WAI 3300 – TOMOKIA NGA TATAU O MATANGIREIA
CONSTITUTIONAL KAUPAPA INQUIRY
JUDICIAL CONFERENCE
HELD VIA AUDIO VISUAL LINK
MONDAY 30 MARCH 2026

Tribunal:	Chief Judge Dr Caren Fox Kevin Prime Dr Monty Soutar Prue Tamatekapua Dr Grant Phillipson Professor David Williams
Crown Counsel:	Mr Andrew Irwin Ms Rahera Douglas
Claimant Counsel:	Ms Annette Sykes Mr Richard Gayfer Ms Linda Thornton Mr Jack Alexander Ms Sophie Gordon Ms Eve Rongo Mr Jasper Sontier Ms Tania Te Whenua Ms Janet Mason Ms Tekih Veikoso Ms Roimata Smail Mr Tony Sinclair Ms Darshini Dorn Ms Harriet Morrow Mr Hugo Fletcher Mr Bryce Lyall Ms Heather Jamieson Ms Ihipera Peters Dr Rekha Arya Mr Tom Bennion
Interpreter:	Paiheke McGarvey

TABLE OF CONTENTS

JUDICIAL CONFERENCE HELD ON MONDAY 30 MARCH 2026 AT 8.55 AM 1

(09:00) CHIEF JUDGE DR CAREN FOX: (MIHI) 1
QUESTIONS FROM ALL COUNSEL – NIL 2

(09:05) MS ANNETTE SYKES: (MIHI, APPEARANCE) 2
(09:10) CHIEF JUDGE FOX TO MS SYKES: 4

(09:22) MR RICHARD GAYFER: (MIHI, APPEARANCE) 7
(09:24) CHIEF JUDGE FOX TO MR GAYFER: 8

(09:24) MS LINDA THORNTON: (MIHI, APPEARANCE) 8

(09:25) MR JACK ALEXANDER: (MIHI, APPEARANCE) 9
(09:27) CHIEF JUDGE FOX TO MR ALEXANDER: 10

(09:27) MS SOPHIE GORDON: (MIHI, APPEARANCE) 10

(09:28) MS EVE RONGO: (MIHI, APPEARANCE) 10
(09:30) CHIEF JUDGE FOX TO MS RONGO: 11

(09:30) MR JASPER SONTIER: (MIHI, APPEARANCE) 11
(09:31) CHIEF JUDGE FOX TO MR SONTIER: 11

(09:31) MS TANIA TE WHENUA: (MIHI, APPEARANCE) 11
(09:34) CHIEF JUDGE FOX TO MS TE WHENUA: 12

(09:35) MS JANET MASON: (MIHI, APPEARANCE) 13
(09:36) MS MASON TO CHIEF JUDGE FOX: 14
(09:51) CHIEF JUDGE FOX TO MS MASON: 18

(09:52) MS MASON: (CONTINUES) 19

(09:56) MS TEKIH VEIKOSO: (MIHI, ORAL SUBMISSION) 20
(09:58) CHIEF JUDGE FOX TO MS VEIKOSO: 21

(09:58) MS ROIMATA SMAIL: (MIHI, ORAL SUBMISSION) 21

(10:00) MR TONY SINCLAIR: (MIHI, ORAL SUBMISSION) 21

(10:03) MS DARSHINI DORN: (MIHI, ORAL SUBMISSION) 22

(10:05) MS HARRIET MORROW: (MIHI, ORAL SUBMISSION) 23

(10:06) MR HUGO FLETCHER: (MIHI, ORAL SUBMISSION) 24

(10:10) MR BRYCE LYALL: (MIHI, ORAL SUBMISSION) 25
(10:20) CHIEF JUDGE FOX TO MR LYALL: 28

(10:20) MR LYALL: (CONTINUES) 28

(10:29) MS HEATHER JAMIESON: (MIHI, ORAL SUBMISSION) 32

(10:31) MS IHIPERA PETERS: (MIHI, ORAL SUBMISSION) 32

(10:40) DR REKHA ARYA: (MIHI, ORAL SUBMISSION) 34

(10:41) MR TOM BENNION: (MIHI, ORAL SUBMISSION) 35
(10:47) CHIEF JUDGE FOX TO MR BENNION: 37

(10:49) MR BENNION: (CONTINUES) 38
(10:51) CHIEF JUDGE FOX TO MR BENNION: (CONTINUES) 38

(10:55) MR BENNION: (CONTINUES) 39
QUESTIONS FROM MR DEREK FOX – NIL 41

(10:58) DR MONTY SOUTAR: (QUESTIONS) 41

(11:00) CHIEF JUDGE FOX: (RESPONSE) 41

(11:00) DR MONTY SOUTAR: (CONTINUES) 41

(11:02) MS MORROW: (RESPONSE) 42

(11:02) DR MONTY SOUTAR: (CONTINUES) 42

(11:02) CHIEF JUDGE FOX: (RESPONSE) 42

(11:03) DR MONTY SOUTAR: (CONTINUES) 42

(11:04) CHIEF JUDGE FOX: (RESPONSE) 42

(11:04) DR MONTY SOUTAR: (CONTINUES) 42

(11:05) MS TE WHENUA: (RESPONSE) 43
(11:06) CHIEF JUDGE FOX TO MS TE WHENUA: 43

(11:07) DR MONTY SOUTAR: (CONTINUES) 43

(11:28) DR GRANT PHILLIPSON: (QUESTIONS) 44
(11:28) DR GRANT PHILLIPSON TO CHIEF JUDGE FOX: 44

(11:28) DR GRANT PHILLIPSON: (CONTINUES) 44
(11:29) CHIEF JUDGE FOX TO DR GRANT PHILLIPSON: 44

(11:29) CHIEF JUDGE ROX: (RESPONSE) 44

(11:30) DR GRANT PHILLIPSON: (CONTINUES) 45

(11:30) CHIEF JUDGE FOX: (RESPONSE) 45

(11:30) MS SYKES: (RESPONSE) 45

(11:31) MS MASON: (RESPONSE) 45

(11:32) CHIEF JUDGE FOX: (RESPONSE) 46

(11:33) MR LYALL: (RESPONSE) 46

(11:34) CHIEF JUDGE FOX: (RESPONSE) 46

(11:34) MR LYALL: (CONTINUES) 46

(11:34) DR GRANT PHILLIPSON: (CONTINUES) 47

(11:34) CHIEF JUDGE FOX: (RESPONSE) 47

(11:35) DR GRANT PHILLIPSON: (CONTINUES) 47

(11:35) CHIEF JUDGE FOX: (RESPONSE) 47

(11:35) DR GRANT PHILLIPSON: (CONTINUES) 47

(11:36) MR BENNION: (RESPONSE) 47

(11:36) MS SYKES: (RESPONSE) 48
(11:38) CHIEF JUDGE FOX TO MS SYKES: 49

(11:43) DR GRANT PHILLIPSON: (CONTINUES) 50

(11:44) MS MASON: (RESPONSE) 51

(11:46) DR GRANT PHILLIPSON: (RESPONSE) 51

(11:46) PROFESSOR DAVID WILLIAMS: (MIHI, QUESTION) 51

(11:51) MR LYALL: (RESPONSE) 53
(11:00) CHIEF JUDGE FOX TO MR LYALL: 53

(11:54) MS SYKES: (RESPONSE) 54

(11:56) MS SYKES: (CONTINUES) 55

(11:57) PROFESSOR DAVID WILLIAMS: (RESPONSE) 55

(11:57) KEVIN PRIME: (QUESTIONS) 55
QUESTIONS FROM PRUE KAPUA – NIL 56

(11:59) MS TE WHENUA: (RESPONSE) 56
(12:01) CHIEF JUDGE FOX TO MS TE WHENUA: 56

(12:02) MS MASON: (RESPONSE) 57

(12:03) CHIEF JUDGE FOX: (RESPONSE) 57

(12:03) MR ANDREW IRWIN: (RESPONSE) 58
(12:05) CHIEF JUDGE FOX TO MR IRWIN: 58

(12:09) MR IRWIN: (CONTINUES) 59
(12:15) CHIEF JUDGE FOX TO MR IRWIN: 61

(12:17) MR LYALL: (RESPONSE) 62

(12:18) MR BENNION: (RESPONSE) 63
(12:22) CHIEF JUDGE FOX TO MR BENNION: 64

(12:26) MS MASON: (RESPONSE) 65
(12:28) CHIEF JUDGE FOX TO MS MASON: 66

(12:31) MS SYKES: (RESPONSE) 67

(12:33) MR IRWIN: (QUESTIONS) 68
(12:39) CHIEF JUDGE FOX TO MR IRWIN: 70
(12:42) DR GRANT PHILLIPSON TO CHIEF JUDGE FOX: 70
(12:42) DR GRANT PHILLIPSON TO MR IRWIN: 71
FURTHER QUESTIONS FROM TRIBUNAL PANEL – NIL 72
(12:48) MS TE WHENUA TO CHIEF JUDGE FOX: 73
(12:49) MS SYKES TO DR GRANT PHILLIPSON: 73

(12:51) MR LYALL: (RESPONSE) 74

(12:52) CHIEF JUDGE FOX: (RESPONSE) 74

(12:52) MR LYALL: (CONTINUES) 74

(12:52) CHIEF JUDGE FOX: (MIHI) 74

JUDICIAL CONFERENCE HELD ON MONDAY 30 MARCH 2026 AT 8.55 AM

MIHI (DR MONTY SOUTAR)

KARAKIA TĪMATANGA (DR MONTY SOUTAR)

(09:00) CHIEF JUDGE DR CAREN FOX: (MIHI)

Tēnā koutou. E mihi ana ki te atua te orokohanga o ngā mea katoa mai i te rangi ki te whenua, mai i te whenua ki te moana kia whakapaingia tōna ingoa tapu. Kei ngā mate nui o te wā hoki atu rā ki ngā ringa kaha o te atua ki te whare mākohakoha i te rangi. **Greetings. I want to acknowledge God the creator of all things heaven and earth from the earth to the seas and may we (inaudible 09:05:58) his holy name. To the deceased return to the powerful hands of our God to the house in the heavens.**

Kei te kaiwhakarite Dr Monty i roto i ngā āhuatanga whakawairua tēnā koe. Kei te minenga kua hui tahi nei mā runga i te ipurangi rorohiko rānei, nau mai, haere mai, uru mai ki tēnei huihuinga o tātou e pā ana ki te uiuinga Tomokia Ngā Tatau o Mātangireia, tēnā koutou. **To the person who conducted our karakia Dr Monty who address the aspects pertaining to the spiritual realm thank you. To everyone who has assembled online, welcome to this hearing of ours in relation to Tomokia Ngā Tatau o Mātangireia Constitutional Inquiry.**

Well, my name is Chief Judge Fox for those of you who aren't familiar with me. I'm sitting today with the Waitangi Tribunal panel of Tomokia Ngā Tatau o Mātangireia, myself, Dr Grant Phillipson, you could raise your hand, Dr Phillipson, Mr Derek Fox, Emeritus Professor David Williams, Prue Kapua, Dr Monty Soutar, and Mr Kevin Prime who is having trouble with his audio so hence, the reason why Dr Monty did the karakia and mihi whakatau this morning.

This is the first judicial conference for the Tomokia Ngā Tatau o Mātangireia Inquiry following the very insightful wānanga ā-rohe held with

claimants and the Crown over the period December 2024 to December 2025. Hopefully, you have all seen, or at least your counsel will have, a copy of the agenda for today's judicial conference.

In short, we will be covering the claimant and Crown feedback on the draft wānanga ā-rohe report produced by Waitangi Tribunal staff and consultation with the panel. Those staff people were Mikayla Dempsey, Stacie Fraser, and Dr Grace O'Leary. I want to take this opportunity to thank them for the work they've done so far and look forward to seeing the final version of the report, once all the amendments have been made, taking into a counsel submissions from counsel and claimants today.

We will also discuss other matters on the agenda, including a pou tikanga wānanga to be held in May. The questions that will be discussed at that wānanga are confirmation of the themes for the inquiry, the research programme, resourcing and preparation for hearings, and when the next year conference will take place in November 2026.

I would ask each counsel before they start to address the agenda, to first introduce themselves, their clients, and Wai numbers. Second, to address during the presentations all issues set out in the agenda that they wish to make submissions on. Third, to respond to any questions from the panel. Following the JC, if they wish to, any matters that occurred during the JC not previously covered in written submissions may be filed and written form within 14 days of this judicial conference. Unless there are any other matters that is how I propose we proceed today, just to make it easier to deal with the fact that we are here and you are all online.

QUESTIONS FROM ALL COUNSEL – NIL

(09:05) MS ANNETTE SYKES: (MIHI, APPEARANCE)

Mōrena e te Kaiwhakawā. Ko te tuatahi kei te mihi atu au ki a koe te tohunga i whakatuwhera tō tātou nei hui i te ata nei. Tautoko ana i ngā mihi i a rātou hoki kua wehe i te pō, e menemene ana i te pō. A, tātou katoa te hunga ora tēnā

tātou katoa. **Morning your Honour. Firstly, I want to thank you the expert who opened our gathering this morning. I endorse the acknowledgements to those who have departed to the world of death. To all of us the living greetings.**

May it please a Tribunal, I appear for four claimant groups in respect of this judicial conference. I am accompanied by Ms Rangipurei Manley from our office who is taking notes. I may have to leave just momentarily to do a bail application in the District Court, Ma'am, around 10 o'clock, but I'm hoping to avoid that. My clients names are:

1. Wai 2494. It's a claim by Donna Awatere Huata brought on behalf of herself and her whānau and hapū of Ngāti Porou, Ngāti Whakaue, and Ngāti Hine.

2. My second claim is a claim Wai 3342. A claim by Mr Pita Tipene, Ms Moana Maniapoto, Dr George Laking, Dr Veronica Tawhai, Ms Donna Kerridge, and India Logan-Riley on behalf of Ngāti Toki Whakarururanga.

3. My third which are two claims – it's a collective; they're pursuing together – is claim Wai 1194 and claim Wai 1212. It's a claim by Colleen Skerrett-White, Te Ariki Derek Mōrehu, and Mr Timi Te Pō Hohepa on behalf of Ngāti Te Rangiunuora and Te Tokotoru o Kahumatamomoe who are supported also by Ngāti Pikiao whānau and iwi and mandated to bring those claims to this inquiry.

4. My last claim is a claim Wai 2872. It is a claim by Professor Leoni Pihema, Angeline Greensville, Mereana Pitman, Hilda Halkyard Harawira, and Te Ringahuia Hata.

Ma'am, I wish to address some significant issues I think today and I don't know in what order but the functus issue and the memorandum that has been filed in this Tribunal by Ms Whiley for Bennion Law which we are completely in support

of. Also, we didn't actually respond to the report because in fact our clients were absolutely invisibilised in it. So I want to ask why is that happening? I have significant clients and their models were put up for self-determination and regionalism and we've-

TECHNICAL ISSUE – ONLINE CONNECTION DROPS

MS SYKES: (CONTINUES)

So the report was a complete disappointment for my claimants who have asked me to convey that today. They put up different models and different venues around self-determination tino rangatiratanga and were actually invisible in the report. We are concerned if that is how we are to be dealt with, then this is neither a fair nor just process. We have to raise that early Ma'am because they have spent significant time and inconvenience. Ms Greensill for example travelling took her five days to get to Nelson because of the weather interruptions and not a mention of the Declaration of Whaingaroa. So we wonder what exactly is happening to our evidence. Is it actually been absorbed or listen to, or actually assimilated into the ideas of others?

The third matter I wish to ask is I'm not too sure what the pou tikanga wānanga is about. I feel that we're actually setting up an elite process which is further distancing claimants who are equivalent in status to many of those pou tikanga that have been asked to comment on constitutional matters. Claimants have devoted most of their working lives to questions of transformation and challenge the legitimacy of the kāwanatanga of the State. And so we would actually like input into those matters, Ma'am.

(09:10) CHIEF JUDGE FOX TO MS SYKES:

Q. Can I just ask, I do note that there is reference to Ms Greensill in the report. But I take the point the Declaration of Whāingaroa could be enhanced more in terms of the report by quoting from it.

