

Before the Waitangi Tribunal

Under s6 of the Treaty of Waitangi Act 1975

And

In the matter of an application by the Hapū of Ngāti Tōrehina ki Mataka for an urgent inquiry into the Crown's recognition of the Tūhoronuku Mandate

And

Concerning the continued viability of applicants claims under Wai 1508 and 1757

Affidavit of Herb Vincent Rihari in Reply

Dated: 26 day of June 2014

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I **HERB VINCENT RIHARI** of Auckland swear as follows:

Introduction

1. On 1 May 2014, I filed an affidavit¹ in support of the application by Ngāti Torehina ki Mataka for an urgent inquiry into the Crown's recognition of the Tūhoronuku Deed of Mandate.
2. I have read the affidavit of Maureen Hickey² filed on behalf of the Crown and the affidavit of Raniera Sonny Tau³ filed on behalf of the Tūhoronuku Independent Mandate Authority ("TIMA"). The purpose of this affidavit is to reply to that evidence.
3. I will do so by speaking to the following topics:
 - 3.1 Hapū rangatiratanga;
 - 3.2 Pre-determination; and
 - 3.3 Level of opposition.

Hapū rangatiratanga

4. While reading both Mr Tau's and Ms Hickey's affidavits, I cannot ignore the continued emphasis that is placed upon the role of individuals through the entire Tūhoronuku process. Although they speak of hapū representation and the ability of hapū kaikōrero to play a significant role for their hapū within the TIMA structure, in actual fact it is the individual that has the ability to make the decisions and can do so without hapū consent at all. This goes directly against our fundamental tikanga of hapū rangatiratanga.

¹ Wai 2341, #A10 Affidavit of Herb Vincent Rihari dated 1 May 2014

² Wai 2341, #A26, Affidavit of Maureen Hickey dated 6 June 2014

³ Wai 2341, #A25, Affidavit of Raniera Sonny Tau dated 4 June 2014



5. I have seen this occur already within the election process where many hapū did not even realise someone had put their name forward to speak on behalf of their hapū. In some cases this was done even when an individual knew that their hapū did not support Tūhoronuku. I spoke about our own hapū experience around this in my affidavit filed in support of our urgency application.
6. Furthermore, it is my understanding that there are now 3 hapū who have formally retracted their hapū kaikōrero nominations (Ngāti Torehina ki Mataka, Te Waiariki/Ngāti Korora/Ngāti Taka Pari and Ngāti Uru. There may be more.) This was a result of hapū hui being held to discuss the matter and the hapū deciding the course of action they wished to take. Hapū rangatiratanga.
7. In Ms Hickey's affidavit she states that the Crown will only recognise a mandating process that is robust and transparent. I would suggest the ability for an individual to speak on behalf of a hapū without the hapū knowing or providing their consent, is neither robust nor transparent.
8. My last comment on this topic surrounds the kōrero in the affidavit of Mr Tau and Ms Hickey where they mention the amendments and compromises Tūhoronuku have made to the original Deed of Mandate in order to incorporate suggestions received from Te Kotahitanga, Hapū, whānau and individuals. Although some amendments were made, the fundamental request for the ability of hapū to decide whether or not they wanted to participate was not altered.
9. This is a bottom line for Ngāti Torehina. We cannot compromise on that point as that would be compromising our own Hapū rangatiratanga.

Pre-determination

10. The Crown, in response to the 11 urgency applications filed with the Tribunal, has stated that there has been no pre-determination by the Crown to recognise Tūhoronuku as the mandated body to settle Ngāpuhi te Tiriti o Waitangi claims. However, I note at paragraph 59 of the affidavit of Ms Hickey, she refers to correspondence dated 30 March 2011 from Paul James to Te Kotahitanga that addresses this very issue.
11. He noted, *"It seemed Te Kotahitanga wanted the Crown to stop the Tūhoronuku mandate process and clarified the Crown was not in a position to make mandate decisions for Ngāpuhi; nor could it prevent an entity going out and testing its support in the claimant community"*.
12. While the Crown has not tried to stop Tūhoronuku, it is my understanding they have funded a huge portion of money so that the seemingly "robust and transparent" process that was undertaken by Tūhoronuku was funded by the Crown. This type of funding was not afforded to any other claimant community who wished to go out and test its support. To me, this is pre-determination and clearly favours one group over any other.

Level of Opposition

13. While reading the affidavit of Mr Tau, I noted on 4 separate occasions he used terms such as "a small (albeit vocal) minority" and "loud minority", when referring to the level of opposition there currently is towards Tūhoronuku.

