BEFORE THE WAITANGI TRIBUNAL **WAI no 2075**

Concerning ***THE TREATY OF WAITANGI ACT 1975***

And of a claim by ROBYN WHANGA on behalf of himself and the descendants of Te Wherowhero of Waikato Maniapoto relating to Tino Rangatiratanga of Maori, Ko te Kingitanga Ko te Mana i te w[h]enua (Sovereign power & Authority) and the Exclusive Rights of Tino Rangatira their history and heritage associated with the Crown's dealings with respect to acquisition of access rights for railways through the sovereign whenua of Waikato Maniapoto

AMENDED STATEMENT OF CLAIM

DATED THIS 9TH DAY OF DECEMBER 2011

RightLaw
Barristers and Solicitors
Gerald Sharrock BSc LLB,
11 Kaihu Street Northcote, Auckland
09 889 4468, gsharrock@rightlaw.co.nz

RECEIVED
Waitangi Tribunal
25 Jan 2012
Ministry of Justice
WELLINGTON

I Preliminary Issue as to Burden of Proof

Res Ipsa Loquitur

1. The common law negligence doctrine of *res ipsa loquitur* states that the elements of breach of duty of care can sometimes be inferred from the very nature of an outcome, even without direct evidence of how any behaved. The principle has wider application than negligence and is applicable to other types of duties of care, and duties of a fiduciary nature. This is inherent from the simple translation of the maxim, “the facts speak for themselves”.

2. In the present context it is submitted the Crown breached its fiduciary duty to the Maori in that;

    a. A "duty" existed for the Crown to act "reasonably" in the Treaty process and
    b. Maori have lost the land holdings, and are similarly imbalanced in other measures of capital or income. The Crown, through its acts or omissions, has failed in its fiduciary and other duties to Maori
    c. It is accordingly, the burden of establishing proper title to land and other interests to be not in breach of the Treaty is a burden that rests up on the Crown.
    d. This position is further justified in the numerous prior inquiries of the Tribunal, that have found the Crown consistently in breach of the Treaty, specifically with respect to wrongful alienation of Maori land and other taonga.

3. The obstacles to proper and full proof and hearing of all the claims are manifold. They include:

a. That those with direct knowledge of the events have died,
b. Those with direct knowledge do not wish to go to hearing because they object to the process, they are disenchanted, exhausted, or otherwise committed to the imperatives of looking after their family.
c. That the records have been lost
d. There are insufficient resources to research the issues,
e. The manifestly unreasonable restrictions and administrative burden imposed on Counsel for the claimants by the legal aid regime,
f. The time available before the Tribunal for meaningful participation to in the Treaty inquiry is insufficient to address proof on all proprietary matters.

4. These combined factors mean that the Crown through delay, lack of funding, obfuscation, is hoping to benefit by the fact that a full articulation of the grievances is not possible.
5. In all principles of justice, such acts should not derive benefit, and accordingly the Crown should be set to prove the legitimacy of their acquisition of title.

II Background

Fundamental constitutional position

1. Maori granted kawanatanga to the Crown under the only legal enforceable document Te Tiriti. Kawanatanga was a limited power.1 The signing of the English text was only

[1] See evidence of Professor Salmond, Doctor Hohepa, and other Wai 1040 inquiry Stage I hearing at Pangaru, and Te Tii Witiora. See also the Evidence of former Bishop Te Haara on meaning based on Bible, and Roman Governors as a model for limited parallel administrative power.

symbolic of agreement to the Maori text2. The Crown seized Dicean Sovereignty. That seizure was contrary to all the then and now existing principles governing relations between sovereign peoples

2. The constitutional foundation document of this country is the Whakaputanga. This is the document upon which Her Majesties Government recognised the confederation of chiefs of New Zealand.3

3. The Whakaputanga established the Whakameininga. The various subsequent agreements and declarations amended the constitutional structures of the country. Te Tiriti appointing the Crown to undertake the kawanatanga of the whakameininga as constituted in the Whakaputanga.

4. Te Tiriti was not a radical document as is clear from the wording in the preamble "a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira"4. It was the maintenance of the existing peaceable circumstance that these words reflect. It is believed that is the reason that Te Wherowhero may have chosen not to sign, as it was not on its face a document of much change or importance.

5. The hui at Pukawa establishing the structures of the Kingitanga. This process was clearly to provide an authority above the kawana.5

6. The equivalent of sovereignty expressed in Maori is Kingitanga o Te Mana o wenua.6

---

[2] See Hobsons letter of instruction to Bumbery etc signing is only to acknowledge adherance to the terms of that which was executed at Waitangi on 6th February 1840. Seeesimilarly letters to ***Reverend Henry Williams,*** **23rd of March 1840, MS 91/75. The Waikato document was also not mandated by Hobson for use**

[3] Lord Normanby's instructions of August 1839

[4] See Evidence of Dr Manuka Henare Wai 1040 inquiry Stage I hearing at Te Tii Waitangi.