A. She is not the only one Ma'am.

Q. Yes.

A. The free trade people they weren't mentioned at all.

Q. Who?

A. The free trade dilemmas. That's Professor Kelsey and Ms Kerridge. They spent significant time. Put significant material, including matters raised from Dr Moana Jackson that was part of significant reports. We just did not feel – the report was really hard to follow. Can I just say, it was disjunctive and it was even difficult to comment from a perspective of thematic in the time required. We needed a wānanga amongst ourselves to actually provide I think a proper response.

Can I say, on that matter Legal Aid is making it very difficult for counsel to meet with claimants other than by Zoom. They are not making it easy for us to travel even to hearings. Senior KCs for example are denied the right of travel from Wellington to the Whakatōhea hearings because I've instructed them from my offices which are in Rotorua. So there are legal aid issues that are also making it difficult but the timeframes to respond to reports are also I think very difficult. But putting that to one side, all of my clients felt invisible.

Q. Well, I'm sad to hear that. What I would say to you, as I will say to all counsel, is that we appreciate the request for amendments to the text of the report and we're more than happy to accommodate those. But it is a draft and the staff will accommodate those changes that are sought.

A. But Ma'am it's not that. It's the dilution of their whakaaro into-

Q. Well, it won't be diluted in the sense that-

A. And it's been done by a staff member. I know Ma'am. But I just want to say it's been done by a staff member not the Tribunal. We wondered whether staff members were even at the hearings that we presented at.

Q. Well, all the hearings were livestreamed.

A. Yes, but nothing like kanohi ki te kanohi understanding Ma'am, especially when you're covering constitutional dynamics of the magnitude of this kind.

Q. Right, okay. Well, do you want to take time afterwards to file the changes that you wish to seek?

A. What we proposed is we want to see what – can I say, it is so serious many of our people are thinking of withdrawing from this Tribunal. The suggestion for example that Ngāti Pikiao should join issues of sovereignty

to the Ngāpuhi hearings is really difficult Ma'am. We have a past within Ngāpuhi but we also did not pursue any claims in the Ngāpuhi hearings at all.

Q. No, that memo is only related to the claimants that were in the Te Raki Inquiry.

A. Well that was unclear to us. But there are claimants like mine, like the Ngāti Pikiao Declaration of January the 3rd for following Te Pou o Matariki is really clear that there was an assertion of sovereignty made there. And if we are to pursue it, where do we pursue it?

Q. Well, everybody else will be in this inquiry for the context within which the inquiry is developed.

A. Well, that's not clear from the direction, Ma'am. But I can tell you that I also have real problems that you're setting Ngāpuhi aside from others on this when we're trying to put up – so I'll talk about the model that Ms Kerridge put up which is a federal model which naturally contemplates an engagement between and amongst Māori as the Declaration of Independence contemplated that we would meet every summer in Waitangi to make laws about. It contemplates a regional coming together of groups that may not actually just by whakapapa but by location and territorial sovereignty assertion need to work together for example to overcome the exigencies of the climate crisis or other matters. They need to work together.

I mean the current climate situations here in the Bay of Plenty for example, we cannot isolate ourselves from Tauranga Moana, Mātaatua waka, when we're looking at the kind of devastation that has been brought by climate change and then we need to look at decision-making processes that enable at a constitutional level the development of infrastructure and function and policy that necessarily traverse the overlapping territorial conceptual boundaries. These matters are significant. They were raised in our evidence before the Tribunal.

Our criticism is the process Ma'am. I can keep writing to the reports but if there's a failure to understand what we're actually saying or a miscommunication we can't just keep writing reports to people, no disrespect to them, who haven't captured the essence of the concepts.

Q. Well, thank you. We might come back for a further round after everybody has spoken because listening to other lawyers might encourage you to think something further that you wish to add. So we may hear from you again.

(09:22) MR RICHARD GAYFER: (MIHI, APPEARANCE)

Mōrena koutou. Tēnā koe e te Kaiwhakawā. Otirā ki a koutou mauri ora ki a koutou i tēnei ata. Ko Richard Gayfer tōku ingoa, nō te tari o Mahoney Horner Lawyers. **Morning. Greetings your Honour and greetings to you all this morning. My name is Richard Gayfer from Mahoney Horner Lawyers.** Ma'am, we represent a number of claims in this inquiry. I'll just read out the Wai numbers and the claimants as per your Honour's request. The claimants we represent are:

- Wai 58, a claim by Patricia Taurua and Robyn Taurua on behalf of Ngā Hapū o Whangaroa.
- Wai 605, a claim by Dr Terrence Lomax relating to the Waimimiti Block.
- Wai 1312, a claim by William Hori and Hinemoa Pourewa on behalf of the descendants of Whakaki and the hapū of Ngāti Kawau.
- Wai 1662, a claim by Leah Wright for the Muriwhenua Hapū Collective.
- Wai 1684, a claim by Doreen Puru.
- Wai 2124, a claim by James Eruera.
- Wai 2389, a claim by Kawhena Paul and others on behalf of Ngāti Ruamahue.
- Wai 2424, a claim by Ms Maipi Marks.
- Wai 2619, a claim by Dr Huhana Hickey on behalf of herself and other Māori disabled.
- Wai 2945, a claim by Raewyn Kapa on behalf of the whānau of Te Rito Foundation.
- Wai 3147, a claim by Rawiri Wereta.
- Wai 3149, a claim by Damian Wereta.
- Wai 3434, a claim by Ms Puti Corbett.

(09:24) CHIEF JUDGE FOX TO MR GAYFER:

Q. Kia ora. So did you hear, I asked lawyers after you've introduced yourself and your claimants to go through each of the agenda items that you wish to make submissions on?

A. Kia ora Ma'am. The only thing from our perspective is we did file a memorandum jointly with Mr Lyall on behalf of Ms Kapa. That's on the record at #3.2.426 relating to feedback on the draft wānanga report. In that memorandum, we set out the amendments to the report that Ms Kapa was seeking and the rationale for each. I don't know if Mr Lyall may wish to speak to some of it because it relates to both Ms Kapa claims. But I think the memorandum largely speaks for itself. Unless your Honour had any particular questions arising from it.

Q. No.

A. But I didn't have any submissions to add to that.

Q. No. Did you want to make submissions on any other matter on the agenda?

A. No, Ma'am.

Q. Do I take it then that you support the proposals set out so far by the panel?

A. Yes, except just to note that we did note ourselves in support of the joint memorandum filed by Bennion Law which is #3.2.421. But besides that, we have no further submissions to make today, Ma'am.

Q. Thank you.

(09:24) MS LINDA THORNTON: (MIHI, APPEARANCE)

Tēnā koe Ma'am me te tēpu. Ko Linda Thornton ahau. **Greetings Ma'am and the panel. I'm Linda Thornton.** My clients this morning are Wai 3462, Owen Hape-Kingi on behalf of Ngāti Uru, Te Tahawai, and Ngāti Eke Tanumia and Wai 3059 Kelly Klink on behalf of Ngāti Rehua.

Ma'am, the item on the agenda that is of most interest and significance I wish to submit on if necessary and that is item 11 the questions of resourcing and hearing time and that kind of thing covered off in the Bennion memorandum which we had supported.

(09:25) MR JACK ALEXANDER: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā me Te Rōpū Whakamana i Te Tiriti o Waitangi tēnā koutou. Otirā, tēnā tātou katoa. **Greetings your Honour and the Waitangi Tribunal. Greetings all.** Ko Alexandra tōku ingoa **Alexander is my name**, appearing today on behalf of Wai 1140, a claim by Moka Kainga Maata Puru, Moses Richard Witehira, Shirley Louise Hakaraia, and Peti Pukepuke Ahitapu on behalf of themselves, their whānau, and the hapū of Patukeha.

Ma'am, I want to acknowledge the recent passing of the late whaea Shirley Hakaraia who was a named claimant on behalf of Patukeha hapū and dedicated a large part of her life and service of the claim. I will also just note that Patukeha did not participate in the wānanga ā-rohe phase but they will participate in the broader inquiry.

I am also appearing today on behalf of Wai 2214, a claim by Professor Margaret Mutu on behalf of Te Rūnanga ā Iwi o Ngāti Kahu and Ngāti Kahu.

In terms of the agenda items today, Ma'am, we have provided some short submissions regarding the draft wānanga ā-rohe report and one suggested supplementary question that's in our memorandum at #3.2.430. I don't propose to speak further to those today.

In terms of the rest of the items on the agenda, I will just note that regarding the research programme, we supported the memorandum at #3.2.329 dated 13 November 2025 which was filed by Mahoney Horner. In terms of the interlocutory phase and hearing allocation, we supported the two memorandums by Bennion Law, the first of which was 18 September 2025, that is at #3.2.290 and then the one which was filed on 23 March 2026 which is at #3.2.421.

Other than that, I don't propose to make any submissions unless your Honour has any questions.

(09:27) CHIEF JUDGE FOX TO MR ALEXANDER:

Q. Your clients were in the Te Raki Inquiry.

A. Patukeha were, āe **yes**.

Q. Patukeha. Okay, thank you.

A. Tēnā koe **thank you**.

(09:27) MS SOPHIE GORDON: (MIHI, APPEARANCE)

Tēnā e te Kaiwhakawā Matua me ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi. **May it please the Chief Judge and the members of the Waitangi Tribunal.** I'm Ms Gordon for Te Mata Law. The clients we're representing today are Wai 1823 Mikaela Scofield, Wai 3373 Sheena Ross, Wai 3359 Florence Karaitiana, Wai 3171 Carol Allan, Wai 3372 Marcus Stone, Wai 3360 Ture Stone, Wai 3254 Diana Holloway.

In terms of the agenda, Ma'am, we did support Mr Bennion's joint memorandum of counsel at #3.2.421. We don't have any submissions to make but we did file a memorandum giving some corrections to the feedback of Wai 2797 and Wai 3373. Other than that, there is nothing further from us unless you have any questions.

(09:28) MS EVE RONGO: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. **Greetings your Honour.** I am appearing on behalf of Wai 3313, a claim on behalf of Ngāti Koata as well as Wai 3463 for the Hotere whānau.

I didn't have any submissions to make on the wānanga report. But I do understand from hearing the kōrero this morning that there may have been a misunderstanding on the referral back of practical sovereignty to the Wai 1040 District Inquiry. Ngāti Koata were keen to participate in that discussion but it sounds like it was just the Ngāpuhi claimants that will be referred back to the 1040 and everyone else would participate in this inquiry which Ngāti Koata would definitely support.

There was a joint memorandum of counsel that was filed. Unfortunately, we've had our heads in other inquiries not being able to fully engage with the emails coming through but we have received instructions to support that joint memo. That is all we had to say on the agenda items, Ma'am.

(09:30) CHIEF JUDGE FOX TO MS RONGO:

Q. Do I take it that because you haven't objected that you are in favour of the pou tikanga wānanga?

A. I do know that some of our claimants would have liked to have participated in something like that. I'm not sure whether they would have fallen within the criteria set out to participate. But yes, no submissions on that, Ma'am.

Q. Okay, thank you.

(09:30) MR JASPER SONTIER: (MIHI, APPEARANCE)

Mōrena koutou. Tēnā koe e te Kaiwhakawā. Ko Jasper Sontier taku ingoa. **Good morning. Greetings your Honour. Jasper Sontier is my name.** We are representing four claimants today on behalf of Loader Legal, Wai 3323 Māia Honetana, Wai 3554 Rita Beckmannflay, Wai 3556 Mereana Peka, and Wai 3557 Mr Thomas Henry. We didn't file any submissions on the wānanga report. I don't think we have any submissions to make today on behalf of the agenda. Thank you Ma'am.

(09:31) CHIEF JUDGE FOX TO MR SONTIER:

Q. Can I take it that you then support the proposals outlined?

A. Thank you Ma'am, yes.

Q. Okay, thank you.

(09:31) MS TANIA TE WHENUA: (MIHI, APPEARANCE)

Tēnā koe **greetings** Ma'am. Ko Ms Te Whenua tēnei **Ms Te Whenua speaking**. I represent a claim by Janice Panoho and Georgina Kerr on behalf of Kaimahi Māori Members of Te Pūkenga Here Tikanga Mahi The New Zealand Public Service Association Wai 3349.

We apologise Ma'am, we have not submitted a memoranda of submissions on the draft wānanga report or questions for pou tikanga due to being fairly heavily involved in other inquiries to date. However, I do wish to give oral submissions today.

Firstly, on the draft wānanga ā-rohe report, we echo somewhat the concerns raised by my friend Ms Sykes. It was difficult to find substandard reference to their contribution which was within wānanga tuaono and that perhaps that the draft wānanga ā-rohe report it appears not to give additional consideration to the statements of position that claimants have raised which we felt could've been a nice opportunity to consolidate in more depth the statements of position with what was expressed ā-kanohi within the wānanga themselves. But we were able to find some quotes made, a couple of quotes only, by our claimant, but it didn't actually tend to reflect within the context of their position the full extent of their argument. So I guess our submission is the degree to which the wānanga ā-rohe report can also bring in some of those contextual themes that claimants are arguing to really position their statements within that context and not otherwise out of context.

(09:34) CHIEF JUDGE FOX TO MS TE WHENUA:

Q. Yes, no, I understand. So, are you able to file a memorandum after this JC indicating what amendments you'd like to see?

A. Yes. Certainly, Ma'am, we will do so on that point.

The second point on the agenda which I would like to make submissions on are the questions for pou tikanga. One of the issues that our claimants raise as kaimahi Māori within the Public Service Sector is the policy of the Crown as an employer to oppress within that regime the ability for Māori, regardless that they are kaimahi, their first position is that they remain Māori nonetheless and Treaty partners nonetheless. So it's their concern around the suppression of tikanga by Crown policy, let alone legislation. So as that is fundamental to their claim, we did note that there did not seem to be an express question for pou tikanga around tikanga itself, its place in society, customarily how this has evolved over time, and its place within our broader society within Aotearoa today. I'm happy to also make

that note in my written submission Ma'am following our judicial conference today.

Q. That would be extremely helpful. Thank you.

A. We also just wished to note we're concerned that the omission of our claimants position, similar again to Ms Sykes, at this early stage it may indicate that their position, which is a unique one, how it has been viewed. We hope that it is not an indication of how their position is being viewed within the context of the constitutional inquiry at this early stage. We have made submissions on the current constitution using the status quo would tend to isolate issues of employment within an employment framework, but the constitutional issues raised in the statement of position were addressed in writing. The appellation for that is the #B055(a). And we say that there are constitutional issues which underpin this claimant's position for example who is the Crown. They completely deny any argument. They refute any argument that as Māori once they become employees of the Crown they are the Crown. They prefer a constitutional view which maintains their mana as Māori and their agency as Māori and the Treaty partnership in the first instance.

So those issues we're concerned that by their invisibilisation that we're not seeing an early indication from this Tribunal as to the importance of the issues that they raise and their ability for them to continue to evolve and particularise their claim as they receive feedback from the Tribunal and also from the pou tikanga. So I put that Ma'am in our submissions and on the record now. Other than that, we see value in the proposed approach and support it to that extent.

Q. Thank you Ms Whenua.

CHIEF JUDGE FOX ADDRESSES MR NICHOLAS JOHNSON – LEAD COUNSEL CHANGE

(09:35) MS JANET MASON: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā Matua **may it please your Honour** and tēnā koe **greetings** Tribunal members. Counsel's name is Mason, and I appear

alongside Mr Johnson. We act for 31 claimants in this inquiry. They are listed in document #3.2.432(a).

(09:36) MS MASON TO CHIEF JUDGE FOX:

Q. Your Honour, would you like me to go through those? There are number of them.

A. I think so. Just because they might be listening and they need to know that we're hearing from them today.

Q. Thank you.

MS MASON: (CONTINUES)

So the first one is:

- Wai 120 Ms Aorangi Kawiti and Te Raumoa Kawiti. They are Ngāti Hine, Ngāti Manu, and other Ngāpuhi hapū.
- Wai 1307 Matu Clendon. He is Ngāti Kuta ki Te Rāwhiti and also Ngāpuhi.
- Wai 2179 Rihari Dargaville. And again, he is Ngāpuhi.
- Wai 3317 Sailor Morgan and Francis Goulton. They are Ngāti Ruamahue hapū from Whangaroa.
- Wai 3314 Ms Merepeka Raukawa Tait.
- Wai 3011 Ms Paula Ormsby on behalf of the Wāhine Toa Chapter of the Mongrel Mob Kingdom.
- Wai 3416 Mr Hone Sadler, a Ngāpuhi kaumātua.
- Wai 3356 Ms Aramena Pōtae.
- Wai 3357 Ms Diane Black, a former representative of Tamaki ki te Tonga District Māori counsel.
- Wai 3386 Ms Evelyn Ratima who is the wife Mr Des Ratima now deceased.
- Wai 3387 Mr Howard Reti of Whangaruru.
- Wai 3316 Ms Jane Ruka on behalf of the Grandmother counsel of the Waitaha Nation.
- Wai 3388 Mr Jim Thacker who is the President of the Mongols Motorcycle Club.
- Wai 3318 Ms Pōtiki who is the chair of the Ngāti Whakaue Rūnanga.

