. No. I mean Grey's instructions really were to go on the foot of a fact finding mission in a way and I think this was the Commander taking an opportunistic hearing, or having landed Tiwai and Tiwai coming back having reported: "Look, there's murderers in a village just down the road," he made the decision on the spot that he would go and arrest them there. So it's an opportunistic action.

Q. Yes, and two people were killed as a result. Do you know if there were any consequences for that having happened?

A. Consequences?

Q. Any punishment from the Crown.

A. From the Crown. But the two people killed were Māori people.

Q. Yes, that's right.

A. Yes.

Q. But he didn't have any authorisation to carry out military-

A. You mean consequences for the officer.

Q. Yes, for having carried out something that-

A. Right, yes. I mean he certainly was heavily criticised in the press et cetera. And of course, they did other actions as well trying to arrest one of the murderers they believed up north. They opportunistically found he was there and tried to arrest him there as well. There were several actions he did that were sort of outside the instructions.

I'm not aware that he was reprimanded for it because he provided information and the information he provided was in line with his instructions. He was able to provide where people are and where he though murderers were and things like that. I never saw a record on his report; a minute or anything saying that "send him a reprimand that he went outside his instructions". Not that I'm aware of.

Q. Thank you. I think it might be a gap in your report is the issue of why the Crown decided to confiscate land. I don't mean in a general policy sense but the specific reason, which Mr Linkhorn was raising with you, about whether it was resistance to the troops et cetera. You have on page 297 that speech of Stafford in which he said: "He advised the governor to take the land of the natives of Ōpōtiki." Normally, there would be a memorandum from the Ministers to the Governor advising him to take the land. Have you seen that memorandum?

A. No. In fact, yes, again I did my best with some research. I'm saying I would have covered everything but I did look for that. I mean there's no record other than the proclamation itself. It just seems to come out of the blue.

Q. Yes.

A. And of course, it's happening within these intensive negotiations with Whitaker. I think I make a record in the report that the exchange of letters where Whitaker effectively says: "Yes, we will take – because there had been exchange of letters setting out the conditions on why the Provincial Government would take over the situation in Waikato and

administer it and all that. And part of it was that there was meant to be a loan; there was meant to be other things and stuff like that.

I think it's actually the day of the proclamation, there's a letter where he says: “Yes, I accept all those conditions and we will do the Waikato.” And then there's one from the Minister that effectively says: “By the way I've confiscated some land too, would you like that,” and then on the same day he comes back and says: “Yes, I would like that too.”

So, all these letters go bang, bang, bang on the same day. Other than the proclamation, there had been discussion or consideration in any depth that I could find of confiscating the land.

I did sort of form the impression that all these things were happening at once and that it was almost done like on the spot as part of the negotiations on the day. Instead of a “well-considered thing” it was meant to have been under the Settlements Act. But only because I couldn’t find any other evidence of discussion or consideration beforehand and the intensive period in which it happened. One minute it's not being talked about and next minute it's talked about.

Q. What was the date of that speech where he said he’d advised the Governor?

A. That was afterwards. That’s in February.

Q. That’s in February.

A. To me, it almost seemed like a post-facto justification. However, if it was true, it was something that I would imagine that was happening almost on the day. It might have been a very interesting day and as part of that day he went to the Governor et cetera. I don’t think it was a well-considered long process.

Q. Okay. It might have been oral advice is what you're saying?

A. Could be, yes. I never saw anything in writing.

Q. You never found the written memo, okay, thank you. Because normally I would have thought that would have been in the AJHR but it's not.

A. Not that I could find, no.

Q. No, okay thank you. Just on that provincial issue. I was struggling with that a bit. You're not arguing that the Crown would not have confiscated the land without the Auckland provincial factor, are you?

A. No.

Q. No. Yes, I just thought I'd clarify that.

A. No. I think the speech on the 28th of September indicates that they had made a decision to confiscate.

Q. They were always going to do it.

A. Yes.

Q. Yes, thank you.

A. It's just the way it came about the timing of it.

Q. Yes. It's also related to the Auckland Provincial officials being Wilson's bosses. I just wanted to check with you – Wilson Jnr I'm talking about there, the Special Commissioner – that they were managing the confiscation in their capacity as agents of the general government. That's the impression I got from your report that they were given that title of agent of the general government. Have you seen any instructions to them, what they were authorised to do as agents of the general government?

A. No.

Q. Were they just given a complete free reign?

A. On the post-confiscation part, as I mentioned in my report, so after January, I didn't really do an in-depth consideration. It's in the front of my report that on the details and mechanisms of confiscation and compensation, I haven't really done the full consideration. I made that decision because Jane Luiten had covered it so she'll be very pleased to hear that I'm dumping it on to her and she's in the room of course.

Q. Yes.

A. But I got interested in the idea of: "Was Wilson instructed? Did he report back on everything," so I made a little bit of an effort to try and find a to and fro instructions and never really found them. But in answer to your question whether they received instructions or what not, again not that I'm aware of. But I think Jane Luiten would know better because she looked at that in-depth.

Q. Okay. I'm just aware from the Porirua ki Manawatū Inquiry that when Featherston was made agent of the general government in the

Rangitīkei-Manawatū Purchase, he was just basically a free agent, so I wondered if that was the same here. But you're not sure.

A. Well, no, I'm not sure. But having said that, the evidence is that Wilson did act as a free agent.

Q. Yes. Okay, thank you. In the issue of the sentencing of those who were found guilty by the Supreme Court, this is pages 897 to 899 of your report and on page 834, the Governor is given advice from both a Chief Justice and the Ministers about the penalty. This might be a point of law, perhaps, I'm not sure. But do you know if the Governor was required to carry out the advice of his Ministers on this point or did the Governor have total discretion to make the decision?

A. No, I probably couldn't answer that I'm afraid.

Q. You don't know, okay.

A. I mean the impression was that that is the case. Otherwise, those various approaches wouldn't have been made, I don't think. But I don't know in detail whether that's the case.

Q. You don't know. Okay, thank you. This is important I think the next question for the Ngāti Ira claim. On page 1001 of your report, you've got this reference to Thomas Black and he says that Hira Te Popo was at his station when the Reverend Völkner was killed. I just wondered if you knew anything about who this Thomas Black was and where his station was? He wrote to McLean telling him this.

A. Yes, Thomas Black.

Q. It's on page 1001 of your report.

A. Yes, I see it there. I'm just trying to recall what I know about Thomas Black. Because I know in the end, and to be corrected if I'm wrong, but I know it becomes the Whakatōhea whānau, the Black whānau becomes and so I'm thinking he had married in. But again, Ngāti Ira would know that. Yes, and him having a station at Whitianga at that time-

Q. At Whitianga was it?

A. Well, it says: "I may here remark he was at Whitianga, a Station of mine when Mr Völkner was murdered."

Q. Whitianga Station. Yes, so where is that?

A. Yes. Well, I mean that is a good question. It was a little bit of a surprise for me in that I didn't think there were any other Europeans in the area, other than the traders who were in Ōpōtiki itself. Yes, I mean it's an interesting comment but I don't quite understand what it relates to.

Q. Right. Okay, so you're not able to help with that. Thank you. Another puzzling issue is the Crown blockade of the Eastern Bay of Plenty. North-Eastern Bay of Plenty, I don't know. You have two mentions of this: one is a mention from Völkner and another one. So that one's on page 384 and you've got another mention on page 508. It's paragraph 3.438 on page 508 you say that the Crown was now blockading Ōpōtiki; this is in 1864. It's just mentioned in passing and I wondered if you had any details about where and when the blockade happened and how it was carried out.

A. I mean that's something else that would be easily looked into and it's one of the many little bits and pieces that fell through the gap of not being followed up. Again, I'm not inviting more written questions. I probably do because my understanding at this point in time is that it initially came in in Tauranga and in the Tauranga situation. So that's in 1864 was when it was first brought in but then I think it got extended. It wasn't a blockade of Ōpōtiki so much but of the whole Bay of Plenty –

Q. Right.

A. – was being watched and vessels stopped or turned back. But it came from the Tauranga campaign.

Q. Yes.

A. So I think there is information about that that I would be able to quickly look at and report back.

Q. Okay, I'll put that in writing. Because they don't stop Levy's ship the *Eclipse* coming in in 1865 and I wondered if it was over by then. So we have two blockades: we have Whakatōhea blockading Ōpōtiki not allowing any of the ships to leave or Völkner to leave and then we have a Crown blockade. I'm just wondering how those two worked. Yes, I'll put that in writing.

A. Yes, I mean I will look to see whether that blockade had ended by 1865. It might have been something in the context of 1864 and the troops

landing et cetera. Because I think when Völkner talks about it he's talking about it in 1864 and how nobody could get any replacement goods having lost them all in the fight.

Q. Yes.

A. So that is all related to 1864, the second half of 1864. The point you've raised is a good one. I mean, yes, Levy was able to come in early '65 so it may have been just there for a certain period.

Q. Just as a general question. We have the arrival of Pai Mārire and in a number of places as well as Ōpōtiki. But I wondered, given the situation there, the flight of all the settlers including Agassiz eventually because they weren't safe or didn't feel safe, do you think the Crown would still have taken military action in Ōpōtiki without the killing of Völkner eventually?

A. Sorry, are you saying that if Pai Mārire had gone there and there had not been a killing?

Q. Well, Pai Mārire did go there and everybody fled eventually including Agassiz –

A. Yes.

Q. – because that's well after the killing of Völkner but he just felt so unsafe that he felt he had to leave.

A. Yes.

Q. There's that situation that would have been there regardless of whether Völkner had returned and been killed.

A. Right.

Q. I'm wondering, given that situation and there weren't such killings in other places where the Crown invaded, do you think there would have been an invasion of Ōpōtiki? I think it's really important because a lot of the question turns on the Crown's attitude to Pai Mārire as well as that specific killing. So I just wondered, given all your thinking about these issues that you've done over the years and for this report, what you think of that issue? Would it have happened anyway is my question?

A. Yes, it's interesting. I mean if you are just looking at the utterances of the Crown over 1865, and I know that was post-Völkner's killing, but those general utterances that they were making about Pai Mārire, it starts with

the April declaration or proclamation from the Governor that more or less says: “Here’s this new religion and we’re not going to tolerate it,” and it moves, by the time of Fitzgerald’s speech to a realisation that: Well, no, they’re never going to be able to do that. It’s too widespread. It’s too deep.” So then they sort of say: “Well, we’re just going to address the excesses. We’ll do something about excesses,” and he sort of said: “I can’t believe that everybody who’s an adherent of the faith would be a committer of atrocities.” It seemed like they’ve got to that realisation that there was nothing they could do about it but they knew they were still duty-bound to deal with excesses.

So, had there not been a killing of Völkner and had there been a still strong Pai Mārire community at Ōpōtiki, looking at those policy statements, the answer would be: “Well, no, they wouldn’t have moved against them if they weren’t posing a threat.” If they weren’t attacking Crown allies or anything, if they were literally just a community there that did nothing else, then according to those policy documents that are left behind the answer would be no, I guess. And of course I didn’t really think about this, but I mean you’d then would need to look at: “Well, what happened on the East Coast where essentially they did?”

Q. Yes. Well, that’s what I was thinking of Tūranga for example.

A. Yes, in Tūranga. Why they did it particularly there is it was in relation to McLean and it was in relation to that whole East Coast situation and in relation to other factors come in where you sort of had Ngāti Porou pressure for the Crown to act and to not let this thing go, so there’s a number of local things that might explain that. But again, if you then went back to the Bay of Plenty there might be those same local things because you’ve got another Crown ally very close Arawa who might have been putting those sort of same pressures. I mean we’re in counterfactuals here.

Q. Yes, but they’re important I think.

A. Yes, I mean it is important to consider I think. I guess the answer is based on those policy pronouncements in ’65 the answer would be no. And I’m predicated on the idea that Pai Mārire did nothing that would have warranted an attack as in attack allies because Agassiz reports that they

had started going abroad and attacking Arawa allies and stuff like that. But if we take that out of the equation as well, if they were just a community there, would they have attacked that's the question. That's where I think the East Coast does come into play, but the East Coast may have had its own local dynamics that got McLean involved and was responsible for that attack. The question then becomes: "Would those dynamics be the same in the Bay of Plenty," and it's possibly because of Arawa being there.

Q. Okay.

A. Because the other thing that's different with Tūranga is that there were European interests there and quite strong ones. Europeans had sort of bought land there and there was a Crown interest in that area where there doesn't seem to be in the Ōpōtiki area at the time, especially because the Europeans had left. There wasn't a European interest at stake or a Crown interest at stake so possibly not. But again, it's something I could consider to have a bit more of a look at the circumstances around the East Coast because again I'm familiar with what happened at Tūranga and be able to respond that: "Well, these are the factors that were behind Tūranga and yet they were or weren't present in Ōpōtiki," to be able to answer that question.

Q. Okay, thank you.

A. I'm lining up so many written questions.

Q. Yes, I know you're adding to them. Just the issue of Whakatōhea involvement in the attack on the Ngāti Manawa Pā. I haven't written down the page number where you talk about this. But do you know is there a reliable source for that?

A. Do you recall the date of that attack?

Q. It's in 1865 I think still.

A. Yes.

Q. According to this source –

A. Yes.

Q. – Kereopa takes some Whakatōhea over with him and attacks that pā.

A. Yes.

Q. Ngāti Manawa and Ngāti Whare have this agreement between them as to which one will be attacked but-

A. Yes, no, I'm not aware of one. I mean I don't kind of cover it in detail.

Q. You do discuss it.

A. Yes.

Q. I just haven't got the page number.

A. Yes. No, other than the sources I've got I'm not aware of others.

Q. Right.

A. But having said that, that area has been covered in Tribunal inquiries so possibly it was raised in those areas.

Q. Okay, thank you. Because that's an important part of the picture I think. Just specifically, I haven't got many more questions. But page 746, this is about Gooch, who is the medical officer, I'm just wondering how you – it's paragraph 5.115 – interpret this statement, so he's come across this wounded Whakatōhea warrior and he says: "You may believe I gave him the Balm of Gilead." When I first read that I thought that meant that he'd helped him and then I read it again and I thought: "What does he really mean by that? Is he being ironic?" I'm worried that he actually killed that person –

A. (inaudible 10:51:23).

Q. – and that that's what he meant by saying that. I just wondered if you had a view on that because that might be another atrocity that was committed.

A. Yes, I really had a recollection that I looked up what that meant and I thought I recorded it in the footnotes. It's something I'll check in the break. Because I think I mention here that the accounts that I have in the main part of the report is like a summary but the very detailed accounts are still in here in supporting papers in what I call a resource document.

Q. Right.

A. Because when I saw it I thought: "What an odd expression," and I looked it up.

Q. Yes, it is a biblical expression and it ought to mean that he comforted and helped.

A. Yes. But I think it is in the document in the resource ones in the supporting papers so I'll add that to my thing to check up in the break and report back on.

Q. Okay, thank you. We had some discussion yesterday about Te Ūpokorehe and Ōhiwa harbour and I noted what Ms Swedlund said in her questions. You've got the statement that Te Kooti took the Ūpokorehe population of Ōhiwa harbour prisoner and took them away and then there's nothing else in your report. I wondered if you had any evidence as to what happened to them? We have the evidence of what happened to the Ngāti Rua and the other ones that were taken from Ōpape but not what happened to the ones that were taken from Ōhiwa harbour.

A. No, that's right. I mean I think one of the explanations I gave yesterday was that that last section is probably not as intensely sort of analysed and rounded off. I guess it's an issue that I didn't follow-up on or make specific comment on but my objective really was to record all the sources there so at least the information was there.

Q. Yes.

A. In this case, obviously there's this gap of what happened to them.

Q. So you don't know?

A. Well, I don't know, but-

Q. I'm always worried when someone says "I don't know, but".

A. Well, I was just going to say, even though there might not be anything specifically recorded in the report in regards to them there, you might be able to deduce it by following Te Kooti's actions afterwards and where he went to afterwards et cetera and some of the information about what his numbers were.

Q. Right.

A. We might be able to deduce whether that's still them with him or not at any stage. Again, I'm happy to do that exercise –

Q. Okay, yes.

A. – and so yes let's add that to the pile.

Q. Well, I would have loved to have given you another six months so that you could do more on that part 6 but I guess that's not possible. Just a

couple more questions. The first one is I have some doubts about the argument that the Weld Government intended to use the Outlying Districts Police Act and the reason for that, and I checked both the Bill and the Act, is that the section 2 of that Act says that the Crown could only take action within three months of a crime being committed, which of course put Ōpōtiki well out of the range of that. So if they had intended to use it for the Ōpōtiki situation they could have included a clause in the Bill that made that an exception so I'm puzzled by it. I noted what you had said about how there was a comment that they intended to use the spirit of the Act because the expedition left before the Act was passed, but I'm very confused by that provision in the Act that they had to act within three months of a crime being committed, or finding out about a district where murderers were harboured was the other part of it. Do you have a comment on that?

A. Yes, I mean that's an interesting point I hadn't considered. I mean it may not mention it in the Bill, although there may be some reflection of it, but possibly they may see it that the Peace Proclamation effectively listed all the murders that had happened at this stage and had declared that those murders are not forgiven and whether that clause therefore relates to future actions. The Peace Proclamation said: "We forgive everything but we haven't forgiven these ones and therefore they're still on the table and we're going to act against them," and then they bring in an Act. Because part of it, it looks to the future –

Q. Yes, that's right.

A. – because part of it like that last clause where they think tangata whenua were just going to give them land so that they can administer a place, so the section 2 may be the forward-looking situation from here on.

However, whether they realise that, you know, if you just look at it, if there's not a vehicle that links the Proclamation to the Bill so that they still can use the Outliers Districts Act because the Proclamation had already named the ones that are still on the table, if there's not that link I mean it could be something that was an error in drafting something they hadn't thought through. Because they very much brought it in with the Ōpōtiki situation in mind.

Q. Yes, that's why I was-

A. So it could just be like an error. It's either an error drafting where they hadn't put two and two together to realise that: "Oh, that stops us looking at it," in which case I suppose they could have amended it thereafter. Or it could be that they felt the Proclamation had already given them the license to carry on and then they would be able to use that Act because the Proclamation gave them the vehicle to do it. I think it's one or the other but I hadn't realised that disjunct between the two.

Q. Right. Okay, that's very helpful thank you.

A. I'm sorry I guess just to finish it off. Because you started your question by saying that you doubted whether they intended to use it.

Q. Well, only because of that. Mainly because of that.

A. Because I was really quite sure that they were. I mean I think it was almost bespoke designed with that in mind I think, yes. But if that's the reason, yes.

Q. Yes, well, that's why I was surprised. I thought I better look at what this Act says and then discovered that. Okay, that's very helpful thank you. And then just my last point was you said you listened to Professor Williams' evidence. Were you aware of Protector Shortland having gone to Ōpōtiki in the early 1840s and arranged with Wilson and an argument about who the catechists were? This peace arrangement between Ngāi Tai and Whakatōhea, were you aware of that?

A. Yes, I am and it does appear in my report.

Q. Does it?

A. Yes. Like I just quote a passage of it and then more or less sort of say there are a lot of issues around this and to fully deal with it, I would have to research into a number of things, Ngāi Tai's position et cetera. I actually said: "Look, I'll leave that for the traditional report. I won't pursue it any further."

Q. Right, okay. So had you taken that from Professor Williams' report?

A. No, that wasn't available to me.

Q. No.

A. There was one source that mentioned it. I mean I come back-

Q. So he took it from the minute books and you had a different source.

A. Yes.

Q. Okay.

A. Again, I mean that's an easy one to do, so in the break I'll search on Shortland and give you the paragraph for it.

Q. Okay. I hope you remember all the things you were going to do in the break.

A. Yes, there's warning, there's the shoreline one. There was one other. What was the other one?

Q. I can't remember either.

A. There we go. No, it's been recorded.

Q. Great.

A. Cool.

Q. Thank you. Those are all my questions orally but I do have many written ones.

A. Okay.

Q. But that just reflects the importance of your report to the Tribunal's inquiry and to the claimants and the Crown.

A. Yes.

Q. So thank you again Mr Walzl.

A. Thank you. Well, I'll keep that last comment in mind as I'm answering them.

HEARING ADJOURNS: 11.00 AM

HEARING RESUMES: 11.26 AM

JUDGE DOOGAN ADDRESSES TONY WALZL – RESPONSE TO QUESTIONS (11:26:38)

(11:27) DR GRANT PHILLIPSON TO TONY WALZL: (CONTINUES)

A. I think there were three matters raised that I said I'd look at. One is the Balm of Gilead. I checked my resource documents and it's not in the footnote. But I do remember looking it up and either it literally was a medicine (an ointment that you can still buy online apparently for $7.99)

but it also did have a meaning of comfort as well. I mean either he means that literally or something else is going on. I couldn't see any reference to it meaning having a sort of euthanising aspect to it. I can't imagine it was something they carried in their kit in the 1860s because it's only an ointment after all.

Q. No. I think it was meant symbolically.

A. Yes.

Q. But it was the way it was put "you may believe I gave him" it just sounded like it was meant the reverse of what you would think the Balm of Gilead means.

A. Yes, okay.

Q. But you're not able to confirm what that-

A. No, I'm not.

Q. Yes.

A. As for the other matters, the Shortland one and the dispute, the inter-iwi dispute is at – things are only as good as what you write down. Here, it is here. Sorry, paragraph 2.291 at page 290. It's an unsourced paragraph where I literally record that I'm aware of it and then I just end the sentence by saying: "As this question centres on traditional relationship between two groups within the Inquiry District, it has not been closely researched for this report."

Q. I see.

A. I thought I had put a source up; come across it and said "I'm not going to go into it," but I was aware of it and declare in the beginning of an introduction that I'm not going to be looking into it.

Q. Right, okay.

A. And then the last one in regards to the warnings that Völkner actually received that is at page 488 and the paragraph is 3.381.

DR GRANT PHILLIPSON TO REGISTRAR – DISPLAY #A030, PAGE 488

A. This context is the post-killing trial that Patara held of Grace.

Q. Yes, I'm aware of that one.

A. Yes.

Q. I was hoping there was something else.

A. No. Well, it is an interesting one because on the one hand several witnesses are saying, so people who are accusing, and it does several as saying "we gave a warning" and then Grace is actually answering it by saying that he was aware that there had been warnings from individuals as well. Yes, that seems to be the only one that I could find.

Q. Could we just have a look at that? Where is it on the page? What paragraph?

A. It's 3.381 and in the quote itself under the paragraph it says "3rd".

Q. So he only knows "from their own remarks".

A. Yes, that's right.

Q. He doesn't know of his own knowledge.

A. I'm sorry, yes, no, that's right. from what he's just heard in the trial –

Q. Yes.

A. – the witnesses have said "we gave warnings" and he's saying "there was no committee; it's just what you've said".

Q. So this is really the only evidence that we have.

A. It's the only evidence I've found in the break. But I'll do a double-check in the written question.

Q. You'll do another, okay. Because I think it's really important and everybody repeats it as a matter of fact and I wanted to see and knew your report would be the place to see the specific evidence from the documents anyway.

A. Yes. Well, I'm pretty sure I have a recollection. I think it's from 4's where he records that his wife said "don't go back".

Q. Okay. Well, I'll put that one in writing.

A. Yes. Because he went to Auckland –

Q. Yes.

A. – and returned with his wife there and then came back. Yes, I think the wife said "don't go back" and I think that it was in that contest that he sort of said: "Like I've heard that before," but he's going to.

Q. Yes, okay. I'll put that in writing.

A. I think there is possibly more examples.

Q. The last thing was the source about the involvement of Whakatōhea in the attack on the Ngāti Manawa Pā. I can't remember the name of the pā. But did you check that?

A. No, because my answer to that is that no I wasn't aware of the source for that.

Q. Okay.

A. Yes.

Q. Thank you. Thank you very much Mr Walzl.

A. Thank you very much.

DR GILLING ADDRESSES JUDGE DOOGAN – FURTHER ORAL EVIDENCE (11:31:44)

(11:31) DR GILLING: (EVIDENCE)

There are further references to warnings regarding Völkner, the arrival of the Pai Mārire party and so on in the Gilling report at page 27. There is a Miss Wallace from Whakatāne who talks about a kati having been placed on the area.

(11:32) DR GRANT PHILLIPSON TO DR GILLING:

Q. Yes, we know though from Mr Walzl's report that that wasn't received.

A. Well, that was going to be my next point. That there's a couple of these warnings sort of floating around and they get stuck with Commissioner Smith in Tauranga and then he's sending them on with a bit of delay.

Q. Yes, 6th of March I think it was.

A. Yes. The warnings arrive in mid to late-February and he doesn't get them or doesn't send them on until early March.

(11:32) JUDGE DOOGAN TO DR GILLING:

Q. Just to be clear Dr Gilling those warnings are in the category of not received by Völkner before he arrived back?

A. It would appear that way. It's just a little hard to tell from the sources of where communication by ship occurs. I mean there are cases of ships

passing literally and handing mail across from one to another and that sort of thing but there's no indication in the stuff that I've recorded –

Q. All right.

A. – that they did in fact get handed to Völkner.

Q. Right. Thank you Dr Gilling.

(11:33) DR GRANT PHILLIPSON TO DR GILLING: (CONTINUES)

Q. Well, wanted to cross-examine you on your report Dr Gilling.

A. But I would have not been much use at all because I've been vastly superseded from something that was prepared 30 years ago in a rush.

(11:34) DR ROBYN ANDERSON TO TONY WALZL:

Q. Tēnā koe Mr Walzl.

A. Āe.

Q. I'm going to start off with a question about sources. There's a particular reason for asking because we have been hunting for a diary recording the death and mutilation of Kimihia. I just wondered you looked at diaries and correspondence from soldiers.

A. Yes, I did.

Q. How did you go about identifying who? There are many soldiers and troops involved in New Zealand wars, how did you go about identifying what to look at, who to at?

A. Yes. I think in respect of the soldiers diaries these were sources I'm pretty sure that were in Dr Gilling's report so it followed on from there.

Q. Okay.

A. Some of them were sourced at the Taranaki museum. When I went on site there to collect some there, I found that there were others that hadn't been identified. Yes, I knew the names by that time and I sort of thought: "Well, that person was on the force as well." It was more that, rather than like new research into all –

Q. Yes.

A. – possible diaries that there might be and doing it that way. It was more following up on tips.

Q. All right. Well, the hunt carries on.

A. Carries on, yes.

Q. Thank you. I was sort of hoping for myself, I would never have to think about Old Land Claims ever again, but clearly my wish is not going to be fulfilled. Just to clarify an impression that I got from some of your discussion with counsel yesterday.

A. Right.

Q. I have to read my own writing. Can you clarify for us what your view of pre-Treaty transactions are. Because there seemed to be a bit of confusion as to whether you were considering them as sales as Pākehā understood it, or whether you have a different view.

A. Okay. Well, I'm sorry that the confusion does remain because I do have a quite a firm view that they weren't sales in that Pākehā sense. I've been a bit of a follower of pre-Treaty transactions from when I wrote a report that effectively said "of course they were sales" many years ago when I was younger right at the very beginning of the process to going through that whole journey that many historians in the Tribunal have been through of following that question so it has been something of interest for me. Therefore, it's been of interest as to where the Northland Tribunal did end up in regards to that. Because when it was first being mooted, it was one or the other, either they were sales or they were completely tuku whenua and that's how it appeared in the Muriwhenua thing and clearly neither of those worked.

Q. Yes.

A. Over time the different historians and Tribunals that have looked at it have come to the view that: "No, it's not purely a tuku whenua; it is a something different." There are different instruments being used. There are understandings that certain things that might be used in a normal tuku whenua environment don't apply here. When it comes to the missionaries for example there's not usually a marriage. I mean there are with private settlers but there's not a marriage which is usually a feature of tuku whenua. So the understanding is that they are not the traditional instrument but nevertheless they're not sales either.

The "not sales" part of it comes down to two things I think. One is that, at the time they were negotiated the iwi law was still tikanga and so at the

time they were negotiated they were still in that paradigm. The second aspect of it is that many of them still had aspects that, whilst they might not be strictly tuku whenua, they still had references to that traditional language. Like we've talked about tuku the other day, yesterday I think. And then there's evidence that you see how people interact with it, with the transactions, the behaviour afterwards and again they are doing things that wouldn't apply in private property.

I think the final convincing factor I think is that those records from the 1840s which are in my report, the ones from Fitzroy, the ones from the Commissioners themselves, maybe the other one was Dieffenbach where people are recording. There was really no understanding that Māori had that they would have to move off their land and they'd lose contact with their land like forever. For all those reasons, I think I can quite safely say that I don't think they were seen as "sales" in the Pākehā sense of the word sales and the creation of a private property in the Pākehā sense as well.

Q. When do you think that Whakatōhea came to the realisation that Pākehā were seeing them as sales?

A. I mean that was a good question and it arose of all places when I was working on the Mōhaka ki Ahuriri area. In the Muriwhenua Tribunal they asked that question: "When would these things have been understood as sales," and the Muriwhenua Tribunal effectively said: "Well, even those Crown purchases are probably not seen as sales." There is a point to get back to your one on this. But it's this idea whether you would have that sort of ability to step out of your own paradigm and completely understand that they are sales. So that was something raised.

And then of course I've looked at a number of Crown purchases and other historians have too in the 40s and the 50s and there is still an underlying aspect there that they're still not seen as sales; they're something different.

And then when I did this Napier report was an interesting one. I think you might be aware of the situation on the Heretaunga Plains, where there was a lot of private transactions again and people sort of signed deeds and there was a huge Commission Of Inquiry, the

Hawke's Bay Commission of 1870 I think it is. I looked at that in some great detail and the language that was being used by people in front of that Commission had those same references. Now these are people who had been involved with Crown purchases. Some of them where they were actually sale deeds the phrase they'd use is: "I gave my grant to my Pākehā to look after." That's how someone interpreted a sale deed that they had signed and there were many of those.

Those customary aspects that the relationship is almost more important than the legal transaction is a very dominant thing and I think it's persisting. There were other examples that that's even applying in the 1880s. I'm not sure which one of the Tribunal's that said that but it was like that "Māori came to understand what a sale meant when they had to face the full effects of it" and I think that's very true.

To get back to your question in this area they didn't face the full effects of it. It's interesting that in 1898 you have a petition from people still complaining about those purchases, even though in theory that was all over and done and dusted and there'd been a confiscation and stuff. A petition still comes in in 1898 saying: "We still oppose those purchases and we always have and we still protest about them." I don't think that understanding was ever brought home that those transactions were sales and other events overtook it.

Q. Where does that leave your argument that those transactions were so important in the development of Pai Mārire? In fact, when you were asked about raupatu, and I can't remember whether it was the blame or the origins arose, you pointed to those transactions as being absolutely crucial. I can't reconcile what you've told me now with that argument.

A. Yes, okay. Even though that idea at that conceptual level there might not be an understanding of a sale in that way, there is still the understanding of transactions being done in the right manner and transactions being tika and in accordance with understandings. They felt that, in the 1898 petition is all about that as well, that it hadn't been done in the right way; certain rights weren't acknowledged; certain people hadn't been paid; the area covered by the transaction was larger than it should have been. It's like the annoyance and outrage over the Pākihi one anyhow was to do

with things not being tika; it wasn't a right transaction even within their own culture.

Q. Yes.

A. I would say them finding out then that the Crown was now somehow part of it, when they hadn't transacted with them or had a relationship with them or had anything face to face with them, was also an angering point. Not so much because they'd alienated the land but simply because they hadn't been part of that agreement. There had been no permission for the Crown to be part of the arrangement.

Not only now were they being told that the Crown was there, but Wilson was telling it to them in a way that he was using it as a threat because he was using it as a way to curve their bad conduct. Although we don't know his exact words, they'd be along the lines that: "Well, the Crown's got an interest here and if you carry on doing this, you will be punished, or something will act against you."

I mean the question we had yesterday with the Crown about "nothing changed on the ground" I mean I think that's correct nothing did change on the ground. But a factor had emerged that there was an interest there and it had been put forward as a threat and that threat overhung the whole situation I think.

The point – I'm not sure if I actually made it with the Crown or I had made it in regards to another aspect – had there been a healthy relationship and had there been a relationship these matters might have been discussed and cleared over that period but there wasn't. It was just the isolation.

I believe that Whakatōhea were shocked at hearing that. It had been posed to them in a negative way and so now they were almost sort of under threat and waiting and worrying that it could happen. And then when they saw the Crown acting in other areas of the country in exactly that manner that influenced how they became involved with various political movements et cetera.

Q. I'm interested in the fact that you are reading that letter from Wilson Snr to the Governor as demonstrating a threat to Māori that the Crown was involved and I'm not sure I interpret that letter in the same way. Certainly,

he's talking and complaining about their bad conduct and then he says it's quietened down and he's kind of inviting the Crown to maybe take over the whole purchase. But couldn't you interpret that as Māori thinking: "Great, we're going to have a relationship with the Crown who is a more powerful ally than a missionary is?" Is that interpretation possible, do you think?

A. No, I don't think so.

Q. And why?

A. I mean in this situation, yes, often we're forced into a situation we really are having to like so intensively look at the source material. Instead of having a plethora of large amount of material that you can pick from, you are really having to look very forensically at small parts. Nevertheless, I often think in this environment those small parts are very important. There's one small part in that. You don't happen to have that? I mean I can find it and I just thought seeing as you mentioned it.

Q. The page number?

A. I'll have it soon.

Q. I think it's 136.

A. All right. Yes, so it's at the bottom of page 136 when he's doing the quote. First, all the part when he's talking about "constant opposition and bad conduct", which from his point of view has happened two years after the purchases so from 1842, even though you're sort of saying "it's quietened down", I mean I'm not quite sure I agree with that. Because he actually at the end of it says "it's still happening now and just while son's been away they've killed so many stock" and this aspect of it. It still was a live issue I think, but he talks about it in the sense that shows his annoyance of it. He calls it "bad conduct". "The constant opposition" is a statement that shows it's not minor disputes; it's quite high. He uses the word "their aggressions". This is the context and he's reporting that they see it as opposition and he sees it as aggression and all up "it's bad conduct".

It's quite a heightened thing I think. I think there's a number of instances. He talks about eight instances of Best's land being taken back; using the woods at their pleasure; and in addition to that there's still cultivations et cetera. Yes, I think it's quite a heightened thing.

Within all that context he then says: "I have been obliged to tell them of late on more occasions than one…," so he said this several times: "…that the shares formerly belonging to Archdeacon Brown are now the property of the Crown…," and then he said: "…which has been a considerable check." I conclude that within that heightened environment he hasn't just mentioned that from the point of view to say for the sake of it. He's using that to say: "The Crown's here and involved here now." He says it's had a considerable check and I would argue that that was his objective in bringing it up as well.

That's why I say I believe it's a threat. He brought it up as a threat that: "You better watch it, the Crown's involved now." According to him, it sort of worked as well, it did stop them. It actually said it prevented their fresh encroachment as well, which is suggesting that they couldn't use the land in the way that they had. I mean when he sort of then suggested to the Crown: "Why don't you take it over," he's not saying he'd suggested that to Whakatōhea at all. So, all we've really got of the Crown actions is him using it as a way to curb actions. So that's why I sort of interpreted that they learnt of it from him and then they found it as quite a threat.

Q. All right. Well, thank you for that. A couple of things about the Old Land Claim Commission itself. It was held at Tauranga.

A. Yes.

Q. And two rangatira.

A. Yes, that's right.

Q. Do we know whether there were other Whakatōhea people who attended that hearing?

A. No, idea.

Q. Was there a Protector there, do we know that?

A. I do believe so. If you look at the translations of Shortland. Shortland had signed as the translator so I think, as you know, often the protectors had that duel role of being translator and the role that they were meant to have as a Protector. He was there and he was a Protector at the time.

Q. All right, thank you.

A. Yes.

Q. And then we come to the survey. No, before I move on, do you know how long the case was heard? How long it took?

A. No. I mean the point came up I think in discussion it would be interesting to see how many cases there were that day, so we don't know. I mean it's even interesting, which I've never really seen before, where the two chiefs' testimonies are actually recorded as one. I mean normally they would record separately, one chief said this and one chief said that, whereas these two apparently were talking in unison about exactly the same thing for them to be recorded as one piece of evidence so that's an oddity. But it would be interesting to know, yes, how many cases the Commission heard that day.

Q. The surveyor in 1852, do you know whether he was accompanied by Māori?

A. No. The only thing we have from Florence, I mean he was instructed to do it around about December and by the end of February he said he had done it. I mean the only thing we know is that he obviously followed the entire boundary around. In actual fact, I mean that's an interesting question because I don't think either of the Wilson's were there as well, so for him to know where those boundary points are you would think he would possibly have to ask local people. Because I was only able to identify three of the seven points anyhow so there's a possibility he had to actually ask them to find it out. But then of course when he tried to go to the south-west one group effectively would not let him carry on, so he had to go around that and leave out 5,000 acres. You can surmise that there was some interaction on the ground. Usually I think it was the practice of surveyors in these cases to find a local person to find the land points and land marks.

Q. Are the boundaries marked in some way on the ground?

A. You mean, sorry, by that surveyor or before that?

Q. By the surveyor. Sometimes they put a bottle in the ground-

A. Yes, I imagine that's sort of the standard practice, isn't it, to leave pegs. Pegs are always left behind by surveyors I think to show them. I haven't got any specific evidence of it but I'm imagining that's the practice.

Q. Okay. I'm asking because I'm just wondering about how or where Whakatōhea were of the fact that those boundaries had been marked right at the time and we don't really know, other than that he seems to have come across a group that said: "No, don't go there".

A. Yes.

Q. He accepted that, even though he thought that their reason was pretty flimsy, which was non-payment of £5 I think.

A. Yes, that's the view he formed.

Q. Yes.

A. But I mean you can imagine that at this time a Pākehā showing up in Ōpōtiki –

Q. Right.

A. – and landing at Pākōwhai you can't imagine that he would be sort of allowed to just wonder off without, I mean even from a curiosity point of view, a crowd of people sort of following him and trying to find out what he was doing. You do get the impression that it would have been observed and known about what he was doing et cetera.

Q. All right.

A. No evidence for it but that's what I expect would be the case.

Q. Okay, thank you.

A. Sorry, I'll just add to that.

Q. Yes.

A. That part of the territory wasn't that difficult to move across as well. It's not like he's moving out through the bush. It's stuff you can move around quite easily. He and a crowd of followers could easily sort of move around it one would imagine.

Q. All right, thank you. Just that lack of settlers in the district and the lack of Crown involvement in this period seems quite unusual. Do you have any sort of thoughts about why the Crown's sort of interaction with that area was so slight during this period?

A. Yes, I do agree. I mean you had an official at Tauranga and one at Maketū, I mean it's not very far away. I think even Whakatāne at one point. It's not far away to be able to go along and as part of your duties think that you could go there.

Q. Okay.

A. And also when you consider that Whakatōhea were hardly written about by other sources either. It's not like there was a lot of material that a Commissioner might think to themselves: “This is a group, I don’t want to really go here because they're feeling this way or they're lawless, there's no missionary there.” I mean there is a missionary there. I think it is an oddity that Crown officials wouldn’t think to, I mean, at least periodically. I mean not even once a year, but somewhere along the line to extend and visit there but they don’t. I mean the only thing that would make you think that maybe they wouldn’t do that is if they had a feeling that they were lawless or isolated but in some of the sources, there is that sort of impression that it is an unknown. Not quite like the Urewera but even that area is an unknown area that is an unknown quantity. Possibly they didn’t feel that they could go there easily, but they made no attempt to do so either. It's hard to understand why.

Q. Another thing I'm struggling to understand is why they seem to have developed a pretty negative view of Whakatōhea on those few official visits of Crown officers when they did go. Because when I look at what they're saying what Whakatōhea is doing doesn’t seem all that outrageous or all that unusual in terms of running their own rūnanga. When it comes to their reaction to what’s going on in Taranaki, it doesn’t seem that extreme. In fact, they seem to be reassuring the Crown that they're not going to get involved, unless they are personally attacked. Do you have any insight into that?

A. No, I noticed that as well. That straight away the way the reporting is in a fairly negative position and it almost sort of indicates that that was already a view that was held before they went there and so what they saw they had it in that paradigm and reinforced it. I think there is something there that, although I’ve just responded, you can’t trace it or peg it. But I think there is something there where they were already sort of viewed in a negative light but I can’t see why or when that emerged. So when they go there and see those actions they see it in a far more negative light than others.

Q. As opposed to how they're viewing Ngāi Tai.

A. Ngāi Tai, yes, exactly. When they go there they see exactly the opposite but of course they're getting messages there where people are straight away are saying: “We want to learn the law.” I mean Wiremu Kingi saying: “We want to learn the law. I've done some cases, what do you think and stuff.” I guess when people are playing nice they warm to them straight away and maybe Whakatōhea just weren’t playing nice. I mean if my thesis is correct about the Old Land Claims just leaving a feeling in the air of suspicion maybe they were encountering people who were already rather distant from them or unpleasant to them and they acted within that category. Whereas, like I said and like you said, Ngāi Tai were completely co-operating and wanting to learn more. Yes, maybe they didn’t like them being surly.

Q. Just carrying on from that, are you aware of many intermarriages going on between Māori and Pākehā in the district in this period?

A. Yes, I mean there was quite a few. Before the campaign there were more than the four traders who were there by the time Völkner arrived back. I think there was quite a number. I mean Wilson talks about I think like about a dozen who come up. Like even in 1840 when he’s there because he holds a service for them and there's about a dozen who come to that service and stuff.

You get the impression that traders were there and the numbers are anywhere from like 10 to 20 or something like that. There weren’t many traders who wouldn’t have married into the local people. Hooper, who was still there, I know he definitely was for example. I mean the Levy’s hadn’t and Agassiz as far as I know hadn’t, even though it becomes a family. But I think you get the impression that there were some marriages there.

