OFFICIAL

IN THE WAITANGI TRIBUNAL

WAI 2374
WAI 2196
WAI 1699
WAI 1701
WAI 996
WAI 377

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND a claim by Sir Graham Latimer on behalf of himself and the hapū of Te Paatu; Mr Haami Piripi on behalf of himself and the iwi of Te Rarawa; Mr David Potter and Mr Andre Paterson on behalf of themselves and hapū of Ngāti Rangitihi; Ms Michelle Marino and Mr Errol Churton for and on behalf of themselves and the descendants of Tāringa Kuri (Te Kaeaea); and Mr Russell Kemp on behalf of himself and the hapū, marae and whānau of Te Uri o Hau

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MEMORANDUM OF COUNSEL

10 August 2012

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Waitangi Tribunal
10 August 2012
Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This Memorandum is filed in objection to the Second Affidavit of Ms Sarah Catherine Kalmakoff (affirmed 10 August 2012) filed at 12.22 pm today, and the Affidavit of Mr Peter Galvin (sworn 9 August 2012) filed at 11.16 am today, by Counsel for the Ministry of Justice ("MoJ").

2. Counsel respectfully seeks that the Tribunal decline to place Ms Kalmakoff and Mr Galvin's Affidavits on the Wai 2374 (and Wai 2378) Record of Inquiry.

3. Counsel is highly concerned at the filing of the unsolicited Affidavits by Counsel for MoJ for the following reasons:

(a) MoJ has already been provided with, and made full use of, an opportunity to file submissions in reply;[1]

(b) no new issues were raised in the Applicant's submissions in response filed on 3 August 2012;

(c) even if new issues were raised, Counsel for MoJ has not utilised a proper process by making submissions alleging the new issues that have been raised and respectfully seeking leave from Her Honour to address said issues; and

(d) much of the information in the Affidavits is irrelevant.

Particular Concerns

4. Counsel notes that Ms Kalmakoff's Affidavit makes various statements in relation to Mr Felix Geiringer. Counsel notes at the outset that the comments of Mr Geiringer that were included in Counsel's Submissions of 3 August 2012 were

[1] Refer to documents Wai 2374, #3.1.7; Wai 2374, #A1 and #A1(a)(i) – #A1(a)(xviii); Wai 2374, #A2; Wai 2374, #3.1.15 and Wai 2375, #3.1.3; Wai 2374, #A7 and #A7(a) – (b); Wai 2374, #A8 and Wai 2375, #A4; Wai 2374, #A8(a) – (b) and Wai 2375 #A4(a) – (b); Affidavit of Sarah Catherine Kalmakoff, affirmed 28 July 2012.

taken from a transcript available on the National Fresh Water and Geothermal Resources Inquiry (Wai 2358) Record of Inquiry and are a matter of public record. These excerpts were included simply to demonstrate the point that the problems providers are facing are widespread and are not being alleviated. However the Crown has now included confidential details between Legal Aid Service's dealings with Mr Geiringer, Counsel assumes, without Mr Geiringer's knowledge, and without Mr Geiringer being provided with an opportunity to respond to the statements made by Ms Kalmakoff. The information, moreover, is not relevant to the matters at issue.

5. The statements in Mr Galvin's Affidavit do not change the fact that the Wai 377 Claimants were clearly earlier advised by Mr. Galvin himself that the Wallaceville property was to be disposed of.

6. Counsel submits that the Crown is attempting to have a second "bite of the cherry" in an attempt to justify inaccuracies provided in their statements – inaccuracies which are not in fact justifiable.

Directions Sought

7. Counsel respectfully requests that the Tribunal:

(a) declines to put the Affidavits of Ms Kalmakoff and Mr Galvin on the Wai 2374 (and Wai 2378) Record of Inquiry; and

(b) directs Counsel for MoJ to seek leave from her Honour, in the usual way setting out exactly what he thinks constitutes new arguments should he wish to furnish the Tribunal with new evidence at this late stage.

Dated 10 August 2012

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Janet Mason
Counsel for the Claimants