- Wai 3320 Ms Ruiha Collier, Mr Dargaville, and Mr Joseph Kingi on behalf of themselves and Ngāpuhi-nui-tonu.
- Mr Sonny Fatupaito Wai 3354. He is the president of the Waikato Mongrel Mob Kingdom.
- Wai 2218 Ms Te Amohia McQueen on behalf of herself and the descendants of Io Matua Kore.
- Wai 3343 Daniel Watson and Porohau Ruka on behalf of the Grandfather counsel of the Waitaha Nation.
- Wai 3319 Ms Nicola Deli Paki.
- Wai 1504 Ms Mihi Searancke. She is from Waikato Tainui.
- Wai 3331 Denise Messeta on behalf of herself and her whānau and iwi.
- Wai 3328 Mr Mike Tana.
- Wai 3341 Ms Teina Boasa Dean
- Wai 3363 Ms Cherie Kurarangi on behalf of wāhine in the Mighty Mongrel Mob.
- Wai 2156 Ms Hurst on behalf of Ngāti Hāua.
- Wai 3321 Ms Api Mack on behalf of herself and Ngāti Awa, Tai Kapiti.
- Wai 2118 Ms Florence Amohia on behalf of Ngāti Hāua.
- Wai 3357 Mr James Harold on behalf of himself and the descendants of Te Maawe Broughton.
- Wai 3353 Ms Michelle Marino and David Churton on behalf of Ngāti Tama Te Kā Trust in Wellington.
- Wai 3390 Mr Pita Paul, his Mr Maanu Paul's brother on behalf of himself and his whānau.
- Wai 3330 Dr Rawhiti Wiri on behalf of himself and his whānau, hapū, and iwi.

Ma'am, I do have submissions to make on a number of agenda items. The first one, the submission is on the content of the draft report. Now we've filed memorandum which is #3.2.432 and I'll just talk about the main issues with the content.

Most of our clients were represented. We filed two annexures. One setting out those clients who were happy with the content and recorded the content in the report for ease of reference and the other one with some clients who wanted some matters attended to. There were two of the claimant groups that weren't represented in the report, like Miss Sykes clients, and they were Ms McQueen (Wai 2118) and Mr Paul (Wai 3390) and we've clearly indicated that in the table.

There was one major issue. Thirteen of our clients had made generic submissions on an agreed stance and these relate also to the themes for the report and the Wai 1040 Paparahi o Te Raki issue, I'll call it. The reason that they had made that they had an agreed stance, which is quite different from the rest of the country, is because the Crown had not accepted the outcome of the Paparahi o Te Raki report, so the conclusion came out in stage one of that report. Counsel made the generic submissions on tino rangatiratanga and sovereignty at stage two of that report, and it was evident that the Crown was relitigating their argument from stage one and they had not accepted that.

Now I'd like to file, with your Honour's leave, two letters that have been sent to the Crown and the responses back from these Ngāpuhi clients which have basically said they don't accept that tino rangatiratanga conclusion. It's quite a big issue for them because the Crown has embarked on our proposed Treaty settlement process in which there is no mention at all of tino rangatiratanga.

And so the agreed stance of the claimants had been essentially saying: "We're out of stalemate. How can we ever move forward if the Crown doesn't even accept this?" And in the submissions that we filed at a paragraph 22, there is a clarification of what it is they were after. It wasn't referred to, in their view, adequately in the draft report.

In the table that they have submitted they have referred to all the different clients that had agreed to the stance and then the memorandum proposes new text for it. But they wanted to make really clear that, as a preferred option, the Crown enter into dialogue with them, to agree on a hohou i te rongo process to resolve it.

Now their view, it's clear they've been through the processes that the Crown itself established to clarify any differences around how the Treaty should be interpreted. The Tribunal has made that decision. It was a very lengthy hearing. It went on for years and weeks and a lot of evidence provided. If the Crown disagrees with that, they are happy to enter into discussion about it. But they are not happy for it to just be left alone like that so that the status quo prevails.

Their first option is that kanohi ki te kanohi engagement. The second option if that doesn't work is that the Crown has set up a legal process itself. If it doesn't like what the Tribunal has come to the conclusion that it has reached, then, of course, it's free to go and take a Judicial Review. That is something that the claimants think the Tribunal can recommend that the Crown look at. And then their third option on this is that we do have an International Court of Justice. I know that currently internationally it is not being treated very well. But nevertheless, that the Crown can go to the International Court of Justice and seek an advisory opinion on how that Treaty should be interpreted. But the problem that they face is that there is just no action at all. So, it's like if the Crown doesn't accept what the Tribunal has said on this matter, they can just bury their heads in the sand and do nothing and that's a breach of the Treaty.

We have a current situation where the Crown is just progressing with all these policies and legislation enacted on a faulty interpretation of the Treaty and that situation is allowed to prevail. They have access to mechanisms and under the rule of law, which the Crown says it subscribes to, it should be then following those mechanisms whether it's Judicial Review or going to the ICJ.

The only thing that the claimants would like is if there is a recommendation that they should pursue these as a rule of law matter that the claimants are engaged in that process. If there was some honour there, it could even be a collaborative affair and then jointly that opinion or that request for an advisory opinion could proceed. So that was the main submission because there was 13 of our clients who wanted that looked into.

The other matter was the pou tikanga. Now we had made some written submissions at paragraph 2 on questions to put to the pou tikanga. But I just make an oral submission on the pou tikanga in light of the submissions made by my friend Ms Sykes.

One thing that the claimants would want is that they are consulted on the pou tikanga. It may well be that your Honour calls for some names may be to be put up. The issue is that all of the areas in New Zealand are represented.

For instance, there is Mr Hone Sandler, who is a very learned tikanga Māori or tikanga Ngāpuhi academic, and maybe he would want to put his name up and there might be others. That might satisfy the issue which Ms Sykes has raised.

There is also an issue around when that pou tikanga group is meeting will claimants have access to listen in. That might be another useful way to satisfy maybe some complaints that claimants have in terms of being removed from that process.

In terms of the questions-

(09:51) CHIEF JUDGE FOX TO MS MASON:

Q. Due to resource constraints, the pou tikanga will have to meet online whoever they are. At the moment, we're thinking of Tribunal members because they are readily available for this kind of work. But we are happy to take names from the claimants as to who might join them. But it will definitely be online and so all the claimants will have the opportunity to watch.

A. Yes, your Honour. I'm wondering maybe if all the claimants did watch, there could be some allowance made for claimants to send in some submissions or issues which they thought were important arising out of that, which might not have been covered. That could be another option for involving claimants.

Q. You mean after the wānanga.

A. Yes.

Q. Yes, that's a good idea.

(09:52) MS MASON: (CONTINUES)

And then in relation to feedback on the questions, we had submitted three questions. But in hindsight, I'd like to withdraw one of them. The first two questions really relate to the same issue and they are at paragraph 2: "How do different levels of authority interact and tell Māori?" The second one regarding authority: "How do different types of interests react within a rohe." The reason for those questions is that in particular for Ngāpuhi, we have a number of clients who subscribe to a wider Te Whare Tapu o Ngāpuhi line and think that there is importance in having that regional representative view as well as hapū, as well as whānau. Their view is that the settlement process has divided iwi and hapū because the settlements have been with iwi and there is no great requirement to really devolve resources to the hapū who traditionally had those resources and that has resulted in this division. But actually, traditionally, those strategic alliances and those wider groups were important. So that's the reason for those two questions.

Ma'am, in terms of agenda item 9 and the confirming themes for the inquiry, we had those submissions on the mana motuhake, tino rangatiratanga issue, in particular with reference to my Ngāpuhi clients. One thing that we thought would be really helpful (and we will file and affidavit with those two letters that had been sent some time ago and the difficulties, which the client claimants have had in terms of getting that tino rangatiratanga issue on the table or even mentioned in the settlement papers and policies) is for the Tribunal to request that the Crown disclose what its view on the stage one and stage two report was. If the Crown disagrees with those statements, with those conclusions, it would be preferable to know that because we don't have that officially.

So your Honour that is requesting that the Tribunal issue a direction that the Crown advised the Tribunal and the parties whether they accept the stage one and two findings that Te Raki Māori did not cede sovereignty to the Crown or

give them the ability to govern over Māori and their resources. Those are my submissions your Honour.

CHIEF JUDGE FOX:

Thank you Ms Mason. In terms of that last point, we will hear from Mr Bennion so we will see what he has to say as well on that point.

(09:56) MS TEKIH VEIKOSO: (MIHI, ORAL SUBMISSION)

Tēnā koe te Kaiwhakawā. Tēnā koutou mō te Taraipiunara. Counsel's name is Veikoso from Te Arahi Law. I appear on behalf of two claims, Wai 88 and 89 the Kapiti Island and the Whitireia Block claims. Your Honour, we acknowledge our jurisdictional issue with Wai 89 but we'll respond to your directions on that. The second claim Wai 966 the Ngāpuhi Te Tiriti o Waitangi claim.

Today, I will only speak on feedback that was provided by Mr Theodore for Wai 966 as he was the only claimant who presented at the wānanga tuaono. Our claimant acknowledges the significant mahi that was gone into preparing this report the draft and agrees that his other kōrero is well reflected and he appreciates that. However, my claimant seeks to incorporate points from his amendment statement of position into what was already written on page 44 second to last paragraph of the draft report.

He basically just wants the report to note that the Crown's claim to sovereignty rests only by occupation, which is paragraph 18 on his amended statement position, and that under te Tiriti the Crown received only delegated authority. He emphasises this, your Honour, because when the Crown goes ahead without appropriate involvement from Māori when they do seek the input but then suddenly change decisions, the Crown claims they have more authority than what te Tiriti actually gave them. So that's pretty much his feedback whakaaro to the draft report.

In terms of the wānanga of pou tikanga, I haven't received instructions on that from them. But if we do, I seek leave to provide any feedback on that or

comments. Otherwise, if you have any questions your Honour and the panel, then feel free to. Tēnā koe.

(09:58) CHIEF JUDGE FOX TO MS VEIKOSO:

Q. Kia ora. Well, we might come back for questions after we hear from everybody.

A. Okay.

(09:58) MS ROIMATA SMAIL: (MIHI, ORAL SUBMISSION)

Āe, tēnā koe e te Kaiwhakawā Matua. Tēnā koutou nei Te Rōpū Whakamana i te Tiriti. Counsel's name is Ms Smail. I appear for the Wai 3351 claim by Lady Tureiti Moxon. We filed a short memo saying there are no comments to make on the items 5 and 6 of the agenda, the draft wānanga ā-rohe report, and the wānanga of pou tikanga are also item 7. The claimant will abide the decision of the Tribunal on how to progress these matters prior to substantive hearings, the five week hearings noted in item 11 of the agenda.

The claimant is focused on preparation of evidence, that she hopes will be of use to the Tribunal, about the practical effects of the Crown's assumption of sovereignty through the context of her Māori health provider which deals with decisions made ultimately at the level of parliament, which filter down to day-to-day frontline work regarding hauora of Māori and communities. In particular, in her previous claims, the control of the Crown of pūtea, both through taxation and then through absolute control of decision-making of what pūtea is shared with community organisations like Māori health providers. She hopes will be useful, practical application insight for the Waitangi Tribunal. Thank you your Honour.

CHIEF JUDGE FOX:

Thank you.

(10:00) MR TONY SINCLAIR: (MIHI, ORAL SUBMISSION)

Tēnā koe Ma'am. He mihi tēnei ki tō rōpū e whakamana te Tiriti. Ma'am, I'm counsel acting for Wai 861 Te Taitokerau District Māori claim, along with

Mangakāhia hapū and others. Ma'am, I've just taken carriage of this claim and I do note that you've got a deadline date 5pm the 6th of April to make submissions on the eligibility of this claim. Ma'am, I do wish to make submissions by that date regarding the Crown's actions or omissions affecting Māori representation in a contemporary nature as distinct from historical matters.

Ma'am, in regard to the discussions that I've just heard this morning regarding the pou tikanga wānanga, I've heard this submission from Ms Sykes and Ms Mason and I'm inclined to move to Ms Mason's segway. I think the options that she made there were very helpful and my clients would support that moving forward in the pou tikanga matter.

We also support Mr Bennion Law's submissions at #3.2.421. That is all my submissions at this point in time, Ma'am. I've got to get my head around the matters affecting this claim and I'll have those submissions into you by 6 April, Ma'am. Thank you.

CHIEF JUDGE FOX:
Yes, thank you.

(10:03) MS DARSHINI DORN: (MIHI, ORAL SUBMISSION)
Tēnā koe e te Kaiwhakawā me Te Rōpū Whakamana i Te Tiriti o Waitangi tēnā koutou. Ko Ms Dorn tōku ingoa for Woodward Law. I appear on behalf of Wai 3352, a claim by Anne Kendall, Reverend Kereama Pene, Dr Kenneth Kennedy, and Sharon Gemmell on behalf of the New Zealand Māori counsel.

We filed submissions which is #3.2.423 on the record regarding the draft wānanga report which in the name was about typographical errors and then also submit a submission that the kōrero by Mr Harvey Ruru and Dr Sharon Gemmell at wānanga tuawhā in Nelson was not portrayed when they spoke to the fifth statement of position for the New Zealand Māori counsel. So

we submit that this does not adequately portray the whole of New Zealand Māori counsel's kōrero for the wānanga ō rohe phase.

In regards to the rest of the judicial agenda, we don't have any submissions to make. Unless your Honour has any further questions, I'll end it there. Kia ora.

CHIEF JUDGE FOX:

No, I don't. But the panel might have questions for you after we hear from Mr Bennion.

CHIEF JUDGE FOX ADDRESSES ALL COUNSEL – FURTHER SUBMISSIONS (10:04:53)

(10:05) MS HARRIET MORROW: (MIHI, ORAL SUBMISSION)

Tēnā koe e te Kaiwhakawā me te Taraipiunara. Counsel's name is Ms Morrow for Dixon & Co Lawyers representing three claimants for this inquiry, Wai 2003 Te Wahapū, a claim by Cheryl Turner, John Klarisich, the late Harerei Toia, Allen Naida, Fred Toi, Warren Moetara, and Hone Taimona on behalf of Ngāti Korokoro, Ngāti Wharara, and Te Pouka hapū. Also, Wai 2959, a claim by Dr Hope Tupara on behalf of Te Rōpū Wāhine Māori Toko i te Ora The Māori Women's Welfare League Incorporated, its members and all wāhine Māori of Aotearoa. Finally, Wai 745, a claim by Luana Pirihi and the late Paki Pirihi on behalf of Patuharakeke hapū. Ma'am, Wai 745 didn't participate in the wānanga phase but wishes to proceed as an interested party for the remainder of the inquiry.

We have provided short feedback on the draft report and made one proposed amendment to the pātai opposed to the pou tikanga panel. I believe that memoranda speaks for itself. I don't propose to speak further to it today, unless your Honour has any questions. What I do wish to add is that our claimants were party to the joint memorandum of counsel filed by Bennion Law. Ngā mihi Ma'am.

CHIEF JUDGE FOX:

Thank you Ms Morrow. Mr Fletcher.

(10:06) MR HUGO FLETCHER: (MIHI, ORAL SUBMISSION)

Tēnā koe e te Kaiwhakawā. Otirā, tēnā koutou e Te Rōpū Whakamana o Te Tiriti o Waitangi. Ko Fletcher tōku ingoa. Ko Tāmaki Legal ahau e mahi ana. Appearing alongside me today, Ma'am, is Ms Scrimberg. We are here on behalf of the following nine claimants. In the interests of time, I will simply refer to the named claimant, that is Bryce Pera Aldridge Wai 2377, Te Uranga Aroha, Evelyn Kereopa Wai 762, Malcolm Kingi Wai 2894, Ian John Mitchell Wai 1716, Violet Eva Walker Wai 2382, Rachelle Griggs Wai 3131, Jason Koia Wai 1862, Maria Knight Wai 2604, and Te Inga and Lee Harris Wai 1531.