14. I believe this is just simply wrong.
15. Ngāti Torehina ki Mataka are a medium sized hapū. The fact that there are another 8 hapū, many of which have a greater amount than Ngāti Torehina, with urgency applications before the Tribunal, shows that the level of opposition is more than a small minority. It is my understanding that there is even more hapū, whanau and claimant groups that oppose Tūhoronuku and support these urgency applications.
16. Given that only just over 5,000 Ngāpuhi voted in support of Tūhoronuku in the 2011 Ballot Vote and the level of opposition currently with hapū is in beyond the tens of thousands, I would suggest that the small minority are actually those in support of Tūhoronuku.
17. I also believe that Ngāpuhi are becoming more inquisitive as to what Tūhoronuku are actually trying to achieve. As a result, we have seen unprecedented amounts of participation in voting, submissions, hui and hearing processes. And this is only growing. In 2010 the Office of Treaty Settlements received 31 feedback forms about the Tūhoronuku Mandate Strategy (all of which were in opposition)⁴. Just 3 years later a total amount of 4,015 submissions on the Tūhoronuku Deed of Mandate were filed with OTS (63% of which opposed Tūhoronuku)⁵. It is interesting to me that this is one of the only statistics that was not mentioned in Mr Tau's affidavit.

⁴ Wai 2341, #A26, Affidavit of Maureen Hickey dated 6 June 2014, para 51

⁵ Ibid para 146

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18. Additionally, I disagree with Mr Tau at paragraph 6.21 of his affidavit where he states, “..Tūhoronuku support continues to be significant amongst wider Ngāpuhi and is actually growing. One of the ways this has been demonstrated is by the increase in the number of registrations on the Ngāpuhi database..”⁶ You cannot simply assume support for Tūhoronuku through an increase in database registrations.
19. This growing level of engagement and in turn opposition cannot be ignored or simply referred to as a vocal minority.
20. It is prejudicial to Ngāti Torehina ki Mataka for the Crown to recognise the Tūhoronuku Deed of Mandate in the face of such a level of opposition.

Conclusion

21. Since the recognition of the Tūhoronuku Deed of Mandate, we as a hapū have still not received any correspondence whatsoever from Tūhoronuku. I once again express my concerns about communication and accountability of a body that has not once engaged with us on a hapū level to discuss the mandate to settle our hapū historical te Tiriti o Waitangi claims. This is prejudicial to us as Ngāti Torehina and cannot be reversed. And I strongly believe that it will only continue.
22. I emphasise the position made in my affidavit filed in support of our urgency application, that the Crown in choosing to recognise the Tūhoronuku Deed of Mandate, has breached the principles of te Tiriti o Waitangi and the duties owed to Ngāti Torehina. To continue with this mandating process would only exacerbate that further and create

⁶ #A25 para 6.21

even more division, unrest and distrust between factions within Ngāpuhi and between Ngāti Torehina and the Crown.

23. I agree with Mr Tau where he uses the words “fiercely loyal” at 3.10 which is why these applications have been filed. We are completely loyal to our respective whanau and hapu and those whose legacy and mamae have been left to us resolve. Mr Tau has tried to undermine that fierce loyalty being rightfully demonstrated by proactive hapu such as those of us prosecuting these urgency applications, by diminishing it to “loud minority” and accusing various members of Te Kotahitanga and Ngati Hine of inciting these claims of aggression. I have attended many hui and witnessed many passionate and fiercely loyal speakers. No harm has come to anyone.
24. The overall tone of Mr Tau’s affidavit, I feel, further strengthens my assertion that both he and Tuhoronuku are pawns of the Crown. Mr Tau has to concede that the most appropriate method of settlement is one which each individual hapu have agreed to. Part of that method is to allow hapu to exercise their right to decide, firstly whether hapu want to settle as an individual or a collective and then, who that collective might be. ‘Strategic Alliances’. (Which are equally as historically important and significant as the whakatauki Mr Tau quotes through the early parts of point 3 of his affidavit). Yet he disagrees that this very Crown error, lies at the heart of the tension.
25. Throughout the early parts of point 3 Mr Tau also speaks of Ngapuhi’s inter-bickering and ‘traditionally’ unified approach towards defending the might of Ngapuhi against a common foe, yet he speaks disparagingly of those who have opposed Tuhoronuku and on top of that, he’ll gladly captain a waka that shows more fierce loyalty

towards that very opponent. No wonder there's confusion and tension.

26. As Ms Hickey states herself in her affidavit, *"the mandating process had already been divisive for Ngapuhi.."*.
27. Once again, I ask that the Tribunal grant our application for urgency.

Dated at Auckland this 26 day of June 2014

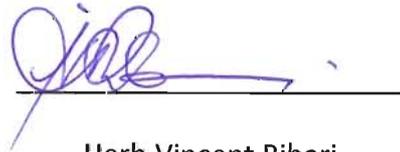
SWORN at Auckland)

by Herb Vincent Rihari)

this 26 day of)

June 2014)

before me:-)



Herb Vincent Rihari

A Solicitor of the High Court of New Zealand

Robert Akroyd
Solicitor
Auckland

⁷ #A26 para 161.1

