IN THE WAITANGI TRIBUNAL WAI 1040

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER Te Paparahi o Te Raki Inquiry

JOINT MEMORANDUM OF COUNSEL IN RESPONSE TO MEMORANDUM DIRECTIONS OF THE PRESIDING OFFICER ON HEARING PLANNING DATED 19 JUNE 2012

Dated: 6 July 2012

RECEIVED
Waitangi Tribunal
6 July 2012
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

1. This Joint Memorandum of Counsel is filed in response to the latest Memorandum of Directions of the Presiding Officer concerning Hearing Planning and dated 19 June 2012 (Wai 1040, #2.5.123) ("the Directions").

2. This Memorandum of Counsel is filed on behalf of the Claimant Counsel listed in **Appendix A.** It addresses three issues arising from the Directions:

   (a) Resourcing issues;

   (b) Stage One Report; and

   (c) Coordinating Counsel Committee.

3. Also, at the outset, Counsel advise that the Claimants wish to have the opportunity to fully consider the Crown's response and any further concessions when it files its Final Statement of Position and Concessions. To allow this to happen, the Claimants are of the view that no further extensions of time ought to be granted to the Crown for the filing of this important document. It is noted that there has already been a significant delay in the Crown's filing.

Resourcing Issues

4. Counsel whose names are appended to this Memorandum wish to record, on behalf of their respective clients, their grave concern at:

   (a) The lack of sufficient resources to enable the Waitangi Tribunal to proceed to Stage Two Hearings in a timely way;

   (b) The lack of sufficient resources to enable the Tribunal to complete the Stage One Report.

5. Counsel appreciate that the Tribunal must work within budgets set by Government and that the underlying problem is not one of the Tribunal's making.

6. Nonetheless the Claimants are gravely concerned at the implications of the delays and constraints for the long-awaited hearing of their claims.

7. Counsel and Claimants are also concerned that the Tribunal has still not responded to requests for particulars concerning the resourcing problem.

8. By letter dated 29 August 2011, Counsel for a number of Claimants in this inquiry (Mr Doogan) wrote to the Tribunal, the Office of Treaty Settlements and the Crown Forestry Rental Trust (CFRT) seeking particulars of resourcing and also whether or not the Agencies had taken up a proposal by Crown Counsel that the Agencies meet to discuss resourcing for Stage Two.[1]

9. A partial response has been received from the Office of Treaty Settlements and from CFRT. To date no response has been forthcoming from the Tribunal, although Mr Doogan and other Counsel have raised the issue in subsequent Judicial Conferences.

10. The most recent Directions simply announce that due to resource constraints there has been a delayed start to the Stage Two Hearings. Claimants are told that Stage Two Hearings may now be able to commence on 18 February 2013.

11. Counsel and the Claimants wish to publicly signal for the record, that these ongoing delays and attempts by the Tribunal to organize its business, within limited resources, are both unfair and unsatisfactory. Counsel seek the opportunity to be heard on the issue and seek detailed information in order that the underlying issues can be taken up directly with the Government and so that Ngapuhi may make the best use of available resources.

12. Ngapuhi are among the last Maori groups to enter the Tribunal Inquiry process. Fundamental principles of fairness require they be accorded at least equitable treatment with those hapu and iwi who have already had their claims heard by the Tribunal. Because of the size and significance of the Ngapuhi claims there is also a strong argument that even more time and resources should be accorded to these claims.

13. Counsel request that time be allocated at the forthcoming Judicial Conference on 30 July 2012 to discuss these significant issues. In

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[1] See letter attached to Memorandum of Counsel dated 28 November 2011, (Wai 1040, #3.1.688).

addition Counsel request that at least two weeks prior to that conference, the Tribunal provide to all parties a detailed assessment of what hearing time it is presently able to allocate to Stage Two in the 2012, 2013 and 2014 years.

Stage One Report

14. Counsel note that at paragraph 12 of the Directions, the Tribunal states that it is proceeding on the basis that Stage Two hearings will commence before the release of the Stage One Report.

15. Given that the Claimants' original understanding was that they would already have the Stage One Report available by now and that its production was then delayed by several months, they are dismayed that the Tribunal will not now report until some time after February 2013.

16. Accordingly, Counsel seek confirmation of the new expected release date of the Stage One Report.

Coordinating Counsel Committee

17. Regarding the reference at paragraph 13 in the Directions to the formation of a Coordinating Counsel Committee (CCC), Counsel can advise that this was discussed at teleconference of Claimant Counsel held on Tuesday 26 June. The next Te Kotahitanga o Nga Hapu Ngapuhi hui is to be held on Wednesday 25 July 2012. Following that hui and prior to the Judicial Conference, Counsel will advise the Tribunal of the members of the Committee by way of an additional Memorandum.

Dated at Wellington this 6th day of July 2012

Dr Bryan Gilling and Katherine Porter
on behalf of Counsel for the Claimants

Appendix A

Counsel in Support of this Memorandum:

1. Morrison Kent Lawyers;
2. Mike Doogan, Waterfront Chambers;
3. Corban Revell;
4. Tamatekapua Law;
5. Kathy Ertel & Co;
6. Tavake Afeaki, Afeaki Chambers;
7. Moana Tuwhare;
8. Te Mata a Maui Law;
9. Kotuku Chambers;
10. Koning Webster;
11. Wackrow Williams & Davies Limited;
12. Tamaki Legal;
13. Auere Law;
14. Right Law;
15. McCaw Lewis Ltd;
16. Rainey Collins Lawyers; and
17. Kath Taurau.