

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Ngapuhi Mandate Inquiry

BRIEF OF EVIDENCE OF HERBERT JOHN TE KAURU CLARKE

19 November 2014

CROWN LAW

TE TARI TURE O TE KARAUNA

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Tihei mauri ora!

**Kei aku rangatira - - koutou nga uri a te tupuna nei i a
Rahiri - koutou nga matua nga whaea, nga tuakana teina,
nga tuahine otira nga tamariki mokopuna - tena koutou,
tena koutou, tena koutou katoa.**

**Kei te Kaiwhakawa, te kaiwhakamatautau i nga kereeme o
Ngapuhi whanui tonu koutou ko ou hoa mema o te ropu
whakamana i te Tiriti - te rangatira e Kihi koutou ra - tena
koutou, tena koutou tena koutou katoa.**

**Tena ra tatou i nga tini mate o te wa - nga mate o tena
wharuarua o tena wharuarua huri noa i te motu - haere atu
ra oti atu.**

Ka hoki mai ki a tatou e takatu nei i roto i te ao hurihuri

E tau ana

Introduction

1. My name is Herbert John Te Kauru Clarke.
2. I am Ngati Rangi of Ngapuhi and Te Whanau a Hunaara and Te Whanau-a-Tuwhakairiora of Ngati Porou.

My background

3. I am a full-time consultant. I am currently contracted to the Office of Treaty Settlements, Te Puni Kokiri, the Ministry of Justice and the Crown Law Office to assist the mediation of Treaty claims and to provide expert advice on Maori knowledge and issues. In this role I have facilitated meetings between the Minister in charge of Treaty of Waitangi Settlements, iwi and hapu across the country including central north island, north

Auckland, the Chatham Islands, Tai Rawhiti and Taranaki. This has included working with:

- Rongowhakaata
 - Te Aitanga a Mahaki
 - Ngai Tamanuhiri
 - Rangitane
 - Tuhoë
 - Te Arawa (nga pumanawa)
 - Ngati Tuwharetoa
 - Ngati Mutunga
 - Ngati Tama
 - Nga Rauru
 - Ngati Ruanui
 - Ngati Ruahine Atiawa
 - Ngati Whatua ki Orakei
 - Ngati Kahu ki Whangaroa
 - Ngati Kahu
 - Te Rarawa
 - Te Aupouri
 - Ngai Takoto
 - Te Roroa
 - Ngati Ruapani
 - Tamatera
 - Ngati Toa Rangatira
 - Moriori
4. During 1996-2010 was a member of the Waitangi Tribunal. I took part in a number of inquiries, including:
- Tauranga Moana - 2 stages
 - Mohaka Ahuriri

- Te Tau ihu o te waka a Maui
 - Whanganui a Tara
 - Foreshore seabed
 - Aqua Culture - Te Ahu moana
 - Petroleum
5. I am a former Chief Executive of the Ministry of Maori Affairs, former Race Relations Conciliator and Human Rights Commissioner of Aotearoa New Zealand, former special senior advisor on education to the Department of Education, former principal of Ngata Memorial College and Wellington High School and Community Institute. I have filled the positions of Director Maori in the Ministry of Justice and Group Manager (Deputy Secretary) Corporate Services and Personnel Development in the Department of Justice.
6. I am also a former member of the Government Superannuation Fund Appeals Authority. I have served as a Trustee on the Sir Winston Churchill Memorial Trust Board for seven years. I am currently appointed to the NZ Lottery Board's Marae Heritage Committee. I am currently a member of the Board of Heritage NZ Pouhere Taonga and Chairman of the Maori Heritage Council. I am also a Trustee of the Tokararangi Forests and Te Rimu Trust. I hold a directorship with KCJC Investments Ltd.

Growing up

7. I was born in Te Araroa, East Coast. My father was Wharetomokia Clarke who was Ngati Rangi of Ngapuhi on his father's side and Te Whanau a Hunaara of Ngati Porou on his mother's side. My mother was Hariata Whakatangi Paraone of Te Whanau-a-Tuwhakairiora and other hapu of Ngati Porou. (Our family comprised 6 boys and 6 girls).

8. I spent my first 16 years growing up in Te Araroa and attending the local Te Waha o Rerekohu primary and secondary school up to the 5th form before going onto St Stephens College Bombay to complete my secondary education.
9. Te Araroa was a small, isolated, self-sufficient eastern most township with about 800 to 900 people in the wider district. It was almost equidistance to the larger towns like Opotiki one way and Gisborne the other way. About 95% of the people were Maori with close whakapapa links to each other. Te Reo Maori was spoken widely throughout the community.
10. Te Araroa lies at the base of Whetumatarau hill an impressive landmark that soars above the town and casts a long shadow over it at the end of the day.
11. For many of our people Whetumatarau is a solemn reminder of the long drawn out battle that took place between Te Whanau a Tuwhakairiora and other Ngati Porou hapu and Ngapuhi led by Pomare chief of Taumarere. When Pomare and his war party attacked, Te Whanau a Tuwhakairiora fled to the top of Whetumatarau. Whetumarama is also a reminder of the macabre incidents that were said to have happened amongst the starving people who were besieged during the months of being confined to the inaccessible heights of Whetumatarau..
12. There is much to be said about the battles that took place between Ngapuhi and Ngati Porou
13. Growing up in Te Araroa one was sometimes reminded of one's pedigree particularly whakapapa connection with Ngapuhi especially during a rough game of rugby or tussle with one's peers. I think our dad got it more than us the children.