In relation to the agenda, we do not intend to make any further submissions beyond those set out in the joint memorandum of counsel that was filed on 24 March. It is on the inquiry as #3.2.425.

Just to briefly canvas the issues. In relation to the draft wānanga ā-rohe report, the claimants broadly support it but have provided some clarifications on certain areas where they felt that their kōrero needed some elaboration or contextualising. If there are specific questions happy to address those but otherwise, content to leave it there, your Honour.

In relation to the pou tikanga questions, a series of amendments were also filed. That was appendix B to the aforementioned joint memorandum. I simply note that our claimant suggestions do not disagree with any of the fundamental premises of those proposed by the Tribunal. Those questions are inevitably quite broad, meant to prompt discussion and, our claimants additions simply point to specific queries or sort of sub-questions under the same topics which they consider it could be useful to have the panel respond to. Again, happy to discuss those but I think it was more the idea of the claimants would appreciate it if the Tribunal and the pou tikanga panel have the opportunity to see some of these specific questions in case the conversation goes in that direction, Ma'am.

In relation to the research programme, we simply note the claimants did file at joint memorandum in September last year on this topic. That was #3.2.295 which generally was also supportive of the memorandum file by Bennion Law #3.2.290 which has been referred to. I'm sure Mr Bennion will speak to. With our main area of not so much divergence but emphasis being that our claimants do not consider that five hearing weeks is sufficient given the breath of kōrero to be addressed. I know that not all these things are within the Tribunal's power but that was something that our claimants wanted to make clear.

Finally, just because it's been mentioned, in relation to the question of practical sovereignty in the Te Raki Inquiry, we simply note that our Northland claimants tautoko the contents of the recent memorandum from Bennion Law #3.2.421. Unless there are any questions which may come up today, then no further submissions this time, your Honour.

CHIEF JUDGE FOX:
There may be Mr Fletcher so we'll come back to you.

CHIEF JUDGE FOX ADDRESSES ALL COUNSEL – FURTHER SUBMISSIONS (10:10:34)

(10:10) MR BRYCE LYALL: (MIHI, ORAL SUBMISSION)
Tēnā koe e te Kaiwhakawā Matua, anō hoki ki a koutou ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi tēnā koutou. Ko Lyall ahau. Ko Ms Swedlund tēnei. Your Honour, we are here this morning for four Northland claimant groups so I'll speak to those first and then to the other claimants that we represent. First, we are here for Te Waimate Taiamai ki Kaikohe Claims Alliance which is a grouping of claimants, 421, 593, 869, 1383, and 1890. We are here for Wai 914 which was filed for Waimate Taiamai, Wai 1515 for the Kapa whānau, and Wai 1536 filed by Dr Maryanne Tapu Baker and Te Kemara Robust. I guess the non-Northern claimant groups that we are here representing are Ngāti Ruapani ki Waikaremoana Wai 144, Te Ūpokorehe iwi that's Wai 1092, 1758, 1787, and 3272, and for Waitaha te Iwi ki Te Waipounamu, Wai 3418.

Your Honour, I've also received instructions this morning for Wai 2523. I'll need to file concerning that when I can confirm those arrangements but to flag that that is a claim which was originally filed oncerning the Trans Pacific Partnership agreement and will concern international trade issues arising in this inquiry.

I do have some submissions to make about the various agenda items. I do note on the agenda it said that we would begin by a brief introduction to the wānanga ā-rohe report from the Tribunal and I wonder perhaps if we had started there if some of the uncertainties that counsel have been speaking to might have been able to be addressed. Perhaps, after Mr Bennion, it might be an opportune moment if that was going to be addressed for that to take place. But the points I wish to raise are first for Wai 1515. My learned friend Mr Gayfer has already addressed the joint memorandum of counsel filed for that claim and I don't have anything further to add there.

For Te Ūpokorehe iwi, they filed a statement of position in writing and didn't participate in the wānanga as they had concerns about sharing that kind of kōrero away from their marae or their rohe. I have to echo the concerns raised by Ms Sykes for her claimants there that, for claimants like Te Ūpokorehe and again for Waitaha Te Iwi ki Te Waipounamu, their vioice is really not heard in this report as it stands and the issues that they have raised haven't been substantively engaged with. There might be a footnote to a statement of position but that is hardly reflective of the nuanced positions that they took the time to put forward within the process. As your Honour has suggested, we can file amendments or what we would like to see in the report but my concern as counsel is that the Tribunal is likely to be flooded with essentially the statements of position in summary with a request to add those into the report or tag those to parts of the report to ensure that all claimant voices can be properly reflected. I think it goes to just one of the issues with trying or asking claimants to give kōrero tuku iho or kōrero on these high-level tikanga concepts and then seeking to summarise those down into perhaps 100-odd pages of report for the purposes of this inquiry. There is always going to be a friction there but as things stand the instructions I have are that the balance has not been achieved

yet and that claimants are feeling their voices are missing, their issues are missing. I have to reflect like my learned friend Ms Sykes that some claimants I represent are considering withdrawing from the process if that is going to be the pattern as we move forward. My instructions are to state that in this judicial conference.

Yes, I think probably as far as I can take it, your Honour, is that we would appreciate further time to suggest amendments to wānanga with claimants. But that, given that were on judicial conference this morning and there is a livestream going out to those claimants, it would be good here from the Tribunal on the report, the thinking behind it, the constraints that the Tribunal faces those sorts of issues so that that can be better understood and ventilated within the claimant community.

Moving through the agenda items. On the questions as put for the pou tikanga, there is some disquiet amongst several of the claimants that I represent about the pou tikanga process. I think my learned friend Ms Sykes has summed those up nicely and I don't think I need to repeat those. But really it goes to the question of who the inquiry is for and what the purpose that the Tribunal is driving at in producing the report. If it is properly to respond to the claim allegations that have been raised by claimants in terms of section 5 jurisdiction, then the claimants are concerned that those issues remain front and centre of the process. While they appreciate efforts to bring their voices and their participation within the process, as we have seen through the wānanga so far, they are concerned about this issue of really narrowing the issues down and putting it to a panel that they may have no ability to contribute to or influence, and then whether the issues that that panel doesn't address are then marginalised within the process.

Four quick practical points. We wonder whether the pou tikanga will be given input into the questions before they are ultimately settled if the process does go ahead and then that would be in addition to claimants having input into those questions because they may have some firm views about what is appropriate for them to be addressing and whether things are either getting too high-level

or too discrete for their comfort levels. My clients are particularly concerned if the process does go ahead to protect the mana of the pou tikanga who do end up participating within that process. For that reason, the second point that we wanted to raise was that we think the question should be set at a very high-level if the process does go ahead. That allows that sort of high-level exploration to take place, a framing exercise which the claimants can then pick up and drill down into as the inquiry progresses from a claimant on-the-ground perspective.

Two brief issues on the questions themselves. Question H, the claimants that I represent have a concern there with the end of the question: "Traditionally, who exercise power, authority, and leadership and who does so today," and wondered whether the "who does so today" might be getting too specific for the purposes of the pou tikanga if the question is being asked of who on-the-ground exercises that power and authority. Ultimately, that might be a question that the Tribunal is tasked with responding to rather than the pou tikanga. Likewise for Question L: "What is the importance of rangatiratanga?" I know that I have just said that question should be at a high-level but the claimants wonder whether that might be perhaps too broad or exploring too many issues to create a meaningful answer from pou tikanga, so whether that could be workshopped perhaps a little to get some more specificity around to whom and what that term means and in the context in which it is being applied.

I will just keep moving through your Honour because I understand that there may be questions after all counsel have had a chance to address issues.

(10:20) CHIEF JUDGE FOX TO MR LYALL:

Q. Mr Lyall, you will be able to put what you have just raised, which I find very helpful, in written submissions.

A. Yes, I'm happy to.

Q. Thank you.

(10:20) MR LYALL: (CONTINUES)

Moving to the themes. I had one issue raised from claimants around really just the heading for theme three: "Dual governance (the relationship between

kāwanatanga and te mana Māori motuhake)." The term "dual governance" is a difficult one for some of the claimants that we represent. We wonder if that might be somewhat of a loaded term presently and whether that perhaps theme could just be described as the relationship between kāwanatanga and te mana Māori motuhake. Essentially, drop the "dual governance" term which has become somewhat of a term of art perhaps lately from theme 3 to avoid that issue arising.

I started out by saying that we represented four Northland claims. I did have the honour to represent some of those climate groups through the Paparahi o Te Raki Inquiry. First, we note that those Northland claimants don't sent to be listed as participants in this inquiry on the list any longer. We wondered whether that was because an assumption had been taken that, if they were going to be addressed in the 1040 inquiry, then they wouldn't be participating any longer in the Constitutional Inquiry on other issues. That is something that I am taking instructions on but we may need to file and seek to have them re-added to that list. Once we have received instructions, they will advance issues in this inquiry or not.

Addressing the referral of that particular issue back to the Northland Inquiry. Your Honour, I won't say alarm, but there is some concern about how that would work practically for those claimants because it is not something that was addressed in the Waitangi Tribunal Strategic Direction for instance and all claimants are aware of the funding constraints and person power constraints that the Tribunal faces. They are concerned about the practicalities of bringing the Northland panel back together, if that is what the decision ultimately arrived at is, following submissions today and other processes that may play out, and concern on the timeframe that might be able to take place within and whether that might also delay later parts of the Northland report which are currently being written and have been awaited for some years now.

The other issue that arises is the relationship that the report, if produced by the panel, might have with a report on similar issues that the Constitutional Inquiry panel would produce. Obviously, *stare decisis* doesn't operate in the Tribunal

but if the two panels are working on similar issues with different claimant groups at the same time and producing a report in a similar time, if there are issues as between those reports, then there may need to be some interrogation there to ensure that things align. We are conscious that issues of constitutionalism, sovereignty, mana, rangatiratanga are intensely context specific so it may be that there are some different issues that arise for the different claiming groups in different rohe. It may be that there are some genuine differences between say the Paparahi o Te Raki Inquiry panel's conclusions and what is appropriate for other groups but it may just be a difference in evidence that the Tribunal hears more context et cetera. We are concerned that there is a potential issue there in terms of the outcome that may be reached and whether the panels may need to come together at some point to essentially compare notes or whether there may be a joint sitting those sorts of things. But conscious that we are in the very early planning stages and a lot of this is for the claimants and likely for the Waitangi Tribunal a little bit crystal ball stuff presently.

Coming to the end two quick issues to cover off further. On research, the claimants are supportive of the research proposed so far. They are undertaking, particularly for Te Ūpokorehe, a process to ensure that their claim issues are covered off and may suggest later proposals for gap filling research. An issue they face (and it is an issue that all claimants in this inquiry face) is the lack of access to Crown Forestry Rental Trust funding, so they are reliant on the Tribunal to produce research or they are reliant on the goodwill of the experts to undertake research on essentially a low bono or pro bono basis. We would welcome (and with acknowledging the constraints on the Tribunal's resources) as things are particularised further and as the issues become clearer the opportunity to suggest some gap filling research or projects along that line. But something that my claimants say would assist with that process (and potentially with the inquiry itself) is an early understanding of exactly what the Crown's position will be on some of these high-level issues, what its approach to evidence will be and broadly, the approach to the inquiry. We have had these statements of position but we are interested and anxious to hear from my friend from the Crown today on some of those topics if possible.

The last point I wish to raise is the proposal for five hearing weeks and we were parties to the 18 September 2025 Memorandum of Counsel. I think your Honour at base the issue here is that we seem to be working from the point of: "Here is the funding available which will allow for five hearing weeks," and how do we reverse engineer at Waitangi Tribunal process to fit within that constrained funding and that constrained time. Whereas the claimants view is that this is their only opportunity to advance these very important claim issues before the Waitangi Tribunal and that, while they do appreciate that there will be some constraint as to timing, funding, and their ability and the Tribunal's ability to hear these issues, the process of working through the issues, the research and exactly what will be needed ought to take place before a decision is arrived at on ultimately the time that the Tribunal will need to hear this.

If we look to some of the other inquiries, as your Honour will be well aware, the Porirua ki Manawatū Inquiry for instance has gone for many, many hearing weeks and Northland I think around 30 in the end. While there is a broader coverage for obviously those historical inquiries, the scale of these issues as such that we don't see that it can be possible for claimant evidence, expert evidence, Crown evidence to all be heard within those five hearing weeks, just on the back of an envelope calculation as things stand if that evidence is going to be properly interrogated. We are concerned that what is going to happen if we go down that path is we arrive at a hearing structure which is more akin to an urgent hearing where we begin very early in the day, sit late at night, reduced breaks, claimants are stressed and pressured, the panel is put under huge constraints both time-wise and resource-wise and then ultimately we get through that and have a report down the track that really leaves a sour taste in the mouth process-wise of the claimants. While again we might be into that crystal ball territory, it is a subject that I have been instructed to raise today.

Having said all that, your Honour, I will turn to the people that actually filed the most to say today and let them have their say.

CHIEF JUDGE FOX ADDRESSES ALL COUNSEL – FURTHER SUBMISSIONS (10:29:16)

(10:29) MS HEATHER JAMIESON: (MIHI, ORAL SUBMISSION)

Tēnā koe e te Kaiwhakawā Matua. Otirā tēnā koutou katoa. Ms Jamieson tēnei. Kei konei ahau mō Ngāti Hine Wai 682, Te Kapotai Wai 1464, Wai 1546 me Ngāti Kapu Wai 1630. We didn't file any submissions on the draft report, Ma'am, but we support some of the submissions made by my friends, particularly by Mr Lyall and Ms Sykes, the comments around the dilution of some of the various kōrero. For instance, the report necessarily summarises kōrero but in doing so there is a risk that some of the strength and the specificity of claimants positions becomes diluted, particularly where strongly expressed positions are grouped into general themes or reframed through comparative concepts.

In terms of the Bennion Law memorandum, we support that. Particularly the need for this inquiry to grapple with the legitimacy of Crown sovereignty, noting of course that the Tribunal has confirmed that the legitimacy of current constitutional arrangements remains in scope. The key question for our clients is whether the Crown's asserted authority is actually within te Tiriti and hapū constitutional reality.

In terms of the pou tikanga wānanga, Ma'am, the questions go to the source and exercise of Māori authority, which is central to our clients positions that their rangatiratanga continues to exist and must be recognised. Those were all the submissions I had. Thank you Ma'am.

CHIEF JUDGE FOX:

Thank you.

(10:31) MS IHIPERA PETERS: (MIHI, ORAL SUBMISSION)

Tēnā koe e te Kaiwhakawā Matua. Sorry, just before my friend Mr Bennion gives his submissions, ko Ms Peters tēnei māua ko Ms Evans. Kei konei māua nō te tari o Kaupare e whakakanohi ana i ngā kaikerēme e whā. Tuatahi, he kerēme nā Ted Wilson mā te hapū o Ngāti Tamainupo ko Wai 775 tēnā. Tuarua, he kerēme nā Whaea Noa Rāmeka mā Te Rūnanga o Ngāti Rēhia mō te hapū o Ngāti Rēhia Wai 1341. Tuatoru, he kerēme nā Tā Graham Latimer

rāua ko Tina Latimer mō rāua anō me ā rāua whānau nō te hapū o Te Paatū ko Wai 1359 tēnā. Tuawhā, he kereme nā Umuhuri Matehaere, Kataraina Putiputi Rihara Nuku Keepa, rātou ko Nepia Ranapia mā rātou anō me ā rātou tūranga hei tarahiti mō Te Haupapa Kohatu Trust, nō te moutere o Motiti ko Wai 3374 tēnā.

Hei tāpiri atu ki ngā tāpaetanga kua whakatakotohia e aku hoa, he paku noa iho aku tāpaetanga mō tēnei wā. Your Honour, I just have some brief submissions to make in terms of the key items on the agenda. On behalf of our clients, we did file a memorandum on 24 March, which is document #3.2.431, with a few suggested corrections to the draft wānanga ā-rohe report.

