IN THE WAITANGI TRIBUNAL

Wai 898
Wai 399
Wai 762
Wai 1480
Wai 1499
Wai 1500
Wai 1523
Wai 1962
Wai 1967
Wai 1992
Wai 1995
Wai 2074
Wai 2084
Wai 2168
Wai 2291

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Rohe Potae Inquiry

MEMORANDUM OF COUNSEL REGARDING QUESTIONS OF CLARIFICATION
19 November 2012

RECEIVED
Waitangi Tribunal
19 Nov 2012
Ministry of Justice
WELLINGTON

TamakiLegal
Barristers & Solicitors

55 East Tamaki Road, Papatoetoe, Auckland
PO Box 259-280, Botany, Manukau 2163
P. 09 252 0194
F. 09 279 2118

Counsel Acting: Darrell Naden, Cameron Hockly & Emma Whiley

MAY IT PLEASE THE TRIBUNAL

1. This Memorandum of Counsel is filed on behalf of the following Claimants:
    a. Lewis Rata for the Poutama lands claim (Wai 399);
    b. Harry Kereopa and Evelyn Kereopa for Te Ihingarangi hapū of Ngāti Maniapoto claim (Wai 762);
    c. Noeline Henare for the Ngāti Pahere claim (Wai 1480);
    d. Vernon Houpapa for the Ngāti Ngutu Hapu claim (Wai 1499);
    e. John Henry for the Tuarau Te Tata Henare Whanau claim (Wai 1500);
    f. Morehu McDonald for the Ngāti Ingoa claim (Wai 1523);
    g. Mona Thompson for the Nga Uri o Wi Repa claim (Wai 1962);
    h. Te Whau Barbara Pumipi for Ngāti Pane and Ngāti Mahanga hapu(Wai 1967);
    i. Piriwhariki Tahapehi for the Ngāti Mahanga, Ngāti Tamaoho and Ngāti Apakura hapū claim (Wai 1992);
    j. Howard Jerry for the Ngāti Hikairo, Ngāti Tamanui, Ngāti Taiharuru and Ngāti Kiriwai claim (Wai 1995);
    k. Shirley Pu for the Ngāti Tumainu and Ngāti Kiriwai claim(Wai 2084);
    l. Ben Campbell on behalf of Ngāti Urunumia and Arapae lands claim (Wai 2168); and
    m. Ray Fenton and Gordon Lennox for the Ngāti Apakura claim (Wai 2291) ("the Claimants").

2. This Memorandum is filed in response to the directions of the Presiding Officer that questions of clarification for technical witnesses appearing in the second week of hearing be filed by midday 19 November 2012.[1]

Questions of Clarification for Drs Robinson and Christoffel

3. We provide the following question of clarification for Dr Helen Robinson and Dr Paul Christoffel on their report entitled *'Aspects of Rohe Potae Political Engagement, 1886 to 1913'* (Wai 898, #A71).

[1] Wai 898, #2.5.141 Appendix A Revised inquiry timetable

4. At page 96 in regards to the increase in Māori representation in the House of Representatives from 1890 the report states that "from 1890 to 1938 Māori were represented in parliament in proportion to their numbers in the New Zealand population. This was no less than Rohe Potae Maori had asked for."

    a. Considering calls from Tawhiao as late as 1889 for a separate Māori parliament and an abolition of the Māori seats in the 'European' parliament would it be more accurate to say that a proportional increase in Māori seats was much less than and even contrary to what some Rohe Potae Maori had been asking for?

Questions of Clarification on the Crown and the Opening up of the King Country Report by Dr Donald Loveridge

5. We provide the following questions of clarification for Dr Donald Loveridge on his report entitled *'The Crown and the Opening up of the King Country 1882 – 1885'* (Wai 898, #A41).

