

**BEFORE THE WAITANGI TRIBUNAL****WAI 2490  
WAI 2429**

IN THE MATTER OF Te Ture Te Tiriti o Waitangi 1975

AND

IN THE MATTER OF The Ngapuhi Mandate Inquiry (Wai 2490) and the claims concerning the Crown's recognition of the Tuhoronuku Deed of Mandate Wai 2341, Wai 2429, Wai 2431, Wai 2433, Wai 2434, Wai 2435, Wai 2436, Wai 2437, Wai 2438, Wai 2440, Wai 2442, Wai 2442, Wai 2483

AND

IN THE MATTER OF An application by Waihoroi Shortland and Pita Tipene on behalf of Ngati Hine for an urgent inquiry into the Tuhoronuku Deed of Mandate (Wai 2429)

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**BRIEF OF EVIDENCE OF ROWENA TANA****Dated this 13<sup>th</sup> day of November 2014****RECEIVED**

Waitangi Tribunal

**13 Nov 2014**Ministry of Justice  
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LAWYERS

## Introduction

1. My name is Rowena Tana and I provide this evidence in support of Ngati Hine and all applicants who have appealed to this Tribunal because they are suffering prejudice from the Crown's recognition of the Tuhoronuku mandate process.
2. I have been involved with the claims process assisting Ngati Hine, Nga Hapu o Te Takutai Moana, Te Kotahitanga o Nga Hapu Ngapuhi ("TKONHN") and hapu and claimants with their Te Tiriti claims. I am also the Secretary for the Motatau marae, the secretary for Te Runanga o Ngati Hine and Te Maara a Hineamaru, and am (generally) the contact for communications between those groups and Te Runanga a Iwi o Ngapuhi ("TRAION")/Tuhoronuku and the Crown. I am the Claims Manager for the Te Pokapu Claimant Resource Centre contracted by Te Haumi, a client of CFRT. However, I would not say that I have a particular role with any group. From the kitchen to secretarial/administrative and coordination roles, I have made myself available to do anything and everything I can to help my people.
3. This is the first time I have offered evidence in this Inquiry and I wish to provide information on my involvement in the claims processes in an attempt to respond to the Tribunal's Statement of Issues. In particular, my evidence focuses on:
  - (a) *Statement of Issue 1.3 - Having made the decision to engage with Tuhoronuku to develop the mandate strategy for Ngapuhi, how did the Crown deal with hapu and other groups in relation to mandate?*
  - (b) *Statement of Issue 5 a) – In terms of the mandating process as a whole: To what extent can the mandate process be said to be open, fair and transparent enough to produce a robust and enduring mandate?*<sup>1</sup>

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<sup>1</sup> Wai 2490, #1.4.1.

4. In providing this evidence I believe it demonstrates that hapu and whanau have suffered prejudice and that we now need this Tribunal to assist us to remove that prejudice.<sup>2</sup>

#### **Te Tiriti o Waitangi claims processes**

5. It was in 2008–2009 that I started hearing that TRAION was planning to negotiate all claims in Ngapuhi including the Ngati Hine claims with the Government.
6. In November 2009, TRAION held its AGM at the Motatau marae. At that event I worked mainly in the kitchen, but from time to time I was able to be in Manu-koroki and was there when claims-related korero was talked. From what I understood of that korero, TRAION were intending to roadshow around the country to ask the people of Ngapuhi how they thought the claims should be progressed. My understanding is that the road shows were to be consultative in nature and that there would be wide discussion with the ability to contribute to the process.<sup>3</sup>
7. Since then, there has been misleading and contradicting information coming from TRAION and it was difficult to understand just what was going on. An example of that was at the 2010 TRAION AGM when one of the people who had seconded a resolution relating to the roadshow at the previous AGM, contested the way it had been contrived. What she had seconded was not the purpose it was being used for.
8. I attended a Tuhoronuku hui at the Ngawha marae, I do not remember the date. I got really cross when someone from Tuhoronuku said that they knew that my Grandfather, Ta Himi Henare, would have supported Tuhoronuku and he would want that for his people. That person had no right to use my grandfather in that way. I wanted to stand to refute that korero but the hui was closed. Ta Himi would not support Tuhoronuku, no way.
9. Earlier that year on 28 October 2009 I attended a hui in Kaikohe for the collectives which was called by John Alexander. There were around 50

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<sup>2</sup> Wai 2490, #1.4.1, SOI 8.

