RECEIVED
Waitangi Tribunal
03 August 2012
Ministry of Justice
WELLINGTON

OFFICIAL

ANNEX A

Page 1114

MS SYKES:

– can I just say that I'm difficult as the legal aid says one day that Temara (inaudible) can come today and then we get an email late on Friday afternoon and it's very difficult for us at the moment and that's been hugely difficult for us to coordinate. Similarly with Mr Williams, he was, said he could come and then he couldn't come 'cos legal aid would have denied airfares, so it's just making it very difficult.

…….

Page 1117

MR RAFTERY:

Yes. We need to convince legal aid that it's possible to work more than eight hours in one day, which they're very sceptical of but…

MS SYKES:

Sir, this is a serious – we only get paid five hours a day.

…….

Page 1121 to Page 1122

MS HALL:

I understand the point of why I have come in at this stage, is that for the Māori Council and 16 co-claimants it goes to equity between the parties to bring this claim. And that is an issue that I can put before this Tribunal because effectively a case of this size should have had the benefit of Queen's Counsel, that was declined. Mr Geiringer picked it up, he is sole counsel, I was not able to instruct two barristers, so he has had the carriage of a major file that ought to have had the benefit of exactly the same quality and level of representation as the Crown has. We have senior counsel here and the Crown's had the benefit of that and I don't think senior counsel here would be getting $92 an hour, which is what my barrister is getting. So working 15 hour days and being paid half the rate that was expected and then the final straw was that we weren't even paid that because the new regulations we've had to devise an entire project to manage this claim. It is large on any basis and the urgency caused the crisis to hit a peak. And so I think that if I can just make the point that it does go

to the equity between – the ability of the parties to be able to present properly and that we have been seriously hampered.

Now, this is not over because this is only part 1 of a three stage hearing. And it's not only run my barrister ragged but it's run my team ragged and we are used to running big cases. This, it's been dealing with the huge hours required to bring a case of this size into the requirements of legal aid for the purposes of Waitangi Tribunal claimants.
……..

Page 1123

MR GEIRINGER:

Sir, I'm not going to quite leave it, I'll leave it very soon, but I don't accept that there's no role for the Tribunal, there's a serious role for the Tribunal. I, Sir, seriously considered not turning up today. I do not see myself as having any ethical or legal obligation to be here giving you these submissions. It's quite clear that any obligation I have is contingent on my fee, a reasonable fee being paid. I never expected a reasonable fee. I just expected a fee that covered costs, and when I was told that I wasn't even going to get that, I very seriously considered not turning up. And I was told it before I had prepared, before I had worked non-stop on these closing submissions. Sir, this makes it essentially impractical for the claimants to be bringing this claim. We're manufacturing a claim out of no resources and in those circumstances it would be quite proper if this Tribunal were to say simply because the Crown through its actions have made it impractical for the claimants to bring their claim, we are going to give the claimants the interim relief that they request until such a time as the Crown provides the claimants with the necessary resources so that the hearing can continue. That would be quite a proper action from this Tribunal.

……

Page 1124

MR GEIRINGER:

It's utterly unacceptable. And it's not the Tribunal's fault, and it shouldn't get in the way of the submissions but it does get in the way of the submissions. I am impeded in my ability to give these submissions today and it is the Crown's fault and how can we have that, how can we have a hearing where the Crown is on one side of the hearing and through its actions it's impeding the ability of the other side.

……..

Page 1232 to Page 1234

MS SYKES:

……..
I've attempted to put a lot into a submission. I know it's long, I don't propose to talk to all of it. It's been very difficult I have to endorse the submissions from my friend Mr Geiringer this morning. Without the legal aid resources it's just almost impossible to do a proper submission to be frank. We had no typists available to us, Sir, we've had very little photocopying facilities available to us and so we've tried to do this as well as we can in those limited resources.

I'll just give you an idea why, and I shouldn't moan about it, but it's really important you understand, we couldn't even access internet facilities because they don't pay for it. They give us a very much a disbursement amount and if you go beyond it, it's actually borne by those that have to bring it to you. My clients don't have money. We are what you call the unsettled iwi. We haven't even had our claims heard and so we aren't in the same position as a number of other claimants and that's why we rely on the good, as I say, aroha of the state to ensure that their positions are brought forward and that's been made more and more difficult which of itself reminds me of some of the complaints of many of our people when their Native Land Courts were first established and the failure to have appropriate resources to people to ensure that their proper claims could be put. I've tried to minimise the risk of that by surrounding myself with a team of lawyers who I think are absolutely committed to ensuring that the honour of the Treaty is found force in modern circumstance and I wish to pay tribute to my colleagues that are here today that have assisted in co-ordinating an approach.

…….

Page 1461

MS HALL:
Sir, can I just ask this – I have a difficulty in terms of your proposal. Our legal aid ceases as from Monday. We have only eight hours of paid time approved to respond to the Crown's submissions and I had – I've been very careful to keep that time within your directions. If you are to give us that extra time and extra material then my participation will be subject to a further grant of legal aid and I know that that's certainly for all the third parties. They are being very difficult, Sir. They won't even meet with us at the moment so I just raise that as a practical difficulty for myself.

……

MS HALL:
Sir, if I may please, I've spoken about this. I have spent the last 20 to 30 minutes discussing the position. It is awkward for us. We would ask if we may have 10 minutes. We will close orally. We will do it here. It will not hold up the closing time or any other arrangements. We have the client here and our decision is to close now and we've –
…….