

OFFICIAL

Wai 1040 #2.5.20

WAITANGI TRIBUNAL

CONCERNING

the Treaty of Waitangi Act
1975

AND

the Te Paparahi o Te Raki
Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER

1 Introduction

These directions are issued following a judicial conference held by the Waitangi Tribunal at Waitangi on 30 March 2009.

This may be helpful to those who intend to file submissions by 9 April 2009.

They are a slightly condensed version of my opening remarks at that conference.

2 Appointment of Tribunal Members

First, let me introduce the Tribunal members that have been appointed to hear the Te Paparahi o Te Raki claims. Some of you may not know that the four of us here today have been appointed by the Acting Chairperson of the Tribunal, Judge Carrie Wainwright (Wai 1040, #2.5.17).

Dr Ranginui Walker and Kihi Ngatai are known to most of you. We have another member with us today. She is new to this inquiry but not new to the Tribunal. In fact Joanne Morris is the most experienced Tribunal member among us. Some of you may know her as she sat on the Muriwhenua Tribunal, and she presided in the Waipareira Inquiry.

It is most likely that there will be two other members appointed to this inquiry. So that everyone is clear, the Tribunal will be appointing the next panel members chosen for this inquiry. That is the law and it ensures there is integrity and independence in the inquiry process. It would be difficult to argue that a process is objective and has integrity if one of the parties in it is able to dictate who should be the judge.

It is indeed a privilege to be here. This is surely an important inquiry for you all but it also has far-reaching consequences for all of Aotearoa – for this inquiry

will look, in part, at that important place of Waitangi where the constitutional arrangements for this country were discussed.

3 Issue for today

Last September we asked:

Do you want to proceed to early hearings on your understandings of He Whakaputanga and Te Tiriti at the very place that these precious taonga were brought forth.

The answer was yes. But we need to be more focussed than just 'let's hui about He Whakaputanga and Te Tiriti'. We now want to know what should be the scope of the hearings that begin in October: what issues or questions will we focus on.

To assist with defining the scope, a committee was formed and a report has been circulated to all claimants as a starting point for discussion. We needed something to start the conversation. That has happened and I want to thank Hemi Toia and the committee for the report they have put together.

Why are we here today? We come together today, as the Tribunal, to listen to people's thoughts and ideas about the scope of the early hearings.

- What will be the central *take* for the initial hearings?
- What are the questions or issues that will focus the evidence presented?

Ms Moana Tuwhare has filed a very helpful memorandum in which she presents a draft statement of issues (Wai 1040, #3.1.81). Some of the issues Ms Tuwhare has outlined include:

- How did pre 1840 contact with Pākehā influence the rangatira who signed Te Tiriti?
- What instructions were given regarding the establishment of a Treaty?

Issues like this focus the evidence and kōrero to be presented. That is what we are about today.

4 Let us be focussed

Mandating is an issue recently brought to prominence for Ngāpuhi. We are aware that a process relating to mandate has started.

That is a process separate from what we are about. The Waitangi Tribunal is not involved in the mandating process.

We have no issue with a mandating process running parallel to our hearing process. If that process assists people to become organised, if that process brings people together, if that process focusses attention on Treaty matters, then that can only benefit our Tribunal process.

But for the purposes of today we must be very clear and focus on what we are about – and that is the early hearings. Let mandating be the focus of other hui. It is not the focus of today's hui.

5 Role of the Tribunal

Let me also remind people about our role. We are a creation of the 1975 Treaty of Waitangi Act. We were set up to hear claims, and to report on Crown breaches of the Treaty of Waitangi.

That does not mean that we cannot hear evidence about things that happened before the Treaty, for there are things that happened before 1840 that may be critical to understanding what happened afterwards. Pre-1840 events will feature in the early hearings in this inquiry. We need to identify the critical pre-1840 matters, so that the rest of the Te Paparahi o Te Raki Inquiry will be informed by those matters.

6 Role of Lawyers

I have been told there is much concern in this area about the role of lawyers in this process. This is surprising given most claimants (I understand about 75 percent) have lawyers.

It would be silly for us to think that legal issues will not be raised. We are a Tribunal. We have a legal function, and a legal jurisdiction. Lawyers will need to play a role in this inquiry.

You may wish to progress your claim on your own and that is admirable. But you must be realistic. We are a commission of inquiry. We hear legal arguments. We look at legal issues. That is the nature of our work.

To be blunt, we think you need lawyers. The Legal Services Agency covers reasonable legal costs for our process.

Our process demands that lawyers define issues, brief evidence and are involved in planning hearings and sorting out interlocutory matters.

7 Reality Check about Early Hearings

I want to cover some of the realities about moving into initial hearings in October. Let us all be clear that being organised and ready to go to hearing is not easy.

Here are a few realities for us all:

- Early hearings are only the start. We will not hear individual claims at the initial hearings. These hearings must be seen as only the start. While it has not yet been finalised, the Tribunal may go to the Bay of Islands to hear the particular claims of that area some time after the initial hearings.