<sup>3</sup> Wai 2490, #1.4.1, SOI 1.1.

people in attendance and they were concerned that TRAION was planning to settle all the claims through the direct negotiations process. Rudy Taylor said that Titewhai Harawira had contacted him to bring Ngapuhi together and to inform the Crown that only hapu would speak for hapu. If this was not done soon, TRAION would be the body who the Crown would negotiate with for all of Ngapuhi. The hui called for Ngapuhi to work together – Kotahitanga. At that hui a working group was formed and TKONHN was born.

10. Initially, I became a member of the Wai 1040 Initial Hearings Organising Komiti (“IHOK”) – a small group of people who were to organise the logistics and coordinate the case for the Early/Initial Hearings on behalf of TKONHN. Later on I also became the communications person, the hui organiser and administrator for TKONHN. I worked closely with the IHOK team, marae, suppliers, CFRT, and the Government representatives from the Office of Treaty Settlements (“OTS”) in organising the Hearings. I also organised the travel and accommodation requirements for TKONHN representatives.
11. I, along with five to six others, became a representative for TKONHN who got to meet with the OTS, Minister Finlayson, Rt. Hon. Jim Bolger, Tukoroirangi Morgan, members of TRAION and others.
12. I was a member of Te Roopu Whaiti, the technical group which was formed after Ngapuhi met with Rt. Hon. Jim Bolger.

#### **Nature of hui**

13. I attended most of the early TRAION/Tuhoronuku road shows/information hui and “mandate” hui in New Zealand and Australia. With a small delegation of Ngati Hine we followed the hui to the South Island and Australia where we attempted to provide our whanau with another perspective on settlement. We felt we had to do this because TRAION/Tuhoronuku was providing one-sided information to drive its own objective of achieving a mandate, rather than actually consulting on options for settlement like it was supposed to. In most, if not all instances, we were outwardly rejected by Tuhoronuku and prevented from addressing hui to provide those gathered with more information regarding the options for progressing the claims. Often we had to be very strategic and direct to even

get the opportunity to speak at their hui. It got to the point at the hui where Tuhoronuku insisted that no statements were to be made, and that only questions could be asked at the end of each hui. Then they said they only wanted to hear from those people from the area that the hui was being held in. At one hui when someone was trying to raise an alternative opinion, Tuhoronuku said “go and hold your own hui”.<sup>4</sup>

14. I could not believe how arrogant some members of Tuhoronuku were and how they made fun of and ridiculed our people – the very people they purported to represent. The Crown was informed of our concerns with these hui.
15. There are many examples of this type of bad behaviour. For instance, talking over the people, making fun of them, calling them ‘disaffected’ which later became ‘disinfected’, not allowing them to talk at hui, making rules up as the hui progressed and abusing them. It was beyond belief. I would like the Tribunal to appreciate that this treatment of our people and conduct of hui is the kind of prejudice which has resulted from this process. The Crown may brush it off and say that some level of opposition or disagreement is expected in a mandate process, however, in my opinion the ongoing stress, and dissolution of relationships between our people has been completely unacceptable. I expect much more for our people.<sup>5</sup>
16. At a Tuhoronuku hui held at Mangere Bridge, one of the Tuhoronuku members stood up and walked over to another person who was speaking at the time and sharing his alternative view. The Tuhoronuku member eyeballed and shoved the other man and plenty of people saw that happen. At a Tuhoronuku hui in Tautoro, another person was yelled at, sworn at and abused for much of that person’s speaking time. I was sitting next to the taumata when that occurred and they were highly embarrassed by that behaviour. At the same hui I am told that there was some ‘argy – bargy’ in the dining room between one of the Tuhoronuku members and a hapu member. More recently at a Tuhoronuku hui in Pt Chevalier, the Tuhoronuku member chairing the meeting got so hoha he rang a bell loudly and

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<sup>4</sup> Wai 2490, #1.4.1, SOI 5(a).

