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IN THE WAITANGI TRIBUNAL

WAI 2374
WAI 2378

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

In the matter of The Treaty of Waitangi Act 1975

And a claim by Gina Mahara, Diane Holloway and Apihaka Mack

SECOND AFFIDAVIT OF SARAH CATHERINE KALMAKOFF

Affirmed 10 August 2012

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Waitangi Tribunal
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Ministry of Justice
WELLINGTON

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I, **SARAH CATHERINE KALMAKOFF**, Central Regional Manager do solemnly and sincerely affirm:

Introduction

1 I have given an earlier affidavit in Wai 2374 dated 28 July 2012. This affidavit is to address new issues raised in the statement of claim in Wai 2378 and also to respond to some new factual allegations that are incorporated into the memorandum of counsel for the claimants in Wai 2374 that was filed on 3 August 2012. In particular that memorandum annexed part of the transcript of the Wai 2358 Urgent Inquiry – the National Freshwater and Geothermal Resources Inquiry. The Crown has not had an opportunity to respond. There is in fact an overlap between the issue in the statement of claim in Wai 2378 and that transcript.

2 As I understand the transcript references there was a complaint on behalf of Felix Geiringer/Donna Hall that:

2.1 Felix Geiringer was being paid at less than a proper rate;

2.2 This was in breach of some undertaking given by Legal Aid with Legal Aid resiling on that undertaking only shortly before the statements were made;

2.3 That even apart from that, there was a problem in obtaining full payment because the amount of work had proven to be more than anticipated in the estimates including that the hearing was taking longer than anticipated.

Position of Felix Geiringer

3 Felix Geiringer has lead provider approval in various jurisdictions being criminal, civil and refugee. But he did not have lead provider status for Waitangi Tribunal work. However, up to December 2011 he had secondary provider approval for Waitangi Tribunal.

4 As a result of the new Legal Services Act 2011 all legal aid providers were required to reapply for provider approval with a deadline of 31 December 2011. Felix Geiringer sought continuation of his lead provider approval in the

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criminal, civil and refugee areas but did **not** seek continuation of provider approval for the Waitangi Tribunal.

5 However, on 29 March 2012, he emailed the Ministry of Justice seeking to urgently re-establish his secondary provider status for the Waitangi Tribunal on the grounds that he had been unexpectedly asked to assist Donna Hall in the Water claim. Mr Geiringer then lodged his application for supervised provider approval and an application for temporary approval as a supervised provider in early April. The application for temporary approval was to enable him to provide legal aid services immediately whilst his full application for supervised provider status was being processed. The temporary approval was given on 11 April 2012 and was backdated to 28 March 2012.

6 The full application for supervised provider status was approved on 7 May 2012.

7 Mr Geiringer has not applied for lead provider approval for the Waitangi Tribunal.

8 Given that he had been a supervised provider in the Waitangi Tribunal jurisdiction pre 31 December 2011 he ought to have been aware of what the pay rate was for secondary or supervised legal providers, namely $92 per hour. The lead and supervised provider rates are listed on the Ministry of Justice's website. Further the issue is that Mr Geiringer's listing status has been extensively traversed with Ms Hall prior and post his working on the water claim.

Alleged breach of undertaking

9 Despite having made inquiries of my staff I am unaware of any undertaking that Mr Geiringer would have been paid more than that rate. Nor am I aware of any communication from Legal Aid Services that counteracted that.

Estimates

10 Legal Aid Services does require estimates, including a degree of narrative, to assess whether or not what is proposed to be done is appropriate, reasonable and necessary. It then seeks to approve the estimate in advance.

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11 It is however open to any legal provider to come back to Legal Aid Services and seek to have that estimate revisited and even to do that retrospectively. Policy requires special circumstances and it is for the provider to explain why the work was not covered in the estimate supplied for that period.

12 If the circumstances arose because a hearing has taken longer than anticipated, and it was reasonable for the legal provider to be there throughout the extended hearing, then it is unlikely that the request for revision will be refused.

13 If the preparation for the hearing takes longer than anticipated, again retrospective approval can be sought for that. However, it will be for the legal provider to justify that extra preparation is required.

14 When a provider claims for 15 to 17 hours as hearing time per day, as happened in relation to the urgent Water hearing, that claim will be questioned, and the provider will be asked to break that time down into component parts – actual hearing time, preparation time etc and to provide explanation for the time sought. This will then be assessed.

15 The comments in relation to estimates applies to all Waitangi Tribunal providers.

AFFIRMED at Wellington by) Sarah Catherine
SARAH CATHERINE KALMAKOFF) Kalmakoff
this 10th day of August 2012)
before me:)

A Solicitor of the High Court of New Zealand

Catherine Elizabeth Jane Deans
Solicitor
Wellington

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