I'm also wondering, and again I don’t have the expertise in the Compensation Court, but I think weren’t some of the people who appeared in the Compensation Court had been married to a Pākehā as well. But, like I said, I haven't got that expertise. We know there is a witness who does who’s coming soon.

Q. Yes. I'm not sure how you pronounce his name Jahus.

A. Yes, that’s a tricky one.

Q. He was but you don't know the name of his wife because she's mentioned several times?

A. No, it's Ranapia's daughter so it wouldn't be hard to work out.

Q. All right.

A. I'm sure there would be local knowledge who would know who she was.

Q. Just carrying on from that, there was a lot of mention during the surroundings of what happened with Völkner of half caste involvement. Have you got any comment on that?

A. There was too.

Q. In particular, there was the comment from Levy I think that it was all half caste.

A. Who took him off the boat at the first stage, yes, that's right that is true. Yes, I mean I guess that's indicating that there was a population and presumably from traders rather than the other way around. I mean I could do a bit of effort to go back through those sources and try and form a view on where those mentions occur and what they might reflect. You can toss that into the mix if you wish, I'd be happy to do it.

Q. Just moving on to Völkner and his letters which have been discussed at some length. Do you think he was a reliable informant?

A. I think he was reliable in that I think he was honest. I think he was reporting what he saw. I don't think he was a dishonest reporter. I think he was reliable, and again the impressions of what he thought he saw and what it meant I think he believed that. However, I do think that there is a disjunct. I mean there's been some conversation in answer to a couple of questions on this whole question.

It came up in the Muriwhenua environment Joan Metge in talking about missionaries can say that: "You can live amongst the community for many years and you can be a te reo speaker but if you're from a service and cultural paradigm you'll never come to understand that community." I think she actually mentioned that missionaries are particularly like that because they had a certain mission. They had a certain thing that they wanted to achieve so anything that wasn't leading to that was just white noise to them. They didn't take it on board and they didn't need to understand it.

If you use that and you apply it to Völkner I mean he hadn't been in the country that long really so there is no way he's a missionary like Williams who'd been there for many years and by that stage 20 plus years. He hadn't been in the country that long and he hadn't been in that area that long. We've got evidence essentially that the local community wouldn't let him in to things that they didn't want him to see. As far as that's considered, I don't think he's reliable.

Having said that, most of what he's reporting on is eyewitness. He doesn't expostulate too many opinions because if he did a lot of those opinions you'd say: "Well, I'm not sure if they're reliable." But as far as him seeing 700 people leave the settlement at such-and-such a time, he saw that and that's probably accurate.

I think it's a mix of that. Reliable in some aspects but not in possibly a wider or deeper view is formed.

Q. I was partly asking that because of his plans of Rangiaowhia and Professor Roa tells us that there weren't that form of fortification –

A. Really, interesting, yes.

Q. And so there notes other evidence that he gives, for example, Whakatōhea selling their boats whether that's reliable as well. That's the questions that have occurred to us looking at that as a source.

A. Well, I think in regards to the plan I think it was handed to him.

Q. Right.

A. I think he got the plan from Wiremu Kingi. Yes, he didn't draw it up, it got handed to him and he handed it on essentially. I'm not quite understanding what the difficulty would be with the selling of the boats. I mean we've got a specific example that he sold one on the promise that it would still be used and sailed in the area. It seems like a lot of the other boats got destroyed in that campaign.

Q. Yes. I think it's some of the oral evidence we've heard that has suggested that they were deliberately destroyed by the Crown.

A. This is during the invasion itself rather than the 1864 campaign?

Q. Now that I'd have to go back to the transcripts to see whether that was specifically-

A. Yes, because certainly during the whole Kaokaoroa aspect there was what was essentially a fleeing down the beach and there's a couple of occasions where they went to places where boats had been stored up –

Q. Yes.

A. – and they weren't able to get on them and they were destroyed. There is a recorded example of them being destroyed. And then the only other time that the Crown could actually have destroyed them was whether there were still boats in the settlement at the time that they invaded. Certainly, I mean the soldiers don't record that but we've heard many times on how the soldiers don't necessarily record all that happened in warfare so I wouldn't say the oral evidence is wrong on that.

Q. Yes.

A. I mean there is also the situation I think where if you follow the records of the number of boats they did really decline in the 60s. Like I think at the height they were 20 something and I think someone's talking about only three or four by the war period as well and we've got a record of one of them being sold. I think the answer is in there somewhere between all of that.

Q. All right. How important do you think that Fremantle's mission on the *Eclipse* was in identifying who the guilty parties were in Völkner's death?

A. The March one or the May one? The *Eclipse* went twice, didn't it?

Q. Well, let's do both.

A. Okay. Yes, that's a good question. The first one, just as a reminder, was where they came back with emissaries from Tūranga who then went inland and had a hui. They of course were trying to find out at that stage about the prisoners and where they were. That was the objective of it. Just to check on your question, when you're saying "who" are you meaning individuals or the whole question of whether it's the whole community or both essentially?

Q. Well, really the individuals.

A. The individuals, yes, okay.

Q. But if you want to comment on the other, do feel free.

A. Yes. Ultimately, those emissaries essentially return to the boat. In the meantime, Tiwai leaves the settlement at the time as well; he comes off

with Grace et cetera. Grace of course has gone on the boat as well. So you would imagine all of those people would be having conversations about what they've seen and heard, some of them during the events and then those emissaries from the hui. Like we don't have any specific evidence but you would imagine they wouldn't just get on the boat and sail off silently and not talk about it. Even though there is a persistent lack of clarity on exactly who they are but certainly Kereopa and Patara is definitely on their lips from there on for sure.

Q. Yes.

A. When it comes to the May one once again I mean they drop Tiwai off and he goes and spends a whole day with the local people, I mean his own people, and comes back and of course he sort of says: "Well, there's a group of them at the pā," and that's why they do that little 2 o'clock in the morning raid that fails. At this stage of course also they got information that Wepiha Te Pono was one –

Q. Yes.

A. – and they picked him up and interrogated him and possibly tortured him by the sounds of it as well. And then there was another one for example that when they heard he was up the coast they landed to try and capture him; they disguised two of the cabin boys to try and capture him and didn't and failed. So they are getting names; they're getting some names of individuals.

On the community side, whether they're forming a view that the whole community is implicated, I don't think they ever had that view that the whole community were murderers. But then they started using that use language every now and then, like in the Proclamation they'd throw in "aiding and abetting" which is sort of wider and has a wider context. Sometimes they'll say "in the proximity of" and then they'll use words "principal murderers" and it's very unclear.

I do think they were getting information but I don't think it had contributed to a final settling down of "we know exactly who they are." Like for example I think when Falloon was killed they knew who they were and drew up a warrant for the arrest for everybody. They had like 12 names or whatever and they immediately recorded them. But you don't seem to

get that same situation so they are learning names and they've got some idea of it and learning sort of groups but I don't think they'd finally worked out exactly who.

Q. All right. Well, I only have a few more questions but you did bring one. You said you think he was tortured, what made you say that?

A. I think it's in the Agassiz statement where he gives information on what happened with Wepiha Te Pono.

Q. Yes.

A. We don't need to go there. But it's quite an extreme description of how he was taken onboard and questioned all day and that he broke down and was sobbing. I think there may even be a mention that rough means were being used. I think he is tied up, for example, when he was being questioned so you do get the impression it was a haranguing day for him I think.

Q. Okay, thank you. Those who were ultimately blamed for Völkner's death. I mean we know Mokomoko was a rangatira. Do we know about the others were they rangatira?

A. Yes, unfortunately no I certainly don't know. I mean I imagine the people here would know because they had connections to them. But no I certainly don't know. Because again without the traditional landscape, I often didn't quite know who was who and exactly what their position was and none of the sources ever would reveal because no one else was.

Q. So the Crown's not describing them as rangatira.

A. No.

Q. No.

A. But I don't know if the Crown even described Mokomoko as a rangatira either for that matter.

Q. Right, okay.

A. I can't recall them ever saying it like that.

Q. All right.

A. Even though he clearly was.

Q. Yes. I'm interested in that balance between who's in charge is it the rangatira or is it the community –

A. Right.

Q. – so that was sort of the reason for asking that question but we'll leave that there. What was the Government's reaction to the defeat of Whakatōhea at Kaokaoroa?

A. Well, I can't record a specific report that effectively says. I mean the action is recorded and that's all reported and they know what happened and they know who was on it but I can't recall anything where they said: "Therefore, we either need to do something about these people or we need to watch these people or we can consider them rebels." Like there doesn't seem to be any after action comment on what it all means. Yes, I didn't see anything in regards to that. Possibly not able to answer that in the specific terms, if that's what the gist of your question was. I mean because it was reported in the papers and everything so I do think that impression was afoot from that time: "You can now count these people in on the side of being potential enemies," whereas that might not have been known beforehand.

Q. Yes. This is my last question and we're in the realms of counterfactual.

A. Right.

Q. I was wondering whether the severity of the defeat of Whakatōhea there meant that the Crown didn't feel like they needed to invade and confiscate land at that point.

A. Yes, I think there's a couple of aspects to that. I mean I don't think the Crown had the capacity to open up numbers of theatres of war. The way they reacted to the murders is the same thing, they had to wait for the South Whanganui-Taranaki war to end before they full spear that was of sufficient size to do what they wanted to attack. I think while they had the capacity to defend because they had landed troops on Tauranga and they had gone and established a position down in Maketū, whether they then had that capacity to start up a new theatre and attack, I'm not sure if they had that sort of capacity. I think that's one aspect.

The second aspect is I mean not only were they beaten in battle but the impact of disease was well-known; it even got reported in newspapers. The coming of the disease, which effectively wiped out I think a further fifth of the population was known as well. That might add to your impression that, if the Crown thought they weren't a threat because they

got beaten in battle, they also laid pretty low by famine and disease which was known about as well.

Q. Right.

A. That would have given the impression I think that they weren't an ongoing threat; still alive threat. They were very much down at that stage and so they weren't a threat that needed to be dealt with. As I said, I don't think the Crown had plenty other things to deal with before needing to think about how they would react to what had happened there, because I mean there were some Ngāti Porou contingency for example and they sort of didn't do anything about that, yes.

Q. Yes. Well, I suppose it goes to the question that Dr Phillipson asked you about their readiness to attack once Völkner had been killed. But anyway I'll leave that there. Those were all my questions Mr Walzl.

A. All right.

Q. You've received some very well deserved compliments –

A. thank you.

Q. – over the course of the last couple of days and I'd just like to add my own to that accumulating pile and thank you very much for this report in particular. It was, as you say, a ripping yard in places and just the intensive investigation of the different sources you came across has been extremely helpful so thank you very much.

A. Thank you very much.

HEARING ADJOURNS: 12.21 PM

HEARING RESUMES: 12.25 PM

(12:26) JUDGE DOOGAN TO TONY WALZL:

Q. Mr Walzl just a couple of questions. At paragraph 4.426 page 688, you say that the third reading of the Outlying Police Districts Act was on the 7th of September 1865. Do you know from your research when it actually came into force or came into effect?

A. Yes, it's certainly in the report.

Q. All right.

A. It's a date in October and it's definitely in the report.

Q. All right, thank you.

A. If it's not found between now and the written question time, chuck that in and I'll come back with it.

Q. Thank you. No that's fine.

A. But it's definitely in the report.

Q. I thought it was likely there but I just couldn't see it. I have just a few questions in large part following on from the discussion you had with Mr Linkhorn following on from the impact of the arrival of Kereopa and his party in early-1865. Again, I want to test a few propositions to see whether they accord with your opinion and your research or not.

A. Okay, yes.

Q. The first one is I think in your discussion with Mr Linkhorn you confirmed that the impact of the arrival was quite immense or it was a tumultuous event within the community at Ōpōtiki or Pākōwhai. That's correct?

A. I would say it was tumultuous but it wasn't negative. It was a positive thing as well.

Q. Yes.

A. I mean they were welcomed. They were expected and welcomed and their arrival was anticipated.

Q. Yes. Just moving on from the arrival. Prior to Völkner's return, there appears to be a fairly rapid or the beginning of a rapid adoption and I think Mr Linkhorn used a word "conversion" to the Pai Mārire message or the new faith. Fair to say that the impact of the message began shortly after their arrival and appears to have had quite a big impact so that fairly large numbers were moving over towards belief in this new message, if I can put it that way.

A. Yes, I think there's two aspects to that. When they arrive and after the formalities or greeting, there are two speeches, one from Kereopa and one from Pātara; well, Patara first and then Kereopa and this is where they are saying: "The missionaries in the pā haven't told you the full story. We will tell you the full story." I's effectively like saying: "Why can we stay and this is what we'll offer," and the chiefs agree when they hear that and

they say: “Yes, you can stay.” At that stage, it’s somewhat a contained and quiet sort of thing and they get a formalised agreement.

And then straight after that begins the sort of the conversion process. We don’t get it in detail. We get quite a lot but a lot of the detail on that is recorded by Samuel Levy and his stuff tends to be a little bit more – I mean he just sees it as a crazy series of events and his description almost fits that.

I think if you want to see a very good account of the techniques, if that’s the word, of how those conversions happen, and I quote it in quite full detail. Before Kereopa and Patara came, they passed through Whakatāne but before that I think it’s either a settlement in the Taupō area or Urewera, and someone sends a full account of exactly how it happens. The singling out of people and yelling into people’s ears until they say something and the whirling people around. It’s amazing detail. As I’ve said, I’m not able to comment on it and I don’t wish to comment on it. But you can see from that that it’s an intensive feverish technique and that happens from that period and just seems to go on right up to the time that Völkner arrives. It’s a really intensive conversion process.

Q. Thank you. Again, just to add to the general level, would it be fair to say that in that period this phenomenon is also causing some tension with some of the rangatira who – well, on two fronts. Again I appreciate there is difficulty in the sources in terms of limitations on identifying by name chiefs or hapū affiliation. But in a general sense, it appears from some of the sources at least that not all were enamel of the new religion and not all were keen to see that some of those, either who were affiliated with Catholicism or Anglican, so enthusiastically heading in a different direction. Is tension apparent or starting to emerge within some of the hapū as between the rangatira and some of the followers of the new faith?

A. Yes. For example, in the Tūranga district where a similar thing happens that is documented in great detail how the rangatira have a different point of view than the populus and resisted as much as they can, and are saying to the missionary over there – gosh, what’s his name over in the East Coast – Williams that: “Don’t worry, we’ll get it under control, we’ll get it under control,” and they do lose control and then themselves

convert. So that is really well documented there. We don't quite have this here. Levy's account, Samuel Levy's account whose is the best account, does not give the impression that there's anyone who's not participating.

Q. Yes.

A. He just gives the impression that absolutely everybody is. He doesn't say chiefs and people but just that everybody is.

Q. Yes.

A. But then you get these snippets of people who might not have. Sometimes it's specific like with Hira Te Popo for example and then sometimes you can conclude it when you look back. Like I can't imagine that Tiwai, considering the positions that he adopted when Völkner was there and stuff, had undergone that much sort of level of conversion.

Q. Yes.

A. It is sort of hard to know. Because we don't know that we really can't track where there were tensions.

Q. Yes.

A. It's hard to, yes.

Q. Yes.

A. Certainly the source material doesn't give any impression that there is.

Q. Yes. When we come to the time of Völkner's return and all the events that took place in a couple of days or day or so after his return, in some of the sources you do see there, including that AJHR paper we added to the record yesterday, the passage above Agassiz statement indicates that the Ngāti Rua rangatira was forbidding his people who are Catholic affiliated from going to see Völkner killed. I am just citing that as an example that at least there's some accounts of rangatira taking a different view and then there's all of the evidence we have about what happened and who was or was not a participant.

A. Yes.

Q. Yes, fair enough as far as that goes. I want to go from there to what happens after.

A. Yes, I mean you get lots of snippets. Even amidst the so-called "crowd" whatever that might mean of different levels. For example, when the boat's coming in –

Q. Yes.

A. – there are voices from the quay saying "don't land, don't land, don't land." And then when they're in captivity certain people visit and bring food et cetera.

Q. Yes.

A. And when Völkner's goods are being auctioned off Tiwai openly protests. Even though Levy gives that impression that the entire community's under the spell and is converted, there's going to be variations in all of that, including people who may be going through the motions.

Q. Yes.

A. I mean you never know; is going to know what's in someone's head. But I mean (a) there was a lot of peer pressure, –

Q. Yes.

A. – there was a lot of high activity and then there is that question of the armed escort that came along as well. Two hundred people, which is quite a lot, –

Q. Yes.

A. – how much of it was being done under threat and stuff. But we really would never be able to nail it down to come to a final position.

Q. All right.

A. But to be able to say that there were variable positions and various levels of conversion would certainly be correct I think.

Q. All right. Following Völkner's killing and then in the months before and leading up to the landing of the invasion force, again just a very general impression I have from a number of the sources including the report is that there is some movement out of Pākōwhai or Ōpōtiki particularly by those who were opposed to what happened. Is that a reasonable assumption?

A. Yes I do think so. I mean that reference from Thomas Black about Hira Te Popo, I mean it's the impression that not only was he not there when he was killed but that he stayed away and you imagine his people

might have gone with him as well. I think those who by that stage hadn't converted or who had strong views would probably have absented themselves. They'd be in quite a difficult position to stay there.

Q. Yes.

A. Again, we don't have evidence of it but I don't think it would be a stretch to think that people who weren't into it so much might have moved away.

Q. What also you see in the sources you've quoted about those intelligence-gathering efforts in whenever it was May –

A. March, yes.

Q. – are a number of observers saying essentially that those in or about Ōpōtiki in those months after Völkner's death are growing stronger in the belief that their god was right. From what you see, fair to say, that those who were either converted, there was a period of solidification of support for the Pai Mārire amongst those who were there –

A. Yes.

Q. – so that when you look at some of the accounts including Agassiz statement in August, is it, –

A. Yes.

Q. – it may well be that the majority of those who were still around Ōpōtiki were Pai Mārire and so that's a reasonable assumption. My question really is that it seems likely that a number of those who were alarmed about what had happened or would have gone out of the area into the hinterland or into other places maybe having a reasonable recognition of what was likely to come by way of a…

A. I mean this really is a very interesting discussion and teasing this out, because we're going through reasonable steps and they're leading to some quite major implications for when the invasion comes for example –

Q. Yes.

A. – and it's certainly something I hadn't thought about. Carrying on with the discussion then, I think the first part of what you are saying I think that's correct. I think there would invariably also be some people who, if they hadn't necessarily converted at the time of the Völkner stuff and had moved away, you could reasonably assume that some as the – I mean it

carried on gathering momentum and it became the norm at Pākōwhai, so you would imagine that some would or could conceivably have come back and joined in because by that stage that's all there is.

I guess what I'm saying is that you wouldn't necessarily have got whole people saying: "Well, yes, I was CMS so I'm going to stay loyal to them, even though Völkner's dead now." It would be along the lines of: "Well, that's over, this is the new you and I want to be part of it," so you can imagine that that process might have happened.

The only reason I sort of talk about this because I suppose I'm jumping ahead to think: "How many were at Pākōwhai when the army came," and we don't know. But we do know that by the time the war was happening and when you look at the surrendering part of it, the numbers of those who surrender and those who are still at large pretty much add up to the whole population. When you look at when they come in, they come in as whole groups too. It's not stragglers coming from different parts saying "we never fought" and stuff like that. They all are part of the community that had been attacked and had been defending and sort of coming in, so somewhere along the line the community is all one again.

Q. Yes.

A. The question of whether there was a Pai Mārire community at Pākōwhai of a certain size but not the whole population. Those who didn't adhere to it might have been in different pockets up in the bushland. It's a feasible thing to think about but we certainly don't have any evidence to know the extent of that.

Q. All right. Tarata Pā and at paragraph 5.124 at page 749, this is following a fairly detailed account in your report of the various sources that you have available talking about the battle. This particular paragraph talks of the possibility that Kereopa himself may have been at the pā and that there was a Ngāti Awa who had recently surrendered whose name was Hori Kawakura and he identified that some of the dead found within Tarata were Pai Mārire priests. Is there much detail in that source about what Hori Kawakura said?

A. No, I think it's virtually at that level. That sentence I think almost reflects what the source had said as well.

Q. All right.

A. As for Kereopa being there, there was only the one source that says it and it's one of the soldier's, Newland.

Q. Yes.

A. I sort of raised a bit of a question over that because none of the other sources did –

Q. That's right.

A. – and yet people knew what he looked like.

Q. Yes.

A. But I do think that some of the Taranaki emissaries when they talk about Pai Mārire priests is who they'd be referring to I mean it's quite likely that they were there.

Q. Yes.

A. Sorry, just one other thing I will say. I think there was evidence that possibly Kereopa was nearby at one of the older established pā because Tarata was one that was a temporary one just being built at the time –

Q. Yes.

A. – but there were still several established ones, like the one they moved on to the next day, Te Puia. I think there's evidence that he might have been up there at that time.

Q. Yes, all right. Because this is in quite close proximity to Ngāti Ira and Hira Te Popo heartland, there's an interesting set of questions here about who the primary drivers were for the creation of this pā were primarily Pai Mārire with some support from Ngāti Ira or not. I'm simply raising the question in terms of what you have seen.

A. Yes. I mean it's interesting in a way that one because, like I said, it was a pā that was being built and it hadn't been quite finished and it wasn't really in a very good defensible position. There was flat ground in front of it, hence, the calvary charge. It seems to be the sort of only example of an offensive position being taken because otherwise everything had been defensive. People had gone to hill pā who you can presumably assume were already there and really they could have just essentially stayed there really. This is the only action that you sort of seen because other than that there are no attacks. I mean they were always attacked

on and they're in defensive pā essentially, but this is the only time where it seems like someone was making an attempt to do something down on the flat to establish a pā and potentially offensive that's what it is because it's not defensive; they could have managed that.

Q. Yes.

A. Tarata is sort of a strange thing to consider. Seeing we're sort of talking in this whole area of the what might be, the thing I try to communicate in here is there seems to be lots of evidence all the time that as soon as the soldiers are there Whakatōhea are trying to get into negotiation situation. I even think that first thing on the 14th when they came in with the flag of truth, I think that was a negotiation and that sort of just went wrong and someone fired and I mean we just have so many recorded attempts of that. One of the commanding officer's, he virtually said: "It's been continual." We don't have record of the messages going back and forth but you get the impression it is just been continual.

If that's the situation you do wonder whether Tarata was some effort to get closer to the soldiers in a negotiation context because it was sort of a silly idea that it was going to be an offensive attack because it just wasn't the right position, and then the mere fact they tried to negotiate et cetera. I mean I talk at that a great length: "Was it true or was it just a way to get out," it's hard to know. But if we are thinking about that "what was that", yes, I tend to think it's possibly got something more to do with that, trying to get in a position to interact rather than what it appears to be just an offensive position.

Q. All right. Thank you. They're all big topics so I better leave it there. I just add my mihi along with my panel colleagues for your immense effort. Appreciate there is quite a list of questions.

JUDGE DOOGAN ADDRESSES TONY WALZL – TIMETABLE RESPONSE TO QUESTIONS (12:48:15)

JUDGE DOOGAN ADDRESSES ALL COUNSEL – PROCEDURAL MATTERS (12:49:36)

MS CLARK ADDRESSES JUDGE DOOGAN – TIMETABLE UPDATE (12:51:08)

DR GRANT PHILLIPSON ADDRESSES MS CLARK – WITNESS EVIDENCE TIMETABLE (12:52:27)

JUDGE DOOGAN ADDRESSES MS CLARK – CLAIMANT EVIDENCE TIMETABLE (12:55:03)

JUDGE DOOGAN ADDRESSES MS RONGO – CLIENT RESEARCH (13:00:30)

JUDGE DOOGAN ADDRESSES MR HUNT – FUNDING (13:01:29)

MR SINCLAIR ADDRESSES JUDGE DOOGAN – WHAKAPAPA CHART (13:04:04)

HEARING RESUMES: 1.05 PM

JUDGE DOOGAN ADDRESSES JANE LUITEN – MIHI, ACKNOWLEDGEMENT (13:52:25)

(13:52) MS GORDON (OPENS, CALLS)

JANE PATRICIA LUITEN (#A012-(a)-(e))

Tēnā koe e te Kaiwhakawā me ngā mema o Te Rōpū Whakamana i te Tiriti o Waitangi. **Greetings, your Honour, and the members of the Waitangi Tribunal.** Counsel's name is Sophie Gordon and I appear as counsel for Jane Luiten today. I propose to call and confirm her evidence after which she will more fully introduce herself.

Q. Tēnā koe Jane. Could you please confirm your full name for the Tribunal?

A. Jane Patricia Luiten.

Q. Ngā mihi. Could you please confirm that you are author of the Tribunal commissioned report entitled, *Nineteenth-century* Land *Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands,* with the appellation number #A012?

A. Āe, I am.

MIHI

E ngā mana, e ngā reo, e ngā karangatanga o te motu tēnā koutou. Ki ngā iwi o te takiwā nei, e kīia nei te North-Eastern Bay of Plenty, ko Te Whakatōhea, Ngāi Tai, Te Ūpokorehe ki o koutou mātua tūpuna tēnā koutou. Ki a koutou te hunga ora tēnā koutou katoa. Ki Te Rōpū Whakamana i tā tātou nei Tiriti o Waitangi tēnā koutou. Ki te Karauna tēnā koutou me ngā rōia o ngā kaikerēme tēnā koutou, tēnā koutou, tēnā koutou katoa. **To the voices from throughout the country greetings. To the local people of this area North-Eastern Bay of Plenty, Te Whakatōhea, Ngāi Tai, Te Ūpokorehe, to your ancestors greetings. To the living greetings to you all. To the Waitangi Tribunal greetings. To the Crown greetings and also to the claimant lawyers greetings, greetings, greetings.**

Ko Jane Luiten tōku ingoa. He Pākehā ahau. I ahu mai nō Te Tai Tokerau, nō Kaitaia. I whiwhi tōku tohu BA Honours nō Te Whare Wānanga o Waikato, a, tēnā koe matua Tom. Mai i taua wā ki tēnei, nui ake i te 30 tau pea, kua mahia e au i tēnei momo mahi rangahau i ngā kerēme e pā ana ki Te Tiriti o Waitangi. Kua mahia e au i ngā takiwā o Te Tairāwhiti, o Te Rohe Pōtae, o Porirua ki Manawatū, o Taihape ki Rangitīkei, o Te Paparahi o Te Raki. E noho ana au ki Tūranga. **My name is Jane Luiten. I am Pākehā. I come from the north, Kaitaia. I received my BA Honours from Waikato University, acknowledgements to you elder Tom. From that time to this time, for over 30 years, I have worked in these types of research work pertaining to the Treaty of Waitangi. I have worked in areas the East Coast, in King Country, Porirua ki Manawatū, Taihape ki Rangitīkei, and Te Paparahi o Te Raki the north. I currently live in Gisborne.**

I have submitted a summary of my report for the purposes of this hearing, which I am told you have read. Rather than read this out verbatim, which would take longer than 25 minutes, I propose instead to speak to the main issues.

REFERS TO #A012(c)

The kaupapa of my research in this Inquiry District is *Nineteenth-century Land Alienation and Administration* of Māori land. The project was broken into two parts and I am here today to speak to Part 1 concerning confiscated lands.

Prior to confiscation, land alienation in this inquiry district was virtually nil. Of the two Old Land Claims at Ōpōtiki upheld by the Land Claims Commission in 1844, one had since been successfully repudiated; the other existing largely in the abstract.

The issues arising from early land trading, the gulf between Māori and Pākehā understandings of what was being traded, have been well-rehearsed in other inquiry districts. On top of this, however, the Pākihi and Ngaio deeds were both unwelcome and unlawful.

The tuku of a single kāinga at Hikutaia transacted in 1840, on the wrong side of the Governor's cut-off date, blew out by 1853 to a government survey for 11,470 acres between the Waioeka and Waiotahi rivers. But the government was unable to realise its surplus, nor John Wilson Snr, to obtain a Crown grant for his claim.

Moreover, the possibly unique buy back of the Ngaio transaction in 1854, occurred a year after the government survey of the Pākihi block, revealed the extent of the threat. The conclusion, between 1840 and 1865 hapū within this inquiry district were alive to the link between land and sovereignty, and carefully guarded both.

Tribal mana was abruptly overturned by Crown raupatu from September 1865. The confiscation of the Bay of Plenty district in January 1866 occurring five months into the military occupation at Ōpōtiki as stated in the proclamation itself. The blanket confiscation was predicated on district-wide rebellion. Overnight, customary title was extinguished and the entire confiscation district rendered Crown land.

Blanket confiscation created the issue of where to put the dispossessed. It also magnified the Crown's liability to compensate those adversely affected by its land confiscation who were not implicated in any alleged rebellion. It is important to understand the two different process of potential returned land at work here:

Compensation was part of the original confiscatory package from 1863 awarded to individuals for the loss of real property when actual confiscation was limited to be satisfied in cash, or later, by Crown grant.

Reserves were something else. Lands on which to concentrate the indigenous population be they loyal or rebel. Once the government resorted to taking whole districts, until the Confiscated Lands Act 1867, the confiscation reserves had no basis in law.

I turn first to the lands awarded to Māori as compensation.

The Compensation Court sat on four occasions through 1867 when the district was still in turmoil. William Mair, a major in the colonial army, was presiding judge for much of the litigation. With few exceptions, the resident population in the Bay of Plenty was debarred from claiming compensation. Pai Mārire was synonymous with rebellion and little distinction was drawn between resisting the Crown's 1865 invasion and earlier support for the Kīngitanga. Many of the compensation claimants within the inquiry district were woman – the wives of 'tauiwi', both Māori and Pākehā – or the offspring of such unions who had been absent from the district since 1863.

A major issue surrounding the Crown's land compensation relates to the extraordinary control Special Commissioner and Crown agent, John Wilson wielded over the process. More than one third of the viable claims within the inquiry district were directly settled out of court with the Crown agent. Successful claimants were located on Special Commissioner Wilson's pre-determined allotments rather than the lands under claim. Multiple claims were consolidated into a single allotment.

Claims that Crown agent Wilson could or would not settle were defended in court. Absence helped claimants meet the 'loyalty' bar but left them vulnerable with respect to proving their 'title' on other grounds by ongoing occupation, for example. Individual claims were countered by the Crown agent's 'defence' to show the area under claim more properly belonged to the wider hapū. Where claimants won from the court a 'share' of tribal lands, the size of this share seems to have been left to Wilson, based on the census the Special Commissioner had compiled precisely for this purpose. Most pernicious of all, was Wilson's use of his father's purchase deeds in court to defeat the claims to ancestral lands at Waiotahe.

The net result was the grant of around 82 land parcels to 48 individuals, together amounting to around 1,874 acres. Over half of the claimants were awarded between 21 and 50 acres, at least six claimants received 20 acres or less. In all, Crown compensation within the inquiry district to individual Māori amounted to less than the single Crown grant John Wilson Snr obtained from confiscation based on his 1840 land trade, and only slightly more than what Te Arawa received at Ōhiwa for two years' military service. This total does not include the Court award of 9,458 acres, to the loyal component of Ngāi Tai, what became known as the Waiohoata Reserve; more about that soon.

Many of these compensation Crown grants were issued within a year or three, and they came with no restrictions on alienation. Grantees were free to sell their titles and many of them did so, some of them very quickly. By 1909 only some 25 compensation parcels within the inquiry district amounting to about 498 acres remained in Māori ownership. Overtime, however, Māori-owned Crown grants became subject to the same restrictions imposed on memorial land emerging from Native Land Court title determination.

Ostensibly aimed at arresting the pace of disposition, compensation awards granted in the latter 1870s, were issued with restrictions on alienation, preventing grantees like Hetaraka Te Wakaunua from dealing freely with their titles. In the circumstances of overnight wholesale disposition wrought by

confiscation, any protective rationale for such restrictions appears farcical. In the case of Te Arawa's military awards at Ōhiwa, restrictions were imposed at the point Crown grants were issued in 1879 to keep Te Arawa there, or failing that, to procure the sections at less than market value.

More significant than individual compensation was the return of raupatu lands as reserves. Reserves had been an integral part of the Crown's land purchase policy since annexation, the ample or even sufficient bits retained by Māori vendors for their present and future needs. Elsewhere in New Zealand reserves had no place in the legislative reform of the 1860s establishing judicial title determination but the government fell back on reserves at this time within its confiscation districts.

Drawing on rhetoric from an earlier era of Crown pre-emption, in September 1865 Governor Grey declared that: "Considerable quantities of confiscated land would be restored to those who wished to settle down upon their lands to hold them under Crown grants and to live under the protection of the law." Any distinction between loyals and rebels had ceased to matter. The re-settlement of the resident population on to such reserves applied equally to both. In the Bay of Plenty, the job of arranging the re-settlement of both the incumbent Māori populist and the military newcomers, was given to Special Commissioner, John Wilson Jnr.

I have shown the location of these confiscation reserves within the inquiry district on a map which I sent in with my summary.

Te Whakatōhea were relocated between Ōpape and the Waiaua river. Te Upokorehe located at Hiwarau and Hokianga Island. Largely due to the co-operation of Wiremu Kingi Tutahuarangi in an otherwise hostile district, Ngā Tai were initially exempted from confiscation. The working confiscation boundary is set at Ōpape.

Confiscation moved east to Tōrere beach during 1867, linked to Wi Kingi's successful compensation award for the loss of Waiaua. The expanded area

was subsequently returned to Ngāi Tai but in a different guise as reserves. The loyal contingent among Ngāi Tai were awarded the bulk of their newly confiscated land, what became the Waiohoata Reserve as compensation, the intervening slice of Awaawakino, tagged government land and subsequently reserved five years later, for the surrendered rebels among the tribe.

On their surrender in 1870, Ngāti Ira refused to join their whanaunga on Ōpape Reserve and were allocated small reserves within the Parish of Waioweka. Reserves were also made for the surrendered rebels from elsewhere, namely Ngāti Kahungunu refugees, led by Te Waru Tamatea, on condition they did not return home. In December 1873 Native Minister McLean conceded further lands to Hira Te Popo and to those who had recently returned from their detention in Wellington. Over a six-year period, another 12 reserves, amounting to about 439 acres, were award to individuals, including men who had appeared as witnesses for Crown agent Wilson in the Compensation Court.

A primary issue arising from these tribal reserves is that of deliberate marginalisation in terms of land quality, land quantity, and location. Te Whakatōhea's Ōpape Reserve on the "confines of their country" looked generous on paper but the only arable portion lay along the Waiaua Valley, the reserve deliberately confined to one side of the river. Hiwarau Reserve held even less potential. Any acres per head formula was never seriously applied. Ngāti Ira's Parish Reserves comprised good land but their 572 acres had to support 64 beneficiaries. The last to secure a reserve from the government near Ōpōtiki got one acre each. For most, the marginal allocation provided a bare subsistence, the porosity of land becoming a source of friction. For some, the 1883 hapū subdivision of Ōpape Reserve amounted to a second disposition.

Ngāi Tamahaua were forced to relocate on land tenanted by ghosts at Ōpape where, as Rewita Niwa protested for the rest of his life, there was less than 300 acres of plough-able land for their support. Ngāi Tama's petition for additional lands within their rohe went unanswered.

The government reserves created ongoing tensions for other reasons. The confiscation reserves were dressed as tribal endowments for Te Whakatōhea, for Te Upokorehe, for Ngāti Ira, for Ngāi Tai. But, in fact, the associated lists of beneficiaries attached to these confiscation reserves pioneered the memorial of title applied generally to Māori freehold land from 1873. For colonial administrators, the hapū tags attached to these reserves were but a useful administrative device, 'a hanga noa iho' as one beneficiary later put it, under which to arrange the displaced population. Of the 56 beneficiaries of Hiwarau Reserve gazetted in 1874, only 30 of them were later said to whakapapa to Te Ūpokorehe.

For some Te Whakatōhea, the hapū labels attached to their reserves created other, enduring tensions. After more than a decade of conflict over the limited arable land at Waiaua where the bulk of the tribe had resettled, in October 1879 John Wilson, now Commissioner of Tauranga Lands, secured an 'Agreement' from Te Whakatōhea to subdivide Ōpape Reserve along hapū lines at government cost, as the government saw fit. The survey of the hapū partition was completed in 1880. The lists of beneficiaries took Commissioner Herbert Brabant another three years to finalise.

From the outset, Special Commissioner Wilson had arranged the post-war re-settlement of Te Whakatōhea in terms of the five hapū of Ngāti Rua, Ngāi Tamahaua, Ngāti Ira, Ngāti Ngahere and Ngāti Patu. In his 1880 partition scheme for Ōpape Reserve, Wilson included Te Ūpokorehe as a sixth hapū. His partition was a simplistic exercise of straight lines, the 20,789-acre reserve cut in the first instance to create a coastal belt and an interior hinterland, both of which were then split six ways in varying portions for each of the six hapū.

Te Whakatōhea beneficiaries now had to choose which one hapū they identified with. In terms of beneficial ownership, Wilson's 1867 tally of 389 beneficiaries had increased to 690, the revised 1883 lists now including 'the whole tribe'. That is, in addition to those relocated there before 1870, entitlement to the hapū partitions now included 'surrendered rebels' who had obtained reserves in the Parish of Waioeka and successful compensation

claimants. In some cases, people wholly outside of the district were also included.

The alleged conflation of hapū identity (and the inclusion of Te Ūpokorehe) remains a source of ongoing controversy today. It is not that the Special Commissioner made these hapū up – they existed – but rather the extent to which, for the purposes of his resettlement scheme, the sixth hapū model became something of a socio-political straight-jacket imposed on Te Whakatōhea. Wilson and his fellow government officials on the ground were alive to the presence of smaller, constituent hapū (what they referred to as 'sub-hapūs') as the preferred basis for subdivision at Waiaua. Ultimately, Wilson's blunt six-way split was seen as the simplest, least costly solution. It also concealed the fact, as Resident Magistrate Bush admitted in 1886, that closer settlement at Waiaua was unfeasible because there was not 'sufficient good land' to go around. Brabant initially opposed Ngāti Muriwai's partition request at this time because of the precedent it would set, arguing that further hapū partition could occur once title had issued, when the owners themselves would be liable for the survey costs.

Lands reserved by the Governor for Māori under the Confiscated Lands Act 1867 were either to be granted or merely 'set apart'. One of the most disconcerting features of the confiscation reserves within the inquiry district is the Crown's failure to issue title by the end of the nineteenth century. Many of them, including Ōpape Reserve, were not even formally reserved, let alone set apart or granted. The exceptions were Hiwarau Reserve and two of Ngāti Ira's Parish lands for which title was issued in 1886.

The lesser option of 'setting apart' suggests the lack of clear title may have been deliberate from the outset. This certainly seems to have been the case for Ngai Tamatea's tenure at Waiōtahe, understood by Crown officials into the 20th Century as 'to occupy & cultivate but no title was to issue'. It is also the case that Crown grants could not issue without a survey, for which, being confiscated Crown land, the Crown was financially liable. In the case of Ngāi Tai's reserves of Waiohoata and Awaawakino, the cost of doing so – what

in 1872 Wilson called ‘economical reasons’ – may have been a factor in the ongoing Crown delay, until 1898. Wilson rued the ‘ruinous cost’ of surveying the Ōpape Reserve partition at the government’s expense in 1879. His refusal, as Judge Wilson, to make charging orders against the Ōpape Reserve partitions in 1896 contributed to Surveyor-General Percy Smith’s refusal to issue title for the reserve partitions three years later.

Neither of these factors, however, entirely account for the carelessness in formally reserving the lands in the first place. One result of the lack of formal reservation was that over time, the reserve beneficiaries came to be regarded as squatters on Crown land, their tenure open to challenge. By the end of the century, Ngāti Ira were compelled to engage legal assistance and petition Parliament to combat Pākehā claims that they had ‘no rights’ to the 150-acre reserve Hira Te Popo had won from McLean in 1873. In 1900, the Commissioner of Crown Lands, too, was working on the premise that the Waioeka Parish reserves were temporary arrangements, given to ‘rebels’ to occupy ‘during good behaviour’, their entitlement amounting to a life interest only. At Waiōtahe, Ngai Tamatea were faced with similar Pākehā trespass.

The failure to grant title to the confiscation reserves meant that these reserves legally remained Crown land. In practice, the reserve beneficiaries and the Native Land Court overlooked the technicality. Succession cases were processed from the early 1880s. Court applications and orders for the definition of relative interests and partition accelerated from the mid-1890s. The resulting orders, however, could not be completed because title to the parent blocks had not issued. The increasing administrative activity undoubtedly contributed to the dawning realisation among the judiciary by the beginning of the twentieth century, of the court’s lack of jurisdiction to do so.

Legislative intervention in 1904 to have title to the reserves issue to the beneficial owners was block specific. The task of title determination was given to the Native Land Court, heard by Judge William Mair at Ōpōtiki in 1907. Again, however, what was largely a formality became mired in a familiar maladministration and delay, the 1907 court orders left incomplete for at least

another decade because of survey and other issues. Title to Ngāti Patu's Ōpape 9 and Ōpape 5 were still to issue by 1933.

Confiscation reserves which had not been specified in the 1904 legislation were eventually dealt with under the more general provision of section 25 of the Native Land Act 1909. Title to Ngai Tamatea's reserves was ordered by the Native Land Court in 1912, reheard on appeal in 1914. But in 1924, the owners were informed that the 1914 orders were incomplete and advised to petition Parliament to rectify matters. Te Whakatōhea's 12-acre camping reserve at Ōpōtiki title to it was ascertained by the Native Land Court in 1909 but, once again, the court order was never finalised and it was finally done in 1965.