[5] Note Grey and Iwakau by Dr Alex Frame VUP

7. A lesser but still significant form of sovereign authority is tino Rangatiratanga.

8. A limited form of administrative power is kawanatanga.

Tuku whenua for railways

9. The making of the main trunk line required access for the Railway through the land of Waikato Maniapoto. The tuku for use of the land was subject to certain conditions, including that the tuku was personal, and that it was a right only for railway purposes.

10. In tikanga a tuku reverts to the grantor upon the terms of the tuku not being complied with.

11. The Crown over time breached the terms of the tuku and did not comply with its consequent obligations, and accordingly breached Te Tiriti o Waitangi by its failures. Specifically :

    a. They have used the railway corridors for non railway purposes;

    b. Land surrounding the railway was acquired without any increment value attributing to Maori for availability of the rail;

    c. Depots and towns were built on land beyond the grants, under the authority of the one chain easement,

    d. The rights were passed without consent or compensation beyond the Crown including foreign parties,

[6] Ibid 1

e. Maori were not given the opportunity to be involved in the management of the corridor or the operations.

12. The claimant was prejudicially effected by the Crowns actions that were a denial of the tino rangatiratanga of the claimants and their tupuna:

    a. loss of the use of the land

    b. denial of revenue from non rail activities

    c. denial of compensation from the breach of the tuku

    d. denial of fair compensation for disposal of land near the rail

    e. loss of personal nexus to rail operator upon Crown disposal of assets

13. The Crown, her heirs and successors (including hereinafter its representatives, servants, agents, subjects, proxies, and associates) has through its acts and omissions breached Te Tiriti and prejudiced the claimants and contravened the legitimacy of the Tino Rangatiratanga of the Rangatira of Waikato Maniapoto and their rights derived from He Whakaputanga, the whakameininga of the Rangatira at Pukawa and other places and Kingitanga by:

    a. Assuming authority by way of treaty and by way of proclaiming over Te Wherowhero and others who did not sign,

    b. The Crown had seized land unlawfully when they were to protect those whose Independence was guaranteed by the Crown and who did not sign Te Tiriti and the treaty

c. The Crown has failed to meet the fiduciary obligations put upon it by the Law of Nations, and subsequent international law with respect to recognition of Maori Sovereignty and the Kingitanga. This obligation being stronger with respect to non Te Tiriti signatories.

d. The Crown its conduct in failing to acknowledge the Tino Rangatira of the Rangatira and their hapu and the consequent decision to deny the Kingitanga its full independent sovereignty is a breach of Te Tiriti and its principles and in contravention of its undertakings of recognition of the He Whakaputanga… in terms of the Law of Nations at the time and international law as it currently exists.

III Prejudicial Effects

The claimant specifically and the descendants of Te Wherowhero, as well as Māori generally have been prejudicially effected by:

14. The Sovereign Power and Authority, Rights,and Privileges Customs and Usages of Māori have not been Protected, they have been attacked, suppressed, persecuted, obscured, eroded, infringed, ignored and made extinct. Such conduct has resulted in:

    a. Loss of Mana,

    b. Loss of Life

    c. Loss of Identity

    d. Loss of the ability to control property and Taonga

    e. Erosion of the capital base

    f. Erosion of the family structure

g. Erosion of the health

h. Erosion of education

i. Erosion of general well being

j. Passage of legislation pursuant to its wrongful interpretation of the rights of Te Wherowhero as an Independent Sovereign by the Crown to implement policies detrimental to Māori

IV Remedies

15. The claimants seek all or any of the following relief:

a. An acknowledgement and apology from the Crown for the breaches of the Treaty of Waitangi outlined above;

b. The recognition by the Crown of Te Tino Rangatiratanga of Waikato Maniapoto;

c. The return of such lands, estates and fisheries including the land on which the sites mentioned in this claim above in the Rohe of Waikato Maniapoto are situated which are now in Crown ownership;

d. The transfer to Waikato Maniapoto of equivalent areas of lands for those sites mentioned in this claim above which are now in private ownership;

e. The transfer of appropriate lands to Waikato Maniapoto of equivalent areas of land which are not in private ownership;

f. The taking of such steps as are necessary and appropriate to remove (and maintain the

removal of) pollution from the air and waters of Waikato Maniapoto;

g. Appropriate cash and/or other compensation for the breaches of the Treaty of Waitangi referred to above and where restitution is not possible;

h. Recognition of Waikato Maniapoto interests on all Crown Boards, agencies and other institution which exercise jurisdiction within our Rohe with respect to the Railways, including any companies in which the Crown has power to appoint directors, or where it has sufficient shareholding to elect them;

i. The registration of a such securities, caveats and debenture over the New Zealand Railways Corporation and its operating entities, and their respective properties to ensure that the tuku of the land is not breached again, .

j. The revenues derived from non rail activities by the Crown, or its sucessors are paid to the claimant on behalf of Maniapoto rangatira that granted the use of the land.

k. Exemplary and punitive damages arising from the above breaches;

l. Such other relief as the Tribunal considers appropriate;

m. The costs of and incidental to this proceeding including the cost of research and counsel.