I just want to tautoko the submissions of my friends, in particular Ms Sykes and Mr Lyall, in terms of some of the wider concerns in terms of ensuring the common kōrero from our kaikerēme was that their mana motuhake, tino rangatiratanga is grounded in their whakapapa and tikanga within their respective taiao and environments. While there was specific reference to some of their kōrero in that respect, others weren't as clear. As an example, for Ms Rukuwai Allen for Ngāti Rēhia hapū because all of her kōrero was given in te reo Māori, it did appear from aspects that were captured in the draft report that the default reference point for her kōrero was her English translation and so just wanting to ensure kia ū ngā kōrero ki ngā kōrero ā te kaikōrero i taua wā tonu.

In terms of the pou tikanga wānanga, we have no specific instructions on this kaupapa kōrero at this time. Therefore, as others have touched on, we seek leave to file any submissions post-JC in respect of those pātai. I just want to tautoko what my friend Mr Lyall had also said that we had also anticipated having a brief presentation from the Tribunal to begin this JC as to the reasoning behind the approach taken to drafting the wānanga ā-rohe report, as we thought that might give us a good insight into perhaps how the outcome came to be as it is. But in terms of the input into who the pou tikanga will be and some of the pātai that will guide their wānanga that will be held in due course, our clients

would like an opportunity to have some input into that after this judicial conference.

In terms of the hearing allocations, our clients supported the joint memorandum that was filed by Bennion Law on 18 September last year. It has already been said but document #3.2.290.

And we also tautoko the joint memorandum that was filed more recently in terms of the clarification sought and the application of the Wai 1040 Te Paparahi o Te Raki findings. One of our claimant groups participated in that inquiry. That was Ngāti Rēhia hapū. The other three claimant groups did not.

We had also noticed that the way Wai 1359 claim for the Latimer whānau was not included in the list of eligible claims attached to your recent directions. I wondered if that was just an oversight or whether there is a question around the eligibility for which we can make submissions on which are due in the next week or so.

In terms of the research programme, we don't oppose the proposal that has been made by the Tribunal. But tautoko what my friend Mr Lyall had said in terms of having an opportunity to suggest any gap filling research that may be required for our particular claimant groups in due course.

Āe, koinā aku tāpaetanga mō tēnei wā e te Kaiwhakawā, mehemea he pātai āu.

CHIEF JUDGE FOX:

Akuanei pea. We'll hear from our next lawyer which I think is Dr Anya.

(10:40) DR REKHA ARYA: (MIHI, ORAL SUBMISSION)

Kia ora Judge. Aroha mai for working. I just want to mention we are here for Waimarie Kingi on behalf of Wai 619, your Honour. Counsel's name is Dr Rekha Arya representing Afeaki Chambers. Our concerns are similar to which have already been raised by our senior counsel Ms Sykes. We actually

raised our concerns earlier also. We filed our claim, however, we have been facing some challenges with legal aid. We are trying to revive our claim, your Honour. At this stage, we are on observation state as interested party. And also, we are trying to follow legal aid if this can be revived as soon as possible. Kia ora your Honour.

CHIEF JUDGE FOX:

Kia ora, thank you. Mr Bennion.

(10:41) MR TOM BENNION: (MIHI, ORAL SUBMISSION)

E te Kaiwhakawā Matua tēnā koe. Ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi tēnā koutou. I represent six claims here today, your Honour. Wai 3163 that's Te Raukura Rapira and Wahapū o Ngāwhā that's a rangatahi Māori claim. Wai 1911 that's Aaron Smail concern with tamariki Māori; it comes out of State care issues. Wai 2169 which is the Muaūpoko Tribal Authority. Wai 2143 that's Karen Pointon on behalf of Tangata Turi. Wai 3073 that's Tania Kingi and that's Te Rōpū Waiora out of South Auckland. And then the one that is raising some of the issues in this judicial conference Wai 3383 that's Nicky Wakefield and the Matakeria group which is a working group. It is described in the papers as a working group supported by Ngā Hapū o Whangārei. It is the Whangārei Taiwhenua. It was formed in September 2017 and it holds hui across the wider hapū of Whangārei and discusses and brings these sorts of matters forward. Those are the six claims.

Yes, I am happily last I think in this situation by the sound. I think a lot of the matters have been talked through with other counsel before but I will just go through your list of items, your agenda for the day and go through the issues as they come up.

I noticed our issue about the Te Raki Inquiry the memorandum seeking clarification on your direction. I can raise that first if that is convenient, otherwise, it comes under other business at the very end, so maybe I will address it first. Just to say that I accept it is an unusual step to formally seek clarification of what is clearly a determination that you have made about how

the inquiry proceeds. We wouldn't normally do that. Except that in this case we had our clients come to us and they said to us this: “We never sought any finding about when practical sovereignty occurred in Te Raki.” That may be a misunderstanding that is not our intention. So that was the first thing.

They were then concerned to say: “What does it mean? If that matter is going back to the Te Raki Inquiry when did practical sovereignty become obtained? What does that mean for the rest of our issues?” We said we couldn't give them a clear answer on that and we would have to consider that further.

We had other claimants come to us when we reached out saying: “Yes, we're also unclear on what the meaning is.” Given that uncertainty, we said: “Look, what we'll do is we'll just seek clarification formally.” It’s an unusual thing to do but we feel is necessary because it is important to basic issues in this inquiry. Of course, this is a Constitutional Inquiry and it is a very slippery beast if you like and it's easy for there to be misunderstandings perhaps and talking past each other on where issues are.

We sent that memorandum into you; we circulated it with other counsel with a draft and sent that to you. We understand from your comments earlier this morning that the intention is clearly that Te Raki Inquiry will look at when practical sovereignty and we assume that meant de facto sovereignty…

CHIEF JUDGE FOX:
Exactly.

MR BENNION: (CONTINUES)
…for what that is worth, occurred in the north. We assume from your statements your Honour that you are saying that still leaves alive our clients main issue which is what is the legitimacy of current constitutional arrangements. As we put it in paragraph 4, we assume now that legitimacy of current constitutional arrangements, which you have left live, includes submissions and evidence and considering whether to make findings and recommendations that the Crown is in breach of the Treaty by maintaining that

it legitimately acquired sovereignty in a series of constitutional steps that it says were complete by October 1840. Because we say that the Treaty itself it is a breach to even argue that because the Treaty itself, we say, doesn't support that theory. It actually doesn't even support the idea of de facto sovereignty versus de jure sovereignty theory and whether you have the ability to comment on that. We understand from your comments that that is an angle that our clients can comment on and argue in front of you and so that continues to be their position. They are going to be arguing that sovereignty in any form hasn't been legitimately acquired and the way the Crown asserts it is a Treaty breach and they intend to continue arguing that.

(10:47) CHIEF JUDGE FOX TO MR BENNION:

Q. Well, I thank you Mr Bennion for raising it because if the direction wasn't clear it should be clear. The term practical as de facto, they are one in the same. But it became apparent at the last wānanga ā-rohe in Taitokerau at Te Tii that your clients in particular wanted a historical analysis of what took place which we are just not in a position to be able to do and through this inquiry. When I say “historical analysis” I mean historically as it occurred in the north not as it occurred everywhere else because we have enough Tribunal reports covering the issue in a practical sense throughout the rest of the country. But the other issues, as you say, will be dealt with by this Tribunal.

A. Yes, thank you for that. As I say, we cautiously took the step of seeking clarification formally, given the-

Q. I can follow that up in the follow-up direction after this.

A. Yes, thank you, it would be appreciated.

Q. Yes.

A. I think in this constitutional area the chance of misunderstanding is high because the nature of the subject it is quite slippery sovereignty itself and all those sorts of arguments. Thank you and thank you for your comments today.

(10:49) MR BENNION: (CONTINUES)

Just working through the agenda. On the draft wānanga ā-rohe report, I think we've had a similar response to others. We haven't provided any formal feedback at this stage. The thought from our claimants it was unclear why particular statements were picked up versus other statements, although I see the rationale of the report is laid out as a staff report at the beginning.

I share the fear of Mr Lyall that if we do add comments saying: "You missed this comment from me and that comment for me," that we may run into a situation where simply everything claimants ever said is somehow regurgitated or footnoted and I don't know how that's resolved. Except I note that the report is still live in the sense that I think the pou tikanga are going to comment and that's going to be fed back into the report. So there may be some further clarity that we obtain from that process as well that might assist in how we all think about what this staff report will do.

Turning then to the pou tikanga. We haven't commented on that at this stage. We understand now it is online. I support ideas that claimants can engage. As to who the pou are, we don't have any particular comment. We would support some theory about how claimants can engage and follow-up and ask the pou to drill down on particular issues which may get refined in the course of discussion from generally or to something specific.

(10:51) CHIEF JUDGE FOX TO MR BENNION: (CONTINUES)

Q. Yes. At the moment, anyway, the proposal is that the pou would have that session on their own. Livestreamed so that everyone can watch it. The preparation is in getting those questions right so that people feel that their issues that they want to have the pou discuss are being discussed. And then following up the pou tikanga wānanga claimants being able to provide comment on what they heard.

A. Looking at the questions that are proposed for the pou tikanga, I mean our approach is that those questions look comprehensive and appropriate. They are so comprehensive in coverage that we don't want the process just producing something that is perhaps too general which

may become a problem. Is there a way of particular thoughts being tracked down and followed further I think is the thought we had. And if there is a way in which perhaps the pou can have their discussion that generates some thought, some commentary, it may be a moment of further reflection or some reflection based on initial or some sort of feedback. If there is some way to build in a mechanism like that, we think that would be useful.

Q. Yes, I would have thought that that occurs through the production of evidence from claimants.

A. All right. Understood.

Q. Yes.

A. I mean this relates to our theme that – something I was going to come to a bit later with research – for example we are very interested in the question of how does the Crown's assertion of sovereignty and legitimacy rank. I mean how does its theory sit in relation to customary ideas that would be one very particular focus that we would have for example and we are hopeful that that would somehow come through in the pou tikanga process as an example.

Q. Are you going to give some thought then Mr Bennion to follow-up submissions on the questions?

A. Yes, if we can. I was going to get to the research issues and I think what we will do is we will feedback some of our theories about constitutional legitimacy. And yes, seek to feedback on the questions and ask them to think about that aspect how tikanga relates to the theories that the Crown brought, āe.

Q. Ka pai.

(10:55) MR BENNION: (CONTINUES)

Coming through to themes of the inquiry, we have commented on those already through our statements of position I think. We have got the broad themes.

Coming to the research programme. Our basic comment here is that we did send in a fairly careful memo #3.2.332 for the research. Our assessment is that we don't think that much of that feedback has been incorporated in the final

commissioned research but maybe some aspects can be picked up under the broad headings.

One of our concerns, and this comes from the Matakeria group, was that we were anxious for some sort of review and assessment of the Crown's assertion of sovereignty and the way it asserts it. How does that look in terms of what international law modes? Does it sit well within international law modes? How does it sit against Māori customary law? We think it is possible Mr Andrew Geddis on report one could potentially look at that theme. As for how it fits with customary law, we will pick that up I guess with the pou tikanga is the way that we see it. But as we view the research proposals currently, they are fairly broad. I guess we are hoping we can retrofit them in essence when we are discussing with the researchers: “Can you drill down on this issue or that issue under your headings that are set out there?”

We note in particular there is an expert brief on how independent self-governance autonomy and self-determination are exercised in jurisdictions beyond Aotearoa. We will be particularly interested in that brief and we see you were looking to commission that.

Coming to the interlocutory phase and hearing allocation. Yes, I think we led that memo #3.2.290 continuing view and concerns about the five-week hearing time, which I'm sure the Tribunal fully understands, it has its problems and we know the limitations you have. We have always thought there should be a phase 1 and phase 2 inquiry. I guess that is about constitutional legitimacy and then how that informs the rest of the inquiry. That ship it seems to have sailed for us but that's fine we will continue to plug away that issue as we can in the timing that is available. But the general issue around the five weeks and its suitability for an inquiry of this size and the number of claims involved remains a very large concern.

Let me just see what else have got. I think those are all the issues that I have, given that so many others have covered off some of these points as well. Kia ora.

QUESTIONS FROM MR DEREK FOX – NIL

(10:58) DR MONTY SOUTAR: (QUESTIONS)

Yes, I do have some. Mostly to do with these issues raised about te reo both in the wānanga and the reports. Just the first one I think it was Ms Peters from Kaupare Law who was talking about somebody that had spoken in Māori and we have summarised with a translation and taken from the translation. I think that would be easy enough to fix by quoting what was said in te reo and retaining the translation. Would agree to Chief Judge?

(11:00) CHIEF JUDGE FOX: (RESPONSE)

Yes, I think that can be dealt with, particularly through you, Mr Fox, myself, and Mr Prime.

(11:00) DR MONTY SOUTAR: (CONTINUES)

Yes. Regarding the draft wānanga report – no, sorry, I'll go onto the questions for the pou tikanga. As I understand, there are about 16 questions already and I'm not too sure how long the actual wānanga is going to go. But I think it was Tāmaki Legal who supplied a whole lot of sub-questions that we can draw it down into. I just don't know how practical that's going to be with time as to how much more we can get into it. Some of those questions if you look at them are going to require quite a bit of discussion from the pou tikanga already so I think that would be a bit of a challenge. And then I think it was Dixon & Co were suggesting that our final chapter in the report of this pou tikanga discussion be in te reo Māori and then translated. That is assuming that the pou tikanga are going to discuss all of this in te reo Māori. What would enable them to do that would be that the questions were put to them in Māori and I think some of those questions will be quite difficult to do that at the moment in order to get that same meaning across to them. I think that's going to be one of our challenges and I just wondered if Dixon & Co had actually thought about that. That was Ms Morrow I think.

(11:02) MS MORROW: (RESPONSE)

Tēnā koe sir. Yes, understand that concern. That was communicated on behalf of the claimants where possible but understand if that's not realistic in the circumstances.

(11:02) DR MONTY SOUTAR: (CONTINUES)

I thought it might help them. I don't know if you are going to cover this Judge as to how those pou tikanga were chosen and why with Tribunal members.

(11:02) CHIEF JUDGE FOX: (RESPONSE)

Yes. Well, I'm open to hearing names from claimants as well that can be joined to the group. But the Tribunal is in the fortunate position of having some very influential pou tikanga people, Dr Hana O'Regan, Kingi Kiriona, Gerald Albert, Dr Ruakere Hond, and then Tā Pou Temara if he is feeling well enough. Those are the people I thought could be the base group but happy to add people and happy to take people that people object to, out. But that is something for you to think about. I'll go through those names again, Tā Pou Temara, Dr Ruakere Hond, Dr Hana O'Regan, Kingi Kiriona, and Gerald Albert. Dr Hana O'Regan would facilitate the wānanga.

(11:03) DR MONTY SOUTAR: (CONTINUES)

One assumes that because they are all te reo Māori speakers that the wānanga may, for quite a bit, be in te reo which might challenge anybody else who is contributing.

(11:04) CHIEF JUDGE FOX: (RESPONSE)

Well, we don't want anybody who can't speak te reo there. That's the long and the short of it.

(11:04) DR MONTY SOUTAR: (CONTINUES)

The only other thing I wanted to raise Judge was, I think it was Ms Te Whenua of Te Whenua Law who was talking about, how in this process we capture the change of tikanga over time. I am assuming she is meaning the impact of colonisation, Christianity on our tikanga and what we are talking about is tikanga

today. Two hundred years ago it may not have been the same and a lot of our tikanga of course have disappeared as a result of the influence of the colonial enterprise and Christianity, and I am wondering how we address that. Did I get that right Ms Te Whenua?

(11:05) MS TE WHENUA: (RESPONSE)

Yes, the tikanga aspect I think is multi-layered, multi-faceted. I didn't see a specific tikanga question that looks to the nature, the source in its customary sense the evolution as you have said correctly through to its status an application constitutionally within Aotearoa today, even with respect to arguments around tikanga as the first law, its legal status and reference to tikanga forming part of our customary law. I had articulated the basis of a question, but in reviewing the questions at paragraph 3 of the document #2.6.83 the pātai for ngā pou tikanga, I think there are certain layers to extrapolate out on the tikanga question. So you are right in the context that it is not as straightforward a singular question I wouldn't have thought but there are different aspects that relate to its constitutional status and the degree to which tikanga is protected by law.

(11:06) CHIEF JUDGE FOX TO MS TE WHENUA:

Q. That's not a matter for the pou tikanga. That's a matter for legal submission.

A. Yes, no, I accept that aspect. But I guess my question will be for me to further think about is what is the question for pou tikanga that will enable that further consideration of its constitutional status within this inquiry.

