



15 December 2011

Grants Officer  
Wellington Regional Office  
Legal Aid Services  
Ministry of Justice  
SX 10146  
WELLINGTON

Attn: Leonie Short



Re: Te Uri o Hau (Latimer and Others) Contemporary Matters Claim (Wai 2196);  
Legal Aid File No. 10018735

Tēnā koe Leonie,

1. The purpose of this letter is to:
  - a. Inform you of the changes relating to the Te Uri o Hau (Latimer and Others) Contemporary Matters Claim (Wai 2196) ("the Claim"); and
  - b. In light of these changes, respond to the letter from Ms Sarah Azzarelli of the former Legal Services Agency ("LSA") dated 9<sup>th</sup> April 2010 ("the 9<sup>th</sup> April letter") in relation to the Application for Legal Aid for the Claim - copy attached as Annex A.

**Background**

2. The Claim was originally filed with the Tribunal on 29<sup>th</sup> October 2009 by Sir Graham Stanley Latimer, Russell Ross Kemp, Rawson Sidney Ambrose Wright, Gabriel Oliver Bloy Thompson, Thomas Benjamin De Thierry, Ruku Lucy Waipouri (now deceased), and Jamie Bruce Lloyd Paikea ("the Original Claimants"), as Trustees of the Te Uri o Hau Settlement Trust ("the Trust"), on behalf of themselves and the Hapū of Te Uri o Hau, and concerns various Crown acts that have affected Te Uri o Hau subsequent to 21 September 1992.
3. On 13<sup>th</sup> November 2009, the Tribunal registered the Claim as Te Uri o Hau (Latimer and Others) Contemporary Matters Claim (Wai 2196). Further to Counsel's request, the Tribunal subsequently added Mihil May Kapa Watene as a claimant to the Claim.
4. The Original Claimants have alleged that the Crown has acted in bad faith regarding the Mangawhai North Property by resisting the development proposed by a subsidiary entity of the Trust in that area and has failed to recognise the kaitiakitanga of Te Uri o Hau over Kaipara Harbour when granting consent for development in the area, in breach of Te Tiriti/the Treaty.
5. In March 2010, Pacific Law submitted an application for legal aid to LSA. The application was in the name of Mr Russell Kemp, and it was on behalf of the Hapū of Te Uri o Hau. LSA subsequently requested further information in the 9<sup>th</sup> April letter, including financial information for the Trust to assist LAS in its consideration of whether to grant legal aid for the Claim.

**9<sup>th</sup> April Letter**

6. Ms. Azzarelli requested in the 9<sup>th</sup> April letter that we:

**BARRISTERS & SOLICITORS**  
Constitutional & Public Law Specialists  
200 Willis St • PO Box 27400  
Wellington • 1 lev/ Zealand  
Phone: 04-3841304 or 027-5269282  
E-mail: janetmason@pacificlaw.net.nz

This is the exhibit marked "JT-2" referred to in the annexed affidavit of JASMINE THOMPSON affirmed at Wellington this day of July 2012 before me:

*Janet Mason*  
Deputy Registrar  
of the High Court  
at Wellington  
A Solicitor of the High Court of New Zealand

- a. address section 43 of the Legal Services Act 2000 ("the Act");
  - b. provide copies of the financial accounts for the Trust and the consolidated set of accounts for associated/subsidiary commercial entities relating to the Trust;
  - c. provide copies of financial accounts for all of the individual named claimants;
  - d. address section 42(2)(c) of the Act in light of paragraph (b) of the Section 44 Tribunal Report in respect of the Claim ("the Section 44 Report") – copy attached as Annex B;
  - e. advise how we intend to progress the Claim given that the Tribunal has already inquired into the Kaipara Inquiry District; and
  - f. provide a copy of our estimate for LSA to consider in the event that legal aid is granted.
7. We note that the Act has since been replaced by the Legal Services Act 2011, however we will be addressing the relevant provisions of the Act in this letter.

**Counsel Now Only Acting for Original Negotiators of Claim**

- 8. Pacific Law no longer acts for the Trustees of the Trust in relation to the Claim, and instead now only act for Sir Graham Latimer and Russell Kemp in relation to the Claim.
- 9. On 10<sup>th</sup> August 2011, Pacific Law filed a Memorandum of Counsel with the Tribunal ("the 10<sup>th</sup> August Memorandum") seeking that the Statement of Claim for Wai 2196 is amended to reflect that Sir Graham Latimer and Russell Kemp, as original negotiators of the Te Uri o Hau historical treaty settlement, are claimants on behalf of themselves, and to add Esther Gray as a named claimant.
- 10. Pacific Law filed a Memorandum of Counsel with the Tribunal on 9<sup>th</sup> November 2011 which replaced the 10<sup>th</sup> August Memorandum, advising the Tribunal that we no longer act for the Trustees of the Trust and we now only act for Sir Graham Latimer and Russell Kemp in relation to the Claim. It is for this reason that we no longer need to address points (a), (b) and (c), raised by LSA in the 9<sup>th</sup> April Letter. As such, we respectfully submit that the financial accounts for the Trust are no longer relevant.
- 11. We note that both Sir Graham Latimer and Russell Kemp, are no longer Trustees of the Te Uri o Hau Settlement Trust. We also refer to paragraph 1 of the Wai 2196 Statement of Claim filed on 29 October 2011<sup>1</sup> which states that the Claim was filed by claimants on behalf of themselves and the Hapu of Te Uri o Hau. Therefore, Sir Graham Latimer and Russell Kemp are progressing with the Claim in their own capacity as individual claimants.