As precarious as their tenure was, the Crown's failure to issue title to the confiscation reserves was arguably the saving of them. For the paradox of twentieth century title determination was that it spelled the end of any 'reserve' status, effectively transforming the confiscation reserves into Māori freehold land at a time when all restrictions on the alienation of such land were removed. The belated title determinations also occurred in a climate of national preoccupation with 'closer settlement' and the 'profitable utilisation' of 'surplus' Māori land, which scarcely seems coincidental. Native Land Commissioners Robert Stout and Apirana Ngata discovered at Ōpōtiki in January 1908 that Te Whakatōhea possessed no such 'surplus', describing Ōpape Reserve as second-class land at best. In the case of Waiohoata and Awaawakino Reserves, no sooner had legal title issued, than portions of these Ngāi Tai reserves were incorporated to enable alienation by lease.

The history of raupatu within this inquiry is a shocking one. Crown resettlement of the incumbent population onto reserves was both mean-spirited and careless, a combination that reduced the formers owners and rulers of this district to subsistence, their title even to these confiscated fragments vulnerable to further incursion. The violation of mana was felt in a myriad of ways: in poverty and poor health, in high mortality rates, in bitter division within and between hapū, in recourse to alcohol, in systemic marginalisation in the new order. Different Crown officials, at different times, equated Māori tenure in this

confiscated district to a 'life interest', without future. The retention of mana in the face of this adversity is an epic of resilience.

This report is based primarily on official records with very little input from the claimants' lived experience or perspective. It has, nonetheless, been a privilege to do this mahi, to shine light on their experience of colonisation. He mihi nui ki a koutou katoa **I want to thank you all very much**.

JUDGE DOOGAN ADDRESSES JANE LUITEN – WITNESS SEATING

JUDGE DOOGAN ADDRESSES MS CLARK – MICROBREAK

HEARING ADJOURNS: 2.21 PM

HEARING RESUMES: 2.24 PM

MS CLARK ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMETABLE UPDATE (14:24:39)

(14:25) MS CLARK TO JANE LUITEN:

Q. Good afternoon. Tēnā koe **greetings** Ms Luiten. It's good to finally meet you. My name is Raewyn Clark. I'm lead counsel for your particular report, so I'll be asking questions of quite a generic nature. But in this inquiry, I do act for the hapū of Ngāi Tamahaua, along with a number of other claims, associated with for example the Mokomoko whānau claim, a claim for Ngāti Rua on behalf of a senior member of Ngāti Rua hapū and also the descendants of Te Rangihaerepō as well.

Just to give you a brief outline of where I'm going to go with my questioning today, I've looked at your report in terms of the various chapters. I'm going to start with the Ōpape Reserve chapter. I'm going to follow that with some questions on the Compensation Court, followed by some questions on the Parish Reserves, followed by some questions on Chapter 6 the Ngāi Tai, Waiohoata and Awaawakino Reserves, and

concluding with some very brief questions on Chapter 5 as well, the Hiwarau Reserve.

Starting with the Ōpape reservation. It's correct, isn't it, that at the time of the reserve's creation, there was no legislation to support it? The legislation that was being applied didn't include provisions for a reserve, such as the Ōpape Reserve. Is that correct?

A. My understanding that's correct, yes.

Q. Okay. You actually say "this is quite telling" and with that in mind, I wanted to look at the legislation that's being applied here. Perhaps Ms Hastie-Broughton could even have the report handy. I'm on page 24. You say there that: "The New Zealand Settlements Act 1863 provided for whole districts deemed to have been in rebellion to be brought under the confiscatory Act, but the actual appropriation of land was presented as something much less.. It's correct, isn't it, that this legislation didn't intend to take whole districts, did it?

A. When it was enacted, it was limited, yes.

Q. It was limited. I just wanted to look at what the legislation actually said and to consider that in light of what actually happened, and again we are at the right point there. The first step section 2 is that the Crown deems the district to be in rebellion and in doing so, the district is brought under the Act. Is that correct, section 2?

A. Correct.

Q. But it's not actually confiscated at this point. We've just got it brought under the Act and deemed to be in rebellion so that's correct. That section 2 it doesn't equate with confiscation, does it, at that point?

A. Not actual taking, no.

Q. Section 3 the Governor then sets apart eligible sites by Order in Council and then section 4 he then reserves or takes the land. Section 4 also: "Any land declared reserved or taken is deemed to be Crown land." The point that I'm trying to get across here is we've got two separate steps. One the district is deemed to be in rebellion. They then look at much smaller eligible sites and they say: "It's those sites that we're going to reserve or take," that's correct isn't it? Two separate steps.

A. Confiscate, yes.

Q. Confiscate. Two separate steps. That's why, would you agree, there was no provision for wholesale reserves, like we see at Ōpape. It's because this legislation never envisaged or provided for the whole district to be confiscated, did it?

A. That's the point I go on to make in the next paragraph.

Q. Yes, thank you. What actually happened in here is that we had a reserving and a taking in the one proclamation, don't we? The legislation never actually provided for that, correct? Well, you've just agreed to that. Would you agree that-

(14:31) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, Ms Lutien, did you agree to that?

A. The taking of the Bay of Plenty they declared the whole district to be a confiscation district and they took the whole district in the one Act, yes.

(14:31) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. In the one proclamation.

A. Because it had moved to blanket confiscation by that time. Never intended by the enactment as it was enacted but subsequently. It's still the same Act. They're just using it as never intended when it was first enacted.

Q. Right. Do you think we can go as far as to say that the taking of the whole district was actually illegal? It wasn't supported by the empowering Act that they were purporting to act under.

MS CLARK ADDRESSES JUDGE DOOGAN – REPHRASE QUESTION (14:32:26)

(14:32) JUDGE DOOGAN TO JANE LUITEN:

Q. Ms Lutein, what would be your answer to that, as you understand it?

A. I think it's raised as an issue at the first Compensation Court hearing. which I can't, off the top of my head, recount to you now, but they are basically raising that very issue about the extent-

Q. Sorry, who was raising that?

A. I think Wilson is behaving like the Crown's taking as legal and there's some question being raised by the Compensation Court judges –

Q. Right.

A. – as to whether it is actually legal because it is not specific –

Q. Thank you.

A. – two sites of settlement is my answer.

(14:33) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Thank you. I will ask some more questions around that, so I'm sure we'll get an opportunity to elucidate that when we get to the Compensation Court section. Just to finish that off. The actual Act to support the Ōpape Reserve did not come in to existence until after Te Whakatōhea had been moved to the reserve. Is that correct?

A. Yes, it's about 18 months after.

Q. I want to jump now to McLean's visit to the region in 1873. We know that Te Whakatōhea was moved to the reserve in May 1866 so they've been there for some time and McLean comes to visit the region. For this, I would like to go to page 66 of your report. It's in the middle of that page where McLean refers to the "conditional nature of the lands that have been given back". In his discussions here with Te Whakatōhea, perhaps I could briefly touch on the language that McLean is using with Te Whakatōhea here, which is quite shocking, quite bordering on abusive in the way that he appears to be speaking to them. Do you have any comments on the way that Whakatōhea are being made to feel through the language that McLean is using here?

WITNESS REFERRED TO #A012, PAGE 66

A. Only that it's self-evident from the language that he's using.

Q. Thank you. I won't dwell on that because you are right, it is. But I would like to return to the conditional nature of the lands being given back. Do you agree that Whakatōhea are being made to feel that the lands that they were in receipt of, being the Ōpape Reserve at this time, the Parish reserves, that for many, many years it was pervasive amongst Crown officials that Whakatōhea were made to feel that they had been given the lands on a conditional basis only. Is that the case?

A. With respect to some of the individual grants that are made to rangatira, the 50 acre awards it's explicit in the grant. It says "it's on condition of good behaviour for three years". In the case of Ōpape Reserve, I have not come across anything explicit like that, but I would agree that that message seems to be tied with why it was kept as Crown land and not granted initially at least. With the case of the Parish Reserves, then there are those later references that I have mentioned in my presentation today where that is the understanding that it's a life interest; that it's for good behaviour and it's conditional, yes.

Q. That was actually only meant to apply to quite a narrow portion of the reserves that were given back. But what seems to be happening here is that the Crown's broadening that. Even those that are across at the Ōpape Reserve are made to feel that they are there provided they retain good behaviour et cetera. They seem to be expanding it beyond what was actually provided for. Would you agree with that?

A. I would agree. And also the Commissioner of Reserves is Heaphy and he has a published 1871 report of reserves, and both Ōpape and Hiwarau I think, but definitely Ōpape Reserve, are listed as Crown land for these number of beneficiaries. Which to me implies that it is still quite conditional and deliberately left as Crown land with that inference hanging over it, yes.

Q. Right. What were you referring to there when you said it was listed as Crown land?

A. It's a AJHR 1871.

Q. Which type of reserve, sorry, was my question?

A. Native Reserves.

Q. The Ōpape-Hiwarau Reserves.

A. Yes, it's one of the very long list of Native Reserves listed in that Commissioner of Reserves report.

Q. Do you see that there is a link between the length of time that it took to actually give title to these reserves? Do you believe that behind that was this lingering perception that the Crown held onto that the reserves were conditional in nature? Do you see a link between the two?

A. I think that's partly a factor but possibly not in every case. As I've alluded to, there are other factors as well. Like the cost of survey, yes, and just carelessness, promising things, writing them down on paper and misfiling it and actually not taking care to properly record these agreements.

Q. Thank you. Again, coming back to McLean's visit and this does stray beyond just a discussion on the Ōpape Reserve. But, do you agree that one of the matters that was complained to McLean, because this visit was an opportunity to err on the part of Whakatōhea the issues that they were facing at this time, do you agree that one of the matters that was raised with McLean is some members of Te Whakatōhea are feeling as though there was an inequality of treatment being applied by the Crown in the way that they were treating Whakatōhea? Favouritism I think is the word that you used. Do you agree that that was one of the issues that was raised?

A. It was raised by Hakaraia Te Rau at that time.

Q. Okay.

DR GRANT PHILLIPSON TO MS CLARK – #A012, PAGE 66

Q. This is where it's referred to here, about halfway down. Hakaraia Te Rau says, he spoke to what he saw as Government favouritism at work: "Some of those who have borne arms against you, you have raised to a responsible position, while I who have also borne arms against you have not had the same honour conferred on me. My Pākehā, Te Wirihana, has not given me any intimation of my filling such a position." What is he getting at here?

A. I would take that to be a reference perhaps to the individual reserves that other rangatira may have received. But also later on Rewita Niwa raises it much later and refers back to Hakaraia Te Rau's request to McLean that he was actually just wanting land for his people. And as an instance where Ngāi Tamahaua have asked for land but never received any.

Q. Thank you. There's two things he's possibly referring to there. One is that he's looking at possibly other rangatira and Hira Te Popo comes to mind. He benefitted from the Parish reserves and he's making that comparison that he doesn't seen an equivalent. Because would you agree that Hakaraia Te Rau is the Ngāi Tamahaua rangatira or at least

an elder of Ngāi Tamahaua at this time? Would you agree to that in your understanding?

A. I could agree to it. I don't know for sure but happy to go with that.

Q. No, that's fine. Well, he could be making a comparison between himself and for example, Hira Te Popo or other rangatira that have been given reserves across at the Parish reserves. Would you agree with that?

A. Yes, Ngāi Tama's enduring grievance was that they were not returned any lands within their tribal rohe.

Q. Okay. Another issue that he's raising there, and you've just mentioned it, because this appears to have happened on more than one occasion, requests are made to visiting Crown official and then I think, as you say, they are subsequentially misfiled. The proper care is not applied to them to ensure that promises that are made to Te Whakatōhea when these Crown officials are passing through the district are then actually followed through with. Would you agree that occurs on more than one occasion?

A. Yes.

Q. Thank you. I think you've already said that Hakaraia Te Rau made a request at this time that wasn't followed through with. You agree with that? A request for further land for his hapū that wasn't followed through with.

A. I think that is dealt with a little bit further on. It would be a matter of me finding it.

Q. Kei te pai. We might come to it anyway.

A. Okay, ka pai.

JUDGE DOOGAN ADDRESSES MS CLARK, JANE LUITEN – HAKARAIA TE RAU PAGE REFERENCE (14:44:16)

(14:44) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Might I just say that why that may be significant is that the answers are probably sometimes 'no' rather than that things have been misfiled. Would that be correct, Ms Luiten?

A. Sometimes.

Q. Yes, sometimes.

(14:45) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. I'm going to move on now from the visit of McLean. I want to talk to you about the hapū subdivision that took place. The hapū subdivision of the Ōpape Reserve began to be discussed in the early 1870s, didn't it?

A. Correct.

Q. This was not the original intention when the reserve was created. The reserve was intended to be a tribal reserve for the whole of Te Whakatōhea. Is that correct?

A. Correct.

Q. Is it also correct that Wilson essentially pushes through the idea of the creation of this subdivision? He's a proponent of it and pushes for it, do you agree with that?

A. I think there is some impetus within Te Whakatōhea themselves to sort out occupation on the reserve. The way it pans out I think is definitely pushed through by Wilson.

Q. Because you must agree that there's no necessarily a Whakatōhea wide agreement for this subdivision at least at this point in time, early 1870s?

A. In the early 1870s, it's more disputes about occupation. How they resolve that, whether that's through partition or not, but there's definitely disputed occupation from the get-go.

Q. Can you maybe speak to that just a little bit more. What exactly was going on with regards to disputed occupation? Just a brief summary of what you're meaning there.

A. It's in the report. When Wilson comes back in 1870 on page 74 at the bottom of.

Q. They find themselves concentrated on a very small area of actually cultivatable land.

A. Yes, because it's a scarce resource and there's a lot of them trying to live on it.

Q. Wilson seems to want to take it upon himself to try and solve this problem and his method of doing that is a hapū subdivision. Is that correct?

A. Wilson is reporting to the Native Minister that it's Clarke's idea that partition is the way to solve this raruraru about the land.

Q. Okay. But nevertheless, it appears to be a solution that the Crown is wanting to put forward it seems to be what you're saying –

A. Yes.

Q. – whether it's Wilson or whether it's Clark.

A. Wilson is in that same quote he's saying he's been suggesting it since 1866 so there you go.

Q. Apparently, sorry. He's been suggesting it since the creation of the tribal reserve that surely is not the case. It was created as a tribal reserve, Wilson surely hasn't been suggesting the subdivision since that time, has he?

A. That's what he's saying in that quote there.

Q. Okay. Even in 1878 so we're quite far through the decade now, so he's not successful in pushing it through in the early 1870s. Even in 1878, we have quite a clear statement from Te Whakatōhea, Ngāti Rua. I'm on page 76 you want to scroll down at the first full paragraph on that page. Ngāti Rua protest. "We object to the survey being made," so they are quite adamant about it. But somehow the following year Wilson is able to obtain an agreement to the survey. Before I ask you exactly how that occurred, I'd like to ask you about the agreement to the survey itself. My impression is that this is quite a tenuous agreement, a high-level agreement. You say that "it's an agreement in principle to partition." How would you describe the agreement that's actually reached here? Do you think it has the full support of Te Whakatōhea or is it preliminary in principle?

A. It has 46 signatures to that agreement that he secures in 1879. This is in the context also of getting preliminary agreements to the sale of Whitikau and Whakapaupākihi blocks to the Crown so there is a lot going on and with Wilson you can never tell just what's going on.

Q. There certainly was no agreement to exactly how the partition would be laid out on the ground, was there?

A. Certainly not. It seems to come as a surprise, an unwelcomed surprise once they find out about it.

Q. Thank you. But what actually seems to happen is that Wilson acts quickly and the subdivision is underway, the partition is underway, the surveys for the partition are underway quite quickly-

(14:51) JUDGE DOOGAN TO MS CLARK, JANE LUITEN:

Q. Which term are we using? Are we talking about the partition, subdivision, survey? Just to be accurate, Ms Luiten, what term would you use?

A. [Jane Luiten] Well, partition and subdivision are the same thing and the survey is what Wilson goes ahead with.

Q. Yes. Because the survey, as I understand it, is essentially a survey of hapū boundaries but without – well, I can't recall. But I think that is all that happens at that initial point. There is no separate titles for all of these.

A. [Ms Clark] No.

A. [Jane Luiten] No. The titles don't happen until the next century.

Q. The survey is what we are really-

A. [Ms Clark] Okay, I will follow that through.

Q. Yes, I just wanted to the terminology to be as close as we can to what's actually happening at that time. It's a survey.

A. [Ms Clark] It's a survey but-

A. But it's a partition. They have to relocate as a result of this partition.

Q. Yes, all right.

(14:52) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Just to clarify, we are surveying the lines within the block – I'm not sure if this is helping at all – to divide the block up for the hapū. It's nothing to do with the exterior of the block or anything. We're dividing the block up for the hapū through the survey. Through the means of the survey, is that correct?

A. Correct.

Q. You would agree that much of that was undertaken without the knowledge of Te Whakatōhea. That's correct, isn't it?

A. It seems to be undertaken without the knowledge of some component of Te Whakatōhea.

Q. Okay. Would you agree that there was no discussion or agreement within Te Whakatōhea as to which hapū would get which area of the block?

A. This is where it gets into I guess contention. I think Te Whakatōhea initially they weren't interested in a partition of the wider block. This is bush land, this is mountain, they don't need to partition it. What they are wanting is their bits of the arable portion in the Waiaua Valley and all throughout the 1870s Ngāti Rua are opposed to that and there is resistance to it. I think earlier on, on page 75, we come back to 1872 Wilson is saying that "at last he's got Te Awanui's agreement to partition" so he thinks he's got but there's still opposition to surveying Waiaua which Ngāti Rua consider to be theirs. The fact that in 1879 Wilson is finally able to get this through could very well suggest, given the way he works, some wheeling and dealing, (inaudible 14:55:07) Ngāti Rua end up with Waiaua. Whether the partition went ahead on that basis with them ending up with the best part of the block, and that is how he got the agreement, would not surprise me at all.

Q. Ngāti Muriwai play a part of this story as well, don't they, or would you like to briefly explain? Ngāti Muriwai sought their own area of Waiaua; they offered to pay for the survey themselves and this seems to have been a leverage point that Wilson uses to help get the survey across the line and get the in-principle agreement?

A. Ngāti Muriwai come in later. Ngāti Muriwai come in after Wilson's been and partitioned and organised the survey. Ngāti Muriwai at this point are still under the Ngāti Rua umbrella. They still get the prize of the land. As Ngāti Rua they are still getting the prize Waiaua of the block, so that doesn't kick in until Wilson's left. In fact, their partition has nothing to do with Wilson and he is so upset about it later on that he cancels the partition, yes.

Q. Okay. Ngāti Muriwai come in later on. Not part of the original hapū subdivision overseen by Wilson.

A. They are part of the subdivision which starts with the agreement in 1879 and does not finish till 1883 with the lists. But the Wilson part of that which is the survey which is done by 1880 that's not Ngāti Muriwai because at that point Ngāti Muriwai are Ngāti Rua.

Q. Yes. Not to fully go into the details. But basically Wilson leaves the district –

A. Yes.

Q. – someone else is in charge and it's at that point that we get an additional subdivision within Ōpape 3 being the Ngāti Muriwai subdivision. Is that correct?

A. Yes that's correct.

Q. Okay. With this original subdivision, I think you will agree and you actually alluded to it earlier, Ngāti Rua got the bulk of the prized Waiaua lands which was the cultivable lands. That's correct, isn't it?

A. That's correct.

Q. I think you said in your summary I heard you use the reference that Ngāi Tamahaua got tenanted by ghosts. What were they meaning by that? Can you explain that?

A. Basically, it is very difficult to live on. I assume from that phrase that that's who was able to live on it was ghosts. Rewita Niwa later he often makes the point I think I've said like 300 or 400 ploughable acres in the whole block, and Ngāti Tama are one of the most numerous hapū of Te Whakatōhea so not much to support.

Q. Thank you. Another effect of the partition was that prior to it the hapū all had that cultivations on the Waiaua plain, didn't they? But with the subdivision certain hapū were essentially pushed off their existing cultivations.

A. Correct.

Q. With regards to this partition, my reading is that there were two final nails in the coffin, if you want to call it that. Essentially, despite Wilson's promise that the government would pay for this survey, Brabant still proposes survey cost be registered as liens against the new blocks. Is that correct?

A. Not just proposes but actually-

Q. He registers them.

A. Yes.

Q. Furthermore the title, as we have discussed already, it never actually issues for these newly created partitions and that in turn creates all sorts of administrative problems further down the track, doesn't it?

A. Correct.

Q. Following the hapū partition, we get to the ownership lists. Would you agree that this is a further step away from what was originally intended as a tribal endowment for Te Whakatōhea, the Ōpape reservation, because now we're actually at the stage of defining lists of owners? Would you agree it's a further step away from the original intention?

A. It depends what you mean by "intention". I mean, yes, these were promised as tribal reserves but, as I've suggested, that's not how they were really perceived or intended by government policy.

Q. Right. Whakatōhea were sold one story but on the other hand the Crown goes down quite a different path.

A. I think those tribal reserves are, as I've said in the report, even though they happen before McLean's Native Reserves in the 1873 Act, he's kind of almost using those confiscation reserves to make this new kind of Native Reserve that appears in the Native Land Act 1873. Where you set aside these tribal reserves, you list all the people who are beneficiaries to them, but you do not do the key thing which is to award them relative interests which becomes the basis for future alienation or partition. Your name as a beneficial owner in the tribal reserve is kind of like a membership but it doesn't amount to an individual property right.

Q. Thank you. We have to question, don't we, how much-

(15:02) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Sorry, can I interrupt for a second? Are you referring to the Native Reserves Act 1873 or the Native Land Act?

A. No, the Native Land Act. There's a whole section there devoted to the creation of Native Reserves that was never actually utilised.

Q. Right, yes. I just wanted to clarify because there were both that year.

JUDGE DOOGAN ADDRESSES MS CLARK – ADJOURNMENT (15:02:38)

(15:02) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. At this time, there is the listing of names. Obviously, a part of this broader policy that I think you've just referred to we're looking to list names or the Crown is wanting Te Whakatōhea to list names in relation to each of the newly-created partition areas and we have what you refer to as a "fattening" of the ownership lists as this time. In other words, Te Whakatōhea are working amongst themselves to figure out which names are going to be listed against which hapū and therefore which hapū subdivision. What is motivating the fattening of the ownership lists that occurred at this time and what did you mean by that?

A. That's a really good question. I haven't been able to work it out. The fattening comes from the relative interest hearings in the latter 1890s where in particular Ngāi Tamahaua want to give quite a considerable number of people quarter-share interests.

Q. Can I stop you there. Aren't the ownership lists happening before we get to the designation of relative interests?

A. Yes, but my point is those later conversations about relative interests shine a light on –

Q. On what occurs.

A. – tribal membership back and who is considered part of a hapū back when those lists are created. It's not entirely clear to me that Te Whakatōhea at this stage are cognisant of the individualisation that this process entails and that putting their names will actually translate into an individual property title. It's not clear to me that at the point they're asked to put their names in a list that they think that's going to happen. They're still thinking it's a tribal reserve.

On the other hand the very strange thing about that partition is that Wilson does the partition first and how he arrives at what share each hapū is going to get it has to be based on how many people he thinks are in each hapū. The question you're left with is are they told how many people that they need to find? It's very strange how the survey happens first and the beneficial list is settled three years later. There's things that I don't know.

Q. Thank you. I'll just make this final point before we break for morning tea. But would you agree that it's possible that Te Whakatōhea was not aware

that the lines had already been drawn and therefore they were motivated to find additional people to fill-up their list because they understood that the more people they had on their list the larger of an area of the reserve that they would get? It's possibly speculative and possibly not helpful.

A. It's speculative but certainly one possible scenario.

Q. Okay. Just to finish off the relative interests. The motivation for wanting to define relative interests at this later point, which is when the fattening of the ownership lists becomes problematical, the motivation for wanting to define the relative interests list was because we're moving into a new era in that time where there is a desire to further partition the block into much smaller farming blocks for basically individual whānau, moving away completely from the idea of hapū and moving into individual blocks for whānau. Is that correct?

A. Yes, a partition is seen as one way to sort out whose bit belongs to who or who has the rights; where you can build a house and where you can't.

Q. What's going on here essentially further highlights the administrative issue of the fact that title has never issued. It's starting to become very messy at this point, isn't it, in that we're getting partitions, we're getting successions but all on the basis of a non-existent title. Is that what's happening at this time?

A. Yes.

Q. And survey liens on the block are also causing a problem at this time? They're preventing or they're part of a barrier to the issuing of further subdivided titles.

A. The applications for partition start quite late so you're talking towards the end of the 1890s. I think Ngāti Rua's is 1904. Survey is certainly part of a barrier, yes. But it's so messy because even the surveys that go ahead can't be legalised, if you like, because of the underlying title issues. It is very messy.

Q. It's cost upon cost with regards to the surveys.

A. Cost upon cost and energy.

Q. The Crown must be cognisant of that.

A. Yes.

Q. Costs they may never realise.

A. Yes.

(15:09) JUDGE DOOGAN TO JANE LUITEN:

Q. Ms Luiten, just one clarification. In the process you're just discussing with Ms Clark, there's a reference to successions happening. Is it succession or is it just additional beneficial interests or owners being identified and added to the lists as opposed to succession like children being (inaudible 15:09:34)?

A. No, they're applications for succession to deceased's interests.

Q. Were part of the process at this time?

A. They are.

Q. Right.

A. They start occurring.

Q. About what time did they start?

A. I think the mid-1880s.

Q. All right. Thank you.

A. Yes.

Q. Thank you.

HEARING ADJOURNS: 3.10 PM

HEARING RESUMES: 3.31 PM

(15:32) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Moving on now to my questions with regards to the Compensation Court. Can we start by having you confirm what exactly the applicants had to prove to be successful in their application to the Compensation Court? Do you want to tell me what those things were?

A. They had to prove their claim title or interest to the land under claim.

Q. What I have here, and tell me if I am correct, there's essentially two components. First of all, they need to show they're not in rebellion. Is that an aspect of what they have to prove to the Court that they somehow qualify to be awarded compensation?

A. That they're not debarred from, yes.

Q. That they're not debarred so that's an aspect of it as well.

A. Yes.

Q. Yes, and they need to show an entitlement in customary terms to the area of land that they're claiming.

A. Correct.

Q. The Crown agent would defend these applications, wouldn't he, in some instances at least?

A. Correct.

Q. Either by trying to prove that the person was in rebellion or by trying to say that person didn't have a customary entitlement to the area they were claiming. Is that correct?

A. Correct.

Q. I think you've already said that in order to defend some claims he used his father's Pākihi block purchase. Was his defence accepted? The claimant was unsuccessful in that case.

A. Yes.

Q. I think you even say that he tried to use the Ngaio block claim as well, even though at that point that purchase had been repudiated by Te Whakatōhea. Is that correct?

A. Correct.

Q. He also seems to couch himself as something of a customary expert in that he will actually refute people's claims to customary entitlement with his own sort of alternative customary title arguments. Is that correct? What I'm thinking of there is when he would refute an individual's application for a particular block. He'd say: "No, actually this is a hapū entitlement this block. It's not just an individual entitlement."

A. Correct.

Q. Can you explain specifically why that particular defence was quite problematical in the context of this Court? And maybe I could sort of hint at what I'm trying to get at there is we have a prior assumption that all the hapū of Whakatōhea are in rebellion so a hapū clearly can't make a claim for compensation and really only an individual or perhaps a very small group of individuals could. So the very fact that he comes against them

with this argument that it's actually a hapū entitlement to this block they just can't win in that instance, can they?

A. Correct.

Q. Yes, thank you. You've also pointed out very helpfully the very large discretion that Wilson enjoyed with regards to this Court and I see two key areas where he had this discretion. One is that he made large numbers of out of Court settlements so that the claim never actually came before the Court. Is that one area that he had a clear area of discretion?

A. Yes, either he didn't come to Court or he settled after the claimant first appeared in Court. Once he knew the scope and the basis of the claim, then he would settle. Without the Court having made an award he would settle at that point.

Q. Right. The Court would adjourn, for example, he'd get that person have a settlement discussion with them.

A. Correct.

Q. And then, not only in those cases but in all cases where he reached an out of Court settlement, is it correct that the Court largely rubber stamped those settlements without any further inquiry?

A. That seems to be how it rolled, yes.

Q. The second area where he enjoyed considerable discretion is that in those cases where the claimant was successful he seemed to have a very large say in exactly where their successful claim would be located and it wasn't necessarily the area they had actually claimed for. Is that correct?

A. Yes. He had already undertaken a survey of some of the area before the first Court sat and a number of claimants, which are set out in the report, ended up with the allotments that he had pre-allocated for the satisfaction of claims. I didn't get into enough detail to compare what they were claiming against what they got because I am unfamiliar with the place and the place names that they refer to in a lot of cases. But my general impression was that they were satisfied by sections that he had preordained for settlement if that makes sense.

Q. Yes. A lot of the awards did come out of that predetermined 2000-acre survey of the Waiaua that he undertook before the Court even started.

A. No, that 2000-acre Waiaua grant is different. He came to the Compensation Court thinking that he could satisfy all the compensation claims by putting them on that 2000 acres and that's when he found out: "No, that's not how it worked," and they weren't interested. The Court actually said: "No, that's not how it works."

Q. I will come to that in a moment as well. Okay, but we don't know what formula he was working to in terms of size of the claims but he appeared to be working to some sort of formula. Is that correct?

A. It's very difficult to say. He says later on that he settled every case on the merits of the case. It's very hard to know.

Q. But the discretion that he enjoyed would've no doubt extended too. For example, had the claim been to a certain acreage in a certain area. If for some reason he was unable to make the claim in that certain area, he would've been able to negotiate with the claimant: "Well, I can't give you 'x' number of acres in that spot but maybe I can give you considerably more acres over in this spot," and he would've been looking to make those sort of arrangements to placate people. Is that a fair assumption?

A. I think he bargained them down in every single occasion that I can think of.

Q. Thank you.

A. It would be very difficult from the claimants' perspective of knowing what you could possibly get. I mean it's very much in his Court about what's being awarded. There's not a lot of bargaining power on the part of claimants making claims.

Q. Why do you say: "They didn't have a lot of bargaining power?"

A. Because he's dictating the size of the share that they get and the Court seems to be going along with it. It's a very one-sided process.

Q. The Court would accept the claim but it wouldn't necessarily give an order that they get a certain acreage in a certain place. They'd accept the claim and then say: "Go and talk to Mr Wilson about the outcome of your claim."

A. In some cases they do award acreage but in other cases they say: "Claimant to receive a fair share of the claim or claimant and Crown agent to settle on the award," as well.

Q. It's quite inconsistent from your reading of the court minutes. But the original acreage that he's had surveyed to satisfy the claims, do I take it that that occurred before Court even started in readiness to settle these claims?

A. That's correct.

Q. Would it be fair to say that his original intention was that all compensation claims would be satisfied out of that particular early survey that he did? Is that correct?

A. Yes. He arrived at Ōpōtiki with about 100 claims and thought he could satisfy all of them with what he had allocated. And then later more claims were accepted which he had to provide for with additional lands is how I read it.

Q. Do you accept that the Crown made it quite clear to the people of the district that if they had been in the district at the time of the fighting, if they were of the Pai Mārire faith that these were essentially sufficient grounds to be in rebellion and therefore, there was absolutely no point in making an application to the Compensation Court because you simply wouldn't qualify? Do you accept that the Crown led the people of the district to believe that?

A. I think that was the understanding in the district. You have the example of Te Wiremu Rangihaerepō who does claim compensation and when it goes before the Court he's questioned about his rebellion status on the grounds that he ran away into the bush but he ran away with a gun. His case is dismissed for being a rebel.

Q. Thank you. That's actually on page 263 that particular example, in the bottom of page 263 and I was also going to refer to that example. Would you agree that this was probably something of an anomaly? Despite having been present in the district – it's at the very bottom of page 263 – despite having been present in the district, it says that he admitted to having run into the bush with the rebels with a loaded gun. He must've known that in all likelihood he would be considered a rebel but he still made an application. You would have to agree that that was probably an exception. Large numbers of people simply didn't even make a claim to

the Court simply because they'd been in the district at the time of the invasion or they were of the Pai Mārire faith.

A. Correct.

Q. Would you agree with that?

A. Yes.

Q. Okay. Te Wiremu Rangihaerepō is an anomaly.

A. Yes, and also it comes up during the Compensation Court hearings the issue of whether the wives of rebels are eligible to apply for compensation. It's raised as a legal issue but it never amounts to any legal challenge in the course of the hearings because they just don't apply. That's the understanding is that they're not.

Q. It came up as a legal issue but somehow that never filtered through to the people that actually they were entitled. The wives of the rebels were entitled to make claims.

A. Well, they may have made that challenge but it just doesn't get passed on to them that that's even a possibility because there is no independent legal advocacy for them.

Q. Yes, and that was actually a question that I wanted to ask you. You do say in your report that due to a lack of legal advocacy the wives of the rebels, even though they were entitled to, did not make claims.

A. Well, it was raised as an issue and Prendergast the Attorney-General says they might be entitled or they are entitled to but it just doesn't go anywhere.

Q. Okay. There's no notification to people or anything like that.

A. No.

Q. Okay. A large number of claimants to the Compensation Court, would you agree, were people that were outside the district at the time the invasion and the fighting occurred? Is that correct?

A. That's my understanding of the evidence, yes.

Q. Would you agree it's likely that hapū who were in the district and knew that they wouldn't have an opportunity to apply for compensation would possibly have contacted whanaunga that were outside the district and said: "You need to make an application?" Encouraged people from

outside the district to make applications and at least get something from this Court.

A. That's an allegation that's made during those Compensation Court hearings is that some of the claimants it's alleged that they're put up by Ngāti Rua for example to claim Ngāti Rua's land to get something back for the hapū and the claim is disparaged on those grounds. Yes, that's a strategy that may or may not have been used but that's the allegation that's made in the Court.

Q. Thank you. Just to finish off the Wiremu Rangihaerepō matter. The Court found that he was a rebel simply for running into the bush with a gun. He was told by Judge Mair that the Court could do nothing for him but he was subsequently awarded a lot of one of the Parish lands of 40 acres. You'd have to agree that this comes across as a double standard being applied here. The Court says: "No, you're a rebel," but Wilson says: "Okay, the Court said this, but here, come over here and here's an award for you." Was this quite typical of the double standards that we are seeing around the Compensation Court and around Wilson's discretion that he applies to these matters?

A. There is no explicit evidence as such that says Wiremu Rangihaerepō got that award under the Confiscated Lands Act 1867 because he was denied the Court award. But there is discretion under the 1867 Act to award land to people who have been served poorly by the Compensation Court, and I have assumed in that case that that's what happened on that occasion. There's no other reason to award him the 40 acres apart from his unsuccessful claim to the Compensation Court.

Q. Thank you. Could I go back now to page 254 of the report? A group of Whakatōhea hapū leaders actually in a way call Wilson out for the fact that what they essentially seem to be saying is that Wilson told them that there was absolutely no possibility that they could have a successful claim in the Compensation Court but now they're seeing other people with successful claims. What's going on here where the leaders combine in a concerted protest to Wilson?

WITNESS REFERRED TO #A012, PAGE 254

A. They're just pointing out how arbitrary the system is.

Q. Yes.

A. Why people of Ngāti Awa who are implicated in the rebellion are able to get compensation when they're not; they've been told that they've been debarred.

Q. Yes. This actually helps confirm that the message was obviously made very clear to them: "You are debarred, don't even try coming to the Compensation Court," but then they make this complaint to Wilson. It's clear from your report, if we follow on to the top of page 255, there that Wilson was minded. He obviously felt that they were making a fair point because he was minded to have another sitting and allow them to make claims. Do you agree that's what's going on here?

A. I think Wilson is doing it to justify his own advice to them that they were debarred. He goes through this appeal of the decision to show them that he hasn't made it up and of course that court sitting doesn't happen.

Q. He seemed to think that if he appealed the decision, where we can presume some Ngāti Awa had been successful, if he appealed it to try and challenge the success that Ngāti Awa had experienced there, do you believe that that was his intention, he would appeal the Ngāti Awa awards as a way of saying: "I wasn't actually in support of those awards"?

A. Not just him but he goes on to say in that paragraph on page 255: "To show the Natives in the Bay of Plenty district that the agent for the Crown has not deceived them and that the Government has not been politically inconsistent in taking confiscation lands," so he's challenging that award to Ngāti Awa-

Q. On the basis of this protest that has been put up by Te Whakatōhea.

A. Yes.

Q. But of course as your report says that appeal/rehearing –

A. Yes.

Q. – in fact, it was intended to be possibly a rehearing – that never happened.

A. No. It's like the issue with the wives.

Q. It just falls by the wayside.

A. Yes.

Q. One of the earlier things that Wilson did with regards to the Compensation Court is that he organised a survey for the Te Arawa military settlers land for them. Is that correct?

A. I'm not sure if he did it but he may have done it. Did I say he did it?

Q. I'm not sure. It was organised. Shall we say, the Crown organised a survey for the land for the Te Arawa military settlers from within the-

A. Yes, it happens a little bit later because that military service is a little bit further on. It's not part of the initial confiscation.

Q. Right.

A. That comes when they need Te Arawa to be there for Te Kooti's return.

Q. Okay. But the Confiscation Court is ongoing at this time. People are still claiming for compensation lands within the district. Some claims are still live and may even concern the Te Arawa military settler blocks.

A. But Te Arawa's military awards have nothing to do with the Compensation Court. That's for military service.

Q. But nevertheless, it was part of the picture, wasn't it, because we couldn't have a double award? We couldn't have a claimant claiming for land where a Te Arawa military settler had already had an area surveyed off for them. My understanding is that the Crown was wanting to get those awards surveyed earlier in the process, to ensure that no claimant could make an award that would essentially take land that had been set aside for a military settler.

A. No. My understanding is that the compensation process is over and done with in 1867 and that anything else reserve-wise comes under the 1867 Confiscated Lands Act not the Compensation Court process. Two different processes at work.

Q. On that issue of the military settler awards, Wilson must have had something to do with the location of those awards, because it appears to create a boundary around what is essentially his Pākihi block. Did you notice that or you may have even said that in your report? Perhaps I could refer to this particular map here which is the confiscation maps. My understanding is that the red is the Te Arawa military awards and the interior roughly equates to Wilson's Pākihi block.

JUDGE DOOGAN TO MS CLARK – #A012(c)(1) MAP (15:56:21)

Q. Yes, so do you see a link between those two the Pākihi block and the Te Arawa military settler awards?

A. The bit that lies in the middle of those military awards is labelled on early plans as Stack's claim. So that's the part of the Pākihi transaction that seems to have been designated early on to Stack but I don't know if that carries on with confiscation. It may do. It may have been the part of land awarded to Stack. I don't know off the top of my head enough about how the locality for Te Arawa military awards were located on the ground.

Q. Thank you. I won't push that point too much further. But the land that was awarded to Stack, wasn't that the same land that was awarded to Wilson and Brown?

A. No, I mean the whole area between the Waioeka and Waiotahi rivers is the Pākihi block. But the claim that Wilson ended up getting it's at Hikutaia which is bounds the Waioeka river. It's beside the Waioeka river rather than the bit that's awarded to Stack.

Q. Okay.

A. I'll see if I can find it on a map in the report.

Q. I'm sorry, I don't have a further reference for you Ms Luiten. It hasn't made it through to my notes.

A. In here you've got this 1643 the inside that looks like the award, the old land claim of James Stack. We're looking at –

JUDGE DOOGAN TO JANE LUITEN – PLATE 41

A. J A Wilson's land is this block here which runs along the river.

Q. All right, thank you.

JUDGE DOOGAN TO JANE LUITEN – #A012 PAGE 57

A. James Stack his claim is this bit here.

Q. All right.

A. Wilson's bit that he gets is along the Waioeka river here. I don't know what happens to James Stack's claim. I didn't follow that, how it turned in from his claim into something that was subsequently partitioned or subdivided whether he sold it.

Q. Okay.

A. Yes, I'm not sure.

Q. All right.

A. Thank you.

Q. Okay, thank you. I'll move on from that point for now. Let's go to page 251 because I wanted to finish off the discussion that occurred at the start of the Compensation Court which was concerning the legalities of the Compensation Court.

WITNESS REFERRED TO #A012 PAGE 251

Q. We know from our prior discussion that the government's original plan had been to concentrate claimants on to a single reserve much like that for surrendered rebels, you say that in your report. That was that early survey that he did for the compensation claims. Is that correct? I'm on page 251 and I'm in the third paragraph on that page.

A. Yes. In October 1866 he's telling Fenton that he set aside this reserve –

Q. Okay.

A. – and six months later he's telling Pollen about the 2,000 acres reserved for compensation at Waiaua.

Q. Okay. Is that one in the same thing?

A. I think so. That's how I took it.

Q. Okay, thank you. At the top of the last paragraph there, if we could just explore what's going on here: "Wilson had been taken aback by Fenton's response that the court would require him to reserve to compensation claimants their own land," and down at the footnote there at 818: "According to Wilson, Fenton had reacted: 'Don't suppose that the Government is always right, or that it always acts in a legal manner. Neither have I anything to do with your instructions, or with private arrangements you may make; but until the Government goes to the Supreme Court and there obtains a judgment overruling the Compensation Court, you cannot take the lands of loyal persons unless you pay them money.'" A little bit further on, just to finish this off and then I'll get you to comment. At page 252 if we could go on a little bit further to the bottom of the second paragraph on that page: "Wilson was further disconcerted by Judge Smith's opinion that the Crown's survey and allotment to date was 'quite illegal' and that the onus was on the Crown agent to locate successful claimants on their own land 'even though it

may be in the possession of a military settler.'" What's going on here? Could you summarise briefly?