Q. Right.

(11:07) DR MONTY SOUTAR: (CONTINUES)

Those were all my questions. I do think that our pou tikanga, whoever they are, are going to have to be well briefed before the wānanga. I mean the questions will do so much but I think in prep particularly for the person, and it might be Hana who conducts it is well briefed on what we are actually trying to achieve through it. Kia ora.

CHIEF JUDGE FOX ADDRESSES TE MINENGA – ADJOURNMENT (11:07:46)

HEARING ADJOURNS: 11.14 AM

HEARING RESUMES: 11.28 AM

(11:28) DR GRANT PHILLIPSON: (QUESTIONS)

Kia ora tātou. I did have a couple of questions but neither of them have been actually addressed in the submissions so far.

(11:28) DR GRANT PHILLIPSON TO CHIEF JUDGE FOX:

Q. One I sent you an email about Judge, did you see that email?

A. Do you want to just tell everybody what it was about?

Q. Yes.

(11:28) DR GRANT PHILLIPSON: (CONTINUES)

The first question is the issue of the nature of the inquiry, whether this is a contemporary inquiry dealing with post-1992 matters, which still allow us to consider and earlier matters as context but also some key issues about te Tiriti and its meaning and its effect et cetera in 1840, or whether we are attempting to do a fuller historical inquiry in this inquiry.

(11:29) CHIEF JUDGE FOX TO DR GRANT PHILLIPSON:

Q. Yes, and I responded by saying it is a post-1992 inquiry.

A. Right.

Q. Unless any counsel have a different view.

(11:29) CHIEF JUDGE ROX: (RESPONSE)

It seems to me that most of the claimants have had their claims heard in the historical claims programme dealing with historical issues. To allow the maximum amount number of claimants to participate, then we are looking at post-1992. Historically, what happened with the cession of power by the Crown will obviously fall into the necessary background to where we are today. We

will still be covering that, but a blow-by-blow account of what happened in each district will not happen.

(11:30) DR GRANT PHILLIPSON: (CONTINUES)

Thank you Judge. My other question is whether counsel have given-

(11:30) CHIEF JUDGE FOX: (RESPONSE)

Well, I just wonder whether or not anyone else wants to comment on that.

(11:30) MS SYKES: (RESPONSE)

Ms Sykes here Ma'am. I don't think it is actually a cut-off date at 1992. I think you have to go, even in a modern context, earlier than that. To the devolution policies and the constitutional frameworks that came out of that, to discussions at the Hīrangi hui in terms of the Māori dimension which were all responses to the Sealord's deal as well, which actually had significant impact. So I wouldn't say it is strictly post-1992, even if you limit it.

I do agree with you Dr Phillipson that contextual analysis will require you to engage with some evidence that could be put on the record. Dr McHugh for example in the original stage one and stage two of the Northland Inquiry, he put quite a different position for the Crown than others put. That my short circuit it but I don't think you could approach the task without the benefit of those experts. You don't need to repeat it but I think they provide important context.

CHIEF JUDGE FOX:

Ka pai.

(11:31) MS MASON: (RESPONSE)

Your Honour, it is Ms Mason here. We had been involved in the Freshwater Inquiry after the Paparahi o Te Raki report had come out. I had a number of claimants who had wanted that outcome to apply to them and submissions have been made to the presiding judge on that issue. The Tribunal had said that those findings didn't automatically apply to those clients.

I acknowledge that your Honour has said that there are a lot of reports out there that provides something similar in terms of what the Treaty meant to different groups. But I wonder where there are people who haven't had the benefit of that and need a specific conclusion from the Tribunal in relation to how the Treaty is interpreted for them, perhaps we could be given an opportunity to make submissions. There might be no one but there may be some groups who have not had that kind of finding for them historically.

(11:32) CHIEF JUDGE FOX: (RESPONSE)

Well, I will be happy to see through submissions who those groups might be.

MS MASON:

Thank you your Honour.

CHIEF JUDGE FOX:

Anyone else got any comment about that?

(11:33) MR LYALL: (RESPONSE)

I'm sorry, your Honour. We do represent some claimants who have unsettled claims who either haven't had reporting done yet on these particular issues, the Northland claimants for instance, or the North Eastern Bay of Plenty is to be completed. So while I think generally our claimants support the focus being on contemporary issues for recommendations, perhaps it might be too soon to conclude that this is a contemporary-only inquiry. I do think probably the scope for issues for historical claims, findings, and recommendations would be quite small based on the list of claimants presenting because of jurisdictional issues but perhaps it is something that we should colloquially park for now-

(11:34) CHIEF JUDGE FOX: (RESPONSE)

We can park it until after the statements of claims are finalised.

(11:34) MR LYALL: (CONTINUES)

Yes, I think that would be sensible, your Honour. Thank you.

CHIEF JUDGE FOX:

Okay. Dr Phillipson you had a second question.

(11:34) DR GRANT PHILLIPSON: (CONTINUES)

My second question is about the process of the interlocutory process or the timing of a statement of relief which I think is very important to the inquiry in terms of what reforms claimants are looking for and getting a consensus on some of that through the statement of relief process. When is the best time to do that?

(11:34) CHIEF JUDGE FOX: (RESPONSE)

Yes, I've been giving this some thought, especially in light of the Crown's submissions about the interlocutory phase. It seems to me that it would be very difficult for claimants to finalise their statements of claims until after at least this first tranche of research is available and only then would they be able to think about potential relief or not, we'll see. And then at that point, the Crown's response but I'm open to be persuaded to a different point of view.

(11:35) DR GRANT PHILLIPSON: (CONTINUES)

Well, I think at the moment we have it paired with a statement of issues. I wondered if that was going to be too early in the process and whether it might need to be something that is done later. But that was my question.

(11:35) CHIEF JUDGE FOX: (RESPONSE)

Yes.

(11:35) DR GRANT PHILLIPSON: (CONTINUES)

If any counsel have a view on that. It may not have been something that people have turned their minds to for this conference but we are at the point of working up what the interlocutory process is going to be through this conference I think.

(11:36) MR BENNION: (RESPONSE)

Yes, I mean our claimants would support as a matter of process the relief coming a little later being informed a little bit more by research at least and

(inaudible 11:36:16) in these further processes. Well, in particular areas, I guess we could almost think of what the relief might be now, which may be some particular aspects of local government, we want the Treaty inserted and the local government is subject to that that sort of thing. But in other areas that may be less clear.

(11:36) MS SYKES: (RESPONSE)

Ma'am, it is Ms Sykes here. Can I just tease that out a bit, Dr Phillipson. What I would like to try and avoid is a consultation process being contemplated or a significant constitutional change dimension or series of conventions being developed at the end because 2040 is looming. There is some need to try and find, I think, if you want to talk pragmatism, a pragmatic solution to advance the transformation of the current position. If there were some interim relief matters around that because the Crown just doesn't engage. And I have to agree with my friend Ms Mason, we are met with most of the inquiries we are in that those matters have yet to be reported on from Ngāpuhi and we are not too sure whether the contextual facts of Ngāpuhi meet others, and I'm talking kaupapa inquiries. So there is an inevitability of delay for the Ngāpuhi then, before you can actually contemplate your own.

And I don't think the distinction, I'll use my clients, for example, Ngāti Pikiao never signed te Tiriti but they are quite clear on the constitutional transformation that te Tiriti enables them to base their current challenges to the dimensions of the Crown that impact on their territorial sovereignty. And then I contrast that against the women's claim that I represent, they are all significant women from around the motu who devoted their lives to constitutional arguments around the Treaty, like Hilda Halkyard Harawira has devoted her life to that. My concern is that there is no homogeneous approach by territory so it would be good if we had some interim relief solutions with the participation and expertise of those individuals who have got 40 years' experience.

And can I use this as an opportunity that is my problem with some of your names in the pou tikanga matters. I haven't seen them at many of the constitutional hui at all in 40 years, the names that you put up at all.

(11:38) CHIEF JUDGE FOX TO MS SYKES:

Q. The purpose isn't so much to talk about what has been happening in terms of-

A. No, it is models Ma'am. You can't-

Q. We're not going to discuss models. They're going to talk about what they understand to be the tikanga aspects associated with each of those terms.

A. Well, I'm sorry, Praxis would require in tikanga terms mā te whakahaere o ngā whakaaro, mā te waka whakarei hei whakatinana i tērā o ngā tūāhuatanga. Ehara tērā te whakaaro noa iho, ko tērā te kaupapa a te tikanga.

Q. Yes, and I think that what will happen, as I envisage it anyway, is that you'll be given the chance to through evidence and through submission build upon the tikanga framework within which these issues will be considered.

A. My difficulty with that approach, and I'll use a particular example, the Poutama report from the Law Commission inevitably became dominated by the pou tikanga that were advising mainly from Te Whare Wānanga o Awanuiārangi in terms of many of their arguments. I'm not suggesting that-

Q. I think you must've been away when Ms Mason suggested that you would be able to put names forward to go on to that group.

A. I am Ma'am. What I'm suggesting is the names that you've put forward are Tribunal people very skilled academics, very skilled intellectuals. I'm not criticising them, but are they constitutional experts?

Q. No. What I'm saying is you can add to that list.

A. I thought you wanted to draw only from the Tribunal.

Q. Well, I think Ms Mason put a very good argument. While you were away, she argued that the claimants would like to have people involved and names could be put forward to join the group.

A. Yes, okay. But anyhow, the point that I want to make in terms of this discussion is that there is a pragmatism aspect of tikanga. Because tikanga is not just philosophical. Tikanga is also a framework that gives substance to use the simple term to make it correct and right.

Q. At the moment, we don't even have the base level.

A. Yes. But-

Q. So if we consider this is a process whereby we are building layers of what we need to be able to write up our report, then we need first of all to understand what it was at the very theoretical tikanga base level and then how it's evolved to the point where it is today. And you know the *Matike Mai* report which is very useful and after 220-odd hui it probably doesn't need to be replicated. It didn't have that initial layer so this is our opportunity to fill that gap.

A. Yes, I'll just check with my claimants, Ma'am. The problem they see is five weeks to do that in the absence of then trying to find a pragmatic outcome in tikanga terms not so much in the inter say terms between a Crown position and our position and trying to find a way forward. Because it is quite clear to us that the Crown's propositions are simply to ignore their already positive findings that actually controvert their position. As your Honour has just identified, that's not just something that happened in the Northland Inquiry. It happened in the Rohe Potae. It happened in CNI. It happened as early in Manukau and Taranaki reports. They are just closing their minds to those options of sovereignty that have already been promoted by claimants, reported on in different Tribunals, but still effectively ignored in favour of a constitutional theory from, to use the term, Western parliamentary models of sovereignty. So that's the difficulty that we see, Ma'am. Five weeks is insufficient for that to occur.

Q. You're not the only one who has told us that.

(11:43) DR GRANT PHILLIPSON: (CONTINUES)

Perhaps if I could just ask if any counsel does have a view on the particular timing of where the statement of relief should come, then that would be helpful if they put that in their post-JC submissions.

I did actually have one further question Judge, unless there is any more commentary on that, which was from Ms Mason. I just wanted to check that you weren't suggesting that we could recommend the Crown review another Tribunal's report, judicially review another Tribunal's report because I'm not

sure whether that's a legitimate thing for the Tribunal to recommend. I wasn't sure about that when you raised that but I may have misunderstood what you were suggesting.

(11:44) MS MASON: (RESPONSE)

Thank you Dr Phillipson. Yes, that was the what the claimants would like because they are very concerned that the Tribunal makes these recommendations and conclusions and then It's convenient for the Crown to just do nothing about them. If they opposed them, then they should go and judicially review it. Especially our Northland clients are quite concerned about how the Crown just picks and chooses the recommendations it wants to engage with. They can't go any further, the claimants that is, with the recommendations they got out of Wai 1040. They feel very confident about going to a Judicial Review and the Crown has that option available.

But the other side, so what happens is there is a stalemate and they feel like they are just held hostage to the Crown's power. It set up the legal system. There are options for it if it does not like what the Tribunal has done. And so they would like the Tribunal to look into this issue and to be able to make a recommendation along those lines because the option is that they sit there are nothing happens and nothing happens and happens. So they would like a recommendation that says that the Crown should it not accept those findings and conclusions that it judicially review the Tribunal's report. I think that's a very clear feeling especially from the Northland clients.

(11:46) DR GRANT PHILLIPSON: (RESPONSE)

I just wasn't sure whether that was a legitimate thing for a Tribunal to do to recommend that the Crown judicially review another Tribunal's report but maybe that is a matter for a further submission. Thank you. I just wanted to check whether that was what you were suggesting. Thank you M Mason.

(11:46) PROFESSOR DAVID WILLIAMS: (MIHI, QUESTION)

Tēnā koe Judge and ngā mihi o te wā ki a koutou katoa, ki a tātou katoa i tēnei wā. I have just got a general observation to make and a request for counsel to

think about rather than wanting any specific responses today. Other than to let my former student know that the Hīrangi hui took place in January 1995 so that is after 1991 but there we are. The general proposition I want to put is that in this inquiry the Tribunal has sought to move away from the historical inquiry that would go on for weeks and years and be led primarily in an adversarial way by lawyers. We have sought from the beginning of this inquiry to highlight the importance of tikanga. And if we are going to apply tikanga, we need to know what it is so hence, the sort of questions that have been posed for the pou tikanga. We have sought to give priority to personal statements from the claimants themselves and preferably in their own words and we got a lot of that on the sixth wānanga that we had. So there are resource issues of course.

At the beginning of our inquiry, there were some pou tikanga and pou ture people who were paid to advise us on the initial steps for this inquiry. The selection, as I understand it, of the pou tikanga for the May hui are people who are members of the Tribunal. We don't have to pay outsiders to participate. They can do their timesheets as Tribunal members. So that's a purely practical thing. Ms Mason has suggested Hone Sadler and others may wish to suggest other names and the Chief Judge has indicated she is prepared to accept that.

My general question to all of you really is to wonder what sort of evidence you are proposing to present as briefs of evidence in the weeks of inquiry hearing. Will the statements of position that your clients have made in their own words suffice for most of you? You have also got 500 pages of transcript which do give the context to those statements of position and which can be drawn on in final submissions. But really just a very open question what exactly would you want to fill up the hearing weeks that is not already covered by the statements of position that your own clients have made? So that's just something that I think I'd like some clarity on at some point. Not necessarily right now of course because you need to take instructions. And also to get clarity from your clients about how the outcomes of the hui with the pou tikanga will inform the hearings or will we just go back to briefs of evidence purportedly crafted by the claimants but very often crafted very obviously by the lawyers. So that's just some general observations from me. Thank you.

(11:51) MR LYALL: (RESPONSE)

I think I'll respond in writing with your leave more fully. But I just make the point that, when certainly my claimants prepared their statements of position for the wānanga, they were doing so to address the principles of constitutionality at a very broad level. They do intend to bring more fulsome evidence on the ways in which the Crown's assertion of sovereignty impacts them, as they navigate their life and their responsibilities within their rohe and that goes across a broader array of different fora. So while some of the issues may have been addressed at that very high level for the wānanga, there was no intent by them at the time for that to be the sum total of the evidence that they were going to produce for the inquiry. And indeed, they made conscious decisions to leave large parts of their kōrero out.

I also think there needs to be a grounding from the individual claimants where they choose to do so. I'm thinking in particular of my Te Ūpokorehe claimants who intend to bring evidence of who they are, as a way of beginning their kōrero and then building from there, as a way to address these constitutional issues. And they again made a conscious decision not to bring that kind of kōrero tuku iho evidence through their knowledge holders for the wānanga ā-rohe process and wish to do so later. So while I'll address those points, I think with some more specificity in written submissions I would push back on any idea that in essence the claimants have had their go at it through the wānanga process and there might not be that much more for them to be putting into evidence.

(11:00) CHIEF JUDGE FOX TO MR LYALL:

Q. No, that's fair enough Mr Lyall. I don't think that Professor Williams was suggesting that. I think he is just trying to get a gauge of what other material might come before us.

A. Your Honour, just a minor point but I think my clients would give me the growling of lifetime if I was to write their evidence for them, so I have to push back on that point as well. Thank you your Honour.

Q. Okay. Can I just say that it is unlikely that we will be able to visit every claimant in their own marae during this process. Your clients are going to have the similar position that they had during the wānanga ā-rohe

phase. Eventually, they are going to have to come to the position where they recognise we have got to have our hearings in places where we can get as many claims as possible to that venue, rather than have every claimant heard on their marae. I just raise that now because that might be something that you take instructions on.

