

OFFICIAL

Wai 1040 #3.1.55

IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 1040

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Te Paparahi o Te Raki Inquiry

AND

IN THE MATTER OF

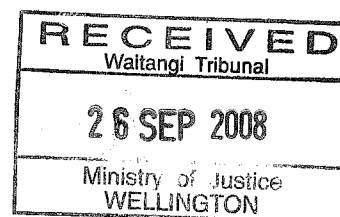
a claim brought by Gary Theodore and Pereme Porter, Wai 966; a claim for Ngai Tawake brought by Kyle Hoani and others, Wai 1314; a claim for the Trustees and Beneficiaries of Te Rae Trust brought by Steve Panoho; a claim for the hapu o Whangaruru, brought by Elvis Reti and others, Wai 1384

MEMORANDUM OF COUNSEL

Dated this *26th* day of September 2008

Counsel Acting: Moana Tuwhare

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May it please the Tribunal:

1. This Memorandum is filed to address matters raised in the Memorandum –Direction dated 29 August 2008 (Wai 1040, #2.5.14) on behalf of the following claims represented in this Inquiry District:
 - a. The constitutional claim made for and on behalf of Ngapuhi by Gray Theodore and Pereme Porter – Wai 966
 - b. The Ngai Tawake claim made by Kyle Hoani and others – Wai 1314;
 - c. The hapu o Whangaruru claim filed by Elvis Reti and others – Wai 1384;
 - d. The Te Rae Trust claim, for and on behalf of the Trustees and Beneficiaries of the Trust filed by Steve Panoho (Wai number yet to be allocated);
2. Counsel shall address each of the matters raised for discussion in turn:

Is there support for an early start to hear the Treaty story first?

3. In short, yes.
4. In particular the Wai 966 Constitutional claimants are eager to have their claim heard in full. The claim is a single issue focussed claim which deals with the meaning and intent behind Te Tiriti according to Ngapuhi. A separate set of pleadings, evidence, submissions and hearings on this issue would ensure that this fundamental issue gets the appropriate focus and airing before the Tribunal forum and provides the necessary context for what occurred thereafter.
5. While not diminishing the importance of other claim issues, matters occurring in the later aftermath of the signing of Te Tiriti arose in large part due to the varying understandings of what Te Tiriti meant. Understanding what Te Tiriti meant to the parties will be of up most importance to assessing any and all grievances raised post the signing of that ‘kawenata tapu’. It may give rise to the development of further or different or locally relevant principles of Te Tiriti, on which the assessment of subsequent breaches may be based.
6. The Wai 966 claimants wish to make the point that a Ngapuhi or even Northland focus on this

issue necessitates that it is Te Tiriti that we are speaking about. That is the version that was signed by the Rangatira of Ngapuhi. The claimants therefore seek a direction from the Tribunal that for the sake of clarity, all parties referring to the document actually signed call it "Te Tiriti" and the term "Treaty" be confined to references to the English language version only, as it is common to use the terms interchangeably but is factually incorrect and adds to the already prevalent misunderstandings about it.

7. The Ngai Tawake claimant group and other claimants Counsel represents wish to provide evidence of the intention and understandings of their rangatira who signed Te Tiriti, and support the proposals for a separate hearing process on this issue. However, they also seek to have their claims heard in full. It is submitted that preparation for an interlocutory process for a full inquiry could run in staggered stages but in tandem, or immediately following the hearing process to take place for the hearing proposal currently under discussion, for those parties who seek a full hearing of their claims.
8. While the claimants are open to early negotiation discussions should that eventuate, at this stage, they still seek a full hearing and unless that changes, wish to prepare and advance their claims in full.

Timing

9. To assist with what the Ngai Tawake claimants are proposing, counsel has drafted a suggested process and possible timeframes in the table below. While it is acknowledged that certain steps in the process have not been specifically outlined in the table below, it at least gives a rough outline of how a staggered process might work in tandem:

	Te Tiriti Hearing process	All Other Issues hearing process
November 08	Direction as to scope of inquiry	Research review undertaken
December	File draft particularised Statements of Claim on Te Tiriti	
January 09		Gap filling research commissioned
February	Final Particularised Statement of Claim Crown Statements of Response	
March	Draft Statement of Issues	
April	Final Statement of Issues	
May	Briefs of Evidence and report summaries filed	
June	Hearings begin	
July		Draft Particularised Statements of Claim
August		
September		Final Particularised Statements of Claim
October		
November		
December		Crown Statement of response
January 2010		
February		Draft Statement of Issues
March		Final Statement of issues and hearing blocks, dates and locations decided

Scope

10. It is submitted that the following issues ought to be thoroughly traversed in a Te Tiriti hearing:

a. Pre 1840 context

- i. political, social and economic organisation and adaptation of Te Paparahi o te Raki hapu;
- ii. early settlers;
- iii. missionary influence;
- iv. pre 1840 land dealings;

b. Te Tiriti

- i. proposal;
- ii. instructions;
- iii. drafting;
- iv. pre signing hui;
- v. signing hui;
- vi. understanding/meaning;

c. Post Te Tiriti

- i. Old Land Claims Commission;
- ii. Surplus and Scrip lands;
- iii. Northern war.

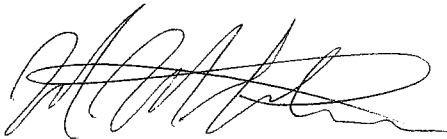
Relevant Evidence

11. Claimant evidence and oral histories on the understanding and meaning of Te Tiriti will be particularly important. Some of this evidence is in draft form already and can be further refined for hearing. Counsel anticipates that other such evidence can be readily briefed.
12. There have been various technical reports written which address many of the relevant issues, such as:
 - a. The Tribal Landscape overview, Manuka Henare, Hazel Petrie and Hohipere Tarau;
 - b. The Nature and Extent of Contact and Adaptation, by Vincent O'Malley and John Hutton;
 - c. Pre 1840 purchases, by Bruce Stirling;
 - d. Te Tiriti and its northern context, by Merata Kawharu, Paul Tapsell and Sir Hugh Kawharu
 - e. The Northern War 1845-1846, by Ralph Johnson
 - f. Northland Language Culture and Education, Part One: Education by J.M. Barrington, in particular Chapter one.

Funding and process for preparation

13. Counsel makes no submissions on funding.
14. In respect of preparation, it is submitted that if there is general support for the proposal, a date be set for further submission on the scope of the inquiry (if necessary), followed by a direction setting the scope and filing date for Particularised Statements of Claim to get the ball rolling on preparation.
15. An interlocutory timetable is therefore sought and further matters such as research gaps, timing etc which may naturally arise as preparation begins, could be dealt with on an as needed basis at the next judicial conference.

Dated this 26th day of September 2008



Moana Tuwhare
Counsel Acting