A. He comes down and thinks he can put everybody on a 2,000 acre reserve.

Q. Yes.

A. Fenton says: "No, actually there's an onus to compensate successful claimants with their own land," that's the first bit. Fenton is actually telling him, I think that: "Don't suppose what the government's instructed you to do is legal." And then the second point goes the pre-allocation by Wilson of parcels within his settlement to satisfy compensation claimants and Smith says: "No, actually you have to under the law satisfy those claims with their own land."

Q. They're essentially questions about whether the Compensation Court even has the authority to do what it's doing, isn't it?

A. That's how I read it. If you go on Judge Smith's 'scruples' about the blanket confiscation that quote: "It would be impossible to bring evidence to convince the court that the whole of the Bay of Plenty district is required for purposes of military settlement," goes to the heart of the question that was raised earlier about the legality of blanket confiscation under that 1863 Act. If you can't prove that the whole district is required for military settlement then, is that legal?

Q. Yes. This is being questioned by the judges or it's essentially being said by the judges to have been illegal I think.

A. Yes.

Q. It's not even because it's been said to have been illegal. And then if we go on further from where you just read: "The Under Secretary of Native Department William Rolleston put it: 'As a matter of fact all the land is taken for settlement,'" so there he is referring to the fact that not only I'd they declare the district to be in rebellion but at the same time they took the whole district which they actually weren't allowed to do under that law.

A. It would be legally challengeable but of course it never was.

Q. Yes, because they have a solution for the problem, don't they, and that's what they refer to a little bit further on in that paragraph. They essentially

figure out that the solution to the problem is to get another Order in Council in place and the Order in Council features boundaries which Wilson drafted on Smith's advice and they essentially try to fix the problem through an Order in Council. Is that what's going on at the end of that paragraph?

A. I think so, yes.

Q. Okay, thank you. We've certainly pressed the point of the Old Land Claims throughout the discussion over the last couple of days but there's one final sort of end to the Old Land Claims saga in this district which I don't think we've fully established yet, which is that Wilson essentially uses the raupatu to finalise matters with respect to his Old Land Claim, doesn't he?

JUDGE DOOGAN TO MS CLARK – CLARIFICATION

Q. But Wilson Jnr takes the opportunity as Crown agent to finalise this. The first point is that his father's claim, Wilson Snr's claim fell within the confiscation area. That's correct, isn't it?

A. Correct. Although the Crown abandons the claim. That's how it's dealt with, the Crown abandons the confiscation with respect to his claim.

Q. Yes, and that's essentially their way of saying: "You can have the claim. We'll abandon it. We took it at first but now we'll abandon it, you can have it." That's what's going on there, isn't it?

A. Yes.

Q. Yes. So that's good news for Wilson, isn't it?

A. Yes. There's a little bit of speculation about how Wilson is going to get that land whether the Crown will abandon the area or whether Wilson submits a compensation claim and eventually it's dealt with by abandoning the area.

Q. Yes, but no doubt Wilson would have lobbied for that because to have the Crown agent making his own compensation claim to the court would have not been a good look.

A. No.

Q. It's dealt with behind the scenes in other words, would you agree?

A. Yes.

Q. His particular claim is not yet surveyed at this point, is it? We're talking here, or I should say Wilson Snr's claim is not yet surveyed at this point and we're talking at the beginning of January 1867 before the Compensation Court has started. Do you agree with that?

A. I would agree with that.

Q. It's in Wilson's interest to get this tidied up and sorted before the Compensation Court starts and to do that (and this is referred to on page 56) he hurriedly organises for the Crown to undertake a survey of the area of his Old Land Claim. Is that what happens?

A. The surveyor's finished by January 1867, yes.

Q. You say on page 56: "In charge of arranging matters on the ground, Wilson would have been the first to be apprised of the government's decision to 'abandon' his father's claim. Indeed, in an extraordinary conflict of interest, he may have overseen the survey, the plan of which was deposited at the Survey Office on 14 January 1867," so it sounds like he organised the survey. This means that by the time the Court opens he was able to say that that particular area was renounced. But that effectively was making his claim safe, wasn't it, from any applications that may have come for that area of land in the Compensation Court. Would you agree with that?

A. I don't think he was as interested as making the land safe from claim as he was interested in finally getting the Crown grant issued which is what his father had been waiting for since mai rānō **forever**. He was not particularly interested or not not interested but not worried about claims because he used his father's purchase deed to actually contest claims not just to his little bit but the entire surveyed Pākihi purchase.

Q. Okay, thank you for clarifying that. He was finally able to get that Crown grant. With regards to the Old Land Claims, he also gave a helping hand to other people or organisations, so as Crown agent working behind the scenes, he arranged for his boss, Frederick Whittaker, to have a successful compensation claim. Is that correct and can you explain what that was based on?

A. Whittaker has an Old Land Claim but he doesn't prosecute it in 1844 before the Land Claims Commission so it's lapsed. It doesn't resulted in

an award in 1844. But he brings it back in the context of confiscation and that's an out of Court settlement between him and Wilson.

Q. Yes.

A. He is a big man by that stage. He is Superintendent or whatever role. He switches between the two. But he's in a position of authority with Wilson.

Q. Thank you. That's all arranged between Wilson and Whittaker directly and no doubt rubber-stamped by the Court. You'd agree?

A. Yes.

Q. And then it was a similar scenario with regards to the Roman Catholic Church having quite a dubious claim to a particular area of land that Wilson is then able to in his role as Crown agent. Yes, this is a claim that stemmed, I'm not sure if that's stemmed back to the Old Land Claims Commission, but he was able to make a compensation award for the Roman Catholic Church as well.

A. But the Roman Catholic Church never even prosecuted the claim before the Land Claims Commission because that transaction was based in 1844 I believe. I can't find it right here now but it's in the report.

Q. Okay, thank you. Moving on now to the Parish Reserves.

JUDGE DOOGAN ADDRESSES MS CLARK – MICROBREAK (16:14:04)

HEARING ADJOURNS: 4.14 PM

HEARING RESUMES: 4.18 PM

MS CLARK ADDRESSES JUDGE DOOGAN – HAKARAIA TE RAU PAGES 116, 155-157 (16:18:44)

(16:19) MS CLARK TO JANE LUITEN: (CONTINUES)

A. Sorry, the Catholic purchase deed for Ōpōtiki was 1841 and the military awards to Te Arawa were not surveyed till 1871, so well after the Compensation Court.

Q. Okay. Do you mean you're referring to Stack's claim?

A. I was referring to your question about the military awards not being available for compensation.

Q. Okay. When did you say they were surveyed, sorry?

A. 1871.

Q. 1871. They didn't cross over with the awards that were being made at the Compensation Court.

A. They fall into that Pākihi area, so again any claims in that area would have been debarred.

Q. Because of the father's deed.

A. Because of the Pākihi deed, yes.

Q. Okay, thank you. The Parish Reserves were not part of Wilson's original plan for reserves in the district, were they?

A. No.

Q. Wilson had only ever intended the reserve would be across at Ōpape. It's correct, isn't it, that the rangatira Hira Te Popo was instrumental in having these reserves created. Is that correct?

A. Yes.

Q. That was through his direct negotiations with McLean.

A. I believe so.

Q. Hira Te Popo was the resistance fighter that essentially held out the longest against the Crown. Is that also your understanding?

A. That's my understanding.

Q. And yet, he was able to negotiate a special reserves award being some areas of the Parish Reserves.

A. Correct.

Q. That again is an example of that inconsistency of applied Crown policy here. We apparently have a resistance leader who is able to get special treatment's not the right word but an exceptional treatment or a treatment that was not planned previously under the Crown's policy and discretion here.

A. Correct.

Q. Hira Te Popo for example had interests in land blocks in the Parish Reserves. At the time of defining and putting names on titles, he

also an interest in the Ngāti Ira blocks on the Ōpape Reserve, didn't he? He was represented in both places, is that correct?

A. That comes later. Those people who win further allocations in the Parish of Waioeka are in 1883 incorporated into the beneficial ownership for the Ōpape Reserve.

Q. Did they win them or did they negotiate them?

A. Negotiate.

Q. In fact, on the point of those negotiations the awards had effectively been agree even before Hira Te Popo had formerly surrendered. Is that also your understanding?

A. I'm not sure.

Q. I've got a note here for page 147. My note says that negotiations were occurring in 1870 and the lots had already been awarded to Ngāti Ira and were under cultivation before Ngāti Ira formally surrendered in 1871. Is that what happened? It's what my notes say but I'll let you respond.

A. I don't know, yes. Highly possible.

Q. Okay. That's a point that we can check and no doubt address-

A. I mean just days after his formal surrender to McLean, Clark is reporting on his thriving crops which suggests he's in situ growing food.

Q. Yes, I mean that's quite possibly where I made that link and got that from.

A. Yes.

Q. It's correct, isn't it, that the Crown are very impressed with what Hira Te Popo and Ngāti Ira are doing in the reserves that they have been given Lot 336 and Lot 393 that they decide to award them further reserves. Is that correct?

A. Correct.

Q. Those further reserves being Lots 337 and 335. Lot 337 and Lot 335 these were examples of their further agreements that were made with McLean during his 1973 visit that we referred to earlier. Is that correct?

A. Correct.

Q. Is this another example of 'a pencil written note' was made to award Ngāti Ira these additional lots and then it misfiled and forgotten about it and no formalities ever took place with regards to those particular lots?

A. Correct. I wouldn't have found those promises. It was in an unrelated pensions file just sitting there. The pensions file was Tiwai Piahana's pension file and that was a paper sitting amongst it. It was quite a surprise.

Q. It's very odd. But you'd agree that shows the lack of care that was obviously taken by Crown officials around these reserves at that time?

A. That's how I interpret it. Another aspect of those extra promises is that meeting with McLean happens just before that inaugural Native Land Court sitting at Ōpōtiki where the Crown is trying to coax Te Whakatōhea into Court to have their title determined to their lands ā-waho and they are not successful on that occasion. Te Whakatōhea boycott and keep their lands out of it. But it's those further concessions of reserves, if you like, they're all part of that package of currying co-operation. Again, there's no direct evidence of that but that seems like more than a coincidence to me.

Q. That the Government was particularly receptive at that time because it had an ulterior motive for what it was wanting to achieve in the ā-waho blocks.

A. Mmm.

Q. Thank you for making that link. It didn't help them to be any more careful with regards to the promises they actually did make. I wanted to highlight the effect that this carelessness of recording these promises that were made had on Te Whakatōhea and those who were in possession of these Parish Reserves. Is that something you'd want to speak to generally? Well, the example I had in mind, and this is possibly tied to the point we made earlier, with regards to the fact that the Crown perpetuated the idea that Whakatōhea were only in possession of these reserves on a conditional basis and that seemed to be an understanding that spread throughout government. That had the effect that later Whakatōhea found themselves challenged by, for example, councils who wanted to do things on their land or generally people questioning their entitlement to actually be on these blocks, including the Crown questioning their entitlement to be on these blocks. Is that what occurred in a number of these Parish Reserves?

A. That's what's in the report, yes. For some of them I can't recall, just ones off the top of my head, but they were only marked on the district plans. There's absolutely no record of any formal or informal reservation of them. I think Ngāti Ira's one I set out there is one of those ones from 1873 that there's no record of ever having it reserved for the minutes. It comes back to the Native Land Court in the end and who has been processing succession as if the land belongs to them and it's only that that actually saves them or saved the title for that land for them.

Q. Members of the judiciary highlighting to the Crown that: "We have a problem here. We've processed a whole lot of successions but we still have no title," and having to advocate to the Crown for finally awarding a title to these blocks.

A. In that particular instance, it's not so much that. It's the Crown having absolutely no record of a reservation, and Wilson's swearing black and blue it was never made. But the Court having a sense that it must have been made because they have been processing the successions to the reserve and Ngāti Ira are able to get title eventually under the 1904 Act because of that acknowledgement by the Native Land Court judiciary that that's been happening.

Q. Thank you. But not without a considerable amount of stress occurring for them in the interim. Would you agree?

A. Definitely. To the point of hiring counsel.

Q. In another example on another block, I don't think it was this particular block that we are talking about here, that's the Lot 337 and Lot 335 that we are talking about there where they had to acquire counsel, other examples of the stress that is caused is, for example, there was an example of a drain that the council wanted to place through someone's block.

A. Yes.

Q. We even have certain owners offering to purchase the block, all while knowing that they had been promised the block previously or understanding, but being so desperate to secure their rights to that block, that they actually offer to purchase the block.

A. That's on page 161 and it relates to Lot 340.

Q. Thank you. Do both of those factors relate to Lot340 the fact that council put a drain through their block without their permission and that they actually sought to purchase the block out of desperation?

A. Yes.

Q. Thank you and thank you for that reference as well.

A. You can see the drain on the illustration on page 160.

Q. 160.

A. Yes, it's running through Lot 340.

Q. Thank you. Obviously because their title was not assured, this could all take place at council's whim and behest without any consultation or permission gained from the owners. Is that correct?

A. In that occasion, the Commissioner of Crown Lands, he's saying that: "After making sure that this drain did not in any way interfere with any of the Native's improvements, I gave permission to the Ōpōtiki Waioeka Domain Board to cut that drain." He goes on to say: "The land as I stated above is a temporary Native Reserve was never gazetted but simply given to these rebels to occupy during good behaviour and I presume that the concession terminates with the death of the last of these Māoris, and the land will be Crown land, pure and simple." That's the way the Commissioner of Crown Lands see's the matter.

Q. Where were you reading from? What page were you reading from?

A. That's in 162 and that quote there.

Q. Thank you.

A. That's 1900. That's his understanding in 1900 the Commissioner of Crown Lands.

(16:33) JUDGE DOOGAN TO JANE LUITEN:

Q. Ms Luiten, on this map, where is Lot340? I am having trouble spotting it.

A. It is this one here.

Q. Is it one of the little ones?

A. Yes. It is only 21 acres and one acre each.

Q. Right, sorry. Yes, thank you.

A. That's one of the parcels where they got one acre each.

Q. All right, thank you. Is that the drain at the end near the river?

A. I believe so.

Q. Yes, thank you.

(16:33) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Is this an example of the block where, luckily enough, one of the original owners had retained his original pencilled list of the original owners and was able to produce that, and that saved the block in that instance. Is that that particular block?

A. Yes, that was Wi Akurangi. That is on page 163, Wi Akurangi shows him a pencilled list.

Q. The pattern that we see with these blocks is that they were at grave risk of losing them. It was only due to the tenacity of the owners in continuing to fight for their entitlements to these blocks, that they were eventually able to, after considerable obstacles, win out in the end and achieve the proper title to these blocks.

A. Correct.

Q. Some hapū received no Parish endowments at all, did they?

A. Correct.

Q. This particular issue flared in the case of Lot 311. Perhaps I'll leave that here because that can speak for itself, and the reference for that is page 165.

Moving on now to Chapter 6 which is the Ngāi Tai, Waiotahe and Awaawakino Reserves. Wilson's instruction with regards to these particular reserves and what became these particular reserves, and we have heard discussion of this earlier today, is that Wilson was under instruction that he was renounce all the land to the east of the Ōpape Reserve. Is that correct?

A. Correct.

Q. He said this very plainly on the first day of the Compensation Court.

A. Correct.

Q. But he reneged on that statement, didn't he?

A. Correct.

Q. It's correct, would you agree, that Wilson used that area to the east of the Ōpape Reserve as something of a bargaining chip where the claims of Ngāi Tai and Wi Kingi were concerned. Do you agree with that characterisation, he used it as a bargaining tool for Wi Kingi's claims?

Perhaps I should take that a little bit further. The starting point is that the Crown had renounced the area to the east of the Ōpape Reserve, but when Wi Kingi showed an interest in Ngāi Tai making claims to Waiaua and land in the Waiaua/Tirohanga area, this caused Wilson to change his intentions with regards to land to the east, didn't it?

A. Yes, and he signals that early on. Because Wiremu Kingi raises these concerns well before the Compensation Court arrives.

Q. He actually threatens Wi Kingi, doesn't he? What does he say?

A. I'm trying to find the reference to what he says.

Q. Okay. We are in Chapter 6 and I have a note for page 211 where Wilson threatens Wi Kingi.

A. I think it's earlier in the Ōpape Reserve section which I will just try and find quickly. The challenge comes when Wilson first relocates Te Whakatōhea at Ōpape. Okay, we're on page 68 to 69.

Q. Yes.

A. Wilson is reporting to Whitaker about having placed Te Whakatōhea at Ōpape and the 3rd reason he gives why he puts them there is: "Because on the 12 ultimo Wiremu Kingi of Ngaitai renounced his claim to Ōpape (a poor one) on account of his peoples former misdeeds."

Q. Where are you reading from, which page?

A. I'm reading the second quote, number three (3rd) on page 68.

Q. Thank you.

A. He's had an ongoing altercation with Wiremu Kingi about placing Te Whakatōhea at Ōpape. And then if you go to the next page, which is about a little bit into the second paragraph: "To do so, Wilson had had to browbeat the Crown's Ngai Tai ally, Wiremu Kingi, who claimed mana over the coastal area as far as Tirohanga and who claimed to have petitioned Governor Grey about the confiscation of this area. Wilson is dismissive of this claim and then he points out to Wiremu Kingi about his tribe's participation in the 1864 war and he threatens him with confiscation

for these 'former faults' if he persists in his claim to Waiaua. Wiremu Kingi does persist in claiming compensation for Waiaua and it's at that point I think Wilson tells him: "If you are successful in your award for Waiaua – This is what Wiremu Kingi is telling the Court that he was threatened by Wilson "if he was successful in his claim in Waiaua his lands would be included in the confiscation" and that's what happens.

Q. But Wi Kingi wasn't really successful in his claims for Waiaua.

A. He gets awarded scrip for his claims at Waiaua.

Q. He gets awarded scrip but not land which would've been ultimately what he wanted.

A. He couldn't have got land because it had been designated as a reserve for Te Whakatōhea, so he gets an award of scrip.

Q. But he claimed as far as Tirohanga and I don't think the Ōpape Reserve goes as far as Tirohanga.

A. No, it doesn't. It borders it.

Q. The fact that the Ōpape Reserve was in place wasn't the only – well, there was still other land that could have been awarded to Wi Kingi but wasn't. He claimed as far as Tirohanga. He claimed his interest went as far as Tirohanga. Land was available as far as Tirohanga in theory.

A. I think Wilson was set against him getting any land further west of Tarakeha Point.

Q. Thank you. Apart from his award for scrip, he wasn't successful in his claim. But still we see that Ngāi Tai reserves – essentially the confiscation line was extended and it encompassed-

A. To Tōrere Beach.

Q. To Tōrere Beach and it encompassed that Ngāi Tai area.

A. Correct.

Q. Just to explore a little bit about what might have happened there. The threat that you refer to is I think on page 211 and that was the page number that I refer to but thank you very much for taking us to that place in the earlier chapter. And at 211, we have quite a helpful quote there and I know that we're going to it: "At the Ōpōtiki court Mr Wilson said both in & out of court that all the land east of Tarakeha was abandoned. The Eastward went home," so presumably, the Ngāi Tai went home. "In the

claim heard at Ōpōtiki, our land was described, but the trial was for Waiaua. Mr Wilson has since told me that if a judgment was given in my favour for Waiaua, he would take the land beyond Tarakeha," which he did. I'm just highlighting the fact that, apart from the award for scrip, he actually wasn't successful in his claims for Waiaua so something appears to have gone on behind the scenes here, an agreement, an arrangement organised with Wilson, and you can tell me if you agree.

What it seems to have consisted of is that Wi Kingi was paid out scrip. He was also given certain areas in the Parish blocks, so Wilson was able to get an award for him there as a rangatira. He later, and you may or may not agree that this is related, but Wi Kingi goes on to become a native assessor. I think he works for the Government for a significant period thereafter so there's obviously a relationship being built. But an agreement is reached that is obviously convenient to the Crown and convenient to Ngāi Tai to a certain extent, where Wilson awards the Waiohoata Reserve to Ngāi Tai loyals. It's no skin off the Crown's nose because they were going to leave that land anyway and from Wi Kingi's perspective, he's secured his tribal lands for the Ngāi Tai loyals. Am I on the right track that there seems to be an agreement that has occurred behind the scenes and I'm trying to highlight what the motivations for this agreement may have been?

WITNESS REFERS TO #A012, PAGE 211

A. Again, we come to murky kind of Crown agent dealings. I think there is a deal going down here and again we can't be sure what it is. Wi Kingi's claim to Waiaua annoys Wilson. The award of scrip annoys Wilson and it's at that point that the confiscation boundary gets shifted. The award of scrip has nothing to do with Wilson, he's mad about it. The sections that Wi Kingi buys, spends his scrip money on, are the town sections in Ōpōtiki so that's as a direct result of being given cash scrip or scrip. But the Crown also throws in complimentary town sections as well because he's an ally, so those are again separate.

But the deal with Waiohoata and Awaawakino is much more murkier to work out what's going on. If you look at the Compensation Court minutes when they talk about Ngāi Tai's involvement in the 1864 battle of

Kaokaoroa they're talking about a 1:2 ratio; that's one being loyal and two being Kīngitanga. You're talking about only a third of Ngāi Tai, I'm going to use those terms 'loyal and rebel' because that's how they were talked about in the day. But there's a considerable portion of Ngāi Tai who supported the Kīngitanga.

When it comes to the Compensation Court, if you go to page 211 and you get that cryptic minute when this claim first comes up in March when Wi Kingi first brings this claim in March 1867 at the end of that first paragraph: "In the Waiaua case claimant agrees to accept a fair proportion of the lands of the hapū, supposing that the Waiaua land is not awarded to Wi Kingi," and then the decision is reserved. And you think, what's going on here? What lands are the Court referring to?

Between that March hearing and the next one that comes up in September when that claim is heard that confiscation boundary has been moved and now Wi Kingi's finding he has to prosecute a claim for these lands as far as Tōrere Beach. The judgment in September awards to the loyal portion of the tribe – and there's only 23 men listed as beneficiaries for that loyal portion, all the rest are women and children –the larger portion of Waiohoata that's the most furthest east.

Q. Yes.

A. But in court, Kingi is saying don't take Hakuranui that most eastern portion near Tōrere for rebellion because loyals would suffer, the land is all one. He's saying in court don't take that part because the loyals have their land in that part.

Q. By that part, can I just clarify, are you meaning this is beyond Waiohoata?

A. No. He's saying don't take Hakuranui which is by Tōrere Beach which becomes Waiohoata –

Q. Thank you.

A. – because the loyals would suffer. He says conversely the rebels won't suffer by the government taking Awaawakino because I am a principal owner.

Q. Where are you reading from?

A. I've extracted this in anticipation of these questions to try and explain to you –

Q. Thank you.

A. – there's a deal going down here and I'm trying to work out. I've taken this from the Compensation Court minutes at the time.

Q. Thank you. It's not from a page of your report. You're extrapolating.

A. No.

Q. Thank you.

A. He says: "My impression is that those Ngāi Tai who have been in rebellion would not suffer much by the taking of this side (i.e., Awaawakino), as I am the principal owner." He's saying don't take that Waiohoata because the loyals that's where their interests are; take Awaawakino because that's where I'm principal owner. But the whole thing is turned around because out this deal out of court he gets awarded Waiohoata for the loyal contingent of Ngāi Tai and the rebel which is two thirds of Ngāi Tai don't get anything.

That Awaawakino Reserve remains government land until Wilson goes back in 1872 and arranges that reserve for the people of Ngāi Tai who have missed out through that huge compensation award to Ngāi Tai. Yes, Wi Kingi does come out of it. Even though the confiscation line has been moved, much to his consternation by Wilson, a deal goes down where he ends up with that Waiohoata Reserve for a third of Ngāi Tai for their benefit and then the two thirds who have been implicated in the earlier rebellion, not the Crown's invasion of 1865 but the earlier rebellion, they end up with Awaawakino Reserve as a government provision for the rest of the tribe from confiscation.

Again, it's one of these deals that Wilson brokers because he is a consummate broker –

Q. Yes.

A. – that we cannot point to any evidence to say for sure that that's what happened but something's happened.

Q. Thank you that's very enlightening.

JUDGE DOOGAN TO JANE LUITEN – FOOTNOTE 675, PAGE 211

Q. A couple of points I'll quickly pick up on there.

JUDGE DOOGAN TO MS CLARK – TIMING

Q. I just wanted to pick up on a couple of points from what you said. Ngāi Tai had absolutely nothing to do with the murder of Völkner and Fulloon. Is that correct?

A. I believe it's correct.

Q. This earlier rebellion that you are referring to that had actually been pardoned by the peace proclamation and to say they had been in rebellion was to harking back to something that had already been pardoned.

A. I guess that depends on your interpretation of the peace proclamation. Because you could read it or interpret it as saying: “All former rebellion against the Crown has been forgiven, except in the districts where these atrocities have taken place.” It certainly seems to be interpreted that way in the Bay of Plenty.

Q. Okay.

(16:55) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, could you just say that again please?

A. The peace proclamation pardons all past rebellion, except in the case where these atrocities have happened. You could interpret that and certainly I think it was interpreted in the Bay of Plenty as elsewhere they’ve been pardoned but not where these atrocities have happened.

Q. There was a reservation in respect of these particular murders. But is there a wider reservation in the peace proclamation about rebellion or atrocities generally? To which are you referring, murders or?

A. I think that the Bay of Plenty is branded as an area by this stage that is responsible for atrocities and the stigma of rebellion it's quite clear that it applies from the earlier actions, and particularly I mean the Ngāi Tai is a case and point. Wilson is not suggesting that they have been implicated in Völkner’s murder. He is referring back to the 1864 engagement at Kaokaoroa and that’s the case for a lot of people.

(16:57) MR CLARK TO JANE LUITEN: (CONTINUES)

Q. For everyone else under the Compensation Court, however, the reference to being in rebellion was with regards to the Crown’s invasion

following the murder of Völkner. But here, in the case of Ngāi Tai, their rebellion harks back to something earlier, doesn't it?

A. I don't know.

Q. Well, the Crown says that.

A. No, I think that they are. I think the implication of rebellion does go back earlier. I mean you get Rakuraku standing up in the Compensation Court saying "we have all been hauhau's, the whole lot of us" but he wasn't involved in Völkner's murder at all –

Q. Okay.

A. – but everybody's been tarred with that rebellion brush.

Q. The final point that I want to make with regards to this chapter is the Awaawakino Reserve, were you here for the evidence of Professor Williams or did you hear the evidence of Professor Williams?

A. No.

Q. Are you aware that in the 1850s an agreement was brokered by some Māori catechists between Ngāi Tai and Whakatōhea in an effort to stop fighting between the two tribes where they agreed to sort of a buffer zone between them which went roughly from Tarakeha to Te Rangi? Are you aware of that agreement from the 1850s?

A. I'm aware of the dispute and I'm aware of the agreement. That dispute was I think Ngāti Rua had their pā at Ōpape burnt down around 1841 and the dispute resolution happened in 1843. But what's really interesting is that the boundary that's laid down time and time again and subsequent Native Land legislation is set at Tarakeha. But there are good reasons for thinking, and certainly Wiremu Kingi suggests, that that boundary was not at Tarakeha. That mediated boundary was set further towards Waiaua River, and that Te Whakatōhea subsequently moved to Tarakeha in the intervening period between 1840 and 1860.

Q. The evidence that Professor Williams puts across on his report is that the customary interest of Whakatōhea extend as far as Te Rangi. They don't stop at Tarakeha. Are you aware that his report says that?

A. Sure. I'm aware of the customary dispute.

Q. The reason that I'm raising this is that there appears to be a link between the Awaawakino block and what I mentioned to you earlier which was the

agreement that I understand it was brokered in 1850, hopefully I have those dates right, with the Māori catechists that there would be a buffer zone between Tarakeha and Te Rangi and that buffer zone appears to equate roughly with the area of the Awaawakino Reserve. Do you see a link between those two matters?

A. I've never thought of it.

Q. Okay. I probably can't take that any further.

MS CLARK ADDRESSES JUDGE CLARK – CROSS-EXAMINATION TIMETABLE (17:00:59)

MR LINKHORN ADDRESSES JUDGE DOOGAN – CROWN CROSS-EXAMINATION TIMETABLE (17:01:24)

JUDGE DOOGAN ADDRESSES COUNSEL – FURTHER WITNESS QUESTIONS (17:02:17)

KARAKIA WHAKAMUTUNGA (PROFESSOR TOM ROA)

HEARING ADJOURNS: 5.05 PM

HEARING CONCLUDES ON FRIDAY 22 NOVEMBER 2024 AT 8.57 AM

KARAKIA TĪMATANGA (PROFESSOR TOM ROA)

(08:57) JUDGE DOOGAN: (MIHI)

Mōrena koutou. He mihi tēnei ki a koe Tom, nāu i whakakākahu tā tātou nohoanga ki te korowai o te atua, nō reira tēnā koe. He wiki roa all right so nau mai everybody. **Good morning. I want to thank you Tom for cloaked our sitting with the blessings of god and so thank you. It's been a long week.**

JUDGE DOOGAN ADDRESSES JANE LUITEN – MIHI, ACKNOWLEDGEMENT (08:58:12)

JUDGE DOOGAN ADDRESSES MS CLARK – CROSS-EXAMINATION TIMETABLE (08:58:33)

(08:58) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. Mōrena **morning** Ms Luiten. Welcome back. A couple of matters I wanted to highlight with regards to the chapter 5. There is essentially two runs at the ownership list for this block, aren't there, 1867 and 1872 when the list is revised. Is that correct?

A. Correct.

Q. In both instances, Wilson plays are very key role in enforcing who goes on to those ownership lists. Is that correct?

A. In compiling those ownership lists, yes.

Q. What we see with regards to the first ownership list is that is negotiated with certain people, being Rakuraku, the Tūhoe rangatira, and some members of the Mokomoko whānau and others. They comprise one group of negotiators in 1867 or 1866 I think it was, late 1866?

A. Christmas, yes.

Q. Christmas 1866. And then by the time we get to the following ownership list, we have quite a different set of people negotiating, don't we?

A. Yes.

Q. The context of that following list is there's been considerable war and disruption in the Ōhiwa area and the wider area of course, as we know, in the interim and we have one the resistance fighter's has come in so it opens up this new negotiation with Wilson. Is that essentially what occurred?

A. Yes. He opens up the question of beneficial ownership to those reserves.

Q. At that point in time, the ownership lists increases in size.

A. It increases in size but it also changes in composition.

Q. Some people are left out. Some people are brought in.

A. Yes. My impression is, and it's an impression, is that the lists are compiled from the people who are actually there on the day on both occasions.

Q. I think you say in report you list a number of different places where these people come from, a number of different connections these people have, a real diversity of people.

A. Correct.

Q. As you have already said, that wasn't at the insistence of Wilson. But along side the negotiation of this quite diverse ownership list, I think you highlight that throughout the reserve is consistently referred to as a Te Ūpokorehe reserve for the benefits of members of Te Ūpokorehe and it's actually gazetted as such. That's on page 182 and 183 where it's gazetted as names of members of the Ūpokorehe hapū for whom the Hiwarau block is granted. Where I'm getting to there is despite this eclectic mix, I think that's your words, of locals that have been included in the award, it's continually and constantly by the Crown referred to as an award for Te Ūpokorehe. Is that correct?

A. That's correct. Wilson continues to assert that throughout the rest of the century to the likes of Te Warana Mokomoko.

Q. Yes, and we have Te Warana who is I think you say he was a youth at the time of the creation of the reserve and this is what's occurring not only in this block, but the attempts to define relative interests or the applications to define relative interests, that takes place much later on. Would you be able to say the date that that occurs roughly?

A. I think it's 1898 from memory.

Q. It's at that time that Te Warana in particular makes an application to the court to define relative interest. Is it correct that he appears to take this opportunity to try to bring the ownership list essentially in line with who he perceives to actually be of Te Ūpokorehe descent?

A. Correct.

Q. You cite extensively the arguments regarding that but the outcome is essentially that the court recognises at that time that this is a list that was made not actually for the benefits of members of Te Ūpokorehe but for quite a diverse range of people. The court recognises and restates that at the time of the relative interests' application, doesn't it?

A. The court in effect says that the name Te Ūpokorehe is used to describe the people who have been displaced and need to be resettled in the aftermath of confiscation.

Q. Okay.

A. In effect, denies the customary basis of the award that there's any customary basis to it.

Q. Thank you. And then something which to me appeared very random happens, he makes the award, the judge at that time makes the award not on the basis of what he actually had applied for, what Te Warana had actually applied for, but on a completely different basis. He does award relative interests but it is to males versus females versus children. Where did this suddenly come from?

A. This has certainly never ever been part of the confiscation reserves arrangement and it's objected to around this time when they tried to do it at Ōpape as well. It's always been an understanding that the interests were equal. But I imagine it comes from other Native Land Court practice with memorial land outside of confiscation districts where that was a common practice to award shares on the basis of your gender or your age. It's another case of these confiscation reserves which had been set aside with specific undertakings by the end of the century just treated as normal memorial lands are being treated outside and the rest of New Zealand.

(09:06) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, Ms Luiten, just to go back one question if you don't mind. In your answer to Ms Clark you said: "In relation to the award, the Court finally made that there was no customary basis for it." Could you just expand a little bit on that or just clarify what you are meaning by that?

A. Te Warana Mokomoko in that relative interest case, he goes to great lengths to show the whakapapa of his list which he calls the true Ūpokorehe to establish their whakapapa to Ūpokorehe. The Court tells him in the process that whakapapa has nothing to do with this. I can find the page. It kind of cuts him short. Let me find the page.

MS CLARK TO JANE LUITEN – #A012, PAGE 197

A. It's a little bit before that on page 193. In that: "Mokomoko was cut short by the court when he began to speak of Taikurere," and the quote from the minutes is: "Court explained that ancestral title is not involved, as this is confiscated land returned by Government to certain specified persons – this inquiry is to ascertain the proper relative interests of those persons, as it had not been stated in the grant whether their shares were equal or otherwise." So that's in the course of the hearing he's told that ancestry has nothing to do with it but he persists with his list.

And then on page 195, you have Judge Johnson again disagreeing with Wilson's judgment. Because Judge Wilson has found with earlier succession cases that he will not award the interests of deceased people outside of Te Ūpokorehe and this is part of his reassurances to Te Warana Mokomoko that his award has been made for Te Ūpokorehe. In previous succession cases, that's why they have to make this link to Te Ūpokorehe. But then in this relative interest case, again Judge Johnson disagrees with Judge Wilson's judgment, and this is page 195 that quotation: "If the land had been granted 'in trust for members of the Ūpokorehe Tribe', that might have been the correct interpretation, but it had been granted 'in trust to the members of the Ūpokorehe Tribe whose names are included in the Schedule.'" He's basically leading to the end ruling that ancestry doesn't come into it and that ruling is on page 197 I think: "This Court is of opinion that, when adopting the name Upokorehe as a collective name for the fifty-six

persons in the schedule of owners, the Compensation Court & Crown Agent – again, by this stage the Court is thinking that this is a Compensation Court matter when it's not; this is a reserve; but time has gone on and nobody can remember – they did so merely to distinguish a certain set of people who had lived in the Ōhiwa Waiotahe district." These are displaced residents rather than any basis in whakapapa and that's the court's argument and ruling in terms of relative interests.

Q. All right, thank you.

(09:10) MS CLARK TO JANE LUITEN: (CONTINUES)

Q. The Court's ruling there does appear to be a reflection more closely of what actually did occur at the time of the creation of those ownership lists. Would you agree with that?

A. Yes.

Q. Thank you for mentioning with regards to the successions. I hadn't appreciated that in the interim between the ownership list been drawn up and this case that you're referring to here of Judge Johnson the relative interest case, I hadn't appreciated that in the interim Te Ūpokorehe had been applying to the court for succession and Wilson had been granting succession irrespective of whether that person was listed in the group of owners. Is that you were saying here?

Q. No. It's not Te Ūpokorehe, or it may be. The succession cases are what have begun to alarm the likes of Te Warana Mokomoko because succession is going to people wholly outside of Te Ūpokorehe. We can go through those, if you like, but I'll give you the gist of it. It is that people start applying for succession to interests of those owners that Te Ūpokorehe have never heard of and they protest and when Wilson is presiding over the Court he agrees with them. He tells them that it's only for Te Ūpokorehe but then Wilson has his own idea of who Te Ūpokorehe are which does not correspond with Te Ūpokorehe's ideas. For instance, Wilson regards Te Teira Haruru who is Te Kareke as Ūpokorehe. When Teira Haruru's interests are applied to – I'm going to go back and just make sure I get this right because it's important to the people to concerned.

Q. If you're able to say the page number.

A. Sure. It begins at page 189 and it begins with a succession application in 1879 and Judge Wilson is presiding. There's a further batch in 1881 and six of these are dismissed out of hand because they're not owners and that's a surprise to some of the people who think they are owners but they find out at that point that their not actually in the list. That's when the first succession is made outside of the group of Te Ūpokorehe.

There's a man who turns up who is claiming the interest on his mother's behalf to succeed to the interests of her deceased uncle, Wahaika, who is a cousin to Hemi Kakitu. He's lived on Hiwarau but he's from Tapuika and the Hiwarau trustees at that point are opposed to these applicants because they maintain that they've only just seen them that day, and that's Te Tiera Haruru making this opposition, but the order is made in their favour. So that's the first inkling the trustees of the reserve get of the implications of this individualisation of title and the naming of these individuals.

Q. Yes. That's understandable the order was made because they were owners because they had been included on that original owners list.

A. Yes, that's the first inkling that they get that this is not actually under the mana of Te Ūpokorehe.

Q. Yes.

A. Te Teira Haruru, he's Te Kareke, and Wilson thinks he belongs to Te Ūpokorehe, regards him as a leader of Te Ūpokorehe; he passes away in September 1886. Hemi Kakitu who is another person who Wilson regards as Ūpokorehe but people actually identify him with Te Karatehe of Tūhoe, he passes away in 1895. It's these things and a succession to these interests that leads to the relative interest application in 1898.

Q. Thank you I think that's very helpful.

A. I just want to make the point that early opposition to these successions going outside of Te Ūpokorehe are supported by the leaders, like Hemi Kakitu initially. But increasingly, the status of those leaders is brought into question by Te Ūpokorehe and that comes out in that 1898 hearing.

Q. Yes, and the status is brought into question on the ground of their links.

A. Whakapapa.

Q. Whakapapa thank you. I will leave that there because I know my friends will have further questions on that chapter for you. Thank you Ms Luiten.

A. Thank you.

JUDGE DOOGAN ADDRESSES ALL COUNSEL – TIMETABLING (09:17:15)

(09:20) MR SHARP TO JANE LUITEN:

Q. Tēnā koe Ms Luiten.

A. Tēnā koe.

Q. My name is Michael Sharp and I'm acting for some claimants on behalf of Ngāti Muriwai in these proceedings. I just want to initially just concentrate on the Ōpape Reservation and how that ended up. I know my friend Ms Clark has asked you about some of those issues in her questioning but I just want some further detail on some matters from your very useful report on that. If we just start on the original list in 1867 that's compiled by Wilson of Ōpape Reserve, you refer to the fact, at paragraph 72-73, that it wasn't intended to be anywhere less by the list of surrendered rebels basically as they came into the reserve.

A. Where are you? What's the page number?

Q. 72 and 73.

JUDGE DOOGAN MR SHARP – CLARIFICATION #A012, PAGE 72

Q. Now, in as far as how the lists are compiled by Wilson, I think you also refer in that part about clues to the Hiwarau, Hokianga Island Reserves where, although nominally people of Ūpokorehe, they were just a list of people that had ended up in that area. So that's a parallel that you drew.

A. They are the people who have surrendered by that time, and mostly from Waimana.

Q. Yes. Now the list by Wilson as divided up in the six hapū and Tony Walzl, I don't know if you heard his evidence earlier in the week, he said he doesn't know how Wilson picked those six hapū, whether they were imposed or not. Now at page 96 of your report you said: "It may not be completely accurate to call it a version of large natural grouping," an early

version, that there may be some input. Can you just explain to me what's your view on how did Wilson get those six hapū?

A. I think that's how he understood Te Whakatōhea. That would have been based on his time living there as a youth, possibly.

Q. Well, we've heard evidence that at 1840 there was, for example, more than 22 hapū in Whakatōhea and Professor Williams gave evidence earlier on in these proceedings that he thinks there was more than that. It would seem from the evidence that there was more than six hapū in Whakatōhea at that stage. Is that correct?

A. Yes. But for the purposes of how they saw themselves, of course, there are smaller hapū within those hapū, those six, but there is also evidence that Whakatōhea many of them they also agree with that description of themselves and identify as Ngāi Tama. If you take Ngāi Tama, for example, there are sections within Ngāi Tama who, on different occasions, identify differently. If you go to their partition when they partitioned Ōpape 1, there is reference there to smaller subdivisions of Ngāi Tama. But on the whole, they still identify as Ngāi Tamahaua the larger hapū.

Q. For example for Ngāi Tama one of the groups was Ngāi Tū, is that correct?

A. That's an older version of themselves.

Q. Yes.

A. Yes, that's where they come from.

Q. Well, that's one version. Can I just put it this way. When we have these groups the six groups later on, certainly the officials come to look at what they say they're described as sub-hapū. That's correct?

A. Correct.

Q. Sub-hapū is not a term in Māori tikanga or with Whakatōhea. That's correct?

A. Hapū?

Q. Sub-hapū.

A. I think they would use hapū.

Q. Yes, hapū. I guess the smaller associated hapū were still hapū within Whakatōhea's view or Whakatōhea tikanga. Is that correct?