<sup>5</sup> Wai 2490, #1.4.1, SOI 5(b).

continuously as a lady tried to ask her questions. This is but a few examples, and I maintain that the Crown had a major role to play in this conflict and division as it was imposing on our people a process that we were just not ready for or willing to participate in.<sup>6</sup>

17. When our representative group met with the Minister and his OTS team and Tuhoronuku representatives, I felt our korero was not being valued and nor were we being shown respect. In fact we were being ridiculed by some members of Tuhoronuku for what we were trying to promote. It was as if they were saying “how dare you have an alternative opinion!” At times the meetings would get quite heated (between members of Tuhoronuku and TKONHN). A good example of that was when we met at the Sky City Grand Hotel on 2 March 2012 where things got quite nasty and personal.<sup>7</sup>
18. We (TKONHN) represented many hapu and people from those hapu and marae. The TKONHN hui were and still are very well attended. Attendance consistently ranges from between 70-130 people. At the hui, the people would discuss how they wanted to progress with the settlement of their claims, resolutions would be offered and by way of a show of hands, the resolution would be passed or not passed. The Working Party and/or the representative group would do our best to represent the people and their wishes. In my view, when we attended hui with Tuhoronuku we were mainly well presented, well organised, we were respectful and we maintained discipline.<sup>8</sup> This was often quite difficult as the nature or conduct of the hui would easily infuriate one. I often felt myself outraged by statements being made by Tuhoronuku and by their processes.
19. Some members of Tuhoronuku would say they felt unsafe to meet with us, TKONHN - the hapu of Ngapuhi.<sup>9</sup> Yet I remember that much of the disruption, yelling, and misbehaviour came from Tuhoronuku supporters who often took exception to what was being said in opposition, or with an alternative view from that of Tuhoronuku’s. They were feeling unsafe but in

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<sup>6</sup> Wai 2490, #1.4.1, SOI 5(b), 8.

<sup>7</sup> Wai 2490, #1.4.1, SOI 5(b), 8.

<sup>8</sup> Wai 2490, #1.4.1, SOI 1.3(h)(i).

<sup>9</sup> See Wai 2490, #A25, Affidavit of Sonny Tau.

fact it was their own that were causing the bad behaviour, and it was most definitely their process that was driving our people apart.<sup>10</sup>

20. Independent observers were provided by the Crown to attend most of the public hui – Tuhoronuku organised hui or joint hui. It would be interesting to get their independent honest view of how they found the behaviour, beyond the very general statements they make in their report, but then how can they be independent when they are employed by the Crown?
21. As I mentioned, I was one of four TKONHN representatives on Te Roopu Whaiti. It did not take too many meetings before we were feeling very frustrated because some members of the Tuhoronuku team were not very helpful and seemed to just be going through the motions. We worked hard in that group, and I acknowledge Willow-Jean Prime and Moana Tuwhare especially for the many hours that they put in. We informed the Crown of the issues we were having.

#### ***Nature of Crown engagement***

22. I also attended several meetings with the Government representatives – Minister Finlayson, OTS, Rt. Hon. Jim Bolger, and Tukoroirangi Morgan. We (TKONHN) were always hopeful that we would achieve what our people wanted for the settlement of the claims. At the meeting with the Rt. Hon. Jim Bolger, right from the start it felt like he was there to try and get us to join Tuhoronuku. The Rt. Hon. Jim Bolger got annoyed with me when, at a second meeting, I respectfully asked him to communicate to TKONHN representatives through me, as that was our process. He was most offended and said he would communicate with whomever he liked. But those were our processes, decided by TKONHN, which were designed to ensure communication reached the appropriate channels.<sup>11</sup>
23. At the meetings, OTS seemed to take a lot of notes. They were courteous towards us, but near the end and at our last meeting with Minister Finlayson, it was clear to me who he liked to talk with and who he did not like to talk with. At that last meeting with the Minister in February, the day the

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<sup>10</sup> Wai 2490, #1.4.1, SOI 5(b), 8.

