OFFICIAL

Wai 2378, #3.1.5
Wai 2374, #3.1.17

IN THE WAITANGI TRIBUNAL	WAI 2374 WAI 2378
IN THE MATTER OF	The Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	The Latimer and Piripi Claim
AND	
IN THE MATTER OF	The Legal Aid (Holloway, Mack and Mahara and) Claim

MEMORANDUM OF COUNSEL CONCERNING THE RESTRICTION TO, OR USE OF, SENSITIVE INFORMATION DATED 6 AUGUST 2012

RECEIVED
Waitangi Tribunal
06 August 2012
Ministry of Justice
WELLINGTON

Te Mata a Maui Law
PO Box 44331
Point Chevalier
AUCKLAND 1246
Tel: 0508-TEMATA (0508-836282)

MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel is filed in response to the memorandum-directions dated 31st July 2012[1]. Said memorandum-directions directed counsel to file any application seeking restricted access to any/or use of (or parts of) Ms Kalmakoff's affidavit and/or exhibits SK-B and SK-C no later than midday today. Counsel apologises for the delay in filing and seeks the Tribunal's leave for the same.

2. Counsel herein seeks to have exhibit SK-B restricted both in use or publication on either the Wai 2378 or Wai 2374 records of inquiry respectively. Reliance for the restriction sought of the exhibit is made under paragraph 4.7 of the Waitangi Tribunal *Guide to Practice and Procedure.*

3. Exhibit SK-B is a document ("the document") outlining the total amount owed by counsel to the Inland Revenue Department ("IRD") ("the IRD money").

4. Diane Holloway in her first affidavit dated 16 July 2012 and in her second affidavit dated 6th August 2012 ("the Holloway affidavits") does not deny that there were tax issues prior to the Ministry of Justice ("MoJ") taking over from the Legal Services Agency ("LSA").

5. At no stage do the Holloway affidavits or pleadings disclose the IRD money owed by counsel to IRD. Nor do the Holloway affidavits or pleadings disclose the amount of penalties, late filing fees or interest costs incurred by counsel as a result of the alleged delays in payments by either LSA or MoJ. It is sufficient to state, as it has, that penalties, late filing fees and interest costs have been incurred.

6. The claimants in these proceedings do not seek as a remedy the compensation of the penalties and interest costs incurred by counsel.

[1] Wai 2378#2.5.1, Wai 2374#2.5.4

7. If counsel were to pursue the recovery of the penalties, late filing fees and interest costs from MoJ then the filing of the document would serve a purpose. However in these proceedings counsel is unable to recover the penalties, late filing fees or interest costs.

8. The IRD money is neither a main or significant issue before the Waitangi Tribunal in these proceedings. Rather, the main issues in these proceedings are:
    a. the delays in processing and administering Waitangi Tribunal legal aid;
    b. the reasons for those delays;
    c. the inequality of access to aid and thereby legal services by the claimants as opposed to the Crown; and
    d. the prejudice caused to the claimants as a result.

9. The document does not address the abovementioned issues.

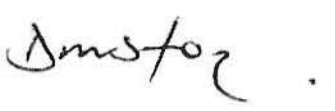
10. The purpose of publishing the documents is to discredit counsel.

11. Inherent in the IRD amounts are late filing fees, penalties and interest costs in addition to the core original P.A.Y.E and G.S.T monies owed by counsel. The document does not disclose how much of the IRD amount is comprised of late filing fees, penalties and interest costs.

12. Therefore publication of the documents would unfairly disadvantage counsel.

13. Therefore counsel respectively submits that for the good and just reasons outlined herein that the document not be filed and the use of it be restricted in its entirety.

DATED at Auckland this 6 August 2012.



David Martin Stone

TO: The Registrar, Waitangi Tribunal and those on the Wai 2374 and Wai 2378 notification lists.