A. That's correct. But there's still a phenomenon of constellation, if you like, of bigger hapū entities at work prior to 1865. You can see it throughout New Zealand. It's the whole phenomenon that the musket wars accelerates. It's a widening whanaungatanga, if you like, that's entrain before 1865. It's not to say that the constituent hapū lose their autonomy over their own immediate – they don't lose their mana within themselves but there is a constellation, and in Ngāpuhi they refer to them as papa hapū. I've seen it in different parts of New Zealand within Ngāti Haua just that people start identifying under a bigger identity and I don't think Te Whakatōhea is any exception to that phenomenon. That's my understanding of it.

Q. Yes, thank you. That's in the context between 1840 and 1865 for example that there's a lot of attrition due to musket wars, to the wars with the British, and I guess loss of land. Are you saying that as a reaction to that associated hapū are sort of collectivising together to survive?

A. That's putting a lot of things together. You're putting the musket wars and the British in one timeframe which is not the case. I think the confederation of small hapū into larger hapū entities is a Māori phenomenon, which is happening by the turn of the century in 1800. It's exacerbated by Amio whenua which began in 1800 the length and breadth of the country. It's a widening whanaungatanga **relationship** that comes with war and peace and it's entrain and it's accelerated by those wars from 1818 onwards. Because with each you have to unite in order to repel enemies but you also make peace with your enemies and cement that through marriages and in that process, you have a tribal confederation that's entrain well before 1840. That's how I see what's happening with Whakatōhea as well.

Q. It's almost a collectivisation of original hapū into groups for survival.

A. It's particular hapū entities coming under wider hapū umbrellas –

Q. Yes.

A. – and forming wider socio-political relationships and identities. It doesn't mean those constituent groups lose their mana that comes from a particular tupuna but it does mean it's a widening identity. I think also the bulk of Te Whakatōhea don't really have a problem with these six – not

the six. Te Ūpokorehe is different because Te Ūpokorehe is added later but the bulk of Te Whakatōhea don't really have a problem with the five hapū that are picked. We cannot know to what extent that was imposed on them. We can't know when they rocked up to Wilson and he said: "Pick one of these five hapū." We don't know how that went down. But there's not a big uproar about it post- those lists. Except with the exception of Ngāti Muriwai who object to the hegemony of Ngāti Rua.

Q. Because I guess at that stage it's only just a list, right. It's not any sort of subdivision of land or anything further than that. They're just listing people coming in.

A. It's listing people I think for the purposes of making sure they've accounted for all the displaced. Again it has no basis in custom.

Q. No. The only other account I could find, apart from yours, with regards to how it happened, one of the pages I handed up was from Ranginui Walker page 136-137 I wonder if that could be brought up or have you got it in front of you Ms Luiten? Can you see that page there?

A. No. I've got 142 and 143. Unless you've got another packet there.

Q. It's that one there. Sorry, did you not have it in front of you?

A. No, I don't. I can't find it.

Q. I'm sorry I'll just send it through.

A. Yes, okay, I've got it in front of me.

Q. Sorry, thank you. If you can just turn and see 136 where it says when Ngāti Patu were allocated Ōpape 5, Te Hautakuru dual affiliation. He said he separated himself from Ngāti Rua. "I took Ngāti Patu's name that's when he gave me the land. That name belonged to an extinct hapū and the Government officer asked for a distinct hapū so I separated myself and gave him that name Ngāti Patu." I don't know how far it takes us but it's just one account of how the process went according to him.

A. Do you know the context in which Te Hautakuru is giving this evidence or saying this?

Q. No, I'm not giving it. I'm just saying it as an example of the process.

A. Yes. But then you'd have to think about the context in which he's saying this in terms of what he's trying to achieve.

Q. Yes, I'm not raising that.

A. Yes.

Q. I'm not looking into it. It just discussions with officials that's all.

A. Yes. What's your question?

Q. Well, I think that's just an example. Because we don't know what the process was or who said what to who or who made decisions and that's an example of perhaps there were some discussions about what groups of people wanted.

A. Sure.

Q. Yes.

A. We don't know how Wilson organised the whole thing.

Q. Now when we're talking about records of Whakatōhea or who were Whakatōhea around that time, so we've discussed that that 1867 list is not meant to be an iwi list but I just want to bring up an iwi list that was made at the time. It's Ranginui Walker page 1412.

A. Yes.

Q. You see at page 142 he's got the list 1870 census numbers which seems to be the list that Wilson made. The numbers seem to line up.

A. That list which he seems to be saying is 1870 –

Q. Yes.

A. – is similar to the list in my report on page 71 –

Q. Yes it is exactly the same numbers.

A. – except that he hasn't included the surrendered rebels.

Q. Right. What, in an updated version of the list?

A. In the list in Ranginui Walker's –

Q. Yes.

A. – book the same numbers are there as if you look at page 71 of my report.

Q. Yes, the 1867 list.

A. The 1867 list –

Q. Yes.

A. – but he hasn't included the unsurrendered portion. Ranginui Walker hasn't included the unsurrendered portion –

Q. Yes.

A. – in that population total.

Q. Yes.

A. Yes.

Q. And then on the next page, he then says: “A more accurate assessment was an iwi register of 1874,” and you go over the page and there’s an iwi register there. You see that?

A. Yes.

Q. Yes. So that’s got the same. It’s got Ūpokorehe added and Ngāti Muriwai added as compared with the Wilson list.

A. I would point out that this list I have never come across. I didn’t come across an iwi register of 1874 in my research. This list is actually Brabant’s 1883 list which appears in my report on page 85.

Q. Right. So you are saying-

A. Yes, and that list it was concluded in 1883 but Brabant finalised it in 1881 without the Ngāti Muriwai change so the 1883 final rendition takes into account Ngāti Muriwai. These numbers that Ranginui Walker has used and attributed to an 1874 tribal register are the same numbers of Brabant’s 1883 list.

Q. Right.

JUDGE DOOGAN TO JANE LUITEN – #A0102, PAGE 85

Q. So you’re saying Ranginui Walker is wrong in saying that’s an 1874 list.

A. I’m saying I’ve never found that tribal register –

Q. Right.

A. – and they coincide with the 1883 list.

Q. Thank you. Now the next area I just want to take is the subdivision of the Ōpape Reserve. Once again I won’t go to the same ground as Ms Clark but just want to just refer to some detail and especially since that subdivision, as you say, it concerned Ngāti Muriwai in particular. You say in your report at page 77 that Eru Ponaho and Porikapa who, as you will see go on to associate as Ngāti Muriwai, they were in the Ngāti Rua list in the 1867 list. Is that correct?

A. Yes, I think so.

Q. Yes. Now I don’t know what background you are aware of Ngāti Muriwai, but if I can bring up that page I brought up before, Walker at page 1367.

A. Yes.

Q. You see from that front page 137, he talks about the Ōpape 3 block, Eru Ponaho was included in the block with Ngāti Rua. They applied for a subdivision for Ngāti Muriwai or apportion. It says Ngāti Muriwai originate in Te Kaha had been driven out earlier by Toihau of Te Whānau-ā-Apanui and they found refuge with Ngāti Rua through its connections with that hapū. I just put that in context because from Ngāti Muriwai's perspective that's their background and history coming into these times we're dealing with now. Are you aware of that background?

A. No, and I don't know what the source is for that living originally at Te Kaha.

Q. There's a reference to Native Land Court minutes.

A. Okay. I have not heard that before.

Q. Āe. Were you aware during the marine and coastal area hearings of the various evidence that was given on this?

A. No.

Q. It was quite extensive evidence, –

A. I haven't looked at any of that evidence.

Q. – including reference to the Native Land Court minutes.

A. Yes.

Q. Look, I won't take you to that.

A. I haven't looked at that. I have gone into it extensively in my part two report.

Q. Āe, thank you. If we look at the narrative with the subdivision. It starts, if we go to page 76 of your report, you refer there to a letter written by Porikapa. Yes, in March 1879 Porikapa and others of Ngāti Muriwai apply to the Government, to the Governor, and the Minister saying: "We wish our land Waiaua surveyed, so that it may be seen what proportion of it we are entitled to. The reason why it should be surveyed is that one hapū assert that they have control of this land Waiaua and they tend to eject the hapūs who are cultivating. All our property that of Ngatimuriwai has been removed from the land, by the same hapū the and that hapū is the Ngatirua." The background from your report, as I understand, is that the issue of subdivision of Ōpape had been raised in the past, but it had been

objected to by Ngāti Rua. We then have this letter in 1879 from Ngāti Muriwai again asking that it be subdivided. That's the context.

A. Yes, this is part of the contest over occupation of a scarce resource at Waiaua.

Q. Porikapa is not writing as part of Ngāti Rua. He's writing as part of Ngāti Muriwai and complaining about Ngāti Rua.

A. Correct.

Q. Yes. If we go on to paragraph 77, we then have discussions about how there is then a meeting. In August 1879 Preece meets with the tribe, because Preece has been appointed to look at it, and obtains agreement that there would be a subdivision by hapū but there's no detail of who gets what or what groups are involved. Is that a summary of what happened?

A. It's an agreement in principle. Yes, he has.

Q. Yes. Then at page 79 you describe how, then Wilson comes back into the picture, he then draws up a fairly basic subdivision with his six hapū and arranges for a survey of those boundaries to take place. That's correct?

A. Correct.

Q. Yes. I'm just sort of travelling through here. At page 84 you say October 1881 Brabant does a list for the six hapū and discusses it with the tribe, or with everyone about the proposed partition.

A. In October 1881, correct.

Q. Yes. You also then at 84 discuss how at that time in late '81 there is a couple of things happening with regards to Ngāti Muriwai in particular that in the Whitikau hearings that are occurring there to give title to the adjoining or nearby Whitikau block, Ngāti Muriwai support Ngāi Tai in getting title against Ngāti Rua.

A. Correct.

Q. Did that happen around the same time?

A. Porikapa, yes.

Q. Yes. And then February in 1882 there is a letter from some other in Whakatōhea complaining about Ngāti Muriwai farming sheep in the area because there's no fences or anything I guess, so sheep just wondering around the Ōpape Reserve in general.

A. Have you got a page reference for me please?

Q. It was at page 84 as well.

JUDGE DOOGAN TO MR SHARP – CLARIFY LINE OF QUESTIONING

A. Yes.

Q. So then we get in January ‘83 a new lease with Ngāti Muriwai getting Section 3A and they agree that after Ngāti Muriwai agreed to pay the additional survey costs because the Crown is concerned about incurring extra costs, aren’t they, for the survey. That’s correct?

A. They get their partition because they agree to pay the survey costs, yes.

Q. Yes. But apart from that, there is various – not just the survey costs. I think at page 84 and also at 96 Brabant sort of talks to them and says: “Well, as a hapū they’re entitled to have the area if they want to.” That’s the general view of Brabant.

A. I think Brabant is trying to resolve the dispute as well.

Q. And then we have the survey map and various other arrangements and you have a list at page 96 of Ngāti Muriwai, including mostly Eru Ponaho whānau but also some other people. That’s correct?

A. Correct.

Q. And then at page 97, I just want to focus on that. I just want to make clarification. Given that history, you make some observations about Ngāti Muriwai’s position with relating to them applying for land titles under other hapū names in various blocks and so on.

A. Yes.

Q. You don’t need to go through that. But you come to the conclusion that the end, and it’s page 97, that this evidence tends to support the contemporary official perceptions as Ngāti Muriwai is a sub-hapū of Ngāti Rua. Now I just wanted to just draw out what you mean by that? Because we had discussed how there is these smaller hapū under larger hapū but still hapū and that seems to be the view of Brabant. At the time, he calls them “sub-hapū” but a hapū; they’re entitled to a block. I’m not sure the relevance of those other observations you’re making about applying for other blocks. Can you just explain what the relevance is?

A. What do you refer to when you “applying for other blocks”?

Q. Well, you go from Eru Ponaho had submitted his family list as Ngāti Rua in 1867 and then you go-

A. Are you talking about the Whakapaupākihi title determination?

Q. Including when you talk about Kingi referring to people of half-caste.

A. I am trying to show how these people, Paku's people, were considered at that time and how they were talked about at that time and different title determinations and in different contexts to give a sense of how they were perceived at that time by the people in that society.

Q. Okay. Essentially what is a thread through those claims in other blocks is that they had Ngāi Tai connections-

A. The thread is that they're perceived as a taha rua of Ngāi Tai and Ngāti Rua.

Q. So they're claiming in a lot of blocks against Ngāti Rua, for example, in Whitikau and other blocks-

A. They go with Ngāi Tai when it comes to those 1881 title determinations and Porikapa does the survey on behalf of Ngāi Tai. It's basically his evidence about the customary usage of the Whitikau block that is strong evidence which is of advantage to Ngāi Tai.

Q. Yes. I don't know if you heard Professor Williams' evidence earlier that Whakatōhea is a characteristics of people having multiple hapū connections and affiliations so I guess this is an example of people who do. Porikapa and Ahu have multiple affiliations and they use those affiliations in the various Native Land Court hearings.

A. Yes. But I wouldn't say that's particular to Whakatōhea. I would say that's true of many people.

Q. Now you make some other conclusions. At page 138 when you were doing your summing up you said: "Ngāti Muriwai's show of autonomy did not arrest the narrative of six hapū that those at Ōpape brace as their own," so I just wonder if you can expand on that. What do you mean the narrative of six hapū that they embraced?

A. Where are you?

Q. 138.

JUDGE DOOGAN TO MR SHARP – #A012, SECOND PARAGRAPH

A. I think that's going back to my original point that most of Te Whakatōhea don't have a huge problem with being cast as an iwi of five hapū but Ngāti Muriwai did. I'm saying that their insistence on their own mana in 1883 was pioneered. It pioneered other subdivision that followed along family and hapū lines and that, yes.

Q. Well, if I can just sort of perhaps help. So you go along to refer to other hapū or sub-hapū then going to get subdivisions of carved blocks. So you're saying that Ngāti Muriwai as a sort of hapū-led was an early example of what happened after that for example with Ngāi Tama and Ngāi Tū and those groups getting their own subdivisions. And you also discuss at 138 that the fundamental issue was that there was so little land to apportion so restricted the ability of smaller hapū to obtain their own land. You've got that at 138 as well.

A. Yes.

Q. Yes. So that's all illustration of those points.

A. Yes, I think I've said Ngāti Muriwai's partition at that time may have been something that was warranted but was never – like smaller and was later followed in later partitions but was never – with the exception of Ngāti Muriwai, was never carried out in 1883 because partitioning Waiaua which was the bit people wanted a portion of because that's the only bit of the reserve they could grow things on. There wasn't enough to go around and the job would have been very complex partitioning it among smaller groups. The 1883 partition was a very simplistic cost effective way of saying that you had achieved partition among the hapū of Te Whakatōhea. I think that's my point.

Q. Yes. And of course, the obvious difference is that Ngāti Muriwai got in before the actual partitions were done. The others were subdivisions of the partitions, where they got in on the original partitions.

A. Ngāti Muriwai pioneered the closer subdivision.

Q. Yes. Thank you Ms Luiten that's all my questions.

JUDGE DOOGAN ADDRESSES TE MINENGA – BREAK (09:59:37)

HEARING ADJOURNS: 9.59 AM

HEARING RESUMES: 10.05 AM

MS CLARK ADDRESSES JUDGE DOOGAN – CROSS-EXAMINATION TIMETABLE UPDATE (10:05:15)

JUDGE DOOGAN ADDRESSES COUNSEL – MR LYALL PROPOSAL (10:05:39)

(10:06) MS FELLOWES TO JANE LUITEN:

Q. Tēnā koe Ms Luiten. My name is Caitlin Fellowes. I am here on behalf of some of the descendants of the Hiwarau block. Before I get into my questions, I would just like to thank you for all your mahi that has gone into your report, as well for your responses to our questions of clarification. I will be mostly referring to your main report #A012 and I will be focussing solely on Chapter 5. Do you have that with you in front of you?

A. (Nods in agreeance).

Q. Okay. If I could take you to page 203 of your report at the bottom of the page-

A. Sorry, what page? 200 and?

Q. 203.

JUDGE DOOGAN TO MS FELLOWES – LECTURN

Q. At the bottom of page 203, you discuss how Hiwarau A was leased for 28 years by the District Māori Land Board under the Native Land Act 1909 to C W Reardon in December 1911. I just wanted to clarify with you, was this the Waiariki District Māori Land Board that carried out this lease?

A. I imagine so, yes.

Q. On plate 54 of the map book, could you please identify for us Hiwarau A?

A. Hiwarau A is in two parts. There's a part up here and there's a part down the bottom.

Q. Thank you. Could you explain to us-

(10:09) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, just to get that clear. It’s the top portion of the block –

A. Yes.

Q. – which has the part A designation and then the part A portion at the bottom of the block?

A. Correct.

Q. The other part which says “A” just above the bottom part is not part of A?

A. No, that's A as well.

Q. So that’s part of A as well.

A. Yes.

Q. All right. So the rest of it would be just simply B?

A. Correct. That's the partition of 1904 I think.

Q. Thank you.

(10:09) MS FELLOWES TO JANE LUITEN: (CONTINUES)

Q. Could you just explain to us why it was split into two main areas with Hiwarau B running through the middle?

A. That is dealt with on page 200. They cannot decide so the court sends out…

(10:10) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Sorry, Dr Phillipson here. It’s actually split into three areas then. There’s part A at the top, part A at the bottom, and then A running all the way in between as well as B on the other side. Is that correct?

A. Hiwarau A is altogether, this is on page 201, 785 acres. Further up, b 14 March, the court seems to have come up with its own arrangements because there’s been considerable raruraru about the partition. Judge Edgar explains later to the Chief Judge “both sides have obtained their kāinga and cultivations; and the land has been fairly divided – the Court visiting the land for the purpose of ascertaining the relative quality and the value of the different parts”. The proposed partition saw Te Ūpokorehe’s ‘A’ share divided in two: a north-eastern square that took in the coastal promontory, and an area to the south. The ‘B’ balance for Mu Te Hura and Mere Hoariri’s party stretches across the block as shown on that same map on page 202. So, it does get divided in two on the basis of that partition.

(10:12) MS FELLOWES TO JANE LUITEN: (CONTINUES)

Q. Yes, thank you. And so do you know when and how Hiwarau A came to be listed in the District Māori Land Board?

A. I don't know that it is vested in the Land Board or whether they're just administering the lease.

Q. Okay.

A. I'm not sure of that.

Q. Yes. Do you know when it might have come to be administered by them and when they had that control of being able to do that?

A. No I don't. No.

Q. Is that something that you could put in writing for us?

A. That I don't know.

Q. Just if you could find the answer for that one possibly.

A. I could look into it, yes.

Q. Yes. Okay, thank you. So just carrying on with the lease, at the bottom of page 203 you state that the acreage of the lease was comprised of Hiwarau A less around 100 acres. Is it correct to say that the remaining 100 acres of Hiwarau A was then further reduced by the 48-acre Public Works Taking in 1912 which then only left 52 acres in Hiwarau A available to the 44 owners of that block?

A. Can you just remind where you are again?

Q. So that would be at the bottom of page 203 –

A. Yes.

Q. – which would then go over to page 204 when you discuss the Public Works Taking.

A. Yes.

Q. It would be 201 where you discuss the 44 owners of Hiwarau A.

A. I cannot say whether the Public Works Taking was taken from the 100 acres that wasn't leased. I don't know.

Q. Okay, that's okay. And so carrying on with the bottom of page 203 you state that the lease included the terms that the cost of the survey was to be carried out by C W Reardon which was to be remitted. So, our question is was the cost of the survey of the partition actually remitted

and paid for by the Crown or did those costs remain as a burden for the owners?

A. My understanding that remitting the cost of the survey was part of the lease agreement.

Q. Yes. Which was then put into a partition at a later date which was not then engaged with.

(10:15) JUDGE DOOGAN TO MS FELLOWES:

Q. I'm sorry Ms Fellows, I don't follow that what you were just saying.

A. So it was then put into a partition – I'll get to this later on where-

Q. All right.

A. I'll get to this later.

Q. You mean a complaint about the survey fee was part of a partition?

A. I believe so.

Q. All right.

(10:16) JUDGE DOOGAN TO JANE LUITEN:

Q. And Ms Luiten your answer was that your understanding was, and when you say bottom of 203-204: "Remitting the cost of the survey…was part of the lease agreement," do I take that to mean that the lessee was to cover the cost of the survey?

A. The lessee was the surveyor.

Q. Yes.

A. And so I think not charging the cost of the survey was part of the lease agreement that he obtained. That's my understanding.

Q. All right. So essentially writing off the cost possibly in return for a lower lease arrangement. All right, thank you.

(10:16) MS FELLOWES TO JANE LUITEN: (CONTINUES)

Q. So I don't intend on taking you there but on page 189 you discussed how the Hiwarau title contained restriction against leases that are more than 15 years. Given that was the case, how did a lease of 28 years get approved by the board?

A. They would have been working to different regulations. And also, again it's another example that by this time, all those restrictions against alienations that are specific to these confiscation reserves no longer apply and these reserves fall into the catch-all of memorial lands –

Q. Okay.

A. – that are dealt with by the Native Land Court outside of confiscation districts.

Q. Yes.

A. So all of the undertakings have all fallen by the wayside by this time.

Q. Yes. So it would be correct to say that a reserve that was intended to be inalienable had its restrictions quickly undone with allowing it to be partitioned in 1904 and then (inaudible 10:18:10) it into more long-term leases. Is that correct?

A. Totally correct, yes.

Q. Yes.

A. The inalienable status of that reserve has long been undone.

Q. Yes. My next questions relate to the Public Works Taking in Hiwarau A. If I could just take you to the top of page 204. At the top of page 204, you discuss how in 1912, 48 acres, 1 rood in the south-west corner of Hiwarau A was taken under the Public Works Act for scenery preservation. Now my question is on page 204 your footnote 653 refers to the compensation hearing in 1913 but then when we look at the land map book on plate 54 this shows that the scenic reserve is already shown in red and is dated May 1911. Could you explain how this may have occurred if the scenic reserve wasn't taken until a year later?

A. When was the date of the taking?

Q. Because I assumed it would have been 1912 as you discuss how the lease took place December 1911 and then a year later the Public Works Taking occurred.

A. Yes.

Q. So I assumed that would be 1912.

A. If I can just make it out with my eyesight, it says 1912 in red on the actual map. Yes, gazetted 1912 and compensation comes before the Court in 1913.

Q. Yes.

A. Your question is…

Q. It says on the map that it was dated at Whakatōhea May 1911 and I believe that's Reardon licensed surveyor.

A. But often these maps, subsequent alienations are put on the map.

Q. Okay.

A. Yes. It would've been possibly depicted later on the map as it happened in 1912 –

Q. Yes.

A. – and the compensation is a matter that happens afterwards as well in 1913.

Q. Yes, that sounds good. We might go to my final questions just concerning the two 25-acre lots granted to Huriana Tahawa and Hira Te Okiwa, which are shown as 275 and 276 on plate 54 of the map book.

WITNESS REFERRED TO #A012 PAGE 187, #A012(c) PAGE 20

A. Yes.

Q. You say that, and this is on page 187 of your main report, you discuss how Huriana Tahawa's claim was defeated by Wilson with the use of his father's Pākihi deed which you described as being in the breach of law on page 20 of your summary. You then discuss how Wilson used the deed to defeat a claim of the tangata whenua and that he propped up his own interests to make then an out of Court deal under the rebel provision of the Settlement Act. We would just like to know, can you explain how Wilson may have justified giving a personal award within a collective reserve such as Hiwarau?

A. I have no idea how he could've thought that was just and how the Court could have agreed to it. It seems to sum up, I guess, that whole Compensation Court process.

Q. You also say, this will be on page 188, that the 1958 Government inquiry uncovered that the Crown grant to Huriana was never completed. Are you aware of what happened to this land block in the subsequent decades and whether the successors of the grantee were ever able to make use of them?

A. In the subsequent decades after the Compensation Court?

Q. Yes.

A. No idea.

Q. No idea.

A. No.

Q. There's no record.

A. No.

Q. That's okay.

A. Yes, there's not a lot on file which is in the raupatu document bank. I didn't go back to the original file to see if there was more but there was nothing much on file that is reproduced in the raupatu document bank on that.

Q. Sweet, thank you. Well, I believe that will conclude my questions.

(10:23) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Ms Luiten, I'm a bit confused. Does that mean that the was over the top of the Pākihi block? Is that how he was able to get that bit in the middle of it?

A. No.

Q. No.

A. We're talking about a compensation claimant who claims her ancestral land within an area that Wilson alleges has been purchased by his father and so her case is dismissed.

Q. Right.

A. And then I go into it in my answers to questions of clarification how it's not entirely clear that it's the same Huriana because there's a lot of confusion over which Huriana it is. But if it is the same Huriana, he then awards as compensation – well, no, not as compensation. Hira Te Okiwa who has one of those 25 acres she gets her compensation grant in the middle of this reserve that's been set aside.

Q. I see.

A. Huriana is awarded her 25 acres under the Confiscated Lands Act 1867 as a surrendered rebel under section 4. There's a Huriana Taharoa who has appeared in the Compensation Court claiming her land at Waiōtahe on the basis of ancestry and her case is dismissed when Wilson produces

his father's deed. Whether that's the same Huriana who then receives this 25 acres under section 4 of the 1867 Confiscated Lands Act, we don't know because all we have is Huriana and these are the things we don't know. But it doesn't alter the fact that Wilson has made these awards or arrangements in the middle of Hiwarau Reserve which was set aside as something else entirely.

Q. Yes. Okay, thank you very much.

(10:26) MR LYALL TO JANE LUITEN:

Q. Tēnā koe Ms Luiten. My name is Lyall and I represent the cluster of claimants bringing claims on behalf of Te Ūpokorehe iwi in this inquiry. To begin with, I've handed you a copy of a map prepared by Te Ūpokorehe.

MR LYALL TO JUDGE DOOGAN – MAP #3.1.457

Q. It was prepared for the Te Ūpokorehe site visit as a part of the Kōrero Tuku Iho hearing week. The purpose is so that we can take some shortcuts in cross-examination today and ensure that we're all on the same page as to location as we move through.

WITNESS REFERRED TO MAP #3.1.457

Q. Do you have a copy of that map in front of you Ms Luiten?

A. Yes.

Q. Ka pai. Now just so that we're all orientated, this map was produced to show the rohe of Te Ūpokorehe. My first point would be that in the southern part of the map we have numbers 15, 16, and 17 pointing southwards so I wanted to note that there is a southern portion that this map doesn't represent but I understand that in order to get the detail required in the Ōhiwa Harbour this was the extent of the map produced. With the caveat that this doesn't limit the southern boundary of Ūpokorehe, you'll see on the western side there's a number 1 there and that represents the western boundary of Ūpokorehe at Maraetōtara. If we move to the far east, there's a number 28 and there's a river beside that. Do you understand that to be the Waioeka River?

A. Yes.

Q. Ka pai. My first question is very broadly you would accept that Te Ūpokorehe have mana in this part of the inquiry district based on the research and your knowledge that you've conducted?

A. I would agree that their mana at Ōhiwa and Waiōtahe is widely recognised that I've looked at, that's been the subject of my research, yes.

Q. You wouldn't have any reason to doubt their assertion that they have mana in this broader rohe?

A. No.

Q. Ka pai. Now you're aware that Te Ūpokorehe identity is an issue in this inquiry and is a longstanding issue.

A. I am.

Q. I think we can all agree that's an issue for Ūpokorehe to resolve amongst themselves and not for this Tribunal or for us as lawyers or historians. Would you agree with that?

A. Yes.

Q. Now there's an issue that Mr Walzl identified with the primary sources in this inquiry district in that many of them don't refer explicitly to the people who are being referred to or their affiliation and references to Te Ūpokorehe specifically are quite scarce. Do you agree with that?

A. They are scarce but they do occur.

Q. We see shorthand terms like Natives or Whakatōhea or Tūhoe being used rather than drilling into the finer detail about exactly who the hapū or whānau were on the ground more often than not, don't we?

A. Correct.

Q. Do you agree that this means when we look from our point here in 2024 that the context in which those people were operating in is almost entirely lost to us?

A. We work with what we have, yes.

Q. Āe, and none of us have a time machine as helpful as that might be. But I think the point I'm coming to is it's important, isn't it, that these Tribunal processes don't then repeat or reinforce those issues and we need to be careful and as specific as we can be when we are referring to those groups.

A. I think I've had that in mind when I undertook this report, yes.

Q. When we see terms like “Natives” or “Māori” used in those historical sources for the rohe of Te Ūpokorehe, as we’ve discussed this morning, do you agree that, depending on the context, we can draw an inference that those people were likely to have been of Te Ūpokorehe?

A. It depends what timeframe you’re talking about. If you’re getting into the Compensation Court minutes there are references to people living in that area who are not of Te Ūpokorehe.

Q. The only way we’d know that is because they have been referred to as not being of Te Ūpokorehe.

A. Or they’ve identified themselves as Te Whakatōhea.

Q. Āe. I think we might be agreeing in a way there, mightn’t we, that where they aren’t identified that’s probably an inference that they are Ūpokorehe?

A. I’m not sure that I would agree with that.

Q. In your preparation for writing the report, did you look to the statements of claim that were on the record for the claimants?

A. I did. That’s the first thing.

Q. Did you speak with the claimants about the context in which those claims were drafted and filed?

A. No, there was very little engagement with claimants.

Q. If we turn to page 6 of your report, please. There’s a long paragraph in the bottom half of the page which ends: “Te Ūpokorehe claimants (Wai 1092, Wai 1758, and Wai 1787)…,” and those are the claimants that I’m here representing today among others, and you say: “…once claiming as a hapū of Te Whakatōhea no longer do, but rather claim as an iwi in their own right.” Well, Ūpokorehe don’t accept that that is a fair reflection of the position that those statements of claim provide, and I wonder if you noted for instance in the Wai 1092 claim – I’m hoping not to have to bring it up given time – but they do point to Ūpokorehe being described as a separate entity or a small tribe. I think the point here is that Ūpokorehe would say that by failing to seek out the context and the kōrero under which these claims were filed, aren’t you undermining Te Ūpokorehe identity in much the same way as the processes that you criticise in your report?

WITNESS REFERRED TO #A012, PAGE 6

A. Which bit are you objecting to?

(10:35) JUDGE DOOGAN TO JANE LUITEN:

Q. That is quite a big proposition. To be fair to the witness, I think you've got three separate Wai numbers there and probably three separate sets of amendments of various times. The general statement being made in the report is that the claimants under those Wai numbers "once claiming as a hapū of Te Whakatōhea no longer do so, but rather claim as an iwi in their own right," so to break it down a little bit, can I just clarify, Ms Luiten. From your reading of the statements of claim or what you did look at, you came to the view that at least one or more of these claimants under those numbers were claiming as part of Whakatōhea in some of the statements of claim that you saw. Is that correct?

A. Well, that's the only thing I can imagine that I'd thought.

Q. All right.

A. Yes, I mean I can't remember off the top of my head –

Q. All right.

A. – what they've said in their statement of claim but I imagine that they were part of Te Whakatōhea claim at one stage and have since broken away from that, yes.

Q. All right.

A. Yes.

Q. It may be a matter that needs to be followed up in writing to give Ms Luiten a chance to clarify what she was referring to, just in the interest of time.

A. Yes.

Q. Otherwise, I think we need to end up going to these matters to check out the pedigree. But I understand the point you're raising.

(10:36) MR LYALL TO JANE LUITEN: (CONTINUES)

Q. I think rather than giving Ms Luiten more homework, perhaps if we round off by just saying that, you'd accept that possibly more care needed to be taken when making a broad assertion like that about a claimant group?

A. I still don't know what assertion you're saying I'm making. I would've worked off the record that I had before me.

JUDGE DOOGAN TO MR LYALL – CLARIFY QUESTION

A. I will say I did have those sensitivities very much front of mind when I did the research and the lack of consultation with claimants goes to the length of the commission. I did offer to come and speak to claimants to receive feedback from the draft report and I did talk with those who came back to me and say that they wanted to take advantage of that.

Q. Te Ūpokorehe provided feedback when that opportunity was-

A. They provided written feedback from memory, yes.

Q. That led to changes being made to the draft report.

A. I can't remember. It was four years ago.

Q. Well, you have said that the report's better for the feedback that was received at your page 9.

A. Yes.

Q. If you could turn to page 11, however, and I'm looking at the second paragraph beginning "Feedback from the draft report" and you say in the third line down: "The ethics of conducting research about iwi and hapū without meaningful partnership or engagement with them have been questioned. Such criticisms reflect high expectations of a commissioned research process constrained by limited resources and working to tight timeframes." The first statement there: "The ethics of conducting research without meaningful partnership or engagement with them have been questioned," that's not controversial, is it? Iwi and hapū ought to have a right to be involved, shouldn't they?

A. Totally, yes.

Q. And: "Such criticisms reflect high expectations of a commissioned research process," aren't you accepting those criticisms in saying that, but really the issue lies with the process itself rather than your mahi or the way that you've tried to deal with it?

A. I don't think the way research is commissioned it allows for that. There's no room for that kind of partnership.

Q. But there ought to be, in your view?

A. I think as a historian, yes. In an ideal world, yes.

Q. You go on half-way through that paragraph to say: "They also arise," so I'm referring to the criticisms there: "…it seems to me, from the contention over mana and identity encompassed in the claim below [*sic*]," and you finish that by saying: "Te Ūpokorehe assert that they are not one of the six hapū of Whakatōhea, but an iwi in their own right." Can you help me with what the connection is between the criticisms in your mind and the statements that you make there? How they arise from that?

A. Can you put that question again please?

Q. How did the criticisms arise from the contention over mana and identity or that Ūpokorehe assert that they're an iwi in their own right?

(10:41) JUDGE DOOGAN TO MR LYALL:

Q. I'm sorry Mr Lyall, I'm struggling with that one. Can you just tease that a little bit-

A. I can. The paragraph says: "They…," and there I think it means the criticisms being directed at the report through feedback: "…also arise, it seems to me, from the contention over mana and identity encompassed in the claims above."

Q. Yes.

A. And then the next paragraph speaks to Ngāti Muriwai (Wai 87) –

Q. Yes.

A. –and Te Ūpokorehe essentially challenging the received narrative of tribal identity.

Q. Yes.

A. My question is how in Ms Luiten's view do those criticisms arise from her assertion for instance that the claimants are challenging the received narrative of tribal identity? It's not clear to me that there's any link between the feedback provided and those assertions. The feedback is on the record, and again I don't think we have the time to go there.

Q. All right.

(10:42) MR LYALL TO JANE LUITEN: (CONTINUES)

Q. I mean the point here is Ūpokorehe has the position that their criticism and feedback is being brushed off by trying to paint them as somehow going against an established narrative here. Do you accept that?

A. I don't accept that their position as an iwi in their own right is being brushed off.

(10:43) JUDGE DOOGAN TO MR LYALL:

Q. Mr Lyall, I think the short point is, isn't it, that Ms Luiten is simply drawing an inference from the feedback she's received. You're contending that that inference is perhaps not a proper one to draw but it might be better dealt with in a submission I think.

A. Yes. Sir, I didn't feel that I could just jump straight to that without giving her the opportunity through these questions to respond but it will be dealt with in a submission.

Q. All right. I think that's fair enough. But yes, I think to go further, we would need a little more context around what was wrong about the inference in order to understand this issue.

A. I think there's probably simply not time to unpack it and probably it's not a ditch to die in and an order yet, Sir, and the point has been put.

Q. Tautoko, yes.

(10:44) MR LYALL TO JANE LUITEN (CONTINUES):

Q. Could you please turn to page 16 of your report? Now I'm looking at footnote 8. If you could give me a nod please Ms Luiten when you've situated yourself.

WITNESS REFERRED TO #A012, PAGE 16

A. Sorry. Page 16, yes, I'm here.

Q. Ka pai. That footnote you're discussing "the radical or inherent title of the Crown" and you've posed some questions at the bottom: "Did the customary title hapū possessed in the Bay of Plenty, entailing no such obligation, render 'rebellion' a legal nonsense? Furthermore, was the absence of any contract of mutual obligation behind the Native Rights Act." These are really legal questions, aren't they?

A. They are.

Q. You haven't attempted to answer them and I'm taking it you wouldn't want to attempt to answer them today?

A. No.

Q. Ka pai. Looking at time, we might move to the Pākihi block, which you've dubbed the "dystopian loaves and fishes tale" in a nice turn of phrase, and so that we are situated, I'd like to start at page 41 of #D009 which is our map book. Because I've conceptually had some trouble working through what's what in this transaction. We know that it's between the Waioeka River in the east, Waiotahi in the west, and this map is labelled "Stack and Wilson's Pākihi Claims Post-Confiscation". So that we're on the same page moving through, we have the blocks in the centre labelled "James Stack" and you've said previously that you didn't work through and work out what's happened to those blocks today, but that's where his area was located. We have the subdivisions around that, which I understand later became the sections that the Crown offered back, or pardon me, gave through their Te Arawa settlement so they're almost a border on James Stack's whenua and then to the east we have the Wilson block and then right at the southern part of that is another area which was Mr Stack's, I believe.

WITNESS REFERRED TO #D009 PAGE 41

A. It seems so, yes.

Q. Ka pai. As I've related it to you, is that your rough understanding of how this worked? I think my question is looking at this map the area to the north of the Wilson section and slightly to the west, do we take it that that was also part of this transaction and became Crown whenua or was that excluded from the transaction? And if so, do we know how?

A. The north-west?

Q. This would be the north-east section.

A. North-east of…

(10:47) JUDGE DOOGAN TO MR LYALL:

Q. Can you point out on the map where we are talking about?

A. Sir, on the map there's the letters on the eastern side "OP" which would be Ōpōtiki township.

Q. Yes.

A. And then directly about that is the Waiotahi river mouth.

Q. Yes.

A. Sorry, the Waioeka river mouth; I mustn't get those confused. And then to the western side of the Waioeka river mouth there's a spit that sticks out there and that seems to be excluded from shading and that runs further south alongside the Wilson block, to the west of the Wilson block.

Q. That area?

A. Yes, your Honour.

Q. Thank you. There's another one down here.

A. Āe. We're on the eastern side of this map.

Q. All right. I'm geographically compromised so you're going to have to be patient.

A. Sir, I'll bring a pointer and a pinboard next time.

Q. That would be great.

(10:48) MR LYALL TO JANE LUITEN: (CONTINUES)

Q. I think my question is though when we talk about the Pākihi Old Land Claim, are we talking about this entire area or are there little pockets like this left out of the claim? Do you know?

A. I don't know. I don't think I've ever seen the survey plan that was made in 1853 by Florence so I don't know what was excluded at that point. There's reference to areas being excluded I think, from memory, later on in the 1850s when Wilson's trying to get his grant.

Q. That was the question. Are we referring to the areas which the two rangatira said had been reserved? I think the translation says "a family called Ūpokorehe" or are they separate?

A. No, it's later that I'm thinking of.

Q. I think that's something that it's probably not fair to put you on the spot on, so would it be easier if I put that into a memorandum and we could follow-up in writing or would you prefer to deal with it now?

A. I'll just see if I can quickly find what I'm talking about. But I can't, so sure. Here we go. On page 52 it's 1854, and who is talking, this is Gisborne to the Colonial Secretary about halfway down the page: "His advice suggests the government was aware Wilson's possession was disputed," and there is the quote: "I see no objection to the piece wished for by Mr Wilson (on behalf of Mr Stack and himself) provided that the boundary towards the river frontage be the Survey Line dividing their land from the land claimed by the Natives on the bank of the river." I don't know which land they're talking about because I didn't locate that survey plan. But it could be a reference to the fact to that river frontage which doesn't seem to be part of Wilson's claim there.

Q. Yes, and now that you've pointed that out to me, that was my understanding when I read your report at that part but I guess that supposition on our part.

A. Right, yes.

Q. Looking again at this map, we don't have the survey plan, but something that did strike me is that we have the carefully laid out sections and demarcations for settlers and officials. But, as far as the cultural landscape goes, that's erased entirely on these types of documents.

A. Entirely.

Q. Linda Tuhiwai Smith's written about these types of surveys being an active structural or colonial violence against the indigenous people by the coloniser. Do you as an expert have a view on that?

A. I am not familiar with Linda Tuhiwai Smith's particular work on that. But I would say confiscation per sé is the same, the eradication of mana basically is the same structural, I can't remember how you put it.

Q. Ka pai. Apart from being in the geographic region where Te Ūpokorehe hold their mana, this transaction is of interest to them for the participation of *Ake Ake* the leading rangatira of Te Ūpokorehe at the time, and he signed his mark and then later appears to have appeared to testify that the transaction occurred at least. As far as official sources go, he does seem to be quite enigmatic. We see him sign te Tiriti and then in this transaction, but he doesn't seem to be recorded elsewhere. Have you

found any documentary evidence recording his participation in other processes or purchases or campaigns?

A. Not that I can remember.

Q. While we're here, you've reflected the kōrero of Mihirangi Koutu in your report, and were you aware that she's the granddaughter of Wi Akeake?

A. The granddaughter of Wi Akeake.

Q. Āe.

JUDGE DOOGAN TO MR LYALL – MIHIRANGI KOUTU

A. She is Erana Akeake's daughter.

Q. Āe.

A. I'm aware she's the daughter of Erana Akeake.

Q. I'm certainly not intending to put you on the spot or-

A. I'm just wondering, because Wi Akeake I thought was also in the same generation as Erana Akeake rather than the generation above. I think Akeake is different from Wi Akeake.

Q. There's certainly a Wi Te Akeake in 1895 records and I think that is a different Akeake.

A. Yes. So that's not her grandfather.

Q. So the Akeake.

A. The Wi Te Akeake in 1895 I don't think is Mihirangi's grandfather.

Q. Āe, yes, I think we agree.

A. Yes.

Q. Yes, ka pai. Now I don't plan to ask you questions about Ōpape because that's outside of the rohe of Ūpokorehe that I'm instructed to question you on. But there is evidence that they've brought that Akeake considered the whenua given to Ūpokorehe there as waewae tarewa, so a suspended foot not to be trodden upon. Is that something that you've found through your research that kōrero reflected?