A. Thank you your Honour. I think they recognise that. I know for Te Ūpokorehe there was a concern about giving that kōrero on other people's marae, rather than it not being specifically at their marae. Whether there is a neutral venue or the Waitangi Tribunal's rooms for instance that might be able to address their concern because they have given evidence in those types of venues before.

Q. Okay.

(11:54) MS SYKES: (RESPONSE)

Ma'am, can I just ask to respond to Professor Williams. The one with Alzheimer's here got her dates wrong, former student as I might be. But the kinds of evidence we were going to kind of look at in this phase was conflict of law evidence and I even see conflict of understanding evidence between and amongst Māori not so much between and amongst European concepts of constitutional structure but the foundational concepts. Because that's really obvious to me, from the four claimants that I've got, there is not a universal position where they want to end up in terms of the constitutional guarantees they believe He Whakaputanga and te Tiriti met with. There would need to be that kind of discussion and we have been encouraging our claimants to put those propositions down. Yes, it's not an easy task, but it requires a lot of wānanga amongst our own clients, then to meet with other clients to see if they can put positions.

The obvious one I can go, because I know quite well, is the Kīngitanga role in the modern context and its role in a parallel context for the assertion of tino rangatiratanga and mana Māori motuhake is still not one that is shared, even within Ngāti Pikiao, as the role. And yet we are on the Tekau Mā Rua for the Kīngitanga just to talk about those matters. We haven't raised any of those matters at all but they are quite significant matters of tikanga that need to be

addressed in any process outcome. Those were the kinds of evidence we were thinking about. And can I say that our statements of position we started with evolved as we listened in the wānanga.

CHIEF JUDGE FOX:

I think that's fair.

(11:56) MS SYKES: (CONTINUES)

So that's one of the key problems that we've got. I don't think they were meant to be definitive. They were responding to what we had heard.

CHIEF JUDGE FOX:

Ka pai.

(11:57) PROFESSOR DAVID WILLIAMS: (RESPONSE)

Kia ora Ms Sykes and thank you for that. I'm just encouraging all counsel to think the way you were thinking just then and stating the perspectives you wish to bring. So, kei te pai.

(11:57) KEVIN PRIME: (QUESTIONS)

Yes, I have questions more around that tikanga panel. Actually, I endorse all the names that you've put up. I have no difficulty with them. I note Ms Sykes comment on them being academics and I have no difficulty with that because many of them have a good in depth knowledge of tikanga anyway. What I do endorse also is the opening for other nominees, if that's a words, to be bought into that panel. I have a couple of other names but I haven't checked with them if they'd be available so I could probably leave that.

Other than that, I have no other questions, apart from just acknowledging the contributions from various people on our panel. I think it's been very, very helpful anyway in widening my understanding of a lot of this, because a lot of this is a learning process for me as well and when you get over 80 you think you're learning something new every day and I'm grateful for that. Kia ora.

CHIEF JUDGE FOX:

Kia ora. Well, you don't look your age.

QUESTIONS FROM PRUE KAPUA – NIL

(11:59) MS TE WHENUA: (RESPONSE)

Tēnā koe Ma'am. My contribution is just partly in response or triggered by the question of Professor Williams. I tautoko the sentiment that claimants voices are important within this inquiry which I think was at the heart of his question.

And just with respect to the evidence that we might bring, one of the elements that we were considering covering was for example inviting Ms Dale Tākitimu, who Professor Williams has seen in the Climate Change Inquiry and may recall inviting some of her thoughts, which she deposed new evidence in the Climate Change Inquiry into, inviting her to bring evidence into the Constitution Kaupapa Inquiry. Also recently in the Climate Change Inquiry, we had evidence from Professor Claire Charters as to UNDRIP the legality or the legally binding nature of UNDRIP and what that means for the application of the principles of the Treaty of Waitangi and the acts and omissions of the Crown here within our Aotearoa context. Now those were essentially, especially particularly the submissions of Professor Charters, opposed by the Crown's witness, Ms Victoria Hallum for the Ministry for Foreign Affairs and Trade and the Crown lawyer in the Climate Change Inquiry noted that those types of arguments and that type of evidence around the law was best left for submissions. I guess I'm raising here the point that if we are able to bring in that evidence from regarded legal experts, it may require some direction from the Tribunal as to the acceptability of doing so, other than leaving that for legal submissions.

(12:01) CHIEF JUDGE FOX TO MS TE WHENUA:

Q. Have you seen the research list?

A. No, sorry mum, I have not.

Q. You might want to look at that. You might find it helpful.

A. Ka pai.

Q. Okay.

A. So that answers that question.

Q. Well not quite because you might still find there is a gap, so have a look at that before you file your submissions.

A. Ka pai.

Q. Great.

(12:02) MS MASON: (RESPONSE)

Ma'am, it's Ms Mason here. I'd just like to respond briefly to the questions posed by Professor Williams. A lot of it depends really on the Crown stance in terms of evidence and of course it would be different for different claimants which was one of the reasons why we requested a direction that the Crown make clear in relation to the Wai 1040 Te Paparahi o Te Raki finding what its position is. But the other thing is that when the Crown made its submissions in the Paparahi o Te Raki Inquiry, it said that the New Zealand Māori counsel set up was sufficient for the Crown to discharge its constitutional Treaty obligations. That is what it said. So if that is something that the Crown thinks, then I am sure there would be parties who would want to provide evidence on why that is insufficient. I mean in particular it is not funded properly and there are a whole lot of other issues.

A couple of things: (1) it depends on the Crown's position on the interpretation in the Treaty and Wai 1040 for those clients. But also it would be useful to see what the Crown's position is overall in terms of how it discharges its Treaty obligations in relation to constitutional matters because that would then lead to some more definition around the types of evidence that claimants would want to put. Those are just my initial thoughts but we would have to go back to our lines obviously and go through that. Thank you.

(12:03) CHIEF JUDGE FOX: (RESPONSE)

That is a good segway into asking Mr Irwin if we he would present his submissions that he has produced for us on the agenda items for the day.

(12:03) MR ANDREW IRWIN: (RESPONSE)

Kia ora. Tēnā koe e te Kaiwhakawā Matua. Engari te mihi ki a koe your Honour, a, ki a koutou hoki ngā mema o Te Rōpū Whakamana i Te Tiriti o Waitangi. E Pā Monty tēnā koe, nāu i whakatau tātou ki te karakia. A, ki a tātou katoa ngā kanohi rōia tēnā tātou. Kei konei ahau, kei konei māua ko Ms Douglas mō te Karauna.

Your Honour, I did file a memorandum as you've just mentioned. I thought I might speak to four points on the agenda. I'm conscious of time too and that I've made comments in writing so I don't think I need to dwell on things for too long. But in terms of the draft wānanga ā-rohe report, the Crown's made some comments in the memorandum, and I think I don't need to speak to those, unless your Honour has any questions. The Crown's concern is really to make sure that its position in this inquiry is clear and understood by the Tribunal and so we've made some comments in the memorandum about the draft report. Your Honour, unless you do have questions or Tribunal members have questions, I'm happy just to leave those comments in writing.

(12:05) CHIEF JUDGE FOX TO MR IRWIN:

Q. Only on the point, I think what you provide indicates you're happy with the Tribunal report, the staff report, except where it proposes oppositional positions for both the Crown and the claimants. Is that right?

A. Yes, that's right your Honour. I would reiterate the Crown's thanks to the Tribunal staff who have turned around a fairly comprehensive report in a short time span. There have been some critical comments made by parties today and the Crown's made some comments too, but I did want to say thank you to the Tribunal stuff for the work that's been done. I think everybody will always wish that somebody has reported their comments in a slightly different way.

Yes, the key point is what I've said at paragraph 3 of the memorandum is that the Crown has tried to stick to its knitting, stick to its lane, so to speak. We have described our understanding of the current status quo of our constitutional arrangements. We haven't directly commented on the claimants suggestions for change. Where the draft report is sought to

make a comparison, the comparison does appear to be inept in that regard.

Q. Yes. It is just that it is interesting at page 7 for example of the Crown's statement of position (the Crown document #B014(c)), you wrote or someone from the Crown wrote: "The Crown's position is that New Zealand's constitutional arrangements ought to be consistent with the Crown's obligations under the Treaty/te Tiriti and maintain the following constitutional principles that serve all New Zealanders." And then again on page 5, you also outlined the Crown position in relation to each theme. It does appear that in the drafting of the statement of position produced by the Crown that the Crown was stating its position quite clearly.

A. Yes, I accept that. And I accept I'm looking at paragraph 24 of the statement of position that you've referred to there, that's correct. I think the Crown is set out there very, very broadly its position that the constitutional arrangements of this country ought to be consistent with the Crown's obligations under the Treaty and maintain certain constitutional principles. So to that extent, yes, the Crown has set out a very broad statement of what the constitution should be.

I wasn't so sure your Honour that claimants were suggesting that their proposals for change were undemocratic or inconsistent with the rule of law or the concept of responsible government or the other concepts that the Crown has identified at paragraph 24.

Q. I see. Thank you that clarifies that position.

A. Yes.

(12:09) MR IRWIN: (CONTINUES)

The hope is that the Tribunal does understand the Crown's position which is it has been limited in what it can say and we have explained that from time to time. But by and large, we do see this inquiry process as an opportunity for the claimants and the Tribunal to wānanga to discuss proposals for change. The Crown doesn't want to shut down that conversation. At this very initial stage of this inquiry, it sought to describe its understanding of the status quo and it has wanted to put the focus on that. So that was the real point that we wanted to

make, because we saw the draft report just going a bit further in looking for disagreement, where strictly we thought there wasn't one.

We have made some specific comments in an appendix to the memorandum but really it is for the staff. It is their report and it is really for them to see fit, taking onboard our comments as to how they wish to (inaudible 12:10:28) of that report if they do.

Your Honour, unless you have more questions about that, just to turn to the pou tikanga. The Crown has no comment on the questions that the Tribunal has proposed for the pou tikanga. The only comment I would make is it was raised today that claimants may or may not have some capacity to comment on who the pou tikanga are. I think the Crown will not have any position on who the pou tikanga are.

I would make the comment though that depending on what the Tribunal sees this panel of pou tikanga being or doing, you may want to think about membership. If you want it to be seen as an independent panel of pou tikanga, then you may want to be careful to guard the independence of the panel members. If, however, you see it in a different way, then you may be open to claimants being members of the pou tikanga. I'm not sure how far as Mason's suggestion was going in that regard and whether she was suggesting that claimants themselves be suggested as pou tikanga. But it is for the Tribunal to decide who the pou tikanga are going to be and my comment is simply you may want to think about the issue of independence and what the purpose of the group is in that regard.

I was going to turn to the interlocutory phase. In our memorandum, we proposed paragraph 8 a table setting out some key steps. I think that this is quite important. I thought there would be more of a focus at this judicial conference on the way forward. We have a year essentially between now and hearings commencing in July 2027 and it would be good to make the best use of time between now and then. In setting up those steps, we had built on an earlier table that your Honour I think had proposed and that had got

slightly out-of-date simply because some of the steps hadn't occurred, so we were on the one hand trying to update that and also just playing around with some of the timing of the steps.

I think Dr Phillipson has raised a really important point about when in the process a statement of relief should be. I don't take any firm stance at all on that. It may well be that a statement of relief is something that is better placed later in the piece because it might be better informed from the finalisation of the research the Tribunal has commissioned. I don't have a firm view about that. Our list of steps, we included that with an interim statement of issues. I think the reason we did that was because that was the earlier proposal that the Tribunal had made. But I think it is a fair point to think about whether the relief aspect might be carved off and put later.

I do think claimants are in a good position to file statements of claims soon and I think that that should happen. The claims really should be the framework for the inquiry. I appreciate your Honour made the comment that you thought final amended statements of claim might come after the research programme is completed and I think that would be either the end of this year or the very beginning of next year. But if you do want the Crown to respond to the claims, the sooner the claims are identified. The Tribunal has done a good job in this inquiry of identifying the claims, but the sooner amended statements of claim are filed, the sooner the Crown can engage with those and respond, as it sees fit. If you delay that step until early next year, I think you will find the Crown will be asking for more time to respond to a statements of claim.

(12:15) CHIEF JUDGE FOX TO MR IRWIN:

Q. Well, I think that is a good point. Would you like to hear from other counsel on that Mr Irwin?

A. Yes. The only other point I'd make is that I do encourage claimants to think about – it might go to some of the points that Professor Williams made. Claimants have already filed statements of position. We have been through a wānanga process. If we are going to get onto a statement of issues, I think that is a good time to be thinking about what your

statements of claim really should be. The suggestion is work on an interim statement of issues as well as statements of claim as soon as possible. We are suggesting May this year.

Q. I really don't think that that's achievable, given the delay and getting the research programme underway.

A. It might be, and just before other claimant counsel who might wish to comment, that what would be helpful now would be an interim statement of issues. The statements of claim that can be filed by May 2026. And then a response from the Crown, on the statement of issues, I should say, the Crown does seek a bit more time to respond on the claims. But that is the suggestion and it might be that claimant counsel will wish to comment.

CHIEF JUDGE FOX ADDRESSES CLAIMANT COUNSEL – COMMENTS (12:17:18)

(12:17) MR LYALL: (RESPONSE)

Look, I am not opposed to trying to get at least a provisional statement of claim to the Tribunal as soon as possible which outlines as best we can on the evidence that we have at the moment for claimants the claim issues that they are going to be raising most squarely. But I would say, just given the Tribunal's own processes at the moment, looking at the hearings that have been set down, I think May is fairly wildly optimistic for that to happen. I mean if I look at some of the claimants that are participating in the Climate Change Inquiry, the Mana Wahine Inquiry, and then have all of their other various kaupapa to attend to, then I think it would be putting a lot on them to have them work with counsel to turn that around in the time that we have. While I wouldn't be opposed to a 2026 date for that sort of perhaps we call it a semi-particularised statement of a claim, I think maybe we will be pushing things. It is something that we can go and take instructions on and refer back to the Tribunal on those.

CHIEF JUDGE FOX:

Thank you. Anybody else

(12:18) MR BENNION: (RESPONSE)

Look, this is the second time in the call a very interesting point has been raised about how much detail comes from claimants and when it comes and how it informs what it is sought in relief. I was going to make a comment earlier when Professor Williams was talking but I'll comment now as the Crown sort of raised a similar issue.

A lot of the claimants we represent as an example come from sort of the area of health care and things but also more fundamental human conditions, so disability, deafness, physical disability, those sorts of matters. Their concern, as an example, is that this inquiry is an opportunity not to be dealing with ambulance of the bottom of the cliff stuff, like some particular recommendations around what we should do with Māori deaf or disabled or those sorts of matters. But a Constitutional Inquiry on all accounts gives us the opportunity to think about the fence at the top of the cliff. That there are some fundamental settings that might assist and help to prevent some of the sort of ongoing day-to-day problems that are encountered and the ongoing problems with legislation as it exists.

For them, it is very difficult to distinguish between how do they properly inform the things they want to come out of the Constitutional Inquiry, the fence at the top of the cliff solutions, without somehow telling the Tribunal about the importance and why they matter and how to then craft that fence at the top of a cliff because these are the things that will come through the fence, unless you designed in a very particular way, and it is hard to do that without information. As I said, I am trying to sort of get the best metaphor or comparison for the conundrum that I see that exists here.

Mr Lyall has referred to semi-particularised statements of claim, you know, more detail from claimants about what are the particular issues and then how they relate perhaps to relief they seek. I guess my main thought is we need do need more time. I don't think the Crown's timeframes can be accepted. I think we need more time.

I think we need some theory of how much claimants can say: “Look, these are our experiences. We can't obviously have lots of hearing weeks going through them, to show you how very important they are and how the details of them might inform the fence of the top of the cliff.” Perhaps, we need some way of providing some information but being reassured that, from the Tribunal’s point of view and from the Crown's point of view, some matters will be taken as assumed for the purposes of the inquiry.

The claims can perhaps pack the key experiences that they think should inform the fence at the top of the cliff’s design but provide more by way background or be reassured that any background they provide is sort of taken as read and generally accepted and doesn't all need to be presented. I wonder if maybe that is one way of trying to shape how this process works in that regard.