14. My two years at boarding school was a wonderful experience. It was there that amongst other things one was able to learn and appreciate tribal differences. The majority of the boys came to St Stephens with a rural background from all around New Zealand with strong Maori values and principles. Many came in at the senior level from schools that did not have the resources to provide higher levels of learning. One was proud to be a student of St Stephens College.

Starting a career

15. On leaving secondary school I went off to Teachers Training College Auckland with a number of other boys from St Stephens.
16. On finishing teachers training college I wanted to find out more about my Ngapuhi side. So the closest teaching post I could win to where my father spent his early years was Awanui in Kaitaia. I spent my probationary year teaching at Awanui Primary school.
17. Occasionally I would drive down through the Mangamuka gorge to spend a night or so at Ohaewai meeting up with relations.
18. The core part of my dad's family home still stands today. It is a kauri house and it is situated on a land block known as Epurua which is half way between Ngawha and Ohaewai. My cousin Bella Tari (nee Clarke) now owns the house and lives there with her family.
19. On Wednesday 25th October 1989 I was invited to Ngawha Marae (E Koro kia Tutuki) during my time as Chief Executive of the Ministry of Maori Affairs I was presented by kaumatua and kuia of Ngati Rangi hapu copies of documents of my Ngapuhi whakapapa through my Ngati Rangi side. It was a hugely moving and memorable moment for me. Hopefully once I slow down in

my work I will be able to study the material more closely and pass on the korero to my children and grandchildren.

Negotiations with Ngapuhi

20. My evidence does not address matters of detail relating to the Tuhoronuku model. Rather, the two key messages that I want to portray are:

20.1 I believe Ngapuhi should enter negotiations as one.

20.2 I believe Ngapuhi needs to enter negotiations as soon as possible.

Entering negotiations as one

21. I feel I have been hugely privileged to have had extensive experiences in working in the Treaty environment. My time as Chief Executive of the Ministry of Maori Affairs was the first phase of my experiences which focussed on bringing the treaty into public policy by helping other government departments to be more responsive to Maori in terms of the Crown's Treaty obligations. While my time on the tribunal was concerned with understanding and appreciating the grievances suffered by our people as a result of treaty breaches by the Crown. The third phase of those experiences was working at the sharp end of treaty settlements which involves working toward an amicable result on Crown Maori relations as a consultant contractor.

22. I enjoyed my time on the Tribunal as aforementioned. It was a huge privilege to be there and one felt that as a tribunal member you were making a difference and a worthwhile contribution to the life of our country. As a result of increasing demand on my time as a contractor/consultant I was very sorry to decline the opportunity of a fourth term on the Tribunal.

23. When I was first appointed to the Waitangi Tribunal the respected kaumatua Bishop Manu Bennett said to me it was his view that one of our primary aims was to help get our people involved in the economic life of this country. During my time of involvement in the Treaty environment that message has become clearer as I have observed with much interest the progress of our people as they have worked their way through their treaty claims.. Progress and development has been spectacular for some, steady for others and not so good for a few. Ngai Tahu and Tainui have got it right in terms of seeking and obtaining large-scale settlements with the Crown. They may not have built grand empires, but they have given their people a better economic chance in the life of our country. I believe Ngapuhi needs to head in this direction. They are the largest iwi by far in this country and they should be the most powerful. Whether you call yourselves Tuhoronuku or Te Kotahitanga or Te Kotahi o Ngapuhi. I believe the important thing is to go as one for the benefit of all of Ngapuhi
24. I have seen other Treaty settlements being struck on a smaller scale. In doing so, I consider that some iwi have lost the opportunity to become the economic powerhouses that other iwi have become. Of course the role of hapu is important in any Treaty settlement process, but the role of hapu must not be at the expense of collective prosperity.
25. Branding is important. The Ngapuhi brand needs to be front and centre stage for the benefit of Ngapuhi. Diluting that brand, through Treaty settlements at a level below Ngapuhi, dilutes the economic benefits the people need.
26. A key issue in any Treaty settlement is the issue of overlapping claims. This is probably the most difficult part of the settlement

process. The more settlements you have in a given area the more overlapping claims you have to sort out. One of the contributing factors to the prolonged process of sorting out overlapping interests is 'kua ngaro kua wareware ranei nga korero e pa ana ki nga take whenua' - lost or forgotten information on property rights is a huge contributing factor to the prolonged process and in some cases impasse. I have seen this issue hold up a number of Treaty settlements. One needs to get this issue right. The smaller the group is in negotiating with the Crown, the more overlapping interests there are.

Entering negotiations now

27. In 1985 the Waitangi Tribunal was given the role of hearing historic Treaty claims. Ngai Tahu claims were heard in 1987-1988. The Tribunal reported on their claims in 1991. Ngai Tahu settled in 1997 for \$170 million.
28. Ngapuhi is in the same position that Ngai Tahu were in in 1987-1988. That is 26 years behind Ngai Tahu. I am told the Tribunal has scheduled hearings for Ngapuhi claims until the end of 2016. I know the time and effort it takes the Tribunal to write reports. It took 3 and ½ years for the Tribunal to write its Stage One Northland report on sovereignty issues. If it takes that long to write a report on Stage Two issues, the Tribunal might report in the middle of 2020. Ngapuhi cannot wait that long to enter Treaty settlement negotiations.
29. I firmly believe the time is right for Ngapuhi to enter negotiations with the Crown now.
30. I have read the evidence of Nora Rameka. I agree with what she says:¹

¹ Amended brief of evidence of Nora Rameka, 14 November 2014.

Kia kotahi te hikoi, me mahitahi, me aroha tetahi ki tetahi.

31. Ngapuhi, kua tae te wa me haere ngatahi tatou.

Signed: _____

John Clarke

Date: _____