V Claim with Respect to Procedural Failure in Treaty Process

16. The Claimant is concerned that the Tribunal is required under its statute to have regard to a text of Te Tiriti that is of no legal effect at international law.
17. The ongoing reliance of the Crown on this text has caused confusion and has been used as justification of many of the breaches of Te Tiriti by the Crown.
18. There is only one lawful text of Te Tiriti.
19. The Treaty of Waitangi Act 1975 contains section 5 (2), which requires the Tribunal to have regard to the legally unenforceable English text.
20. This prejudices the claimants in that it leads to an obscuring of the true nature of the legal agreement that is Te Tiriti

VI Breach of Te Tiriti

21. The Crown breached the terms of Te Tiriti o Waitangi by its assertion of the validity of the "Official" English text. This is underlined by the method of operation associated with the procurement of "signatures" from the Rangatira who signed the treaty document at Waikato Heads and those who were approached/associated with it.

22. The Crown conduct was not in conformity with Treaty principles was the Crown :

    a. Asserted and continues to assert legal validity to the English text

    b. obscures the fact that Te Tiriti was the only text signed at Waitangi by the Rangatira

    c. Obtained a small group of Rangatira to sign an English text failing to acknowledge that it

was merely symbolic of agreeing to Te Tiriti that was executed at Waitangi

d. failed to adhere to conventions on treaty signing and negotiation, and passed Section 5(2) of the Treaty of Waitangi Act in an attempt to avoid their impact;

e. failed to adopt proper interpretation of treaty principles and laws, and passed Section 5(2) of the Treaty of Waitangi Act in an attempt to avoid their impact;

f. to operate in accordance with the limits imposed on imperial matters, or in accordance with Letters Patent.

These matters go to breaches of Articles 1, 2, &3 of Te Tiriti either directly or by effect.

VII Grievance and Prejudice

a. By virtue of the facts and matters outlined above and the breaches of the Treaty of Waitangi claimed above, Claimants have been prejudicially affected as specified in previous amendments to this claim including:

b. The Crown administered the relationship of Maori and the Queen in accordance with the English text and failed to have regard to the authoritative and authenticated Te Tiriti. The Crown asserted powers and authorities in excess of that which they were entitled to practice from time to time have regards to

the constraints that existed upon their authority as exercised by colonial officials.

c. The Crown perpetuated this by passing Section 5(2) of the Treaty of Waitangi Act in an attempt to justify utilisation of the English document;

d. Loss of mana of Claimant's leaders through their loss of control of Claimant's land, loss of authority and denial of te tino rangatiratanga and, as a consequence, the breakdown of the Claimants leadership system including through statutory bodies and other mechanisms including those relating to mandate and settlement processes of Claimants;

e. Loss of political influence including those relating to mandate and settlement processes of Claimant;

VIII Relief Sought

a. The Claimant seeks all or any of the following relief:

b. A recommendation by the Tribunal that

c. Section 5(2) of the Treaty of Waitangi Act 1975 be repealed;

d. Treaty of Waitangi Act 1975 be amended to clearly state that the only authoritative and authenticated text is the Maori text Te Tiriti.

e. That a new translation of Te Tiriti into English be undertaken as the authorised official text and scheduled to Treaty of Waitangi Act 1975.

f. A constitutional mechanism should be established to enable Maori to be able to exercise a veto over the proposed appointee for Governor General

g. Royal Commission be appointed under an independent chairperson of international standing to consider the proper interpretation of the Treaty of Waitangi as an international instrument, and to propose a means of requiring that enactments of the New Zealand legislature be consistent with the Treaty of Waitangi.

h. The Crown should reissue all Maori land titles as titles acknowledging customary title, rather than a Crown Grant

i. That legislation should be made that clearly states that activities on Maori land are not subject to control by Local Government, and a parallel structure of governance based on the hapu should be established.

j. An acknowledgement and apology from the Crown for the breaches of Te Tiriti ki Waitangi outlined above;

k. Such other relief as the Tribunal considers appropriate;

l. The costs of and incidental to this proceeding including the cost of research.

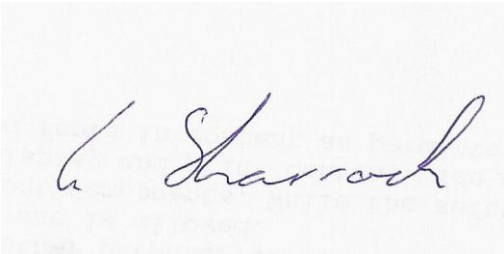
Further Amendments to the Statement of Claim and Service

The claimant hereby reserves the right to further amend and particularise the claim and to seek further findings and recommendations as the claim

progresses. Such a process is required to ensure the informed nature of any inquiry and valid settlements arising.

The address for service of Gerald Sharrock at RIGHTLAW 11 Kaihu Street, Northcote Auckland. Documents for service on Gerald Sharrock at RIGHTLAW may be left at that address for service or may be posted to the solicitor at 11 Kaihu Street, Northcote Auckland. Email gsharrock@rightlaw.co.nz, fax 09 4180332.

DATED at Auckland this 9th day of December 2011



Gerald Sharrock

Claimant counsel