<sup>11</sup> Wai 2490, #1.4.1, SOI 1.3(i)

mandate was to be advertised, I felt that he had gotten hoha with me, with Willow and with Pita. He became very closed and abrupt with us, yet all we were trying to do was represent the people's interests by asking questions of clarification and letting him know how disappointed we were after he had told us that the Government was going to accept the Tuhoronuku mandate. We asked if there was going to be a media release, as we wanted to inform our people at home ourselves rather than them finding out through the media. Unfortunately for us, the Government's press release and Tuhoronuku's press release and advertising were already prepared. No sooner had we left the meeting room, their stories hit the press.<sup>12</sup>

24. The Government representative's attitude towards the hapu/claimants was varied. Initially when Minister Finlayson wanted to meet with TKONHN representatives, he only wanted to meet with the co-chairs. Yet that is not what the hapu/claimants from TKONHN wanted. After much discussion and debate at the monthly hui, TKONHN would decide who the TKONHN team should be to represent them at those meetings. It took a fair bit of negotiating with the Minister and OTS to have the number increased to four and then to six.<sup>13</sup>
25. In organising hui, travel and accommodation arrangements for TKONHN, I liaised with Margaret Joiner who was then employed by OTS. I remember getting frustrated one time with one of the decisions that Margaret relayed back to me from her Minister and seniors around how many TKONHN representatives could attend a meeting with the Minister. Our roopu ended up ignoring that directive because that was not what the people of TKONHN had decided. In organising the Government-funded Stage 2 Hearings, I again worked with Margaret, and together we were able to negotiate good outcomes that helped the Hearings run smoothly.
26. That said, I feel that there was definitely a bias on the part of the Government and they did afford Tuhoronuku preferential treatment. The two parties seemed to meet regularly, much more than we were able to meet with the Government representatives. The Minister would come north

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<sup>12</sup> Wai 2490, #1.4.1, SOI 1.3(i), 5 (a)(b), 8.

<sup>13</sup> Wai 2490, #1.4.1, SOI 1.3(i), 5 (a)(b), 8.

and meet with them and we were not privy to those meetings. At times, meetings would take place between Tuhoronuku and OTS when claimants were in hearings for the Wai 1040 Inquiry and we would find out indirectly. This obviously isolated us from the process and made it look very suspicious that the Crown and Tuhoronuku were colluding in the face of opposition from the hapu and claimants, and at a time when our efforts were supposed to be focused on uniting the groups. I was suspicious at the time, but now I strongly believe that we were being strung along through those facilitation processes. I found myself saying – it's another 'tick the box' exercise. But I tried to believe we would get there in the end and achieve the changes our people so required.<sup>14</sup>

27. Tuhoronuku were funded by TRAION to promote and run their business operation activities. I heard several times at TRAION hui that the Government would reimburse the money spent on Tuhoronuku, and I understand that that has occurred to a great extent. Under such circumstances, Tuhoronuku could afford extensive and expensive advertising and communications, they could afford expensive consultants and contractors, they could afford to travel the length and breadth of the country and over to Australia to hui with Ngapuhi people and to vigorously promote what they were wanting. Tuhoronuku could afford to hire staff to carry out the operational work and to pay their members meeting fees and costs associated with Tuhoronuku activities.<sup>15</sup>
28. In contrast, TKONHN and the other hapu organisations I was working for were not funded and relied on the good will of its members to carry out the work. We could only do minimal advertising in the media as we relied on koha from whanau. Photocopying was also done mainly by koha. TKONHN ran raffles to raise money to assist getting members to Tuhoronuku roadshow meetings. To travel to Wellington, the South Island and to Australia to attend Tuhoronuku meetings, I 'max'ed' out my family credit card to pay for airfares which took almost 14 months to pay off. Our small group who went stayed with relatives, and we even ended up sleeping on the

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<sup>14</sup> Wai 2490, #1.4.1, SOI 1.3(i), 5 (a)(b), 8.