(12:22) CHIEF JUDGE FOX TO MR BENNION:

Q. So you wouldn't be in favour then of having a process which saw amended statements of claims coming in, then the research, then the interim statement of issues, and the Crown response? You probably would have to have final statements of claims before the Crown response.

A. Yes, I suppose what I think I would be in favour of is being given the necessary time to provide further particulars. That is possible within the process as long as time is there.

I think what we need is some way of saying or understanding that the further particulars don’t all need to be-

Q. Because some of the statements of claims were filed in the 1980s.

A. Yes. No, it is just that further particulars don't all need to be proven. There doesn't need to be a process where they are all going to have to be proven or placed in a formal way in front of the Tribunal and it assessed in order to inform the relief that is sought. Because otherwise that really does inform I think how we think about those five weeks and how problematic they are. It might be the discussions with the Crown and ETS that we could say to the Crown: “Of all the particulars that have been given and the way they have been given, what do you see as things that you need to have satisfaction on?” In order to be happy to move forward

to say: “Look, we assume, these are the experiences of these communities, reputable reports on those matters. Given all those assumptions, we don't need to see all those matters teased through. We're happy that a couple of the claimants experiences, as they say, how law current laws and settings affect them, we're happy to accept those. We don't need all those sorts of things proven. Yes, we're happy to. Can you please give us some information on,” and maybe the Tribunal asks as well: “This further point and that further point. But we're satisfied with 80% of what is here as sort of a background and context that doesn't require further investigation. We're happy for a few key moments to be highlighted for us and that will be enough for all parties to go: “Well, the Tribunal has enough to go to findings or recommendations and say: ‘We need the fence at the top of the cliff designed in a very particular way.’”

I suppose I'm not objecting to the general set of stages but maybe they're going to have to be filled out in a slightly different way in this inquiry. Since everything becomes constitutional in a way too. That is another sort of background problem.

Q. Thank you.

(12:26) MS MASON: (RESPONSE)

Your Honour the first thing is the independence issue which my friend Mr Irwin has raised in terms of the claimants suggesting pou tikanga. I had suggested Mr Sadler. He is a claimant. But this issue has faced quite a lot with legal aid. Sometimes and quite often the person who could be an expert is also the claimant and legal aid will say: “We can't fund claimants to be experts.” I’m not saying this applies to Mr Sadler because he isn't usually funded; he doesn't want funding. But it is quite important that those people who are experts, even if they are claimants, are able to be involved. Because, by its very nature, many of the claims that are filed in the Tribunal are filed by kaumātua and experts on tikanga. It would be unusual for such people not to be involved in the Tribunal process. I would submit that independence issue isn't really an issue if it is to be weighed up against people who have valuable information. There aren't many elders like this that are left, especially in Ngāpuhi. So that is one issue.

The other issue is I am wondering for my Ngāpuhi clients anyway, they may like to file statements of relief. They would need some time. It would be useful for them to have the ability to do so. Because the Crown is embarking on settlement processes for them and the tino rangatiratanga issue is absent in those policy documents so it may well be that they would find some value in getting together. They have their finding, so to speak, and they are onto the next phase. They may well find advantages in having a timeframe for filing a statement of relief. It could be some claimants who want to file a statement of relief could file it by July or August and a direction in that regard would be useful in terms of them getting funding for hui and to (inaudible 12:28:37) and to discuss that option.

(12:28) CHIEF JUDGE FOX TO MS MASON:

Q. Okay. It would defeat the purpose if we had 10 different statements relief. At some point, if we could understand whether or not there is a consensus around the claimant community about what the statement of relief should look like, that would be useful for the Tribunal's purposes.

We are not focused on the settlement process, like your clients are. We are focused on other inquiry process which would provide to the most claimants possible some opportunity to have the relief that they are seeking considered.

A. Yes, your Honour. The clients that I represent have expressed an interest in focusing on their area and their iwi and not on the national questions. One of the reasons for-

Q. But you can still work together with other claimant counsel by noting the need for tribal variation.

A. Yes, absolutely. They distinguish themselves primarily because they have ancestors who signed He Whakaputanga. They distinguish themselves in that way and that is how they have seen things. But yes, of course, they will work with others.

The other issue that I wish to raise is this issue of some claimants who might not have a Tribunal finding in terms of historically how they dealt with the Treaty and whether they signed or not-

Q. Okay, can we come back to that issue. I just wanted responses to Mr Irwin's proposal.

A. Yes. I was just going to say it might be useful to have a direction and a timeframe for that, so people could come back on that and that could be an interlocutory issue. The statements of claim the finals certainly not May and we will want them after the research is available.

Q. Not even an amended statement of claim.

A. It would be difficult to go through-

Q. Because at the moment we don't have sufficient information, even the Tribunal doesn't, about what the nature of the claims are.

A. Perhaps some claimants could do that. But I certainly think some would want to wait until after the research is there, then they are not going through that process twice.

Q. All right, okay.

(12:31) MS SYKES: (RESPONSE)

I'm just worried without the research. While my friends were discussing their propositions, there are some aspects of your research proposal that is quite new to me, Māori rights and interests. I would be reluctant to spend a lot of time on an expanded pleadings phase.

I would like to do it once the report is available because it has not been traversed at that point. But I do like the idea of an interim statement of issues which could be constructed by your Honour or your panel because of course it is your statement of issues. And I take cognisance of Professor Williams notice to us that there are 500 pages of transcripts and 50 statement of positions. You may wish from that flavour to get a draft out without necessarily us having to draft it and then we input into it and then that gets finalised after the research reports and the final pleadings has completed. I would certainly appreciate your thinking now of what are the crystallised issues that have emerged in the wānanga phase.

The other thing – I don't know if I'm responding to Mr Irwin – the tikanga expert panel is actually yours to give weight to or not. That is one of my concerns

about it. If we become participants in it, the weight of their recommendations or their guidance is still ultimately for you to determine because of course they are reporting to you. I am not as fussed about total independence because ultimately it is up to you that will make that determination as to whether you give weight to it or not.

(12:33) MR IRWIN: (QUESTIONS)

Thank you your Honour and thank you for those comments counsel. If I can just segway off what Ms Sykes has said, I think, she was suggesting the Tribunal staff would be putting together a draft statement of issues. I mean that is something worth exploring and thinking about and I think the Crown would very much support that.

I think putting some real definition on the inquiry is a good use of time between now and the start of hearings. Any move in that direction, I should say, is a good step and I think that was a good suggestion from Ms Sykes.

I think she was expressing in a slightly different way, the issue going through my mind, when I was expressing comments about independence for the pou tikanga. It is a question of weight for the Tribunal as to what they say and what they come up with and that independence is something that goes towards that. So that is something for the Tribunal to think about and I don't want to overstate my position on that. The Crown is not opposed to claimants being involved. It is just an issue of what does the Tribunal want that rōpū to actually do and be seen as.

I just had some final comments your Honour. A couple of responses to two submissions made by my learned friend Ms Mason. I can probably briefly addressed those two suggestions. One suggestion was that this Tribunal issue and direction, as I understood it, requiring the Crown in this inquiry to respond with clarity about whether or not the Crown accepts the Tribunal stage one Northland findings and I guess stage two Northland findings. I don't think that direction is needed, your Honour. The Crown has been very clear in both the Northland Inquiry and this inquiry about its views on the Tribunal stage one

report. In the Crown statement of position that was filed in December at paragraph 35, the Crown very clearly sets out its current position on those findings and it has maintained its position that respectfully that disagrees with some of the findings in the stage one Northland report. That position was made clear as well in the Northland Inquiry. I don't think a direction on that is necessary. I would like to think the Crown's position is very clear already.

The second thing was Ms Mason had suggested this Tribunal make certain recommendations to the Crown. They included that the Crown take an issue to an International Court of Justice I think she referred to. And also she suggested that this Tribunal recommend that the Crown sue the Tribunal in Judicial Review and challenge at stage one Northland findings. I respectfully submit your Honour that this Tribunal not make those recommendations. The first point is that this is not the time for this Tribunal to be making recommendations. The inquiry really is just getting underway and we don't even have finalised statements of claim filed. We haven't had hearings. We haven't had submissions from the parties. This Tribunal is not at the point of making recommendations to the Crown.

In terms of the recommendation that the Crown sue the Waitangi Tribunal in Judicial Review, I think that that is a most odd submission for my learned friend to have made. I suspect there would be questions around the extent to which it is a lawful recommendation for the Tribunal to make but I would caution against making that recommendation. The broad and simple point is that the Tribunal is in the position of making non-binding recommendations to the Crown. It has done so. It did so in the Northland Inquiry. It reached findings in the stage one report and it has reached findings and recommendations in its first instalment of the stage two report. It is for the Crown to either agree or disagree with those non-binding recommendations. It is a most odd thing for this Tribunal, particularly this panel, to make a recommendation to the Crown that it sue the Waitangi Tribunal and Judicial Review to challenge findings it doesn't agree with. So that was all that I wished to say, your Honour.

(12:39) CHIEF JUDGE FOX TO MR IRWIN:

Q. Thank you that is very helpful Mr Irwin. Well, you did raise a matter that I will follow-up on and that is the submissions Ms Mason made. One of them was the reference to the International Court of Justice. Do you have any response to that?

A. I have only just heard it been made this morning. My quick responses is, as I have said, this is not the stage to be making recommendations. If at the end of this inquiry the Tribunal wishes to make recommendations to the Crown about what it should or shouldn't do that would be the time to be making that kind of recommendation.

I might add, if the pointed issue is the Crown's perspective and understanding of what the Treaty means, it may be that, as I understand it, for the purposes of this inquiry your Honour was clear in an earlier direction that you did not seek relitigating of that issue. I had understood we were moving on. The Tribunal has its view, the Crown has its view, and you were moving on with this inquiry. If the Crown isn't onboard with the Tribunal's way of thinking so be it. But it is for the Tribunal to have this inquiry to explore issues that the claimants raise and explore whether the constitution should be changed and make recommendations to the Crown accordingly.

Q. All right. Thank you.

CHIEF JUDGE FOX ADDRESSES TE MINENGA – FURTHER QUESTIONS/RESPONSES

(12:42) DR GRANT PHILLIPSON TO CHIEF JUDGE FOX:

Q. Are we allowed to ask questions judge of the Crown?

A. Yes.

Q. We did it of the claimant counsel. I'm just not sure if we are.

A. Yes.

Q. Yes.

(12:42) DR GRANT PHILLIPSON TO MR IRWIN:

Q. Well, my question Mr Irwin for the Crown is about the issue of the statements of claim and particularising statements of claim et cetera. How does the Crown think that should be balanced in terms of particularising vis-à-vis this being a Kaupapa Inquiry and us dealing with broad issues that affect all Māori? Do you see where the balance should be drawn there? Do you have a view on that?

A. Well, I think the cart should always be behind the horse and what is the leading the cart "the horse" so to speak are the claims. The function of the Tribunal is to inquire into the claims. The claimants frame the claims, they file the claims, and they really do have control over as to what the claims are.

My very real understanding of this inquiry and all other kaupapa inquiries is that the Tribunal has organised its inquiry into claims of a certain theme at the same time so that you draw together the claims that raise constitutional issues and then you inquire into those claims. The claims should be leading the inquiry and framing really what the inquiry is. Now that might be a perfect world and it might not be exactly how kaupapa inquiries generally speaking are proceeding. But I still think that it's very important that we maintain a focus on the claims because that is how the Treaty of Waitangi Act is structured and how the Tribunal's functions are to be directed.

In principal, ideally, we should be getting statements of claim as soon as possible all claims and identifying as early in the inquiry process as possible what are the actual questions or claims that the claimants make as particularised as they can be and then framing an inquiry around that. Now I accept that may be an ideal and not necessarily descriptive of how we are progressing in all kaupapa inquiries but I still think it remains an important thing.

Bear in mind, claimants have lawyered up in a good way. I don't mean that in a pejorative way. There are legal experts here who act for the claimants, many of whom have been involved in, for example, the Northland Inquiry that we all know has addressed many of these very complex constitutional issues already and other inquiries have as well.

There is a good body of knowledge here and the expectation that claimants can produce particularised statements of claim is not an unreasonable expectation.

Q. Yes. I mean the broad themes that have been identified have already been identified from the statements of claim. It is not that we invented them. They have come out of the existing statements of claim but they have been identified at a broad level because the kaupapa inquiries are intended to enable those major issues that affect most or all Māori to be addressed in a timely manner. I wasn't suggesting that the claims don't need to be particularised but it is the level at which they should be particularised that I am asking I guess. Because in a kaupapa inquiry the Tribunal cannot report on every single item and every single statement of claim. If we were to do that, then we would be having a different process for addressing them. So I am looking at where the balance needs to lie and how much work and how much time ought to be put into particularising statements of claim that might not need to be addressed at a particular level. I guess that is the issue I am raising.

A. Yes, that's a good issue. My quick response could be that maybe the balance of effort might be better put towards a statement of issues at this stage and that we should move towards crafting that. The suggestion was made by Ms Sykes that the Tribunal might want to have a first go at it which we would certainly support.

If you have very broadly stated statements of claim that is fine. The Act doesn't require particularisation and I can't certainly insist upon it. But this inquiry will be better if we know sooner in the piece what the actual particular issues are. So that if we now move towards focusing on a statement of issues that is going to identify in a particular way what the real questions for the inquiry are that's going to help us all very much.

Q. Yes, and I think that might be why that needs to come from the claimants first rather than the Tribunal in order to do that.

A. Certainly not the Crown.

Q. No. Yes, okay, thank you. That is helpful.

FURTHER QUESTIONS FROM TRIBUNAL PANEL – NIL

(12:48) MS TE WHENUA TO CHIEF JUDGE FOX:

Q. This matter arose for me during the course of this most recent discussion. It is with respect to a claimant that I act for and I am sounding out your Honour's thoughts on eligibility, particularly with respect to a hapū that I act for currently going through their district inquiry. But those who may be experiencing a fresh breach with respect to their rangatiratanga and wish to put in a new claim, I am mindful that your Honour has given directions in 2024 and then the recent direction as to eligibility. Is there any scope at this early stage, whilst the statement of issues is yet to be developed and so on, for any claimants to file statements of claim who maybe experiencing a breach with regard to constitutionality in a fresher sense, since 2024?

A. Put in the submission and I'll have a look at you.

Q. Ka pai, thank you.

(12:49) MS SYKES TO DR GRANT PHILLIPSON:

Q. Can I just respond to Dr Phillipson. You still can seek your own procedural terms of your inquiry. I am not suggesting that it is a Tribunal-led statement of issues. I was just picking off on your co-panel member Professor Williams who we have actually spent a bit of time in some of the statement of positions refining some of the issues. I am just trying to avoid an elongated process. That is why we are saying, if you have a crack with the statement of issues and then we respond, and then we do final statements of claim once the two reports are available, I still think that's a manageable process within the next 12 months.

My biggest concern is elongating this process to meet those procedural requirements which I think can be short circuited. Does that give you the confidence that you are still having claimant-led statement of issues?

A. I'm sorry about that. But we will have to think about that. Thank you Ms Sykes.

PROFESSOR DAVID WILLIAMS ADDRESSES CHIEF JUDGE FOX – FURTHER QUESTIONS/RESPONSES (12:51:16)

(12:51) MR LYALL: (RESPONSE)

I was simply going to support Mr Bennion's kōrero around, if we are to particularise or develop statements of claim and given the specific circumstances here, perhaps it is not done in a layout the claim, everything is referenced back to a specific piece of research in much the same sort of adversarial way that we normally do in say a historical inquiry and whether it could be more of a broader set of themes or pitching the claim issues in that way at the beginning so that everyone is on notice of the issues that claimants are going to be advancing. But there isn't that imposition on their time and resources to fully lay everything out in advance of receiving a statement of issues or the Crown's evidence or the Tribunal's evidence. And that I think would assist on a purely practical level with resourcing through legal aid as well.

(12:52) CHIEF JUDGE FOX: (RESPONSE)

It would and it would also assist us if we did take on the responsibility of doing a draft statement of issues.

(12:52) MR LYALL: (CONTINUES)

But I will follow-up in writing because I think everybody wants to get out of here your Honour.

(12:52) CHIEF JUDGE FOX: (MIHI)

All right. Well, thank you everybody. Ngā mihi ki a koutou me ō koutou whakaaro nui. Kua mutu tēnei hui ināianei. Ka tukuna atu au te wā ki a koe Mr Prime ki te whakakapi i tēnei hui.

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING CONCLUDES: 12.54 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.