**Section 42(2)(c) of Legal Services Act 2000**

- 12. You have asked us to address section 42(2)(c) of the Act in light of paragraph (b) of the Section 44 Report, which deals with the extent to which the Claim might reasonably be dealt with by the Tribunal in conjunction with other claims.
- 13. Section 42 (2) (c) of the Act provides:
  - (2) The Agency may grant an application to which this section applies only if it is satisfied—...
    - (c) that the interest of that group of Maori is not sufficiently protected by any other claim.
- 14. Paragraph (b) of the Section 44 (b) Report states, inter alia:

<sup>1</sup> Wai 2196, #1.1.1, para 1.

**BARRISTERS & SOLICITORS**  
 Constitutional & Public Law Specialists  
 200 Willis St • PO Box 27400  
 Wellington • New Zealand  
 Phone: 04-3841304 or 027-5269282  
 E-mail: janetmason@pacificlaw.net.nz

Wa) 2196 is likely to be dealt with by the Tribunal in conjunction with other claims that fall within the Kaipara Inquiry...

The Tribunal notes that a large number of claims that (sic) also represent the interest of Te Uri o Hau. The Tribunal may choose to deal with these claims collectively to the extent that their issues overlap.

15. In response, we note that:

- a. the nature of the Claim concerns the Crown's treatment of Te Uri o Hau post 1992, including its conduct regarding property at Mangawhai North, and its failure to recognise the kaitiakitanga of Te Uri o Hau over the Kaipara Harbour when granting consents for development in the area;
- b. it is unlikely that any other claims that fall within the Kaipara Inquiry post 1992 will cover the same subject matter; and
- c. the interests of Te Uri o Hau as set out in the Claim are therefore not sufficiently protected by any other claim.

**Tribunal's Inquiry Into Kaipara Inquiry District**

16. Paragraph (a) of the Section 44 Report states that:

The issues of the Claim appear to fall within the Tribunal's Kaipara Inquiry. The Tribunal has held hearings in this Inquiry district and issued its report in 2006.

17. Ms Azzarelli has also advised in the 9<sup>th</sup> April letter that:

...the Claim falls within the Kaipara Inquiry which is currently inactive as hearings have been held and the Tribunal issued its report in 2006. The Agency would only consider a limited grant of legal aid given that the Inquiry district is inactive.

18. In response, we advise that:

- a. the 9<sup>th</sup> April letter pre-supposes that the Kaipara Inquiry District may not become active again, which is of great concern;
- b. the Tribunal is of the view that it is "unclear" how or when such claims will be dealt with, which again is of great concern;
- c. there is no conflict between Te Uri o Hau pursuing the Claim and also having signed a Deed of Settlement with the Crown given its contemporary nature;
- d. the Claim does not cover the same subject matter as the historic claims of Te Uri o Hau that were filed with the Tribunal, nor does it duplicate the subject matter of the settlement negotiations that Te Uri o Hau were involved in with the Crown leading to the signing of the Te Uri o Hau Deed of Settlement and the passing of the Te Uri o Hau Settlement Claims Act 2002 ("the Settlement");
- e. the content of the Settlement is not disputed, although part of the Claim does concern the Crown's conduct during the process leading to the Settlement and the performance of its obligations arising from the Settlement;
- f. the Claim is unique and relates to matters the Tribunal is yet to inquire into; and
- g. the content of the Claim is contemporary and the Tribunal's Inquiry into the Kaipara Inquiry District pre-dates the acts and omissions that the Claim addresses.

19. We consider that the uncertainty of how and when the Claim will be inquired into should not prejudicially affect our clients' ability to seek adequate funding for the continuation of work necessary in order to progress the Claim. It is our clients' intention to continue to undertake extensive research and preparations to prepare the Claim for hearing by the Tribunal at whatever stage this may occur.

20. We note that we have also been instructed to apply to the Tribunal for an urgent hearing in relation to the Claim and we consider that there are good grounds for this application to be granted.

**BARRISTERS & SOLICITORS**  
Constitutional & Public Law Specialists  
200 Willis St • PO Box 27400  
Wellington • New Zealand  
Phone: 04-3841304 or 027-5269282  
E-mail: janetmason@pacificlaw.net.nz

21. We note that under section 3 of the Act, one of the purposes of the Act is "to promote access to justice by providing a legal aid scheme that assists people who have insufficient means to pay for legal services to nonetheless have access to them."
22. We consider that it is clearly in the interests of justice for our clients to receive legal aid funding to progress the Claim. We do not consider that funding of the Claim should be restricted by the current inactive status of the Kaipara District Inquiry nor by the Tribunal's current uncertainty as to when and how the Claim will be inquired into.

**Next Steps**

23. We trust that the information we have provided is now sufficient for Legal Aid Services to progress our application for legal aid, on behalf of Sir Graham Latimer and Russell Kemp.
24. We look forward to your expeditious response.

Yours sincerely,



Janet Mason *LLM, LLB, BSocSc*  
Senior Legal Counsel  
Managing Director

**BARRISTERS & SOLICITORS**  
Constitutional & Public Law Specialists  
200 Willis St • PO Box 27400  
Wellington • New Zealand  
Phone: 04-3841304 or 027-5269282  
E-mail: janetmason@pacificlaw.net.nz