A. I think I may have come across that but not anywhere else, yes.

Q. Certainly if a rangatira was treating it that way or calling it that that would go some way to explaining why Ūpokorehe from the area that we're discussing wouldn't have travelled over to the Ōpape.

A. I think I have read that in their submissions.

Q. Now you go through the various ways in which the Pākihi arrangement was manipulated in favour of Wilson and Stack and eventually the Crown. Mr Walzl describes it as being fraudulent. Would you go that far?

A. Fraudulent, yes.

Q. Now while we're here, if you could turn to page 44 of your report please and I'm looking at the bottom part of the page. The last two lines there: "The Te Whakatōhea hapū transacting these deals," so that includes the Pākihi deal or arrangement as I think is possibly a better term. Do you accept a better phrasing of that might have been "the rangatira" or "Te Whakatōhea hapū and Ūpokorehe" or similar, rather than using "Te Whakatōhea hapū" as shorthand there?

JUDGE DOOGAN TO MR LYALL – CLARIFICATION

A. My understanding, and I accept Ake Akeake was a signatory and is listed as Te Ūpokorehe, but the impression I got was Te Ūpokorehe were not party to that transaction and at least they were the most outspoken against it. Subsequently, they're singled out in 1844 as against any kind of transaction. So I understand that transaction is being negotiated primarily as Whakatōhea rangatira rather than Wilson having transacted with Te Ūpokorehe as such. But I take your point that if Te Akeake was party to it and he being Te Ūpokorehe that does suggest Te Ūpokorehe that could have been changed, yes.

Q. Yes.

A. But I also think if Te Akeake was party to that transaction with Whakatōhea, then he would have been party to the same advice. Yes, I take your point, yes.

Q. Okay.

MR LYALL ADDRESSES JUDGE DOOGAN – BREAK (11:00:27)

HEARING ADJOURNS: 11.00 AM

HEARING RESUMES: 11.25 AM

JUDGE DOOGAN ADDRESSES COUNSEL – TRIBUNAL CROSS-EXAMINATION (11:25:06)

(11:25) MR LYALL TO JANE LUITEN: (CONTINUES)

Q. Kia ora Ms Luiten. Could we please pick back up on page 173 of your report? Here you're moving to your discussion of the Hiwarau and Hokianga Island Reserves.

WITNESS REFERRED TO #A012 PAGE 173

A. Yes.

Q. The second full sentence there you say: "They…," meaning Te Ūpokorehe: "…were presumably discovered there by the military expedition in search of Kereopa, in October 1865." Kereopa's not mentioned elsewhere in your report. What's your source for that statement or that presumption? Again, I'm not seeking out "I've got you" moment or anything. If that does need to be followed up, I'm perfectly comfortable with that.

A. I think the presumption is based on the fact that Wilson's first list that's compiled is that 17 which he's singled out and is an early list of Te Ūpokorehe which we only have the typescript of. It seems to have been a butchered that "Hiwarakua-Apokorohitea" thing, I've suggested that's a butchered "Hiwarau-Ūpokorehe" that's just a conjecture on my part. My leap to them being at Waimana is the fact that that reserve that's negotiated is largely credited to Rakuraku's negotiation and he was at Waimana.

Q. Now, we've discussed Captain John Rushton over the past few days and he pops up in your report. Did you do any background research into his past or his exploits?

A. Only the article you've identified which is in that footnote and the other two articles, which are also footnoted along with it.

Q. I raise him here because according to the obituary that I filed he does seem to have been involved in that expedition seeking out Kereopa so I'll move to him here.

MR LYALL TO JUDGE DOOGAN – FILE RUSHTON EVIDENCE

Q. This was an obituary that was placed in *The New Zealand Herald* in 1925 "Captain Rushton Passes" and the subheading is "Opponent of Te Kooti". I raise this Ms Luiten (1) to show that certainly in the author's view a large part of Captain Rushton's history was bound up in his exploits against Te Kooti. But before we get there, I think in fairness to you, my clients will bring evidence that Te Ūpokorehe, rather than Te Kooti swooping in to Ōhiwa, they will say that they invited him into the Ōhiwa harbour, assisted building the whare Te Herenga-o-te-rā on Hokianga. Have you seen kōrero of that invitation in the written sources that you've reviewed?

Q. No.

A. Now we haven't obviously had time to go through Captain Rushton's full biography, but you'd accept that his pursuit of Te Kooti was a defining characteristic of his biography, if nothing else, based on the headline of his obituary there?

Q. He was part of the Crown invasions. Part of the ground troops that arrived by steamer in 1865 September.

A. Please finish.

Q. There's a bit more detail about his work since then in those other two *Star* articles that are footnoted along with your *Herald* one.

(11:32) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, those other articles are part of the bundle that you've been given?

A. No, they're in my footnote that refers to the article that Mr Lyall has supplied. It's on page 189 and it's in footnote 579. as well as *The New Zealand Herald* piece in 1925, there is also two articles in *The Auckland Star*, one in May 1929 and one in March 1932, that give a little bit more background; his background.

Q. Thank you.

(11:33) MR LYALL TO JANE LUITEN: (CONTINUES)

A. I think in those articles is where they say he was referred to among Māori as Te Wiremu which I don't know where they get "Te Wiremu" from "John" but, yes.

Q. I was confused about that myself. I don't know if you would have seen it; we might be passing into the interesting rather than the relevant, –

A. Yes.

Q. – but an article *Ranger's Romance: Story of Love and War in the Early Days in Ōpōtiki*.

A. Yes, that's one of the ones that are in there.

Q. That you've listed there.

A. Yes.

Q. Have you reviewed that document or just listed it there?

A. Have I reviewed it?

Q. Have you seen the-

A. Last night I looked it up again to see them, yes.

Q. Ka pai. Now Rushton and coming back to the point I guess, you've recorded that he, following the passing of Kakitu, spoke in favour of what you've called the tauiwi in the Hiwarau block. First of all, is that correct, he did undertake that task?

A. It's quite strange to me. At one point in the report I said he was Hemi Kakitu's brother-in-law, but I don't think that's correct because his brother-in-law is the Te Kareke which might have been Teira Haruru instead. That might have been me getting confused. But, in any case, he had a friendship with Hemi Kakitu and he regarded Hemi Kakitu as the leader of Te Ūpokorehe. When he came out against Te Warena Mokomoko who is representing the true Te Ūpokorehe, he seems to have missed the point that Hemi Kakitu was also trying to represent the true Te Ūpokorehe. He comes out against Te Warena Mokomoko and almost undermines the protection that Hemi Kakitu has been trying to create of having the reserve as Te Ūpokorehe but himself falling of course.

Q. Te Ūpokorehe consider that Rushton may well have spoken out in the way he did as a way of punishing Ūpokorehe for their previous support of Te Kooti.

A. No, I think Rushton was upset that what he perceived as Te Ūpokorehe casting aspersions about Hemi Kakitu's rights to Hiwarau, when in his

mind Hemi Kakitu had an entitlement and I think he was coming at it on that grounds, rather than any feeling against Te Ūpokorehe.

Q. You see it as confusion rather than malice that was motivating-

A. I think it's the general confusion about who Te Ūpokorehe is and counting important men like Hemi Kakitu as Te Ūpokorehe when Te Ūpokorehe's point is that they are not.

Q. Finally, on Rushton at your page 205, you point to a letter that he wrote into the 1900s where he purported to be attaching a petition on behalf of certain Hiwarau block owners but that petition wasn't attached. His letter for the record is #A012(a) at page 221. I found that quite a remarkable letter in that he points to his own role as an intelligent scout responsible for organising Māori witnesses to the Compensation Court. Have you seen in the course of your research others fulfilling that role or do you have detail about what that role may have been? Because for Te Ūpokorehe it certainly seems far more coordinated than perhaps the records would suggest otherwise to have someone who is actively seeking out witnesses in support of the Compensation Court and it was unclear on whose behalf he was acting on there.

A. I would say he'd be acting on behalf of the Crown and Wilson's defence of compensation claims and it would be organising Māori witnesses to defend or defeat such claims. I have not come across any evidence which gives more detail about that role.

Q. My next question. The final point I note on this chapter is Hokianga Island and it gets comparatively little airtime as a part of the chapter contrasted to Hiwarau. Is that just a reflection of the nature of the sources that you encountered?

A. Yes, I'd say so.

Q. In your chapter of Ngāi Tamatea and how they came to be placed in the whenua, I don't take issue with the narrative that you have set out, but I do point to a possible gap in the report and that's any protest or objection or indication of how those that were already on the whenua there reacted when people were put into the rohe. Is the lack of that sort of material not in your report because the documents you reviewed were silent on it, or did you not seek it out?

A. I would say it's because they are silent on it. But I would observe that given the way they were treated they would not have even raise an objection and also the preferential treatment that Ngāi Tamatea got by being given land of excellent quality. You're talking about a community of relatively the same size, you can imagine how that would have appeared to the people of Te Ūpokorehe.

Q. It's not only the whenua being of superior quality, but there were gifts associated with that to help.

A. Indeed.

Q. Āe.

A. The fact that the Crown officials point this out and make a point of it in their correspondence means they're well aware I think of what an exception this is, and it hasn't been bestowed upon the people of the place.

Q. That's why it was somewhat of a surprise to me that we don't have records of any protest or petitions or letters objecting to that from Te Ūpokorehe or others that may have been on the whenua. But you're saying that it's just not part of the record.

A. No. It doesn't surprise that it is not part of the record because of the way they are being treated.

Q. Could we unpack that a little? Are you suggesting that by that stage they are apathetic or they've given in? What would, in your view there, the reason be that they aren't raising those objections or protests?

A. I think they have been raising them in the past and they've all fallen on deaf ears. Like that award to Ngāi Tamatea, yes, it comes at the same time when Native McLean comes to Ōpōtiki and they are asking him for more land. He basically says: "Well, don't talk to me about land. It's all gone. It's done. You've had it." And then when they persist, he says: "Go and see Commissioner Wilson. He set aside 20,000 acres for Whakatōhea, go see him," and there you get all of those smaller reserves and unfulfilled promises. It's part of the whole atmosphere of the time that there's not much point in protesting.

Q. I think we could say that here the absence of evidence doesn't necessarily mean that there was no protest or concern from those there.

A. (No audible response given).

Q. Your chapter on the military awards for Te Arawa.

JUDGE DOOGAN TO JANE LUITEN – CONFIRM ANSWER

A. I think I already said that it doesn't surprise that there is no protest given the context of the time.

Q. The chapter for the military awards for Te Arawa, I think I raised the same questions as for Ngāi Tamatea that there is a chronology of what happened on the ground and some of the protests that those that were placed there raised about having restrictions put on their titles and so forth. But there doesn't seem to be a record of protest or concern raised from those who were in the Ōhiwa, Waiōtahe and elsewhere, Ūpokorehe among them. Again, is that simply because it wasn't in the records that you consulted?

A. Correct.

Q. Finally, if we could turn back to the rohe of Te Ūpokorehe map that I handed up and we're going to return to the Pākihi arrangement. I am looking at number 28 which is the far eastern side which is labelled as Te Ara Kotupu. Do you see that in the spit as we've been through above not this Stack side, it's the Wilson side? During the Ngā Kōrero Tuku Iho hearings, Ūpokorehe kaumātua Wallace Aramoana gave evidence that that was the site of an atrocity where Ūpokorehe members were burned in a whare by the constabulary. We don't have a precise date for that. He said when they used their cannons from shore is what was handed down but the evidence is that that was where Ake Ake had his kāinga and that is also where he's buried. If that's true and all follows that's evidence that Te Ūpokorehe people were living in, or at very least having to travel through the Pākihi area right up to the point of invasion quite beyond the 1840 mark, isn't it?

WITNESS REFERRED TO TE ŪPOKOREHE MAP

A. Yes.

Q. Indeed, you've provided evidence, I think a letter from Wilson Snr which references Wilson Jnr which discussed loss of livestock on the block in the decade essentially following the Pākihi arrangement, which would also indicate that for those on the ground they're certainly not respecting

the boundaries or they don't see that it was a sale in the Western view of things. Do you agree with that?

A. Yes.

Q. Aside from the few matters that I'll need to raise in writing for you, those are the questions that I had for you today.

JUDGE DOOGAN ADDRESSES JANE LUITEN – TRIBUNAL CROSS-EXAMINATION (11:46:47)

(11:46) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Tēnā koe Ms Luiten. I wanted to start by thanking you for your report. I think you were given an extraordinarily difficult task to do, to untangle all these complicated land dealings that evolved through the confiscation and the subsequent dealing with the land. I think you did a very good job so thank you very much for that. I know I couldn't have done this so thank you very much. I just wanted to raise some general issues to start with. Your general position I think is that all or most of the successful claims made to the Compensation Court – this is for individual awards – were made by people who had left the district and some well before. Is that correct?

A. Yes.

Q. Yes.

A. Yes.

Q. Do you think that that is the way that the compensation process was supposed to work, that only those who were not in the district would be able to get any compensation through it?

A. No.

Q. No. Why did that happen I guess? Is it simply that every single person present in the district was considered to be in rebellion?

A. With the exception of Tiwai Piahana.

Q. Yes.

A. Yes.

Q. Right. Okay, thank you very much. That's pretty extraordinary.

A. Can I just add to the point that was raised yesterday about what is considered rebellion and as it happens in the Compensation Court. I just want to reiterate that it's never spelled out in the court record and those minutes from the Compensation Court. It's never spelled out what constitutes the rebellion that is debarring inhabitants from claiming compensation. Whether it's the 1864 campaign to support the Kīngitanga or whether it's conversion to Pai Mārire, which is both Völkner's death and the months following it when the place is supposed to be running amok, or whether it's resistance to the government invasion when they land with guns blazing to arrest the murderers.

We talked yesterday about Ngāi Tai's experience in the Compensation Court where it is their participation in the earlier 1864 action that is supposedly pardoned by the proclamation of peace but isn't in this case and that is used to extend the confiscation district and that's how they end up with Waiohoata, so we don't need to go over that again. But I dealt with it, at page 250 of my report, I touched on the fact that it wasn't made explicit in the Compensation Court what was rebellion but I didn't go into it in detail because I didn't appreciate what an issue it was. But last night I went back, I have a typed scrip and I went back last night to my typed scrip of the minutes from that Compensation Court that I have on-hand here in Wellington, and it's by no means a full transcript; I only have the first week of the first hearing in March 1867. But there are multiple examples of testimony that refer explicitly to participation in actions at Maketū and at Rāwhiti. I don't know where Rāwhiti is, but it's also always used in conjunction with Maketū so I'm assuming it's part of that 1864 campaign. These are positive or negative. It's either: "I didn't take up arms against the government," or: "I did take up arms against the government." But I think these all indicate that the people giving testimony in court considered that the rebellion that was debarring them from claiming was their participation in the 1864 fighting and the fact that they were Pai Mārire, and the fact that they had resisted the government invasion in 1865, even if it was running away into the bush to hide.

Q. And you've got that example of someone running away into the bush with a gun and he's considered a rebel.

A. Yes, Te Ranapia.

Q. Yes.

A. "When the steamers arrived, I took up my gun and ran away to the bush because I was afraid." I think it's clear to the people who are appearing as witnesses in court that it is the 1864 battles that are being considered as rebellion.

Q. Yes. Well, you mention Ngāi Tai so I wanted to go there because I had a question about that. I just think it's extraordinary that, despite the peace proclamation in there, with the case of Ngāi Tai, you do actually have evidence of it being Wilson who says that they are in rebellion because of their activities in 1864. That's correct, isn't it?

A. Yes.

Q. He says that in court.

A. He says it in court and he says it in correspondence.

Q. Yes, and in correspondence. That's not corrected by the judges of the court or by his superiors. As a result, I think it's about two-thirds of Ngāi Tai end up in the much smaller block of land. There's a block that's about 9,000 acres that the loyal part of Ngāi Tai is given. So I wanted to ask you, because I think that's all quite unprecedented, why the original boundary of the compensation district was drawn where it was? Was the Crown aware that that's where Ngāi Tai were and believed that they were in rebellion, and therefore the boundary of the confiscation district there? Do you know why that boundary ended up there?

A. Well, the gazetted boundary goes much further. It goes all the way up to Te Whānau-ā-Apanui of course.

Q. Right.

A. But the working boundary, by the time of the Compensation Court is put at Tarakeha or Ōpape, -

Q. Yes.

A. – the eastern end of Ōpape. I believe that there is an arrangement to keep confiscation away from the lands of Ngāi Tai.

Q. Yes. But they don't keep to that, do they?

A. No.

Q. No.

A. No. I think it's set there because Ngāi Tai are not implicated in Pai Mārire.

Q. Yes, and didn't fight against the Crown but were in fact considered allies was one of the words we heard. I wanted to ask you then, given that situation whether most of Ngāi Tai were considered to be in rebellion and were given that much smaller area of land, did that include Wiremu Kingi and did he receive one of those personal reserves that Wilson arranged for some of the chiefs?

A. Sorry, what was the first question?

Q. Was Wiremu Kingi, the Ngāi Tai leader, was he one of the ones that was put in the smaller block? So two parts to the question. Secondly, did he receive a person reserve which some of the Whakatōhea rangatira did receive from Wilson?

A. Okay. Wiremu Kingi is not a beneficial owner of Awaawakino block which is the block that's made for the rebel Ngāi Tai –

Q. Yes.

A. – but he is listed as a trustee for that block.

Q. I see, right.

A. In terms of your second question, the individual awards that are made for rangatira of Te Whakatōhea, for example, are made under section 4 of the Confiscated Lands Act which are to do with surrendered rebels. Wi Kingi doesn't get one of those because he isn't one but he is awarded compensation over and above Waiohoata.

Q. Yes. That's the scrip, is it?

A. No, he receives compensation grants at Ōpōtiki on top of other things.

Q. I see. Yes, that's right.

A. He doesn't get any award under the 1867. There's two processes at work.

Q. Yes.

A. Yes.

Q. Okay, thank you. I do recall that now that you remind me. I just think that's quite unprecedented. The restrictions on alienation that were placed on some of the titles and some blocks that didn't get titles, it is not clear to me the normal restrictions on alienation that the Native Land Court placed on titles would be that you couldn't sell it but

you could lease for a period of up to 21 years. Do you know if these restrictions included the ability to lease the land?

A. I think they were absolutely inalienable. Well, I'd have to check that. My understanding is that they are inalienable. Absolutely that they don't include lease –

Q. They don't include the opportunity to lease.

A. – but again, it's something the changes over time. When the Crown grant for Hiwarau Reserve issues in 1886 for example there's actually – let me check that. I cannot find it. Okay, Hiwarau Reserve when it's gazetted it is to be inalienably assured by a grant and trust. That's in the 1872 schedule which is gazetted in 1874. When title issues in 1876, this is page 179, it's to be inalienable by gift, sale, mortgage or leased for a longer period of 15 years.

Q. Fifteen.

A. Normally it's 21 years –

Q. Yes.

A. – but this has been shortened, and it seems to have been shortened to enable the lease to Rushton in that specific occasion. It says: "The restrictions against alienation had been relaxed on Brabant's recommendation, on the grounds that the owners wanted power to lease and that doing so would 'not be altering Mr Commissioner Wilson's decision as he does not specify the degree of inalienability in his schedule et cetera.'"

Q. I see, that's helpful. Yes, because there's a lot of them, I actually had a question in writing for you to go through them and tell us which ones were inalienable and which weren't so we can get a scale of that. I think you've table and I thought that might be added as a category, unless you have already go that and I've missed that.

A. Yes, I could do that.

Q. Yes, I've got a number in writing that are points of detail. Similarly, these trusts that were established so certain people are named as trustees. There's a list of individuals. I was wondering if that was similar to the title issues under section 17 of the Native Lands Act 1867? But was there

any definition of the trust? Was there any definition of what the powers of the trustees were, what they could do with the land?

A. No.

Q. No. There's a trust but it's alienable and the trustees we don't know what the role that the trustee were supposed to perform was.

A. Tika.

Q. I see.

(12:02) JUDGE DOOGAN TO JANE LUITEN:

Q. Sorry, just on that. The only documentary statement of the trust is the gazette or the award and the gazette instruments?

A. Correct.

Q. There's nothing else beyond that which provides any detail as to the nature of the trust obligation.

A. Correct.

Q. Thank you.

(12:03) DR GRANT PHILLIPSON TO JANE LUITEN: (CONTINUES)

Q. Just carrying on then. I just wanted to run through a few things. We have the situation where Wilson, do you know how old Wilson Jnr was when he came to Ōpōtiki with his father?

A. I think he was a youth. He was the oldest of those Wilson children.

Q. Right.

A. I might even have it in the report, I'm not sure, in a footnote somewhere.

Q. Okay.

A. But yes, I can't think off the top of my head.

Q. Yes, thank you. He comes with his father and the family and they're in this situation where they think they've bought this farm but it's constantly being disrupted by people coming on and cultivating, cutting firewood, doing all the things and disputing the ownership. And then we move to a situation where, having lived through that, Wilson is suddenly put in absolute power over all of Whakatōhea and Te Ūpokorehe and he has this conflict of interest because he wants to ensure the grant to his farm is protected through the confiscation process and no awards are put

there. And then we have Wilson coming back as a Native Land Court Judge and making decisions as a court about awards that he made a Special Commissioner. And then we have Major Mair as the Compensation Court Judge, who is a major taken from the Army. A bit of experience as a Resident Magistrate, but he is put in control of a court awarding land to the people that he was fighting against. And then we have Wiremu Kingi of Ngāi Tai as an assessor in the Native Land Court when that Ōpape block is considered by the Court. Do you have any comment on the kinds of – I'm a bit speechless about it all really. It just seems outrageous that those kinds of conflicts of interest are not-

A. I think you've missed Wilson's role as the government land purchase officer as well.

Q. Yes. That as well, yes.

A. I think that goes to my point that was raised with Mr Lyall. There is no point in protesting these arrangements. You're dealing with the same people.

Q. Yes, that's correct and that is an important aspect. But what kind of responsibilities do you think that the Crown had to ensure that there were fair above-board processes in their dealings with people whose land they have taken forcibly and that they had been fighting against? Do you have a comment on that? It may not be something you thought about.

A. I don't know that the Crown is too concerned. The Crown has come in and confiscated all this land and made its arrangements and their actions speak for itself. I don't know if that is an answer to your question.

Q. Yes, it is. It is, thank you. Is there any record of the negotiations between McLean and Hira Te Popo about the Ngāti Ira reserves? Have you found any record of that negotiation?

A. No.

Q. On the process of the Compensation Court I had thought that there was no right of appeal from the Compensation Court decisions but I noticed on page 255 of your report you do have Wilson saying that he wants to appeal something and that there was going to be a rehearing and I wasn't aware that that was a possible part of the process. Is there any provision for that in the New Zealand Settlements Act?

A. I don't believe there is. But that appeal is followed as far as trying to set up a court for it but the court falls over.

Q. Yes.

A. There is another example with the wives' issue which again goes to 1864 participation because the implication is the wives aren't part of those tauā that go away in 1864. But apart from that, when Wilson says: "There is a danger that some of these women might appeal," and the answer he gets is: "Actually, they can't," that gets treated as they might claim and the answer to that is: "Well, the window of claim has closed so they can't claim anyway," and that's how that is dealt with. So that's not quite an appeal of a decision.

I think the most likely way appeals would be handled, would be again by Wilson who has the discretion under the Confiscated Act 1867, to deal with people who have been poorly treated by the Compensation Court. I think that is how most appeals would have been dealt with, rather than any appeal provision in the 1863 Act.

Q. All right. Great, thank you. When you say "poorly treated" is that the word in the legislation?

A. I'd have to look it up, yes.

Q. Or that's how you understand it. Yes, no, thank you.

A. I might have put it in quotes, I don't know. No, I can't find it quickly.

Q. No, that's fine.

A. That's a matter of looking it up.

Q. Yes. Have you seen written instructions to Wilson or to any of his superiors?

A. There are the general instructions, written instructions to Pollen that I have cited in the report.

Q. Yes.

A. But those are about Waikato. Not specific I don't think to the Bay of Plenty.

Q. Yes. But you think they were probably much the same.

A. Yes. Well, I imagine they would have been along the same lines, yes.

Q. But you haven't seen any?

A. I haven't seen any written instructions to Wilson, no.

Q. No, thank you. Are you able to tell us or give us a comparison of how much land per person the military settlers got, as opposed to the Ōpape Reserve and the Hiwarau Reserve?

A. I think the rank and file of military settlers got 50 acres of country land and a quarter acre town lot is my understanding; a town section. It's very hard to know what Wilson was awarding on what basis. There are subsequent references which suggest that in Ōpape Reserve he was working to 30 acres per person. As I have pointed out, Hiwarau Reserve seems to start out at 50 acres per person but then he not only on survey that the size of the reserve decreases from 1,500 to about 1,000, so a third gets lost and then more beneficiaries are added. If there was a 50-acre benchmark, it's 19 acres by the end of that exercise.

Q. Right.

A. It doesn't compare. I guess where it is you could argue equitable is in the 50-acre sections that he gives to individual Te Whakatōhea rangatira which are around 50 acres each.

Q. Thank you. Is it the same with the Te Arawa military settlers that they got 50 acres per head?

A. I think they got 25.

Q. Twenty-five.

A. Yes.

Q. Right, thank you. Just two more questions and I'll put the rest in writing which I'm sure you're delighted about. The first one is why were Te Ūpokorehe added late to the Ōpape Reserve?

A. Good question. I don't know the answer to that.

Q. Okay, thank you. Finally, just a particular issue that I was unclear about on page 286 of your report. There is an issue about the Fencing, Highway, and Impounding Acts in respect of Ngāti Ira in their reserve and it wasn't clear to me what the issue was. I hope I've the right page. Yes, it's in the quote there on page 286 from Brabant. Do you see that: "These people have been, since my residence here, distinguished by their loyalty, industry, and good conduct, and have readily submitted to (what would be supposed to be to them) the irksome provisions of the Fencing, Highway, and Impounding Acts."

A. I would say that relates to possibly different forms of land use that are occurring now with Pākehā settlement. You have gone from a situation from cultivation perhaps to having to have pastures fenced and you can't have wondering stock because it gets impounded. It's Māori having to give way to new land uses and adhere to that.

Q. Yes. Well, I wondered if it was that they were required to fence their reserves?

A. I imagine that would be part of that. I don't know.

Q. You think that's what it refers to?

A. Yes.

Q. No, okay. Because it's a just a mention in passing and then there's nothing further. Okay, thank you very much Ms Luiten and I'll put the rest of my questions in writing.

A. Thank you.

HEARING ADJOURNS: 12.15 PM

HEARING RESUMES: 12.20 PM

JUDGE DOOGAN ADDRESSES MR LYALL – CLARIFICATION (12:21:19)

(12:21) DR ROBYN ANDERSON TO JANE LUITEN:

Q. Tēnā koe **greetings** Ms Luiten. You've brought a lot of interesting information about mana wahine and I would dearly love to have you give evidence to that panel as well as this one. But carrying on with the matter in hand. The Old Land Claims has seemed to have gained more prominence than I was expecting while I was reading the material for this hearing and Mr Lyall has talked to about Māori and whether they thought there was a sale or not. I'd like your opinion as to when you think Whakatōhea began to understand or to appreciate that Pākehā understood those arrangements to be permanent and exclusive transactions or sales? I mean Pākehā, yes, when Pākehā, so when did Whakatōhea understand what Pākehā understood by the arrangements?

A. I think Te Whakatōhea are alive to the ideas that Pākehā bring to this trade and I have suggested that that informs why they don't actually even tuku whenua **gifts** to Wilson. They tuku kāinga **homes**. They tuku tētahi kāinga **homes**. They completely avoid whenua in that transaction. I am suggesting that's no accident and that their whole care about not engaging in land trade is based on advice that comes from their Ngāpuhi in-laws who have a vast experience with land trade and its implication by this time.

I'm suggesting that that apprehension of what Pākehā mean by the trade is the reason why they don't trade. It's the reason why they sign that deed with Pompallier saying: "There's no more trade to be had," three weeks after Wilson's paid over the payment for Pākihi. I think this extent of the threat, the actual threat of what that deed means comes with the survey in 1853 when they start seeing on the ground: "Oh, my goodness, this is what they're surveying on the strength of that deed," and that is a year later. It's only a year later that they repudiate formally the Ngaio deed and I don't see that those two events are a coincidence.

Q. Okay. Because I was going to ask you about the survey because we don't seem to have that much information about how that was conducted and whether Māori were walking the boundary with Florance and how clearly that had been marked out. Do you have any comment on that?

A. I would agree that the evidence is that we don't have much information but I agree that a surveyor turning up in Ōpōtiki with his survey tools in 1854 people would know about it on the ground. I also suggest the fact that the opposition to the survey, the 5,000 acres that he couldn't survey which he says was a matter of £5, would suggest that he was also paying pounds as he goes to get the survey of the other portions done. That's again an inference on my part from the fact that he couldn't get the people who opposed that portion of the survey – he couldn't pay them to agree – suggests that that's what he was doing to get the rest of it surveyed possibly is one interpretation of that.

Q. I'm interested that you did mention that Pompallier deed, and I'm interested in your answer that their resistance to land sale predated 1840. Is that what you're saying to us?

A. No. I'm saying I only became aware of that Pompallier deed when I read Tony Walzl's work in preparation for this hearing. I wasn't aware of it when I wrote this report. But that deed that Whakatōhea asked Pompallier to commit to writing is an anti-trade deed. It's saying: "Nobody can trade land no matter who they are," and that is written in March 1840 shortly after Wilson has come back with the payment for the Pākihi deed. I'm saying in 1840 Te Whakatōhea are aware of the implications of trading land. Whether or not they agree with Pākehā ideas about it, they're aware of those ideas; they're very cautious. I'm suggesting that that's why they don't even tuku whenua to Wilson. I think that description in the deed of tētahi kāinga is significant.

Q. All right, thank you. I appreciate and understand what you're saying there. I did have a question about the extent of your statement saying that "for the next 20 years they didn't sell land" in your answers to the questions of clarification. Are you aware of Crown purchase officers going in and wanting to buy land in the district?

A. No. I'm not aware that anybody came here in the way that they did to Tūranga-nui for example. McLean came specifically and I'm not aware that any Crown officials came here.

Q. Going back to the question of the survey in 1853, at that point do you think Whakatōhea felt that they were under any threat of losing control over their land and over the affairs, you know, running of their own lives?

A. No, it was an autonomous tribal district.

Q. Do you think that had changed by 1860s?

A. No.

Q. All right. Okay, thank you. I mean which hapū are especially affected by the Pākihi deed when it becomes such a matter in the Compensation Court processes?

A. Te Ūpokorehe. I'd have to go back and see who else is claiming but I know that Te Ūpokorehe's claim on the basis of mana. Ancestry is dismissed as a result.

Q. Would you like me to put that in writing just so that you can double check that?

A. Sure.

Q. Okay. I promise not to ask many questions in writing. Another issue that arose for me out of your answers to questions of clarification I thought that it was Wilson who had decided as Ōpape as the location for the reserve but it seems to me that it's actually not from your answer. That it's actually Government officials. That it's Defence Minister Haultain and Dr Pollen.

A. Yes, Wilson accompanies them to look at Ōpape and that's where they decide it's going to be. Whether it was Wilson's idea who said: "Come and look at this land," but the decision was made by those three men. Yes, they were there on the ground at the time.

Q. Okay, I understand. They had a good awareness of the nature of that land when it was chosen clearly.

A. Yes.

Q. Okay. When Wilson's describing it as being "valuable land, high-quality land" he's not really deceiving them as to the nature of what was being contemplated.

A. In that April 1867 correspondence I think he's pointing out that only a part of it is high-quality land. I think he says about 1,500 acres. But he's not saying the whole lot is high quality land. He's saying there's a part of it that's high quality land "and I left the other part of the high quality land on the other side of the river for the Government". Does that answer your question? He's not saying that the whole lot is high quality land.

Q. But he's saying it's perfectly adequate for them.

A. For them.

Q. Yes.

A. Yes.

Q. All right, thank you. Just carrying on about Wilson, you talk about, on page 91, on his track record of bullying and bribery and then his being a stickler for the rules.

WITNESS REFERRED TO #A012, PAGE 91

A. Yes.

Q. Can you just elaborate exactly what you're referring to with those statements? I mean I think I might have a pretty good idea.

A. Well, we've got the example we've already discussed with Ngāi Tai telling Wiremu Kingi if he persists with his claim to Waiaua, then he'll take the confiscation line east to encompass his lands. I think the use of Te Whakatōhea witnesses in the Compensation Court to defend claims and the subsequent award to certain Whakatōhea rangatira of 50-acre lots I think there's a connection you can make there in terms of bribery, if you like.

Q. Say that again please.

A. He's using Te Whakatōhea witnesses –

Q. Yes.

A. – to defend claims in the Compensation Court not only against other tribes but also claimants within Whakatōhea.

Q. Yes.

A. These are the men who end up with a 50-acre award through private arrangement under the Confiscated Lands Act with Wilson.

Q. Yes. What about the stickler for rules statement?

A. The stickler for rules statement I guess comes out in his later judgments when he as Judge Wilson finds out that his arrangements haven't been adhered to.

Q. Yes.

A. I refer in particular to Ngāti Muriwai when he finds out about that in 1888 he cancels the award and said: “No, that wasn't part of my arrangement,” cancels the award and puts them all back into Ōpape 3 again. He's got these very fixed ideas about his rules but he is also very good at bending rules when it suits him to get the job done.

(12:35) JUDGE DOOGAN TO JANE LUITEN:

Q. I’m sorry Robyn. Just before you go to the next question, could I just go back to that previous answer about the awarding of the 50-acre lots. Do you know how high the correlation is between those who were giving evidence in the Compensation Court the Whakatōhea witnesses and those who were subsequently awarded the 50-acre lots?

A. Reweri Rangimatanuku, Pokanoa Awanui, which I'm taking Pokanoa to be another name for Te Awanui-

Q. You've a table have you?

A. Yes, that's page 262.

Q. Thank you.

A. Te Ranapia is in there. The only one I am not aware of that appeared as a witness in that list is Piri Te Makarini who doesn't seem to pop up in the Compensation Court as a witness.

Q. Right. So that was Piri Te Makarini.

A. Yes.

Q. Okay, thank you.

A. I'm not sure who he is.

Q. Alright, thank you.

(12:36) DR ROBYN ANDERSON TO JANE LUITEN: (CONTINUES)

Q. And then you made a further statement just orally about him bending the rules. What were you thinking of there?

A. I think I have given examples in my questions of clarification in his role as Government land purchase officer where a number of clauses and practices that he uses are outside of the law but they subsequently become law because they're so effective. I referred here to initial leases to do with Motu lands, he puts in a clause that once they have agreed to lease to the Crown they can't deal with the lands with anybody else which at the time is unlawful but that becomes law.

Another example is that he is advancing money for individual interests at a time when that's not lawful and then that subsequently becomes practice. He is doing all these slightly dodgy things that because they become effective are then adopted by the government as government practice or enacted into law.

Q. That suggests a huge influence on government policy, or is he one of a number of Crown purchase officers who are-

A. I think he's one of a number of Crown purchase officers who are operating in a climate of competition with private enterprise and are finding it very tough and are taking any methods they can in order to get success for the government.

Q. All right, thank you. I mean he is clearly hugely influential is what's happening within this area and I think you at some point suggest that he considers himself to be an expert on Māori matters locally. Do you think that's a credible position for him to take?

A. No.

Q. Why do you say that?

A. I think we did establish he was born in 1839 –

Q. Yes.

A. – which means he was a youth when he was at Hikutaia establishing the family farm and then he has left the district by 1851 I presume when his father leaves. I don't think they stick around much longer. He is certainly gone by 1853 and he doesn't come back until after confiscation. He is there as a youth. He is there as a teenager.

I think his ideas about who Te Whakatōhea are. I mean they come up again in my next report when we are dealing with the Ōamaru partition. He has fixed ideas about who Te Whakatōhea is which aren't even reflected by the evidence that is given in the case. He has all these preconceived ideas that don't necessarily fit with how Te Whakatōhea see themselves. Some of them may fit, like his five hapū, but that's a matter of ongoing talk, I suppose, discussion.

Q. All right, thank you. I just want to talk a little about the forced relocation of Whakatōhea on to Ōpape. I know you've described this or there is a description of this, or Wilson's description of the conduct of that process in your report. Do you know whether troops were actually involved at all in that process?

A. I don't believe so. The understanding I get from Wilson's account is that Te Whakatōhea are somewhat relieved that they're not being deported further afield and that they largely cooperate in the relocation.

Q. An explicit threat is made to them that they are going to be sent to the Chatham Islands, do I-

A. There's no explicit threat –

Q. Yes.

A. – that is on record. What we have is Te Ranapia's later evidence. I think it's Te Ranapia. It's a Whakatōhea rangatira's later evidence that that

was the threat held out to them and we have Walzl's evidence that the military commander at the time was recommending as much. We have Wilson who arrives in April 1866 to tell them this is where they're going to go, he says he withholds the information about exactly where they're going to go that evening. He lets them stew for an evening without telling them where they are actually being moved to and then he lets them know the next morning and he talks about the evident relief. My impression is that they're deliberately kept in a state of not knowing actually what the government has in store for them.

Q. He also describes them as being perfectly satisfied. Do you have a comment on that description?

A. I think it's interesting that he is trying to get some kind of response from them and they won't satisfy him. They say: "Well, whatever the government decides for us," but I had suggested that his reply to Tiwai Piahana at that stage when he asks or food is some indication of how he is treating these people.

Q. Yes, this is a comment rather than a question but to ally that statement with descriptions of dejection, fear, sullenness does seem to undercut his own sort of assessment. Now I was hoping for lunch time to sort of formulate this question because you have this interesting sort of three-way thing going on between Fenton, Wilson, and Pollen on page 251. Does Fenton have any authority over the Compensation Court activities?

A. He is the Chief Judge of the Native Land Court at this stage I believe. He would also be in charge of the Compensation Court which is like a sister court is my understanding.

Q. He does authority over what is happening?

A. Well, to an extent.

Q. That discussion of that, I wonder if you could just explain what is going on between Fenton's criticism of what's being arranged for the people who are coming in from the outside? I think you say that Wilson considers that he does take it into account.

A. I'm sorry, Robyn, can you direct me to the page.

Q. Sorry, it is page 251 and actually some of it is in your footnote, footnote 818 and then you go over the page and you say: “I think that Wilson considered that he had taken into account Fenton’s criticisms.”

A. Sorry, your question is what's the relationship between those three men or what's going on?

Q. Yes, and I'm not quite sure what the criticism is and how Wilson actually responds to the criticism.

A. The whole district has been taken. It's a blanket confiscation which is never intended under the 1863 Act.

Q. Yes.

A. Wilson comes in under instructions from Pollen because the confiscation districts have been handed over to the province to organise the re-settlement. Wilson believes he has a free hand –

Q. Yes.

A. -- so he starts making arrangements, like putting all the compensation claimants into a single 2,000 acre reserve, and he starts finding out from the likes of Chief Judge Fenton that: “No, actually there are legal issues here.”

Q. Yes.

A. In October 1866 when he tells Fenton that he's put aside this large reserve for the purpose of meeting these claims, Fenton responds that: “No, actually you are required to reserve two claimants their own land,” which is a surprise to Wilson. That's where you get Fenton saying to Wilson, who is the Crown agent: “Don’t suppose that the Government is always right.” There are legal issues like that that come up in the process of that Compensation Court which are referred to here but not elaborated on in a lot of depth because I think a lot of those have been dealt with in John McLellan’s report as well.

Q. Okay.

A. But I guess the point is that it's not a robust judicial process that this is all happening in and that it is open to legal challenge but those legal challenges are never pursued in any depth.

Q. All right, thank you.

A. Does that answer your question?

Q. Yes, I think so.

MR HUNT TO DR ROBYN ANDERSON – MR WILSON'S LETTER (12:48:19)

My last question, and I think you did discuss this a little bit with Ms Clark yesterday, what do you think McLean was trying to achieve by promising additional reserves to Te Hira Popo in 1873?

A. I think he was trying to preserve the pacification of the district by making small concessions. I think he was trying to soften up Te Whakatōhea for the Native Land Court hearing that's going to open the next day which is a showcase of how judicial title determination works with his eyes already on the outlying district and the Government purchase of that. I see them as small concessions to make people happy.

Q. All right. Well, those are all of my questions. Thank you very much for your report.

A. Thank you.

Q. As Dr Phillipson says, it's an incredibly complicated history, even more complicated than title history often is, and requiring a lot of sensitive navigation between conflicting views and interpretation. You've produced a very helpful report and so thank you very much.

A. Thank you.

MR LYALL ADDRESSES JUDGE DOOGAN – #3.1.353(a) LETTER (12:50:55)

(12:51) MS TE WHENUA TO JANE LUITEN:

Q. Tēnā koe e te Kaiwhakawā, otirā tēnā tātou katoa. Ko taku ingoa ko Te Whenua. Kei te tū hei rōia mō te kerēme Wai 1511 Ngāi Tamatea e arataki ana, e kōkiri ana e Keita Hudson. Kia oral. Counsel for Wai 1511 Ngāi Tamatea, a claim made by Keita Hudson. Nā reira tēnā koe Ms Luiten kei te mihi anō hoki au me te tautoko anō hoki i ngā mihi kua mihia ki a koe mō tō kaha te whakapau kaha mō tēnei kairangahau rīpoata. Tēnā koe. **Greetings Ms Luiten. Thank you and endorsing acknowledgements made for your efforts in producing this report.** Ms Luiten, I am specifically focussing on the component of your report

which refers to Ngāi Tamatea and the lands which were allocated for them at Ōhiwa and Waiōtahe which is at Chapter 7 of your report.