<sup>15</sup> Wai 2490, #1.4.1, SOI 1.3(e), 8.

floor because we could not afford any hotel accommodation. For the majority of our people they could not participate fully in the process because it was so intensive financially and time wise, and they relied on the elected representatives of TKONHN and NHOTTM to represent their position. I acknowledge them for placing their trust and reliance in us. The Crown was very aware of our resourcing constraints. So really, when you compare the financial circumstances of the collectives, how reasonable is it to expect TKONHN or the hapu to do what Tuhoronuku did; to develop and consult on an alternative settlement model.<sup>16</sup>

29. The Crown has not offered to recompense us for our costs (other than Te Roopu Whaiti and travel and accommodation to meet with the Minister and Tuhoronuku).<sup>17</sup>
30. Heavy pressure came to bear upon TKONHN and claimants who were told time and time again that CFRT funding could not be used to meet to discuss the Tuhoronuku direct negotiations process. TKONHN even had to remove its name from any documentation in activities that were funded by CFRT, because TKONHN was seen to be in direct opposition to Tuhoronuku and what the Crown had set out to achieve. Yet direct negotiations were having a huge impact on the claimants and their preparation for Hearings; how could we not discuss the elephant in the room. This whole denial and threat caused huge angst and hardship for the claimants.<sup>18</sup>

***The Crown's failure to act in good faith***

31. In my opinion the Crown should have acted in good faith. They had set themselves a target of settling all Waitangi Tribunal claims by 2014, an election goal, and in Tuhoronuku they found a partner willing to do just that. I remember at a couple of meetings with the Minister and his officials, the Minister described our behaviour something like 'exemplary', unlike Tuhoronuku who he had met with just before our meeting and in the second instance, was about to meet with. Their behaviour was totally the opposite - rowdy, abusive, and demanding. Why would you wish to continue to deal

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<sup>16</sup> Wai 2490, #1.4.1, SOI 1.3(e), 8.

<sup>17</sup> Wai 2490, #1.4.1, SOI 1.3(e), 8.

<sup>18</sup> Wai 2490, #1.4.1, SOI 1.3(e), 8.

with people like that unless you had a specific goal that you were bent on achieving no matter what?<sup>19</sup>

32. The Crown was helping Tuhoronuku run the path to direct negotiations. They were well down that path before they were asked to help us with funding for the Tribunal Hearings. I think the Crown should have listened to what we were saying in the options TKONHN, Nga Hapu o te Takutai Moana, Ngati Hine, Te Roopu Whaiti and Tukoroirangi Morgan were putting to them for the settling of the Te Tiriti o Waitangi claims, which would have saved the Crown a lot of work and saved the New Zealand taxpayers buckets of money. The Crown in its actions has caused division, suspicion, bitterness, embarrassment, hatred and mistrust amongst the people and tribes of Ngapuhi.<sup>20</sup>
33. One only needs to look on Facebook and see the derogatory comments our people are making about each other. We go to hui throughout the country where other iwi are present and they are laughing at Ngapuhi. It is such a shame, we are much better than this.<sup>21</sup>
34. This process has seen the hapu way of making decisions and catering for its own people undermined and eroded whereby the individual has become more important than the hapu whanau. Tuhoronuku's activities are not our way; voting by and elections of individuals to decide the fate of our hapu is not right. Our hapu sovereign rights are being superseded by the greed and haste of our Te Tiriti partner. Under this regime, I cannot see peace for our people for a long time to come.<sup>22</sup>

#### **Concluding remarks**

35. I ask Tuhoronuku to remove those hapu, marae and claimants who do not want to be a part of the Tuhoronuku mandate. You know well what you are doing to our people, to the generations who have gone before us and what this will mean to those who come after us. History is repeating itself. To the members of Tuhoronuku; together let us unite the tribes of Ngapuhi and

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<sup>19</sup> Wai 2490, #1.4.1, SOI 3.1(a).

<sup>20</sup> Wai 2490, #1.4.1, SOI 5(a)(b), 8.

<sup>21</sup> Wai 2490, #1.4.1, SOI 5(a)(b), 8.

<sup>22</sup> Wai 2490, #1.4.1, SOI 1.3(g).

work towards a strong future for our people, one which is based on hapu principles.

36. I ask the Crown to honour Te Tiriti o Waitangi and its intentions. To respect their Te Tiriti partner and the hapu that makes up that partnership as being equals.
37. I ask that the Tribunal direct the Government, our Te Tiriti partner, to immediately halt their activities with the Tuhoronuku mandate so that the issues of settling the grievances as outlined in the claims can be sorted out with fair and enduring outcomes for all.

A handwritten signature in black ink, appearing to read 'Rowena Tana', with a stylized flourish at the end.

**Rowena Tana**