Then we may go to Hokianga to hear those claims or to another area to hear issues. This is only the start.

- We will not be having 16 weeks of hearings on He Whakaputanga and Te Tiriti. We do not have the resources, time and there are not the issues and discussion to sustain such a marathon. You need to be realistic. The Tribunal will certainly be realistic when it comes to setting the length of the initial hearings. We have years of experience in setting hearings. There have been indications that the hearings may be for 3 weeks. This has not been decided yet. The hearing time may be a little bit longer or it may be a little bit shorter.
- Another reality - we will not be listening to 200 witnesses in the initial hearings. At the initial hearings we wish to hear quality evidence. It is not about quantity of evidence presented. More people saying exactly the same thing will not further your claim. Quality evidence is vital to the Tribunal being able to do our job. In fact it is possible that the Tribunal will call expert technical evidence, in addition to your own technical and kaumatua evidence.
- We will need very strong reasons to persuade us that we should take the October hearings beyond the birthplace of the Tiriti, beyond Waitangi. But let me put it this way. Later, when we are hearing other claims, will be the time when we will seek to hear your claim in your area.
- Another reality – as I have said, you will need lawyers to assist you.

Let me also make this very clear to us all. We as a Tribunal take all inquiries very seriously. That is obvious. We expect evidence of a high standard and quality and we expect people to be ready. We will only go to hearing in October if everything is ready. We are not going to go into such an important *take* half-hearted. You only get one shot at initial hearings, and you must make it your best shot. Let me repeat that. We will not go to hearing if everything is not ready.

8 The Challenge before us all

There has been over four years of work between the Tribunal, relevant agencies and claimants towards the commencement of Te Paparahi o Te Raki hearings. We all still have much work to do.

I was asked the other day about how we as a Tribunal were going to start hearings up here. How is the Tribunal going to even start an inquiry that:

- potentially has over 600 claims;
- has over 200 individuals claiming on behalf, not of their whanau, hapū or iwi but claiming on behalf of themselves;
- will probably be the most challenging inquiry ever undertaken by the Tribunal;
- deals with the largest single Iwi as part of this inquiry;

- deals with the birthplace of Aotearoa as a country; and
- is highly complex.

I told this person that we recognise that claimants have different histories, different kōrero, and they come from many different places within the north. We also recognise that there are similarities. At an initial glance, the Northern Wars, land purchases, and public works look like issues common to many Te Raki claimants.

However, there are two things common to all: He Whakaputanga and Te Tiriti. That is where we are going to start. We are going to start with those common *take*. We must start somewhere. Where better to start than with He Whakaputanga and Te Tiriti.

The task ahead of us is not easy – but it is not impossible. It is a challenge you all must rise to.

We must be focussed – we must not be daunted by the enormity of the challenge ahead. Nor must we underestimate the enormity of that challenge.

We have an important *take* – one, which needs and deserves hearings of the highest quality. We will settle for nothing less.

To achieve that standard we will all need to co-operate. Things will not always run smoothly, but progress will be made. We anticipate ups and downs. But that's fine.

9 Co-operation

If we are all to play our part to ensure we face up to the challenges ahead of us, there must be co-operation. There must be principled conduct. There must be compromise by all participants.

Groups

Co-operation must also extend to how you all work together. It is important that people understand the usefulness and strength to be gained in bringing claims together, in working on claims as a group whether that be on a hapū, iwi or on a regional basis.

Every single claim will not have its own individual hearing when we begin to hear localised claims later on. There are over 600 claims, we will not be having 600 hearings. That is impossible. Claims must be brought together to be heard on an issues or on a regional basis.

Wai Numbers

There is a lot of kōrero about how many claims people have here. It is not about having a number of Wai numbers and a number of claims. It is about how much support you have for your claim.

We would recommend people think about how they can come together in terms of their claims.

I hope I have made myself clear. Let us all co-operate and be focussed on the one question:

What will be the scope of the initial hearings beginning in October?

This is a first step for consideration. We are interested in gauging your view on what the scope should be. What are the questions to focus us all? What are the issues for discussion?

10 Key messages

Let me repeat for us all the key messages we have today:

- The initial hearings beginning in October are but the start. They will be the beginning of a longer process.
- We will be hearing other claims following the initial hearings.
- The October hearings are not a time for individual claims.
- Quality, not quantity, evidence is required.
- You need lawyers to assist you.
- Co-operation is essential.

11 Conclusion

At the 30 March 2009 conference I announced that the Tribunal invited written submissions from parties. They are to be filed by **5pm, Thursday 9 April 2009**.

In particular, we invite submissions on how the Tribunal might develop a statement of issues to encourage maximum focus for the hearings planned to begin in October.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the combined record of inquiry for the Te Paparahi o Te Raki claims.

DATED at Wellington this 3rd day of April 2009



Presiding Officer
Judge C T Coxhead

WAITANGI TRIBUNAL