A. Āe.

Q. Ka pai. To support this line of questioning, I've also provided a document for cross-examination which is document #E003 in the bundle.

A. Is that Mary Gillingham's work?

Q. Āe.

A. Ka pai.

Q. Do you have that before you?

A. Almost.

Q. Ka pai.

A. I do now.

JUDGE DOOGAN TO MS TE WHENUA – ADJOURNMENT

Q. I start by just taking you through Chapter 7, in particular the first paragraph there where you note that: "It was not only tangata whenua who were relocated by the Crown to reserves within the inquiry district. That confiscated land was also used to accommodate Māori foreigners, specifically a kin group from the Upper Waiora. Te Waru Tamatea a rangatira of Ngāti Hinganga and Ngāti Hinemanuhiri, and his supporters, who supported Te Kooti after the escape of the whakarau from Wharekauri, who had been on the run since April 1869, numbering eight men and 30 women and children who had surrendered in 1870 to within the district. I just tuatahi **firstly**, I want to note your use of the word "Māori foreigners". It is specifically in reference to the fact that this kin group and their ancestral lands were located outside of the inquiry district. That's correct, isn't it?

A. Correct.

Q. Ka pai. Ahakoa tēnā, he kupu nui tēnā ki ngā kaikerēme, **in spite of that, (inaudible)**, you may or may not be aware, but in April earlier this year we held our tuku kōrero hearing on Maromahue Marae and it's important to the claimants to note that in that hearing they gave evidence and demonstrated to the sitting Tribunal that they had since relocation established a whakapapa connection to Te Whakatōhea which was demonstrated in their wharenui. With respect to your use of foreigners

again you're really just limiting the reference to the original ancestral lands, aren't you?

A. Āe **yes**.

Q. Ka pai **all right**. And then you not further on that, in the following paragraph actually, the agreement to re-settle Te Waru and his people had been reached between them and the Government agent McLean, and that the ostensible reason for the relocation, repeated in the official narrative for decades to come, was that Te Waru and his people were not welcome home on account of killing their relations in the recent war at Te Wairoa. Their return home may have also upset government plans underway to appropriate their lands in the Upper Wairoa through forced cessions and through purchase, although this has not been the subject of research for your report. That is correct?

A. That's correct.

Q. Despite that it is not the subject, the sole focus or key subject of research for your report, the context and the background which led to their relocation and the division between their uri **descendants** and whanaunga **relatives** in Te Wairoa and themselves is relevant to you report, isn't it, because it underpins their forced exile. Is that correct?

A. I think so. Yes, I'd agree.

Q. During the forced exile they, as you note in your report, lost the majority, if not the totality of their ancestral lands at Te Wairoa. It is relevant to that also, isn't it?

A. Āe.

Q. So we have only two minutes remaining before the lunch break, but what I propose is take you through the summary. The key elements of the summary of that context is produced in the Gillingham summary in the cross-document but I think we could potentially break first and then come back.

JUDGE DOOGAN ADDRESSES MS TE WHENUA – ADJOURN (12:58:39)

HEARING ADJOURNS: 12.58 PM

HEARING RESUMES: 1.45 PM

(13:45) MS TE WHENUA TO JANE LUITEN: (CONTINUES)

Q. Tēnā anō hoki tātou. **Greetings once again.** At risk of taking us through laboriously in detail the cross-document at 2 pm on a Friday, I have decided it might be better for me to ask. Ms Luiten, have you had an opportunity to read through the Gillingham summary?

A. I have.

Q. Āe, ka pai. **Yes, all right.** Cutting to the chase, in reference to that summary and the point that we left off with before the break which was on the official record Te Waru and his people were not able to return home on account of their relatives essentially having a significant bone to pick with them. Do you accept that it was in fact the Government's actions in Te Wairoa that caused the division between Te Waru and his people and their relatives who remained in Te Wairoa?

A. Yes.

Q. According to the Gillingham report at paragraph 11 it was in fact McLean a general agent for the Government who decided to wage war on Te Waru in 1865, wasn't it?

WITNESS REFERRED TO #E003, PARA 11

A. Yes.

JUDGE DOOGAN TO JANE LUITEN – ADJUST MIC

Q. Sticking with that paragraph 11 of the Gillingham report, it was according to the report McLean who deputed the leading loyalist chiefs in Te Wairoa to join the Government campaign, wasn't it?

A. Yes.

Q. At paragraph 8 of the Gillingham report, it was the Government agents that armed the loyal chiefs, wasn't it?

WITNESS REFERRED TO #E003, PARA 8

A. Correct.

Q. At paragraph 18 of the Gillingham report, it was in fact the Government agents that reached an agreement to reward the 'loyal' chiefs for their loyalty through a determination of land interests in the four blocks which Te Waru was primarily interested in, on the agreement in advance of title

determination, that the land would then be on-sold from the loyal natives to the Crown.

WITNESS REFERRED TO #E003, PARA 18

A. What was the paragraph, sorry?

Q. Paragraph 18. While you're perusing that, for the record, I will note that those blocks are the Ruakituri blocks, Taramarama blocks, Tukurangi block, and Waiau blocks which are referred to at paragraph 2 of the Gillingham report and in my notes page 137. Sorry, I think that's incorrect. They are also referred to in your report. I'll need to get the proper reference.

A. 237?

Q. 237, yes.

A. What was the question?

Q. Yes, the question again is whether you agree in reference to paragraph 18 of the Gillingham report that it was the Government agents that reached an agreement with the loyal chiefs of Te Wairoa to reward them for their loyalty through a determination of interests in the four blocks which I've just set out on the proviso that those blocks or their interests within them, would then be on-sold to the Crown?

A. I'm not getting that from paragraph 18, but I do agree with the general point that and elsewhere.

Q. You're aware of this arrangement?

A. Yes.

Q. Yes. At paragraph 24 of the Gillingham report, would you agree that the Government then indeed carried out the award of title in or around 1876 in those four blocks to the loyalist chiefs and then purchased the lands off them for £11,300?

WITNESS REFERRED TO #E003, PARA 24

A. Yes, I agree with that. According to my notes that I made of the Gillingham papers that were supplied to me prior to the hearing is that there's an agreement at Wairoa in August 1872 with those blocks Waiau, Tukurangi, Taramarama, and Ruakituri blocks to define them at 157,000 acres, but there's a protracted dispute about customary interests between Tūhoe, Ngāti Ruapani, and Kahungunu. I've made a note that

the Government's solution by October, and I note that August 1872 Te Waru Tamatea, who has been an opponent of land sales all along, is by that stage out of the district with his surrender in December 1870. He never went home. He went from his surrender to Waiōtahe. The Government's solution by October 1874 is to purchase those blocks.

Q. Yes, kia ora thank you for that point. Because within Chapter 7 of your report, you do note quite extensively a number of examples where there's a toing and froing of Te Waru Tamatea and his people forcibly exiled in Waiōtahe understanding and hearing of the determination of title of their ancestral lands in Te Wairoa seeking directly, requesting permission from Government agents to return home to have their interests in those blocks determined and being prohibited being told no on account of the threat of war erupting. That's correct, isn't it?

A. Correct.

Q. But the protracted circumstances that you refer to in terms of customary title being determined in the Wairoa blocks could lead to the protracted forcible exile, couldn't it, or it could be a motivation factor anyway for the Government to wish to prohibit Te Waru's return back to Te Wairoa as the customary interests are determined and that, as you say, is a protracted exercise?

A. Particularly with those four named blocks, it completely removes his opposition from the equation back in Wairoa.

Q. That's right. And so, would you agree that, though the official narrative may have been that Te Waru, and his people were not welcome home on account of killing their relations and more as you note in your report, that this is merely a convenient narrative and it serves the government?

A. I would agree with that.

Q. In fact, as you note at page 236, you describe the way that Te Waru and his people were detained at Waiotahe as forced exile, you also described that as a travel embargo. There was definitely a policing of their movements by government officials.

A. Yes.

Q. And again, at page 234 of your report, you say: "They were kept under surveillance throughout the 1870s," right up into 1883 at least at page 242

of your report where you kind of conclude your analysis of that engagement.

A. The prohibition ends with Native Minister Bryce who says it's ridiculous.

Q. Right. Because even then at 1883 this was some years after their lands had ostensibly been lost through the title allocation and on-selling to the Crown, isn't that right?

A. That some time after those four blocks that they get paid out by Preece in the 1870s but they still have customary interests to defend at Wairoa. But even after that payout for those big blocks they are still not allowed to return home to defend the remaining customary lands at Wairoa.

Q. Would you agree that the enduring prohibition on their movement was beneficial to both the Crown and also particularly in the first instance where the loyal Wairoa chiefs were granted title and then paid out for that title to the degree of £11,300, it was beneficial to both their whānau in Te Wairoa and the Crown?

A. I don't know if that is beneficial but certainly they got the benefit of that transaction rather than those who did not.

Q. Thank you. Gillingham actually notes that ultimately the primary benefactor at the end of the day was the government. In her own words, at the end of the day, and this is paragraph 25, it was the government who ultimately benefited from "it" being the transactions. I'm sorry, this may not be a quote. But it was the government who ultimately benefited through the acquisition of Ngāi Tamatea's customary lands. That is her final sentence at the bottom of paragraph 25.

A. Yes, it is.

Q. Okay, thank you.

JUDGE DOOGAN TO JANE LUITEN, MS TE WHENUA – CLARIFICATION

Q. Bearing that in mind, if we turn to the proposition within your report and particularly around your reflections around what had been described in your cross-examination with my friend Mr Lyall as preferential treatment toward Ngāi Tamatea. In your reference to what you have described in your report in one paragraph as largesse and in your engagements with my friend Mr Lyall preferential treatment, am I correct in presuming that you're referring to a comparative between Te Waru and his people in the

300 acres that they were granted within Waiotahe as prime land and the lands of the iwi taketake of the rohe?

A. Correct.

Q. Okay. In comparison though to what they have endured in being forcibly exiled from Te Wairoa in losing – apologies – at least 172,500 acres and that's a reference to the area of land of the four blocks which I have referred to and only those four; we're not even touching on the other customary lands which you acknowledge; they continue to seek that they have their interests determined and post the four blocks with being dealt with. So that is 172,500 acres reduced to 300 acres with reference to your page 234, and when I am looking at page 234 – sorry that's a reference to the area of land – that that is not preferential treatment, is it?

A. No.

Q. No. With respect of the human impact, Gillingham talks about the Pai Mārire which was Te Waru Tamatea and his people, his followers contingent within Te Wairoa numbering around 180 fighting men at her paragraph 12. Then you acknowledge at your page 233 that there were only eight men and 30 women and children remaining who surrendered at Galatea and were relocated at Waiotahe. That's a reduction from 180 tangata tāne to eight tāne on those numbers. That's not preferential treatment is it?

A. No.

Q. Even if we look at the acres *per capita*, if we take that approach that Ngāi Tamatea were afforded in comparison to those of the iwi taketake which we know about through your report. At this point, I'm turning to page 307 of your report.

WITNESS REFERRED TO #A012, PAGE 307-308

At the paragraph beginning "At the time" with the sentence beginning, "At the time, the Special Commissioner boasted that the Crown provision amounted to 61 acres per head." Can you see that one?

A. Yes.

Q. Okay. "Sixty on acres per head," and this was for Whakatōhea. Then later you note at page 308 a more honest breakdown of the hapū reserves

reveals that the Crown's magnanimity seldom exceeded 20 acres per person.

A. I see that.

Q. Yes. So if we take even just on an acres per head basis which is the reference that you make and also in your reflections at page 248 we are talking about at the very least 20 acres per person for Whakatōhea to in fact only around about just under eight acres per head for Ngāi Tamatea. I don't expect you to mathematically calculate what 300 acres is divided by 38 but I did in fact calculate it. Would you accept that it's a likely proposition that it rests below 30 acres per head or 20? Yes, 20 the conservative estimate for Whakatōhea.

A. I think Wilson's 61 acres per head was part of his untruthful and fantasy world. I would go with the 20 acres and you can tell us what the answer with Ngāi Tamatea is.

Q. Around about 7.89 acres.

A. Yes.

Q. Also, even comparatively and in your own words in your reflections on an acres per head basis, it was not preferential treatment. Would you agree with that?

A. I would agree with that. I think the thing that stands out is the quality of land rather than the quantity.

Q. I appreciate that. That was the specific point that you were making to bring home to the Tribunal the particular egregious nature of the way that Te Whakatōhea and iwi taketake were treated, wasn't it? But it was not–

A. To suggest that these people were treated well.

Q. Thank you. Would you warrant a view as to how they were treated on the spectrum of well to poorly?

A. I think what happened to that reserve in particular their title is one of the ones which is never secured to them and they do bear that stigma of being rebels who were there during good behaviour. It's a life interest and title is never meant to – that's the Commissioner Of Crown Lands into the 20th century saying "no title is to issue" so they're living under that and with that as well.

JUDGE DOOGAN TO MS TE WHENUA – TIMING

Q. My question is around the capacity for Te Wairoa to have sorted this out themselves. In other words, at paragraph 9 of the Gillingham report, Ms Gillingham gives a fairly thorough recount of a tikanga-based restorative justice or utu process amongst the two factions that had evolved within the Wairoa and their rangatira. The Government's intervention in this situation was unnecessary, wasn't it?

A. I believe so.

Q. If the Government had left the rangatira of Te Waiora to their own devices to sort out the differences between them they could've done so in a peaceful manner, couldn't they? Sorry, I'll rephrase that question. There was a tikanga-based restorative justice process that's demonstrated by Gillingham that was active in the rohe, wasn't there?

A. There's a tikanga-based way of restoring relations. But with the Government's entry into the takiwā by this stage, I'm not sure that that tikanga-based approach would've been allowed to happen now that the Crown has moved in.

Q. That's right. Effectively they interrupted tikanga, didn't they?

A. Indeed.

Q. Ngāi Tamatea still live with the stigma associated with that interruption of tikanga, don't they?

A. That's something Ngāi Tamatea will know.

Q. Tēnā koe **thank you** Ms Luiten. Thank you very much for your response to my questions.

(14:10) MS FEINT KC TO JANE LUITEN:

Q. Tēnā koe **greetings** Ms Luiten. My name's Karen Feint and I represent Ngāti Rua hapū. I wanted to start at page 68 of your report where you refer to the Special Commissioner Wilson elaborating on the reasons for providing the reserve at Ōpape.

WITNESS REFERRED TO #A012, PAGE 68

He says in that quote at the bottom of the page that: "It is so well separated from European lands by the Waiaua river," so it appears that at least part of the rationale is to move Whakatōhea away from the Pākehā settlement of Ōpōtiki. I wanted to ask you whether you were

aware of Whakatōhea referring to the Ōpape Reserve as a reservation in style like the North American reservation?

A. I am aware of that.

Q. Do you think that that's an act comparison?

A. I do.

Q. At page 72 you say that the total size of the reserve was 20,789 acres and then you set out the per capita acreages for each hapū at page 85 in your Table 2 there. Where you've got the acres per head in that right-hand column that refers to the total for the coastal and bush blocks for each hapū. Correct?

WITNESS REFERRED TO #A012 PAGES 72 AND 85

A. Correct.

Q. You'd agree, wouldn't you, that that figure is not a figure that includes only arable land. It also includes the mountainous land of the bush blocks.

A. Correct.

Q. Have you worked out what the per capita acreage would be if you just take the arable land and say the coastal blocks for each hapū?

A. In the case of Ngāti Rua, which comes up in the partition, I think it works out at about 15 acres per head.

Q. Right. Would that be the same for the other hapū or similar?

A. For some it will be less and others slightly more.

Q. You refer in your report to the fact that this was Ngāti Rua's customary land and that Ngāti Rua had to manaaki **care** the other hapū. Of course, the question of sufficiency of the Ōpape Reserve is not only about economic viability, is it, because there's also a cultural impact moving the hapū onto someone else's ancestral land.

A. Yes, it's about turning the customary interest on its head basically.

Q. I was struck by the quotation you have of Ranapia Waihuka at page 283 of your report where he says: "Our ancestor for this land is the Government and I am the child of the Government."

WITNESS REFERRED TO #A012, PAGE 283

A. Yes.

Q. I think you said in an answer to my friend Ms Clark yesterday, you had suggested that perhaps Commissioner Wilson may have done some sort

of deal with Ngāti Rua so that they could choose the land where their reserve was. Albeit that's to some extent speculation, is it not?

A. That's correct.

Q. I noted that Ōpape 3 includes Ōmarumutu which is an ancient pā of Ngāti Rua but it doesn't include their ancestral maunga Makeo which went to Ūpokorehe

A. Makeo.

Q. Although they had some element of choice perhaps in the land that they received, it nonetheless still resulted in them losing significant ancestral taonga. Would you agree?

A. I would put it that it's not that they had choice about where their bit was, but I think the fact that Wilson put them in Ōpape 3 may have been how he achieved agreement to the partition in the first place. It is not that they chose that bit but that was a way of securing that agreement. But we don't know and I don't know that.

Q. Well look, would it be agreement or would it be more accurate to say, a way of reducing their opposition?

A. Yes.

Q. All right. Just in passing you referred to the claims of Ngāi Tai to Tirohanga and my friend Ms Clark asked you whether you have seen Professor David Williams' evidence on the topic. I wanted to be clear, you haven't undertaken an assessment of the customary interests of Ngāi Tai in relation to your report?

A. I have in relation to my Part Two report.

Q. All right. That is helpful thank you. I will come to that when we get to Part Two. Now next I want to step through the documents that I filed last night. Have you had an opportunity to have a look at those? I have brought along hard copies.

MS FEINT KC TO JUDGE DOOGAN – HARD COPIES

If we start with the document from the AJHR which has the census figures for Ōpōtiki in 1874 and we're looking at page 9 of that document.

A. Yes.

Q. I don't need to ask you a question about this, Ms Luiten. I'm just referring it to you for context in relation to the later documents about the population

of Whakatōhea as at 1874. This sets out about halfway down it's got five hapū Ngāti Rua, Ngāi Tama, Ngāti Ngahere, Ngāti Patu, and Ngāti Ira with their population figures. Do you see that?

A. Yes.

Q. And then about four lines further down it's got Whakatōhea, Ūpokorehe and their population figures.

A. Yes.

Q. It appears that Brabant is responsible for providing that data if you look at the top of the page.

A. Yes.

Q. All right. And then the next document is the Ranginui Walker text that Mr Sharp referred you to at page 142. At the bottom of page 142 in that final paragraph he says: "A more accurate assessment of the population of Whakatōhea and the census of 1817 was recorded in the iwi register of 1874."

A. Yes.

Q. And then if you turn over the page he's got the register set out there –

A. Yes.

Q. – which includes Ngāti Muriwai. It's very small but on the bottom right-hand figure of that graph beside the number for Ngāti Ira of 26 children it's got footnote 3.

A. Yes.

Q. And if you go over to page 300 footnote 3 in Chapter 5 his source is A C Lile the Whakatōhea book at page 197.

A. Yes.

Q. And then if we go to A C Lile's text at 197, he has those same statistics headed *1874 Statistics*. Do you see that table?

A. Yes.

Q. Interestingly, he says: "The register of members of Whakatōhea made as at 1 January 1874 is relative to the creation of reserves out of confiscated lands." To be clear, there weren't reserves created in 1874 were there?

A. Sorry, where did you get the last bit?

Q. I am looking at the text under the heading *1874 Statistics* page 197.

A. What is your question?

Q. Where he says that the register was made in 1974 in relation to the creation of reserves out of the confiscated lands, –

A. Yes.

Q. – but my question to you was 1874 wasn't the year that the reserves were created.

A. No, there's Brabant's list in 1883.

Q. Right. Then if you go back to page 94 you can see the heading "Ngāti Muriwai" he says: "Named as a separate hapū in the 1874 list of proposed grantees to the Ōpape Native Reserve."

A. Sorry, I'm not with you yet.

Q. Page 94.

A. Yes. "Ngāti Muriwai named", yes.

Q. You can see the footnote is number eight.

A. The footnotes are?

Q. The footnotes are on page 97. Then it just simply says "records held by the Whakatōhea Trust Board". It's up on the screen there if you can't see it.

A. Yes.

Q. Right. And again, if you go back to Lile's table on 197 and then we bring up your Table 2 on page 85 of your report.

A. Yes.

Q. I think you have answered this question this morning already but I just wanted to ask you to confirm that the population numbers in Lile's 1874 table on page 197 are the same as the population numbers you have got in your Table 2 there?

A. I believe it is the same table. It is where Lile's table is actually Brabant's 1883 list, subdivision list.

Q. Right. In your opinion, Lile's got the wrong date for his population figures. Is that correct?

A. Yes, and I haven't come across an iwi register of 1874.

Q. Alright. That's helpful. The thing that slightly confused me is the tables headed 1881 but you're saying these are the figures as at January 1883. Is that correct? If you look at footnote 202.

A. Yes, I think the 1881 is because these lists were first negotiated or finalised with Te Whakatōhea in October 1881. My impression was, the final list that submitted in 1883 is basically the same list as the 1881 list, except with Ngāti Muriwai put into their own separate piece.

Q. Right.

A. My impression was that none of the other beneficiaries are different.

Q. Right. So they would have been deducted from the Ngāti Rua numbers?

A. Yes.

Q. All right, thank you.

(14:26) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Ms Luiten, the table should really say 1883, shouldn't it?

A. Yes, possibly.

(14:26) MS FEINT KC TO JANE LUITEN: (CONTINUES)

Q. In terms of your footnote you say your source is the Ōpape Native Reserves file. Is that document 83/331 on the record of inquiry?

A. It should be part of the supporting documents.

Q. In your document bank.

A. Yes.

Q. I couldn't find the document bank for you but there's one filed, is there?

A. Yes.

Q. Alright. I'm no good at searching the record of inquiry obviously. If we've concluded the 1874 statistics are not correct or at least they are dated from the wrong year, and I then take you back to page 76 of your report from my read of your report the earliest that Ngāti Muriwai are mentioned in the record is March 1879, in this letter that you have quoted, Porikapa as writing in March 1879. Is that correct?

A. Correct.

Q. You are not aware of any other documentary record of the existence of Ngāti Muriwai prior to that date?

A. Correct.

Q. It appears by 1979 they were already running sheep on the Ōpape Reserve. Is that correct?

A. Correct.

Q. Then you go on to say that Ngāti Muriwai were originally included in the Ngāti Rua lists for Ōpape 3 in October 1881 and then the dispute over sheep farming coupled with the support that they gave to Ngāi Tai in the Whitikau hearing meant that matters came to head in February 1882 with Ngāti Rua wanting to drive their sheep off. So that's when the dispute within Ngāti Rua came to a head. Correct?

A. Correct.

Q. And then in January 1883 the solution adopted was that Ngāti Muriwai got the Ōpape 3A partition.

A. Is that January?

Q. I'm looking at page 85 by now.

A. January 1883, yes, correct.

Q. Right. And just to dig a bit further into how that came about, you refer back at page 84 to there being certain proceedings taken in Mr Bush's Resident Magistrate Court. There were trespass cases taken, I assume, by Ngāti Rua against Paku Eruera and his people. Is that your understanding?

A. I'm not sure just what that prosecution was. I think I assumed Ngāti Muriwai took the proceedings rather than Ngāti Rua. It says that Ngāti Rua actually did drive them off the property of the latter hapū and certain proceedings were taken in, so I'm not sure whether Ngāti Muriwai – I don't know the answer who instigated that.

Q. Okay. I think someone else asked you before, did you read Tony Walzl's Ngāti Muriwai report for the MACA proceeding?

A. No.

Q. Right, okay. But it suggests in that quote there that it was Bush, the Resident Magistrate, who first proposed that they get a separate block.

A. He seems to support it.

Q. And then Brabant negotiated it in effect.

A. Yes.

Q. It appears that it was Crown officials who arranged the subdivision at Ngāti Muriwai's behest. Would you agree with that?

A. I would agree with that. And at some point in that decision it was made to consolidate their interests at Waiaua from Ōpape 12 as well.

Q. Yes. I was going to ask you about that because that effectively meant that they got double the allocation of arable land per capita –

A. Correct.

Q. – that Ngāti Rua did. Correct? That might be a further reason for the division between them?

A. Correct. Another component is that, to add to this, Resident Magistrate Bush works closely with Wiremu Kingi of Ngāi Tai so you have that aspect to all of this as well in the background.

Q. It is not entirely clear that Ngāti Rua agreed to the subdivision, is it, because they continued to object –

A. They continue to object.

Q. – throughout the 19th century? Because you refer to their objection in 1886 at page 98.

A. Yes.

Q. And then, were you aware that in a 1898 Native Land Court hearing, Heremia Hoera gave further evidence concerning his objections?

A. Which hearing was that?

Q. I haven't written down which hearing it was, I've obtained that from the Walzl report. But if you haven't looked at it, we will move on.

A. Okay.

JUDGE DOOGAN TO MS FEINT KC – BREAK

Q. At page 97 of your report, you say in that first full paragraph that when Te Paku Eruera was giving evidence in the 1895 Whitikau No 3 rehearing, his evidence was to the effect that the name Ngāti Muriwai was taken at the point of the Ōpape 3A partition in order to emphasise that the land came from their Whakatōhea whakapapa interest rather than their Ngāi Tai interest.

A. Yes.

Q. It's correct, isn't it, that Paku Eruera and Ngāti Muriwai never claimed any customary land interests as Ngāti Muriwai in the Native Land Court?

A. Correct.

Q. At footnote 331 on page 97 you make a statement that for the remainder of the 19th century Te Paku Eruera continued to distance himself from Ngāti Rua claiming ancestral rights in the 1895 rehearing, for example. as Te Panenehu of Tūtāmure not Ngāti Rua of the present day. Panenehu of course was the predecessor hapū to Ngāti Rua. Are you aware of that?

WITNESS REFERRED TO #A012, PAGE 97, FOOTNOTE 331

A. I'm aware of that. It's my opinion that it's also the predecessor hapū of Te Paku's people.

Q. Right. Why do you think that Te Paku was trying to distance himself from his Ngāti Rua kin?

A. Again, it's a matter for the Part 2 report which might be better left there. But I think his grievance against Ngāti Rua in this report I thought it was about the sheep and the Ngāi Tai connections, but in the course of Part 2 I think it goes back a lot longer than that. I believe that Eru Ponaho, who is Te Paku's grandfather, are one of the last people who are living at Waiaua as descendants of Panenehu which has gradually been absorbed into Ngāti Rua and Te Whakatōhea and Ngāi Tai. But I believe these people are standing out against that hegemony and insisting on their rights as a distinct people.

I think that that's where this comes from as Ngāti Muriwai. It's why they reinvent themselves in the subdivision as Ngāti Muriwai because they don't accept or want to become under that Ngāti Rua hegemony that exists since at least 1840. I think it's part of internal tribal dynamics and Ngāti Muriwai, Te Paku's people, it goes back to having a connection with that land that they see in the early 1880s that is not part of being Ngāti Rua or the bigger Ngāti Rua. They're still perceived as Ngāti Rua and a part of Ngāti Rua but I think they have those links back further which makes them stand apart.

Q. Except that Ngāti Rua also have those links to Panenehu.

A. They do, yes.

Q. In relation to your conclusion in the bottom paragraph on that page, you refer to the contemporary perceptions of them as a sub-hapū of Ngāti Rua

and that they were successful in getting a partition of the hapū Ōpape 3 block. In effect, they were a whānau group of Ngāti Rua who managed to get their own partition, whereas other whānau within Ngāti Rua were not so lucky, were they?

A. Yes, at that time.

Q. There wouldn't have been enough land to go around to give everyone –

A. Everyone the same.

Q. – 30 acres per head-

A. Yes, and the Crown wouldn't have wanted to survey such a small, close subdivision because it wouldn't want to pay for it as well.

Now on page 98 in that second paragraph there you say in that third line down: "Amidst the tide of ill-will between Ngāti Muriwai and their Ngāti Rua whanaunga from 1878 the show of autonomy by the former seems to have been perceived as a transgression of mana by Te Whakatōhea as a whole and then you refer to a quote: "Ko mātou ko te hunga tokomaha kua hinga i te tangata kotahi **we the many who died at the hands of one man**. We the majority have been undermined by the minority of one." Where does that quote come from?

WITNESS REFERRED TO #A012, PAGE 98

A. It's quoted earlier on. It comes from Te Whakatōhea's objection to running sheep. They say that they've made this tribal-wide decision that there is to be no sheep on Waiaua. I mean I can find it for you if you want me to.

Q. Yes, that would be helpful, thank you.

JUDGE DOOGAN TO MS FEINT KC – REMAINING QUESTIONS

Q. Do you want to find it over the break?

A. Over the break, sure.

Q. Just to be clear, the minority of one they're referring to I assume would be Te Paku Eruera. Is that correct?

A. Correct.

Q. Thank you. I have no further questions but thank you for your evidence.

JUDGE DOOGAN ADDRESSES MS FEINT KC – REFERENCE TO SOURCE (14:42:40)

HEARING ADJOURNS: 2.42 PM

HEARING RESUMES: 2.48 PM

JANE LUITEN ADDRESSES JUDGE DOOGAN – SOURCE REFERENCE #A012 PAGE 84 (14:48:37)

(14:48) JANE LUITEN: (RESPONSE)

It's on page 84 and it's a letter of protest, if you like, from Te Whakatōhea, from Te Awanui Aporotanga and 22 others to Brabant. The signatories include men who are representative of Te Whakatōhea as a whole and they're complaining about Te Paku's sheep at Waiaua. They are writing this letter in February, which is four months after Brabant have made those lists, which at this point Ngāti Muriwai are not separated; they are part of Ngāti Rua. This is the list for the subdivision. They refer to Brabant's advice that he's given them in Ōpōtiki the previous October. "That it was not right for anyone to farm sheep on land held in common: 'I puta tau kupu kia Te Whakatōhea e kore e tika kia whakatupu te tangata i tēnei taonga i te hipi ki runga i te whenua o te katoa tangata.'" It goes on about that tribal edict against sheep farming: "Ko tā mātou whakaaro kia kore rawa he hipi ki runga i taua whenua. Ko mātou ko te hunga tokomaha kua hinga i te tangata kotahi," and that's where the later reference comes from. "Our opinion is that there should not be sheep on that land. We, the majority, have been undermined by the minority," and that is my translation in the absence of a contemporary translation on record.

JUDGE DOOGAN:

Kia ora. Thank you Ms Luiten.

(14:51) MS TE HIRA TO JANE LUITEN:

Q. Tēnā koe Ms Luiten, otirā tēnā tātou. Hei tīmatanga ake, ko Ms Te Hira ahau. Kei konei ahau e whakakanohi ana i ngā kerēme o Ngāti Ira o Waioweka, otirā ngā uri whakaheke o Hira Te Popo me Rakuraku. Kei te hia tuku mihi ahau ki a koe hei tīmatanga kōrero. Tuatahi ake mō te tika me te rere me te Māori o tō whakahua i tō tātou

reo, otirā mō ōu mahi nunui kua oti i a koe i roto i tēnei o ngā pakirehua. Nō reira, āe, e kore ārikarika ngā mihi ki a koe. **To commence, I am Ms Te Hira and I am appearing for the claims of Ngāti Ira of Waioweka and the descendants of Hira Te Popo and Rakuraku. I want to thank you to begin with. Firstly, for the outright and your correct pronunciation of Māori language in your great work that you have accomplished in this inquiry, and so yes. I want to thank you very much.**

I, alongside Ms Sykes and Ms Cole who is assisting, represent Ngāti Ira o Waioweka and I would just like to thank you for your contributions in this inquiry. A lot of what you have provided has also been very helpful to us in our MACA case. But I want to start my questioning today with a pātai about the Ngāti Ira rangatira Hira Te Popo. Yesterday you explored with my friend Ms Clark that Hira Te Popo was able to negotiate land with Native Minister McLean, despite being the resistances fighter that held out the longest against Crown's force, which was something other rangatira struggled to do. Do you agree that Hira Te Popo was an exceptional rangatira?

A. I do.

Q. Can you elaborate on that a little bit more and why you think he was so exceptional?

A. I think the fact that he was the last to hold out and the fact that he secured those reserves for his people and that he was able, despite the violation of mana, to actually turn those reserves as a place of sustenance for his people in the aftermath of confiscation.

Yes. In regards to the lots that he was able to negotiate so beginning at chapter 4 of your report on page 143, you go into a little bit of detail about Lots 335, 336, 337 and 393 of the Parish of Waioweka and also in your exchange with Ms Clark yesterday you touched on these lots and how Lot 337 was never formalised following the negotiations with McLean and the sole undertaking of this grant by McLean to Hira Te Popo was found in the pension file of Tiwai Piahana. Is that unusual? Was that an unusual find or would you agree that that's unusual that the sole undertaking was in Tiwai Piahana's pension file?

WITNESS REFERRED TO #A012, CHAPTER 4, PAGE 143

A. Highly unusual.

Q. Yes. Can you speak a little bit more on why you think it may have been in Tiwai Piahana's pension file.

A. I have no idea. Well, let's see what else – do you have a reference to where that is?

Q. Yes, so I think page 148.

WITNESS REFERRED TO #A012, PAGE 148

A. I'm just wondering if I discussed the other promises made on that. I can't remember where I've discussed it in the report.

Q. Sorry, 149, 150 under Lot 337. The reason I'm asking is because you made a comment yesterday about how Ngāti Ira descendants were applying to succeed in Lot 337, despite the fact or unbeknown to them that there was no formal grant issued.

WITNESS REFERRED TO #A012, PAGES 149, 150

A. Correct.

Q. Are you aware of Lot 337 currently is?

A. No.

Q. Lot 337 has undergone further partitions. Lot 337A is a 20-acre lot where Ōpeke Marae currently sits. So that is the 20 acre block that Ngāti Ira has remaining from the larger Lot 337 and we were able to visit that particular pā, Waiōweka Pā, during our takahi whenua **visit.** I guess my question to you is based on all of your research into rangatira like Hira Te Popo and how he was able to establish a huge industry and economy of scale at Ōpōtiki, do you have any comment about how Ngāti Ira only really have that 20 acre block Lot 337A, which has actually been further partitioned and is now in smaller kind of papakāinga **villages** blocks, do you have any comment about how that has become the reality of Ngāti Ira o Waiōweka having gone from pre-1860 what we claim to be over 1,600 acres to just that pā?

A. My only comment is that I don't know the details of 20th century alienation but my comment is that a major point of my report, which I hope is conveyed, is that the undertakings with these reserves as inalienable reserves for the present and future of these people by the early 1900s

and by the time of the title determinations which are set and entrain because the Crown title hasn't issued for these reserves, by the time that title is determined for these reserves they're no longer treated as reserves because reserves are an anachronism. They're treated as memorial Māori freehold land. Of course, by the time title issues by that Native Land Act 1909, there are no restrictions on the alienation of Māori freehold land so all of the protections that come with these reserves of the 19th century by the 20th century no longer apply. At the very point where the likes of Ngāti Ira finally get title to the reserves they're no longer protected.

Q. Thank you. That brings me to the next lot in question which is Lot 345, which isn't provided on any of the maps.

A. 345 where are we?

Q. So you are on page 154 of your report and there's a paragraph there that discusses Lot 345. You say that: “By 1876, Hira Te Popo had managed to save enough capital to purchase 100 acres of confiscated land in the Ōtara Gorge, at 10 shillings per acre.” But by the time the land had been surveyed he could only afford half the area that had originally been intended and the grant wasn't issued until December of 1879. Do you know where Lot 345 is?

WITNESS REFERRED TO #A012, PAGE 154

A. No.

Q. The block narratives of the North-Eastern Bay of Plenty District report by the Tribunal records that this particular Lot 345 block was sold in March 1909 and it was purchased by someone named Mary Black. Do you know of the circumstances of that sale?

A. No. I didn't look into this very deeply because it wasn't a returned land as such. It was Hira Te Popo purchasing it on his own initiative.

Q. Right, thank you. I want to move now very quickly to just talk a little bit about –

JUDGE DOOGAN TO MS TE HIRA – TIMING

Yes, I want to move now to discuss Ngāti Ira’s interest in the Ōpape Native Reserve. Page 88 of your report, you note that Hira Te Popo declined to join the community at Ōpape on his surrender in June 1870

even though he headed the list of names for Ōpape 6 and Ōpape 8 blocks which are the Ngāti Ira blocks in the Ōpape Native Reserve. We claim that the reason he declined to take up occupancy of those Ngāti Ira reserve blocks was because he acknowledged that those blocks were in the traditional rohe of Ngāti Rua not Ngāti Ira unlike all of the lots that he was able to negotiate with McLean in the Waiōweka Parish. With that in mind and based on your research, what is the overall conclusion that you come to, I guess, of 19th century land alienation and administration on Ngāti Ira?

WITNESS REFERRED TO #A012, PAGE 88

A. I think the whole Crown raupatu in this takiwā is shocking and I think both the alienation, the overnight extinguishment of customary title, the violation of mana and the subsequent administration which is characterised by neglect and mean spiritedness. I think I've made that quite clear in my report.

Q. Yes, I think that's clear in your report too. Which brings me to my last kind of topic of wānanga with you which touches on this extinguishment of customary title through the Crown's blanket approach to land confiscation in the district. We say that this blanket approach by the Crown still persists today and its latest manifestation is a blanket iwi-wide settlement that has extinguished historical claims leaving much of Te Whakatōhea quite divided and we just wanted to know if you had any comment on that.

A. I think there are a number of reasons for that division which are identified in this report. I also think that extends to lands ā-waho as well in the experience of the 19th century in terms of lands ā-waho has contributed to that so within this raupatu district, yes.

(15:05) JUDGE DOOGAN TO MS TE HIRA:

Q. I think to be fair to Ms Luiten, we need to acknowledge the limits on the nature of her brief which definitely wasn't around contemporary; at least the focus of this report is not on the contemporary impact. I will allow Ms Luiten to comment but I do not know that she can properly take it much further, given that that is not really the focus of her research.

A. I'll leave it there, Sir.

Q. All right. Thank you.

MS TE HIRA ADDRESSES JANE LUITEN – MIHI (15:05:48)

JUDGE DOOGAN ADDRESSES ALL COUNSEL – CROSS-EXAMINATION UPDATE (15:06:01)

JUDGE DOOGAN ADDRESSES TE MINENGA – PROFESSOR TOM ROA (15:07:00)

HEARING ADJOURNS: 3.07 PM

HEARING RESUMES: 3.30 PM

(15:30) MR SINCLAIR TO JANE LUITEN:

Q. Tēnā koe **greetings** Ms Luiten. My name is Sinclair and I'm acting for Wai 87 and Wai 1794. There are a number of my clients who have been observing the hearings for the last week and they are viewing these hearings with a great deal of interest and your report of course. Some of my clients are direct descendants of Wi Akeake and they're of Ūpokorehe, Maromahue, and Ngāti Patumoana as well as others who are observing these hearings.

In the course of the hearings, we've heard from Mr McLellan, Tony Walzl, and my topic is really about matters that I've gone over with them and I want to address you in the matter of iwi and hapū and that dichotomy. So they've heard with great interest Whakatōhea were at once numbered 30 hapū, 26, 22, then down to seven, then down to six, and then they've heard down to five today. That's a new revelation for them from Whakatōhea. Could you explain please the comment you made, I think it was to Mr Lyall, that Whakatōhea were an iwi of five hapū?

A. That's how Wilson first categorises them in 1867.

Q. Yes. But are you saying at 1867 Whakatōhea were down to five hapū?

A. I'm not saying it.

Q. No.

A. I'm saying that's Wilson's.

Q. Is that your conclusion, is it, from Wilson's material?

A. No.

Q. No.

A. I'm saying that's an arrangement.

Q. Okay.

A. That's how they're arranged.

Q. All right. The material that I've read in your report mentions Ūpokorehe hapū a number of times and there's an association with Whakatōhea. Are you familiar with that, that Whakatōhea are associated and have under them Ūpokorehe hapū?

A. I'm aware that that's how it is perceived by Te Whakatōhea in the Compensation Court hearings for example in the evidence.

Q. Yes. That would be Whakatōhea's right to self-identify with their aligned hapū, wouldn't it? It'd be in accordance with their tikanga, wouldn't it, rather than Mr Wilson's view of things? Would that be fair to say?

A. Sorry, the question again, please?

Q. It would be fair to say that Whakatōhea identify Ūpokorehe as one of their hapū. Now, that would be fair to say, wouldn't it?

A. That's what they did, yes.

Q. Yes. My question to you is in regard to Ūpokorehe as an iwi in its own right, and I'm coming from the point of view that I represent Ūpokorehe clients that identify as a hapū of Whakatōhea, where would you go-to to determine that Ūpokorehe are an iwi in their own right, apart from Wilson's designation?

(15:34) JUDGE DOOGAN TO MR SINCLAIR:

Q. I'm sorry. Ms Luiten's been quite clear in her report acknowledging the issue and acknowledging what the sources say. I think it would be helpful if you could perhaps ask whether, if you are going to follow this line of questioning, is there anything in the sources Ms Luiten has seen that support characterisation of Ūpokorehe as an iwi or not.

A. Yes, Sir, that is what I was trying to convey to Ms Luiten. In particular, she's received information from one section of Ūpokorehe that they're an iwi in their own right. I thought that matter would've been part of the determination in the report.

Q. Are you referring to the feedback Mr Lyall was talking about?

A. Yes, Sir, as well as what I'm reading in the report at page 11 and it's been also made at page 6 –

Q. All right.

A. – that Ūpokorehe are an iwi in their own right. You've made that statement twice in your report at page 6 and page 11.