6. At page 65 you state:

> "It is my impression that the 'Four Tribes' spoke for all of the former King supporters who chose to break away from Tawhiao at the end of 1883 in order to negotiate directly with the Crown concerning the future of the King Country. In other words, it defined itself by stepping away from the King's authority – which means that as the Crown's authority was gradually accepted, it would inevitably tend to lose focus as a distinctive body"

7. Previously at page 64 you note that Hursthouse was turned away from going further south than Otorohanga by a group of members of Ngāti Maniapoto and "told that he must get permission from the King, who was absent in the South." You also note that "Hursthouse appealed instead to Wahanui, but the chief refused to discuss the matter with him."

    a. Do you agree that this sequence of events and statements by Māori of Ngāti Maniapoto indicates strong ongoing support for

the King and the Kingitanga, and recognition of the King's mana in the Rohe Potae at that point in 1883? If not, why not?

8. In 1883 King Tawhiao went on a tour around the North Island, you indicate on pages 64 to 68 that you consider this the period when the Four Tribes "broke away" from the Kingitanga.

   a. Do you acknowledge that many of the actions of the leaders of the Four Tribes during the year 1883 were required in the absence of the King and do not of themselves indicate a breaking away?

9. At page 71 you note that "The Colonial Press gave extensive coverage to the detention (and mistreatment) of Charles Hursthouse and his survey part in March."

   a. When you describe the treatment of Charles Hursthouse as "detention (and mistreatment)" are these your views, those of the Press, or both?

10. On pages 85 and 86 you set out the five requests of the original petition by Wahanui on behalf of the Four Tribes. You note at page 89 that there were then petitions by Ngāti Maniapoto and Waikato which you describe as "counter-petitions."

   a. Can you please indicate where those "counter-petitions" request the Native Land Court be permitted full access and operation in the Rohe Potae?

   b. Would you agree that the "counter-petitions" focussed on, and were opposed to, the description of the boundary of the Rohe Potae and who properly held tribal title to the land, rather than the requests by Rohe Potae about the Native Land Court and retaining their own lands? If not, why not?

11. On page 90 you state "It should be noted that the western boundary of the Four Tribes' block, as defined by Rewi, Wahanui, Taonui and others in 1882-83, as described in the July 1883 petition, and as surveyed in 1884 as the western boundary of the "Rohe Potae"(see below, and Figs. 2 and 3), ran down the middle of Lake Taupo to the

mouth of the Tauranga River, then east and south to the summit of Mount Ruapehu before continuing west towards the Mokau River."

a. Did you mean to refer this as the western boundary or should the passage say eastern boundary?

12. On pages 118 and 119 you detail the agreement reached between Bryce and the chiefs at the 1 December 1883 meeting in Kihikihi. On page 155 you note that Wahanui gave a speech to Parliament outlining his opposition to the Native Land Settlement Bill on 1 November 1884.

a. Would you agree that one reason why there may have been opposition to the legislation was the difference between the terms which had been agreed to between Bryce and the chiefs at the 1 December 1883 meeting and the expression of those agreements in the legislation?

13. At page 174 on the issue of compensation for Māori land taken for the railway Ballance is quoted as saying that "We propose to deal with the Natives in the matter of this line precisely as we should deal with Europeans, the law is the same in both cases."

14. Messrs Cleaver and Sarich in their report Turongo: The North Island Main Trunk Railway and the Rohe Potae 1870-2008[2] state at page 153 that:

> "Under the Public Works Act 1882, compensation for land taken for public works was determined differently depending on whether the taking involved customary land or land with a Crown derived title."

15. At page 154 they go on to say that:

> "The different procedures for customary land and land with Crown granted title were removed with the passage of the Public Works Acts Amendment Act 1887, which made takings of all Māori land subject to the Native Land Court for the determination of compensation. The making of an application to the Court remained at the Minister's discretion."

[2] Wai 898, #A20.

a. Do you agree with the assertions by Cleaver and Sarich that the Māori land, both customary and Crown derived title, was dealt with differently to European land?

b. Was this the case with the Public Works Act 1882 as well as the Public Works Amendment Act 1887?

c. Was compensation for owners of European land taken under the Public Works Amendment Act 1887 subject to the discretion of the Minister making an application to the Native Land Court?

d. Was Ballance correct in describing the proposed legislation as dealing with "European" or general land the same as Māori land?

Dated at Auckland this 19th day of November 2012

Darrell Naden / Cameron Hockly / Emma Whiley
Counsel Acting