

OFFICIAL

Wai 1040 #3.1.69

**KI MUA I TE ROOPU WHAKAMANA
I TE TIRITI O WAITANGI**

MO TE TAKE O

Te Ture Tiriti o Waitangi 1975
(kua whakawhitia)

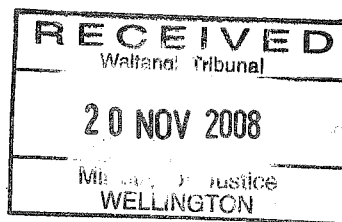
ME

TE TAKE O

Te rohe o Te Paparahi o Te Raki

MEMORANDUM OF COUNSEL

Dated the 20th day of November 2008



Rangitauira & Co
Barristers & Solicitors
1115 Pukaki Street
PO Box 1693
ROTORUA 3010
Tel: 07 348 0034
Fax: 07 346 2933

Persons acting: Annette Sykes, Jason Pou and Miharo Armstrong

May it Please the Tribunal

1. This Memorandum is filed for and on behalf of:
 - a. the Hokianga Claims Collective;
 - b. Te Mahurehure;
 - c. Ngati Pakau me Ngati Te Rauwawe;
 - d. Ngai Tu; and
 - e. Ngati Kahaurau me Ngati Hau ki Omanaia.
2. It expresses their concerns regarding the latest Direction dated 16 October 2008 that emanated from the Waitangi Tribunal regarding the future hearings scheduled for the Te Paparahi o Te Raki District.
3. Within its Direction, the Tribunal has stipulated the following hearing plan:
 - initial hearings will commence in October 2008 and will focus upon various understandings of the Whakaputanga and Te Tiriti o Waitangi;
 - a maximum of three weeks will be set aside for these hearings which will be held at a single venue at Waitangi;
 - a Hearing Co-ordinating Committee is to be established with a pre-defined membership.

The Hearing

4. The Direction of the Tribunal notes the support for an early commencement to hearings, however, it ignores the overwhelming desire of claimants to discuss Te Tiriti o Waitangi and Te Whakaputanga within their own rohe.
5. The Hapu of Hokianga have expressed an earnest desire to have their issues relating to Te Tiriti o Waitangi and Te Whakaputanga aired and debated in Hokianga. This desire was expressed at the Judicial Conference for and on behalf of the Hokianga Claims Committee, and also by Professor Patu Hohepa when he addressed the Tribunal.
6. As Professor Hohepa informed the Tribunal, the hapu of Hokianga did not sign Te Tiriti o Waitangi in Waitangi, rather, they required it to be brought to Hokianga for assent. Twice as many signed at Hokianga than at Waitangi.

7. The issues debated in these initial hearings will form the bedrock of any future hearing and possibly any settlement that might be achieved. A number of issues will need consideration from the many Ngapuhi and Crown perspectives if the debate is to be constructive for the future of Ngapuhi Crown relationships.
8. It is inconceivable to consider that such an important debate could take place within three hearing weeks.
9. It is therefore crucial that the people of Hokianga can have some confidence that:
 - a. their voices will be heard;
 - b. all appropriate issues are traversed; and
 - c. adequate time is available for the process to take place.
10. To date this has not occurred at the Judicial Conferences that have been convened in Waitangi. Those Conferences that have been convened have de-prioritized groups that sit outside clusters, as the Tribunal has continued to afford a higher priority to groups that do not even represent claims. It is in these respects that we remind that the Clusters and Te Roopu Whakapiripiri were only created to facilitate research. No mandate has been given with respect to representation of claims or hearing planning.
11. Thus far, the claims of unclustered groups have been treated as ancillary to the process. It now seems that these claims are now to be rendered irrelevant for the purposes of developing a hearing plan. Notwithstanding the efforts of claimants to make themselves available and attend Judicial Conferences, they have been denied the ability to have their voices heard and express their views. They are either denied the ability to speak, or those that do, have been ignored. Consequently, there has been no opportunity for deprioritised groups to "*test or confirm their leaders*", as the Tribunal has essentially selected and prescribed who it will listen to.
12. In this way, their claims, and their mana over their claims have been disrespected.
13. The fact that this continues to happen is a key factor influencing the desire of Hokianga Hapu to have hearings relating to their perceptions of Te Whakaputanga and Te Tiriti o Waitangi held on their marae and in accordance with their tikanga.

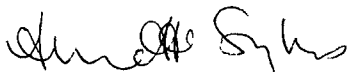
14. Only then, do the people of Hokianga believe that the hearing of their claims can be separated from the layers of disrespect that characterize the Judicial Conferences held in Waitangi thus far.
15. This state of affairs was exacerbated by the Chief Judge (now Justice) Williams when he convened a secret and confidential meeting with those selected groups that have received a priority within the administrative processes that have thus far taken place. As matters have unfolded, it has become clear that the matters discussed at the secret meeting were indeed the very subject matter that was to be the central focus of the Judicial Conference held on 26 September 2008 in Waitangi.
16. It now seems more than coincidental that the outcome of the Judicial Conference held on 26 September 2008 as encapsulated within the Tribunal's Direction, mirrors the presentation that was delivered at a confidential meeting convened by the Tribunal on 20 August 2008.
17. In these respects, the very processes that the Tribunal is currently employing is distancing claimants from the process and excluding them from the avenues of healing available to them with respect to addressing historic Treaty grievances.
18. Hokianga hapu once again request that the Tribunal reconsider its approach to initial hearings to the extent that:
 - a. adequate time be made available for the each takiwa to present their perspectives upon Te Tiriti o Waitangi and Te Whakaputanga (we suggest three weeks per takiwa at a minimum); and
 - b. these hearings are conducted within the respective takiwa.

Hearing Co-ordinating Committee

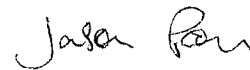
19. The composition of the Hearing Co-ordinating Committee that the Tribunal has prescribed entrenches the concerns that are outlined above.
20. No room on the committee has been provided for unclustered groups within the Committee that has been unilaterally determined within the Tribunal's direction.
21. All are cognizant of the need to progress matters expeditiously, however, this cannot occur at the expense of the ability of claimants to access the process.

22. We acknowledge that the Tribunal has requested a report from the Hearing Co-ordinating Committee be provided by 12 December which others can make submissions on, however, the ad-hoc committees that have been created to date have tended to report late impinging upon the ability of claimants to respond, as their views are diluted.
23. In our submission, it is time for the Tribunal to begin listening to the vast majority of claimants within the region. If a forum is to be created to allow for constructive planning, then resourcing needs to be provided to those unclustered groups to ensure that all remain on an even footing.
24. In these respects, we request that a Judicial Conference be properly convened by the Tribunal early next year to allow claimants to present their views relating to hearing planning.
25. We request that this Conference be held in Hokianga and that ample time be allocated for the Judicial Conference to ensure that the perceptions of all are considered as the Tribunal progresses the Te Paparahi o Te Raki Inquiry.

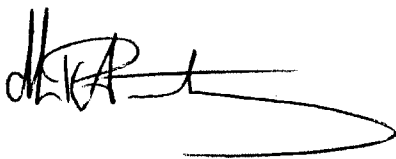
DATED at Rotorua this 20th day of November 2008



Annette Sykes



Jason Pou



Miharo Armstrong