Q. Just go to the passage please. Page 11.

MR SINCLAIR REFERS TO #A012, PAGE 11, SECOND PARAGRAPH

A. Page 11 second paragraph, Sir, where it states: "Ngāti Muriwai assert that Whakatōhea is an iwi of more than six hapū and Te Ūpokorehe assert that they are not one of their six hapū but an iwi in their own right." So I'm really teasing out here that you have one section of Whakatōhea asserting that their iwi is more than six hapū and then you have another section of Ūpokorehe, that's not my clients from Ūpokorehe hapū, that are asserting that it's less than six hapū. I think Sir that this is what the research and this inquiry is designed to make findings on.

Q. All right. But what is the point you want Ms Luiten to respond to because she is simply observing the issues as she has seen them represented. So what is your question to Ms Luiten?

(15:36) MR SINCLAIR TO JANE LUITEN: (CONTINUES)

Q. The question is did you find any evidence at all that Te Ūpokorehe were an iwi in their own right, apart from Wilson's determination?

A. I would preface what I'm going to say with the point I make in my report that mana is a difficult thing to argue with. That's something for the people themselves their mana.

If you're asking me for my opinion about Te Ūpokorehe's status prior to confiscation and how they fit in a tribal landscape, I can share that with you based on the evidence that I looked at. I looked at this evidence knowing full well about the issue of the iwi, hapū raruraru I suppose.

The conclusion I came to is that Te Ūpokorehe – and I'm talking about this time prior to 1865 which is why I used the past tense “were” – held mana whenua in their rohe at Ōhiwa and Waiōtahe. But they had been like everybody else in the district adversely affected by the fighting from 1818 to the late 1830s when everybody is returning and they exist at Ōhiwa and Waiōtahe at a time of increasing tribal confederation. So that Te Whakatōhea are rebuilding at Ōpōtiki; Ngāti Awa are also confederating; and you also have Tūhoe inland; and all of these relatively comparatively bigger tribal nations all converge on the Ōhiwa harbour.

There is evidence of Te Whakatōhea rangatira who are living at Ōhiwa harbour. It is stated in the Compensation Court minutes. You have Mokomoko who was married into Te Ūpokorehe, and you have Rangimatanuku who apparently has a place at Onekawa, and you have Te Kareke who have a settlement at Punawai, and you also have Tūhoe making important marriages into Te Ūpokorehe. I dare say, although I don’t know, that the same is happening with Ngāti Awa but I’m not aware of those.

So what I am suggesting is with the changing tribal society at the time which is seeing confederation of hapū increasingly and Te Whakatōhea hapū they are expanding and this expansion is towards Ōhiwa, in the same way Ngāi Tūhoe are and Ngāti Awa. It is advantageous to both parties these expanding nations and Te Ūpokorehe to make these marriage alliances because Te Ūpokorehe on their own cannot exist. They have the mana whenua but they don’t have the numerical strength or I guess political might to exist on their own anymore in the midst of these stronger confederate nations.

That is why in the Compensation Court you have people saying: “Te Ūpokorehe belonged to Te Whakatōhea, Te Ūpokorehe belonged to Tūhoe, Te Ūpokorehe are Ngāti Awa,” and we have all these different factions of Te Ūpokorehe. It’s true that you have this subsuming, if you like, of Te Ūpokorehe into all of these Tribal nation neighbours but there is a part of Te Ūpokorehe which stand alone.

So you have the likes of Rawiri Makawa later actually in Native Land Court litigation saying: “Te Ūpokorehe lived alone by

themselves." On the one hand you have Te Ūpokorehe who their tribal neighbours have married into and are living in the vicinity of Waiōtahe and Ōhiwa, the likes of Mokomoko, but those relationships are very nascent. Like the children of Mokomoko are still young when the Crown arrives. So it's a dynamic situation. It's in flux and it's building, it's building towards confederation.

The conclusion I got to was that Te Ūpokorehe there were a part of them that remained aloof but I think there are also rangatira like Te Akeake who are working within Te Whakatōhea tribal nation as well and are part of that nation at that time.

The extent to which you say you are an iwi in your own right, I can't make that call. I can say there were a people there who identify as Te Ūpokorehe who descend from the 19 generations in court given and who haven't married in as such and they are Te Ūpokorehe and they may not align themselves with Tūhoe or Te Whakatōhea or Ngāti Awa.

The political reality on the ground by 1860 I believe are shown in accounts like Thomas Black's account of the mediation over Ōhiwa harbour. In the Compensation Court, there are numerous examples of these confederate heavyweight neighbours to each side talking about the contest. Everybody recognising Te Ūpokorehe mana there, but the actual contest over the place has been between Whakatōhea and Ngāti Awa, for example, that's the contest over Ōhiwa and that's how they put it in the Compensation Court minutes.

Where was I going with that? I was talking about Thomas Black's account. In 1862 there is a big mediation, because Ōhiwa harbour has been in dispute; it's disputed territory not with Upokorehe but between these power heavyweights on both sides, Ngāti Awa, Whakatōhea, and there is a mediator dispute which Thomas Black reports on in 1862 where they get Wiremu Tamihana over from the Waikato to mediate. The report of that, again, yes, it's by a Pākehā observer, but he sees it as a contest between Ngāti Awa and Whakatōhea and he describes there being forces of 400 or 450 men on both sides. So that's what I am talking about this confederacy which for a small people like Te Ūpokorehe, which we have in the Compensation Court, we have Te Ūpokorehe people saying, the

ones that have come back from having been taken from slavery in the 1830s, they come back into Court and they say: "We're tenth of what we used to be." In that situation of confederacy, you haven't got 450 men to be an iwi in your own right. You know that's the political reality of the day as you are dealing with these tribal nations on both sides –

Q. Yes.

A. – and it's in your interest to marry into them. But that doesn't mean that everybody married in and it doesn't mean that there were still an enclave of Te Ūpokorehe who were not married in.

Q. Yes.

A. I hope that makes-

Q. Yes, that makes sense. Because you see Mokomoko then goes to Ngāti Patumoana in Ōpape with a faction of Upokorehe and Rakuraku goes into Tūhoe with Waimana with another faction. So that's really whanaungatanga and that whanaungatanga which you talk about in your next paragraph to combat those burgeoning matters of war and that's inflicting upon the tribe, isn't it? The Ngāti Patumoana, Ōpape, Waimana, Tūhoe, it's Upokorehe hapū going in different directions.

A. I'm not familiar with the Patumoana link. But just the examples of Whakatōhea rangatira moving in to Ōhiwa and having those marriage alliances. I mean to live in a place like Punawai where there's said to be that community of Te Kareke it means that you can live there. I think the my other theory about – this is about Māori – the way hapū society is moving in this direction post-te Tiriti is the impact of te ture and I think te ture brings a mobility that hapū have never had before and that's why you get the likes of so many people without whakapapa being able to live at Ohiwa that end up in the Hiwarau Reserve. Before te ture I don't think there was that degree of mobility within hapū society; you lived within your hapū rohe. But I think te ture allows a freedom that didn't exist before so I think that plays into this tribal nationhood as well and the impact on Te Ūpokorehe.

Q. Thank you Ms Luiten.

JUDGE DOOGAN ADDRESSES MS SINCLAIR – QUESTIONS IN WRITING (15:48:52)

(15:49) MS RONGO TO JANE LUITEN:

Q. Kia ora Ms Luiten. You have finally made it to your last claimant counsel, congratulations. My name is Eve Rongo and I represent Ngāi Tai, so all my questions will be based around them. I have been listening this whole week to the kōrero around raupatu and I've got to say it's pretty dodgy. I mean Wilson gets annoyed with Wiremu Kingi and then Ngāi Tai find themselves with half their rohe confiscated I mean that's pretty crazy, right?

A. It's crazy. But it's returned. They get it returned as well in a different guise.

Q. Yes. I will follow-up on that I think. You have had some discussion with Ms Clark yesterday and with Dr Phillipson today so that's kind of ticked off a few of my questions there so I'll leave most of that kōrero where it is. But there are a few gaps which I will take you through.

Wiremu Kingi filed his application for the interests that went to Tirohanga and after a reserved judgment the Compensation Court upheld his claim and awarded £75 in scrip.

A. Correct.

Q. Wilson was completely against awarding land west of Ōpape because he had those four reasons. He wanted Māori as far away from the Pākehā settlers as he can. Did the Compensation Court award the £75 scrip because they agreed with Wilson's reasonings there?

A. The Compensation Court award was on the basis of Wiremu Kingi proving his claim in court. I believe the scrip award was because they couldn't award land because Wilson had dedicated it as a place as Ōpape Reserve for Te Whakatōhea. But he got the scrip and Wilson was in principle opposed to working and even applying for entitlement to Waiaua which Wilson didn't believe he had.

Q. That scrip it was in his name as an individual.

A. He made that claim on behalf of his people of Ngāi Tai.

Q. Yes.

A. But I believe the scrip was awarded to him as an individual.

Q. Okay. Because that gives us another example of how it was an iwi application but then it was put in his name so it's more along that lines of trying to break down the iwi structure. Do you agree?

A. Correct.

Q. Later when Ngāi Tai tried asking: "Sorry we don't quite know what happened with our interests all the way down there. We know something was happening," Wilson got quite abrupt, didn't he?

A. Sorry, the first part of your…

Q. When Ngāi Tai didn't quite know what had happened with their claim that went all the way to Tirohanga and they had enquired: "What's going on with this? We know something happened but we don't know what," that request was put on to Wilson and then he responded to them quite abruptly. "You don't have interests there. It's all done."

A. No, I think that's more that Wiremu Kingi was aggrieved with Wilson's relocation of Te Whakatōhea on land that he considered more properly belonged to Ngāi Tai and that is why he lodged the compensation claim.

Q. Okay.

A. Sorry, I would take that back. He doesn't lodge a compensation claim – yes, that is why he lodges the compensation claim for Waiaua, yes.

Q. Okay. I did have a page actually from when some other iwi members enquired of the Crown asking them about what happened with that hearing I think and then they got that response from Wilson but I didn't write down the page number so I will just move one from that.

Okay, so Wiremu Kingi had the scrip and he uses £50 for some town sections and then he got some free town sections too. What was the rationale then in putting those in his individual name instead of in the iwi as a whole?

A. I don't know the rationale. But it is not the only time it happens. There are other examples where more than one person makes the claim and it ends up in the name of one claimant.

Q. Okay. But in this instance there doesn't seem to be a deal or arrangement between Wilson and Wi Kingi and I kind of come to the conclusion – well, it is evident because Wilson, first of all, tries to get the claim thrown out

for being late but also he extended the confiscation line afterwards. So that's some pretty good evidence, isn't it?

A. Of?

Q. Of Wilson and Wiremu Kingi not having an agreement, not being on the same mind when it comes to Wiremu Kingi's application through to Tirohanga.

A. Yes. But I don't know that that has any bearing on the individual award that is made by the court.

Q. Is it your view that Wilson bribes some Whakatōhea witnesses to testify against Wiremu Kingi in that hearing?

A. I think Wilson is using people. How he gets their cooperation we don't know. We can only surmise why they take part in those Compensation Court hearings. I haven't found any evidence of what he promised them.

Q. Of course.

A. Yes, but the men who are instrumental in defending the claims do end up with personal Crown grants.

Q. Okay. So who exactly was the one that wrote the lists for the grantees for Awaawakino and Waiohoata?

A. We don't know. I don't think the Compensation Court in making that, the Court's grant of Waiohoata that's an aberration in terms of the Compensation Court proceedings. There's no other. I mean it's basically a tribal reserve and there's certainly no indication that the Court had a hand in writing down the beneficial owners. There's no indication of how that process happened.

With Awaawakino, of course, that doesn't happen until much lately, 1872. There's an interesting quote where Wilson comes back and Ngāi Tai are quite ambivalent about that award and again because they're even arguing about whether it has been confiscated at that point. So there is a lot of unresolved discussion about Awaawakino but that turns into an award for surrendered rebels and we don't know the process. I haven't found out anything about the process of how that occurred.

Q. But we think it might have been a Ngāi Tai iwi member.

A. I would imagine it would be done with Ngāi Tai to come up with those names.

Q. That is one my concerns as well is that if it was a Ngāi Tai iwi member, then that person would have forced to actually name the rebels and distinguish them from the rest of Ngāi Tai. But I think what makes this whole thing difficult as well is that the New Zealand Settlements Act it didn't even define rebels, did it?

A. I think there is a definition in the New Zealand Settlements Act. Anyone who's taken up arms against the government or aided or abetted them, I believe that's part of the Settlements Act.

Q. Okay.

A. It extends to objectionable. Yes, I think I was reading that this morning.

Q. Because I was reading the New Zealand Settlements Act alongside the Proclamation of Peace –

A. Yes.

Q. – and when you put them together you kind of see how Wilson made that stretch to extend the label of rebel over into Ngāi Tai in terms of the New Zealand Settlement Act talking about the districts and then the Proclamation of Peace talking about the murders of Ngāi Tai being involved in Kaokaoroa. But moving on. The value of the land that is not defined in the Settlements Act as well, is it?

A. The value of what land?

Q. Well, the value of, for example, when Wiremu Kingi applied for his interest going out to Tirohanga and he got £75 in scrip, there's nothing in the Settlement Act that tells them how to value that land?

A. Correct.

Q. Wiremu Kingi he had to participate in the Compensation Court in both Ōpōtiki and Whakatāne. Do we know how long those hearings were?

A. I think that is set out in John McLellan's report. It's easy enough to look up, yes.

Q. Okay, I will look at that.

A. I mean I could check my notes here. Let me have a look.

JUDGE DOOGAN TO JANE LUITEN – CONTINUE CROSS-EXAMINATION

Q. The Compensation Court minutes unreliable. Would you agree?

A. Quite a brief record of what was said and it's in English.

Q. Wilson didn't record his settlements or his negotiations.

A. No.

Q. Ngāi Tai didn't have a say in the procedure run in the Compensation Court?

A. Ngāi Tai didn't have a say, no.

Q. The Compensation Court must have been quite a hostile environment. Like every acre that was given to Māori that would have been one less acre for settlement, right?

A. I think the Compensation Court begins in March 1867. It's a year into military occupation so in that sense it is a hostile environment.

Q. But even the fact in making an application to the Compensation Court too, the claimants would have had to acknowledge their wrongdoings against the Crown and any framing of return of lands is put as an act of benevolence on behalf of the Crown instead of the rightful return of ancestral land. You'll agree?

A. You can't claim if there has been any wrongdoing to the Crown. So the claimants are the minority who fall under that, yes.

Q. I guess that comes back to Ngāi Tai's claim to have been pardoned then at the Kaokaoroa. Now there were delays in granting the awards and I know that Ngāi Tai had tried to succeed and do a whole lot of things in the meantime and then they discovered that it hadn't actually been granted the way it should have been. There are some that say that that was a good thing-

JUDGE DOOGAN TO MS RONGO – CLARIFICATION

A. Are talking about the reserves?

Q. Yes, Awaawakino and Waiohoata.

A. Yes, in 1898 I believe.

Q. Yes. So there were delays and some say that that was kind of a good thing because that meant that it couldn't be sold and it could be the reason why it's still in Ngāi Tai hands today. But my question to you is that you'd agree that that's not good enough, right? That that benefit of it having not been sold that that's not a good enough reason and it was out of the hands of Ngāi Tai's tino rangatiratanga **authority**?

A. I believe the delay in issuing the Crown grant was not what was promised that would happen. I believe the delay in their case was primarily about the cost of survey.

Q. Okay, thank you. I think that last question was a bit inarticulate because I tried to put three questions in one and race through. Thank you for answering the questions. That's all I have.

JUDGE DOOGAN ADDRESSES MR LINKHORN – CROWN CROSS-EXAMINATION (16:04:54)

(16:05) MR HUNT TO JANE LUITEN:

Q. Tēnā koe **greetings** Ms Luiten. It's 4.05 pm so the Crown is once again at the tail end of things to bring the energy, as Mr Linkhorn put it earlier in the week. Now I am going to ask you some questions about reserves and then, as Mr Linkhorn said, he is going to follow-up with some questions on some other topics. My first sets of questions relate to Ōpape but before the establishment What these questions are about is seeing if we can, sort of brief questions, bridge the gap between when we have surrenders and the Oaths of Allegiance in October-November 1865 and then the later move of Whakatōhea or relocation of Whakatōhea to Ōpape. In your report, and I can take you to the page if you like, but you say that the surrendered locals were kept under surveillance at Ōpōtiki. Is that right?

A. It appears to be the case, yes.

Q. Appears to be the case. It sounds like from some of your earlier comments that you've had a chance to look at Mr Walzl's report and he said in his report, or first he has referred to soldier records after the invasion, that those who surrendered were ordered to camp close to the soldiers in Pākōwhai. Does that sound-

A. I read that.

Q. You've read that?

A. Yes.

Q. And then he later says that once the surrender and oath process was accomplished that those who came in were released on their own cognisance. Did you read that as well?

A. Yes.

Q. I guess this first sort of question to follow those up is kind of an open one. Did you get a sense of the kind of surveillance that the surrendered locals were under from Crown forces?

A. I haven't seen much evidence of that period.

Q. Okay.

A. They're certainly disarmed.

Q. Disarmed when they came in, weren't they?

A. ((No audible response given).

Q. Yes. We might be getting into questions of definition, but it sounds like or to be clear the locals were they under detention, so to speak?

A. I don't know. But from Walzl's account it didn't sound like they were incarcerated or under detention.

Q. Or not a sort of situation where a sort of imprisonment-

A. No.

Q. Yes, thank you. It sounds like presumably, to the extent that kāinga were left after the Crown scorched earth tactics and the undisciplined looting of soldiers in that, that locals were free to come and go to their kāinga or elsewhere in the area.

A. I couldn't say.

Q. You couldn't say, thank you. And then my next set of questions moving to the decision to establish Ōpape Reserve, you discussed with Dr Anderson before or earlier today that it was Defence Minister Haultain and Whitaker-

A. Pollen, I think.

Q. Pollen?

A. Possibly.

Q. Or is it Whitaker on behalf of – sorry, let me correct myself. Haultain and Pollen who made the decision about where Ōpape would be set up where the reserve would be located?

A. Apparently they take a site visit out there.

Q. They take a site visit out there and you've sort of jumped to where I was going. Haultain and Pollen prior to this had they been to the region before, do you know?

A. I don't know.

Q. That's okay. But we do know that Wilson Jnr he had obviously been to the area before.

A. Yes.

Q. Yes, having farmed there for a number of years when he was younger. They're there in February "they" Wilson, Haultain and Pollen they're there in February 1866 and they take a site visit as it were to Ōpape. Would it be fair to say that it sounds like it would've been Wilson that might've suggested going to Ōpape? We don't know. Haultain and Whitaker, if I approach it another way, they wouldn't have been familiar with the geography of the region. They might've had ideas about the type of land that they were looking for a reserve but it would've been left to Wilson to say: "I'm familiar with the area. This land has those sorts of features." Does that sound feasible?

A. I couldn't say.

Q. You couldn't say.

A. Yes.

Q. You didn't get a sense of that from the records we do have of Wilson's correspondence? I wonder if…

A. I thought I'd read somewhere that he writes to…

Q. Are you around page 68?

A. Yes, somewhere around there. I'm trying to think that-

Q. Possibly at the bottom.

A. He's writing back and saying the place that you chose, that you decided that they should be.

Q. I wonder if you're at the bottom of 68. We have there, I think this is Wilson's it's his May letter to Pollen at the bottom of 68 in the indented quote.

WITNESS REFERRED TO #A012, PAGE 68

A. Yes: "The place you mentioned."

Q. The place you mentioned. Which, and this is my only interpretation, the place that's a little bit not as definitive as "the place you decided". Does that sound like a fair, or hard to say?

A. I couldn't comment.

Q. Couldn't comment. I guess what I'm getting at and the proposition is just the ultimate decision might've been Whitaker and Pollen having seen the land it might've been on a recognition of Wilson.

A. It may have been.

Q. Okay. Now my next set of questions is still about Ōpape and these relate to, you said yesterday and I think it's in your report and also in your answers to the Crown's questions of clarification, your comment that Ōpape was intended to be the sole reserve for Whakatōhea.

A. Yes.

Q. Yes. Wilson had also reiterated that – well, he said in his correspondence back to Central Government he said that he'd said those were his instructions to I think it was Wiremu Kingi. Is that right that it was his instructions that Ōpape would be the sole reserve?

A. When Wiremu Kingi is objecting –

Q. That's right.

A. – he shows Wiremu Kingi his instructions about relocating Te Whakatōhea there.

Q. That the instructions were including Ōpape would be the sole reserve?

A. He doesn't say as much as the sole reserve. But he's talking about relocating. There's nowhere else he's relocating them. At that point, it's there.

Q. Okay. That's the interpretation you're sort of placing on that.

A. Yes, that's the interpretation I'm placing on that.

Q. Yes. I guess incidentally it's interesting that he mentions he had a copy of his instructions but you've been unable to –

A. No.

Q. – locate those in the materials or the research.

A. That's true.

Q. Just to sort of recap the chronology that's April-May 1866 Ōpape is set up, and it's on the basis that it's going to be the sole reserve for

Te Whakatōhea and then by April 1867 we have Wilson having agreed to the 12-acre reserve in town.

A. Correct.

Q. I think it's also by April 1867 we have the 50-acre allotments allocated to the rangatira.

A. The conditional allotments, yes.

Q. The conditional allotments.

A. For good behaviour, yes.

Q. I think you talk in your report about how good behaviour also brings in working with the Crown troops later on I think. Is that right?

A. I haven't seen evidence that directly links those land arrangements to military service. From Walzl's report there seems to be a suggestion that they were paid, but certainly Te Whakatōhea are cooperating with Crown campaigns in the district by that time.

Q. We'll come to this again shortly. But that also included in a couple of years campaigns by Crown forces in relation to Te Kooti being in the area.

A. I believe so, yes. Again, from Walzl's research not something that I looked at. But from my reading of Walzl's research, yes.

Q. Okay, so I'll park that and I'll come back to it but I'm conscious of the qualification you put around it that it's based on your reading of Walzl. So if we're back to the Ōpape Reserve is the sole reserve and then we've talked about how then within a year there were further reserves. It seems like within a year there's cracks in this idea that Ōpape would be the only reserve of Whakatōhea. I'd say correct but you give me your…

A. They needed a place to camp near Ōpōtiki. The reserve they got was 12 acres to give them a place to stay in Ōpōtiki so that's what that was. The awards to individual rangatira, to individuals not to iwi as such, so I don't know that that could be described as an additional Te Whakatōhea award as such.

Q. Yes, sorry, carry on.

A. That's it.

Q. Sorry, I should be clear I'm not advancing a proposition that there was a sole reserve but then the Crown they were benevolent and granted additional reserves. What I'm more sort of trying to get at is what the

Crown policy or Wilson's instructions were for reserves as a whole. With that in mind, there were some possible explanations I had that I'll just put to you and you can respond whether it might be that one or it might not be that one but just give me your view. The first one will be Wilson's instructions had changed. His instructions that the sole reserve of Te Whakatōhea would be at Ōpape that he'd received new instructions. Does that sound possible?

A. No.

Q. No. Wilson had instructions but within those he had a sort of large degree of discretion or flexibility.

A. I would agree with that. To meet the circumstances as they arise.

Q. To meet the circumstances as they arise.

A. That discretion is in the 1867 Act and the 1866 Act which the name I can't remember but it's about making direct agreements with friendly natives as well. He has that discretion under legislation.

Q. I think we'd be getting into the legal question but there'd be an interesting factual question in that that legislation would, and I can't recall the text off the top of my head, give that power to not necessarily the Special Commissioner but the Central Government official who would then be the power to then be exercised through a local agent like Wilson who presumably would have to then report back to Central Government about how they are exercising the delegated discretion. But the only records we have for that are the letters Wilson had sent back that you have used for your report. Is that-

A. To which legislation do you refer?

Q. The Confiscated Land Act '67 and then the '66 legislation that neither of us can recall the name of right now.

A. I don't know that the Act sets up any procedure about how it came about but I know that there's a discretion under that Act to make those arrangements or those arrangements are made lawful under those Acts.

Q. Okay. I was going to have some questions about the relocation to Ōpape which have been addressed to some extent by your earlier discussions with I think it was Dr Anderson and then possible counsel. Now you have

already answered the question as to whether troops were involved and you said no.

A. I don't believe so.

Q. You don't believe so. There is an interesting footnote in your report quoting from Wilson, I think it's his May report, May 1866, he says that: "His time has been fully occupied in watching the Whakatōhea in the original removal." I think the only question I-

DR GRANT PHILLIPSON TO MR HUNT – PAGE 68, FOOTNOTE 153

As somebody who also employs long quotes and footnotes, I appreciated your use of them. I just note that now incidentally. I don't know if the Tribunal necessarily appreciates it in my writing but never mind. Anyway, so that's the quote there and we don't need to take that any further, but I noticed that and it was interesting. The question I was left with in terms of this "how did Wilson get Te Whakatōhea to Ōpape" was whether you got a sense from your research as to whether it might have been facilitated by relationships that he had with key rangatira and was able to persuade them to move on that basis? Is there anything in that idea, do you think?

A. I don't know that he had a very positive relationship with anybody in Te Whakatōhea. But I guess again I'll go back to Tony Walzl's report where there's an incident when Wilson arrives in those early days and the commanding officer said that Te Whakatōhea won't listen to him.

Q. Yes.

A. It strikes that he wasn't somebody they had respect for. Certainly knew how to be careful with him. That he was someone to be treated carefully but not actually genuine respect.

Q. I'm reminded that earlier you spoke about Wilson saying that he left the location as a surprise overnight which mightn't necessarily strike one as something you would do with people you had a good working relationships with.

A. No, it's the same intimidation behaviour.

Q. Next I wanted to move to the Ngāti Ira Parish Reserves which have been discussed with counsel and with the panel and where all my questions will be come from is Crown motivations for why those reserves would be

granted. You might remember your discussion with Ms Clark yesterday that Hira Te Popo was – we know that he was instrumental in those negotiating and obtaining those reserves, and you agreed to the proposition that it was another example of special treatment. Do you remember that? Special treatment sorry from the Crown.

A. Special as in different from the rest of not insisting that he join Te Whakatōhea at Ōpape, yes, he was able to. I mean that comes into the same point that's raised with Ngāi Tamatea is that special treatment doesn't mean that it's any much better. But yes, he was able to negotiate those reserves in Ōpōtiki.

Q. One of the things I was listening out for was sort of wider regional contextual matters that seem relevant to the granting of the reserves. Just to set the scene or the chronology, Hira Te Popo and members of Ngāti Ira came in and surrendered in June 1870. Is that right?

A. I think so.

Q. And then we have the formal surrender in 8 January 1871.

A. Correct.

Q. In particular in 1869 prior to the surrender one of the big things, one of the bigger I will say things, for lack of a better word on my feet, taking up the mental space of officials in the region was Te Kooti being in the region. Is that right?

A. Indeed.

Q. We know that it was in March 1870 that Te Kooti and his followers had gone to Ōpape.

A. Te Kooti, did you say?

Q. Te Kooti, yes.

A. Yes.

Q. And then they were chased by Crown forces and Māori forces who were working with the Crown troops culminating in the attack on Maraetahi Pā also in March 1870. Are you familiar with that chronology?

A. Yes.

Q. So that's the background to Hira Te Popo's surrender. You agreed earlier in discussion with my learned friend Ms Te Hira that Hira Te Popo he was an exceptional rangatira.

A. Yes.

Q. Now the key thing there I think that could be emphasised is that was also what Crown officials at the time thought. Like they were aware of Hira Te Popo, and they had a view of them that he was exceptional and a significant chief amongst Te Whakatōhea. Does that sound right?

A. I would agree with that.

Q. When he came in and surrendered, would it be a fair characterisation that this was seen by the officials as an important turning point in what they saw as achieving their objective of a peaceful district and the objective to isolate Te Kooti? Does that sound right?

A. Definitely, yes.

Q. And then it was in 1871 where we have the formal surrender and that's when Hira Te Popo has the negotiations with McLean which result in further Parish Reserves.

A. I think the further Parish Reserves comes in 1873, December.

Q. Okay, but reserves result from 1871. You might have read in Mr Walzl's report that Hira Te Popo was reported to have said that "he resolved to outdo them all" and I think this "them" are the chiefs of Te Whakatōhea and the substantial proofs of loyalty. Does that…

A. I'm not familiar with that.

Q. Not familiar with that. But are you just more generally familiar with him taking a vow of loyalty to the Crown when that surrender happened?

A. I wasn't. But I'll take your word for it, yes.

Q. I think just in the context it would've been necessary. I guess what I'm trying to emphasise is that Crown officials were then motivated to respond with agreeing to the requests for the Parish grants of land at Ōpeke and at Ōpōtiki. Does that sound right?

A. I think the motivation is to end the trouble in the district.

Q. End the trouble. They saw Hira Te Popo as important or instrumental in contributing to that objective.

A. He's the last of the resistance.

Q. I think the other key point to stress would be McLean's involvement as a sort of leading colonial politician at the time.

A. Yes.

Q. Yes. I think I'm already at 30 minutes. Thank you. Now I'm going to hand over to Mr Linkhorn.

(16:31) MR LINKHORN TO JANE LUITEN:

Q. Kia ora. I'm Craig Linkhorn.

A. Kia ora.

Q. Thank you for your patience with all of us and in anticipation with me. Yes, on behalf of the Crown team, we're hugely appreciative of the work you've done here to put this together and explain it. If I sort of said to someone at the start of this week: "We're going to hear four witnesses this week and it's going to take five whole days," people would've wondered what the heck. But actually the time spent on this has been crucial I think in terms of improving our understanding and ability to contribute to the inquiry so thank you very much. We're left with the impression when we think of J A Wilson Jnr that he would've lost no opportunity to speak up his credentials of local knowledge and why he should get the job of Special Commissioner and such like. Does that seem like a fair surmise that he was that sort of man?

A. I believe so.

Q. At this far from those events, we're possibly at risk, aren't we, of assuming that he was in the district more than he actually was. I thought it would be worth just pickup up on some matters that the Tribunal members questioned you about him just sort of thinking a bit about his biography. Now, do you understand that he was born in 1829 probably in France?

A. Yes.

Q. Yes. The family sailed from London in 1832 via Port Jackson in New South Wales and got to the Bay of Islands in April 1833 that's your understanding.

A. I'm happy to go with it.

Q. Okay. Are you happy to go with the fact that they're in Tauranga in 1838 and we know that because his mother dies there at Te Papa Mission Station so he's eight or nine year's old at this stage.

A. The mum and the kids are in the Bay of Islands. She dies of cancer. I think she does travel to die to Tauranga. But before that, yes, Wilson's –

Q. Right.

A. – in Tauranga but the family's in the Bay of Islands.

Q. Just a couple of points so far. He's not born in New Zealand –

A. No.

Q. – and so whatever te reo he picked up it certainly wasn't a first language. He was never in a kōhanga but in terms of education he was at the CMS School at Waimate North. And then do you understand that he went to New South Wales to the King's School at Parramatta?

A. I heard that. I read that.

Q. Yes. And then St John's College Auckland.

A. Yes.

Q. I'm labouring these points because this is not a boy who grew up on the shores of Ōpōtiki, Pākōwhai and what have you. This is someone who is said to have begun farming in 1845 at Ōpōtiki with his brother Charles. And so 1829, 1845, what is he by this stage, 15, 16. And then are you aware that the biography says from 1852 he and East Tāmaki?

A. Yes, I was aware.

Q. So we're talking about a period 1845 to 1852 where he's farming with his brother at Ōpōtiki.

A. And that seven years is pretty much the extent of that Wilson claim at Hikutaia of actually occupation.

Q. And then we know that he's farming in Tāmaki and is out of the country to get married –

A. Correct.

Q. – in Jersey and doesn't get back until 1857 and then he's a provincial politician, isn't he?

A. He is.

Q. That's in the Auckland region, South Auckland until the Waikato war breaks out and then he's involved in the military in the Waikato, isn't he?

A. That's what it says, yes.

Q. He was appointed in 1865 captain of the third battalion of the Auckland militia as a second appointment after having earlier been in the Auckland militia from 1863. But my point is that his Government position here as special agent is really off the back of less time in the district than we might

be given to assume judged by how he later presented himself to everyone. Is that fair?

A. Correct.

Q. Could I get you next please to go to page 56 of your report. I just want to contrast it with something on page 20 of your summary under the heading Old Land Claims. I'll start with the page in the summary, if that's okay.

WITNESS REFERRED TO #A012(c), PAGE 20

A. I'm here.

Q. So I'm really interested in this word “informs” in the second to last line of the first paragraph: “Because of the unrealised Crown interest these Old Land Claims represented by 1862 which informs the Government’s confiscation of the district four years later,” which I take to be 1866. My question is are you saying that the Government’s nascent interest in say the Brown share of Pākihi or the surplus land there informs the decision to proclaim the district or are you meaning that once Wilson’s on the ground his knowledge of those things and his gripe about it all informs the way that confiscation plays out in the district? Is that what you mean by the use of the word “informs?”

A. I mean it in the sense that sitting behind the confiscation of the Bay of Plenty district there's a piece of land at least 7,000 acres big which the Crown thinks it is entitled to and I think that's not an unimportant part of the story. It was never really known before this research started. I had no idea of the surplus that it would even be there.

Q. What records can we look at to see how it informs the definition of the confiscation district for instance?

A. It’s the fact that those Old Land Claims are being prosecuted just a few years, four years before the confiscation of the district. It’s sitting there in the background is all I mean by informs. It's there.

Q. I'm just trying to get to whether there is any record of the people who decided on the lines, on the space that would become the confiscation district whether this was a factor for them. Because if I look at the scale of the district, it seems immaterial in the definition of the district and its gazetting.

A. I don't mean it informs in that sense of the size of the confiscation district. But it's there in the minds of the likes of Whitaker who has his own claim to prosecute. His own Old Land Claim that he produces and he is very much behind the confiscation of the district as the Superintendent of Auckland and he would be aware of the surplus too I believe.

Q. Just to quickly wrap that one up. When you say "Whitaker has his own claim" I mean Whitaker is a man who goes around buying up other people's claims to chance them when he might be able to, isn't he?

A. He is.

Q. All right. The next topic I wanted to get to was the material in Chapter 6. As with the other areas, we're very grateful to the questions that Dr Phillipson and Dr Anderson have put to you and other counsel already; it's covered a great deal of the material that we're interested in. But Dr Phillipson asked you about the reason for the original gazetted eastern boundary of the district and in my note of your answer I think we lost sight of that part of the question because you talked about how very quickly the practical boundary became Tarakeha. But I think the question is what's the reason for the original eastern boundary being over at Te Whānau-ā-Apanui, do you know?

A. I don't know. I presumed it was on account of 1864 participation of people from the East Coast.

Q. And what records would we go-to to check for that in terms of what's informing that?

A. I don't know on what basis that confiscation district was put as far as Whānau-ā-Apanui.

Q. Yes, okay. Look, there has been a great deal of discussion in that last sort of day about how Wilson changes the deal on Wiremu Kingi because he saw about the claim Te Waiaua. The thing I'm left with is I'm still uncertain Ms Luiten about whether we've got any record available to us of how Wilson was construing the Peace Proclamation. Perhaps I will put it this way, do we have any positive record whereby he refers to the Peace Proclamation itself as a rationale for his behaviour?

A. In terms of?

Q. In terms of reaching back to Kaokaoroa rather than confining his work to events surrounding the killing of Volkner.

A. There's no evidence of him referring to the Peace Proclamation. Indeed, it wouldn't be to his interest to refer to the Peace Proclamation when he is trying to hang Ngāi Tai for their participation in the earlier action if it was supposedly pardon by the Peace Proclamation.

Q. Yes. So why then do you describe that as being his interests? How do we articulate this as being his interests? "It was in his interests to construe it as accepting Kaokaoroa," you say. But I'm confused as to why that was in the Crown interests, or are you meaning Wilson's personal interests?

A. The confiscation boundary gets moved and in court Ngāi Tai are having to deal with their participation at Kaokaoroa and Maketū.

Q. You see his instructions are to abandon the area east of Ōpape, aren't they?

A. They are.

Q. He's in neglect of his instructions, isn't he?

A. Well, yes, in that situation.

Q. Is he on some personal vendetta by this point?

A. I believe that he is miffed with Wiremu Kingi at this point but it still goes through. It's still accepted by the Court.

Q. Yes.

A. He's still acting for the Crown.

Q. Yes. And if we later come to what Wiremu Kingi and others conceded in the Compensation Court, what they conceded was support for the Kīngitanga, wasn't it, not involvement in the death of Völkner or resistance to the invasion at Ōpōtiki?

A. Correct.

Q. I've got a minor difference in numbers but it's not something I will spend time on now. I might follow it up in writing.

The next topic I wanted to touch on briefly was the names of grantees in Waiohoata and Awaawakino about how for the women and children they're nearly identical, aren't they, but what's distinctive is the men's list. Is that fair way of summarising it?

A. Yes, it is a different set of men.

Q. Yes.

A. I think there's only one male that I could find in there, when I looked again in preparation for this hearing that is the same. It has the same trustees but not the same beneficiaries.

Q. Yes. I mean pardon the expression but this is not like partition of India and Pakistan where people have to sort of physically move and live on one or other, is it? In another words, this is a creation in the minds of the Crown not in the lived reality on the ground of where people are and kāinga on those lands.

A. Correct.

(16:48) DR GRANT PHILLIPSON TO JANE LUITEN:

Q. Can I just clarify. Do you mean it wasn't at the time that that happened or that it remained that way?

A. I don't think it ever was. I think that Ngāi Tai lived at Tōrere. They didn't occupy Awaawakino as in a kāinga.

Q. I see.

A. Yes.

Q. Yes, I'm with you.

(16:48) MR LINKHORN TO JANE LUITEN: (CONTINUES)

Q. So this is an imposition by the Crown through Wilson that that was a reneging on a deal to leave the area east of Ōpape and to impose tenurial arrangements on them that were more complicated than that deal would have led to. The people have the consequence of that but they weren't physically shifted in a way that the other people were forced to relocate to Ōpape for instance.

A. Correct.

Q. I can leave the remaining matters because I think they've been covered sufficiently by others. But thank you very much for your evidence.

A. Thank you.

Q. Kia ora.

RE-EXAMINATION QUESTIONS FROM MS GORDON – NIL

(16:50) JUDGE DOOGAN: (MIHI)

Ms Luiten, I just wanted to add my thanks, on behalf of the Tribunal, to the mihi my colleagues have already extended and to the mihi Crown counsel have extended. Your research has been immensely valuable to us. We are greatly appreciative of all the thoroughness of your research and also your kaha yesterday and today. It's been a long day and these are difficult topics and we are greatly assisted by the chance to hear from you directly. We look forward of course to a further opportunity when you not only of course with these written questions which are pending but when we get to your stage two report. He mihi nui ki a koe mō tō mahi **thank you very much for your work**. Thank you very much.

I just wanted to briefly also thank all of the witnesses this week and just acknowledge the assistance they have given us. Counsel will certainly be aware that it wasn't our particular preference to have so much technical witnesses in one week, but while it has been a very long week, it has been a very enlightening one and a very helpful one. So, acknowledging just for the record, our appreciation to Professor Williams, Mr McLellan, Mr Walzl, and again to you, Ms Luiten.

Claimant counsel thank you. Thank you for bearing with the constraints of our process and timetable and for your flexibility.

Crown counsel thank you again for your assistance in the inquiry.

There are of course the procedural matters that we will pick up with once we get memoranda in December.

I would also like to just thank staff behind me who do an amazing job in particularly busy year. Also to Gareth thank you, to Paiheke in the little lock box, and lastly to my colleagues on the panel. Mr Morrison thank you for your kaha in returning today to join us. Lastly, counsel assisting Ms Gordon and

Ms Holmes ngā mihi nui kia kōrua **thank you both very much**. Thank both of you for your assistance this week.

Having regard to the place we are sitting, it is only fitting that I tukuna te rākau ki te wā whakakapi ki a koe Te Ātiawa, Mr Moeahu **pass the floor to close our hui to Te Ātiawa, Mr Moeahu**.

KARAKIA WHAKAMUTUNGA (KURA MOEAHU)

HEARING CONCLUDES: 4.53 PM

MINISTRY OF JUSTICE
Tāhū o te Ture

Notes of Evidence Legend

National Transcription Service

Indicator	Explanation
Long dash –	Indicates interruption: Q. I think you were – (*Interrupted by A.*) A. I was – (*Interrupted by Q.*) Q. – just saying that – (*First dash indicates continuation of counsel's question.*) A. – about to say (*First dash indicates continuation of witness' answer.*) This format could also indicate talking over by one or both parties.
Long dash (within text)	Long dash within text indicates a change of direction, either in Q or A: Q. Did you use the same tools – well first, did you see him in the car? A. I saw him through – I went over to the window and noticed him.
Long dash (part spoken word)	Long dash can indicate a part spoken word by witness: A. Yes I definitely saw a blu – red car go past.
Ellipses … (in evidence)	Indicates speaker has trailed off: A. I suppose I was just… *(Generally witness has trailed off during the sentence and does not finish.)* Q. Okay well let's go back to the 11th.
Ellipses … (in reading of briefs)	Indicates the witness has been asked to pause in the reading of the brief: A. "…went back home." The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted. A. "At the time…called me over."
Bold text (in evidence)	If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking: Q. How many were in the car? A. **There were six.** Q. So six altogether? A. **Yes six** – no only five – **sorry, only five.** *(**Interpreter speaking** – witness speaking – **interpreter speaking**.)*
Bold text in square brackets (in evidence)	If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets: Q. So you say you were having an argument? A. Not argue, I think it is negotiation, ah, re – sorry. **Negotiation, bartering. [I think that's what he meant]** Yeah not argue.