

BEFORE THE WAITANGI TRIBUNAL

WAI 2490
WAI 2429

IN THE MATTER OF The Treaty of Waitangi Act 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)

REPLY BRIEF OF EVIDENCE OF ROWENA TANA

Dated this 25th day of November 2014

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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.

Whakapapa

I te taha o toku mama:

Ka moe a Tau Henare i a Hera Subritzky, ka puta mai ko James
Clendon Tau Henare

Ka moe a Johnson Cherrington i a Alice Ashby, ka puta mai a Rosie
Cherrington

Ka moe a James Henare i a Rosie Cherrington, ka puta mai a Grace
Teaorewa Henare

I te taha o toku papa:

Ka moe a Walton Davis i a Margaret Johnson
Ka puta mai ko Rome Hemi Davis

Na, ka moe a Grace Henare i a Rome Davis
Na, ko ahau te kaikorero,

Ko Rowena Ngaio Tana toku ingoa

2. I provide this evidence in response to the briefs of evidence filed by the Crown and Tuhoronuku. I have read the evidence and take issue with it. Unfortunately time does not permit that I respond to each individual and statement, rather I have chosen to respond to key statements which relate directly to the evidence that I have already provided to this Tribunal.¹ The issues concern the nature of the Tuhoronuku mandate hui and issues concerning representation for hapu which speak directly of the Crown's failure to ensure that an open, transparent and fair mandate process was conducted by Tuhoronuku.

¹ Wai 2490, #A61, *Brief of Evidence of Rowena Tana*, 13 November 2014.

Brief of Evidence of Sonny Tau, 18 November 2014 (Wai 2490 #A98)

3. In response to my evidence dated 13 November 2014, Sonny Tau states:²

The mandating process was marred by inability to participate and poor behaviour on the part of Tuhoronuku members:

Rowena Tana alleges poor behaviour by Tuhoronuku members at mandating hui, yet it was Te Kotahitanga members who monopolised the time at hui. It was Tuhoronuku opponents who aimed to disrupt our mandating hui, which were professionally and fairly managed by Tuhoronuku staff. Despite their attempts, the hui proceeded and were successful.

4. I feel that I must reiterate what I have said regarding the nature of the hui. As far as I am aware, it was never a strategy of any of the groups I was involved in to go to a Tuhoronuku hui and deliberately disrupt it or monopolise the time. When the Tuhoronuku roadshow hui began, Te Kotahitanga o Nga Hapu Ngapuhi (“TKONHN”) formally requested speaking time at each of the Tuhoronuku hui, to be able to provide information about the pathways to settlement and about how hapu wanted to prepare their claims. We asked for this time because TKONHN felt that that information was not being presented in a balanced and fair way to the people. TKONHN’s request was denied by Tuhoronuku.
5. We could not simply accept this and step out of the process and leave Tuhoronuku to conduct their hui and provide our people with one-sided and misleading information. Our claims were included in their process and we soon realised that Tuhoronuku wanted to settle them. So we were required to attend the hui to provide our people with more information. Given that Tuhoronuku did not like that we were in attendance, or the information that we were relaying to the people, they controlled the hui so as to limit our participation. Within the bounds of the tight chairing of these hui, when we

² Wai 2490, #A98, *Brief of Evidence of Sonny Tau*, 18 November 2014, para 8.1(e)(i).

spoke and questioned Tuhoronuku and its process they challenged us for questioning them, and this is how the tension and disruption occurred.

6. At the early roadshow hui (Avondale and others), TKONHN members tried to share their korero but were not welcomed to do so. People who were identified as TKONHN members were asked and/or told to let those from the local area speak first, and that process was mainly followed. In most cases, TKONHN people would wait and ask their questions once it seemed the local people had no more questions.
7. The assumption by Tuhoronuku seemed to be that anyone who had an opposing view to that being delivered by Tuhoronuku was automatically in the TKONHN camp, and so the division of our people began very early on. I recall several examples of people who came to the hui, who tried to ask questions of clarification, and who had never attended a TKONHN hui.
8. I also disagree with Mr Tau's suggestion that the hui were "*fairly managed*".³ In particular, I think that it was unfair how people were being told what they could and could not talk about and how they were to do that. It was unfair and wrong that questions were not or could not be answered. Furthermore, there were instances where people were rubbished and even bullied because they had an alternative view to those who were managing the hui. Of course it provokes a reaction. Did Tuhoronuku expect the people to leave their brains and desires on how their claims should be settled at the door when they entered because Tuhoronuku had done all of the thinking for them? I would question how that is fair.
9. Mr Tau is overstating when he claims that "*hui proceeded, and were successful*".⁴ Some hui did proceed to completion but not all, as there were examples where hui were shut down early (the Avondale hui for example). There were also some that were scheduled but never held. I would definitely not say that the hui were successful by any measure. The hui throughout the entire mandate process have been poorly conducted, misleading and unfair and have laid the foundation for the conflict and division that exists today.

³ Wai 2490, #A98, *Brief of Evidence of Sonny Tau*, 18 November 2014, para 8.1(e)(i).

⁴ Wai 2490, #A98, *Brief of Evidence of Sonny Tau*, 18 November 2014, para 8.1(e)(i).

As the process continued and each new series of hui took place, matters worsened because the issues with the process were never addressed.

10. Furthermore, I also take issue with the 'election box' that was used at mandating hui, which was essentially just a photocopy paper box with tape around it. The election process was managed and overseen by Tuhoronuku/TRAIION staff and then the contents of the box were supposedly sent by courier to ElectionNZ after each hui. For obvious reasons, I would question the fairness of this process. It was not until the people of TKONHN pointed out the unfairness before something was actually done about it. TPK observers were eventually given that responsibility. These are serious issues which caused conflict and suspicion throughout the mandate process and the Crown needed to have done more to address them.

Brief of Evidence of Titewhai Harawira, 20 November 2014

11. Titewhai Harawira also speaks about the nature of hui and the involvement of Kotahitanga in an attempt to make out that it was Kotahitanga that was intimidating throughout the process. In her evidence, Ms Harawira says:⁵

People who attended in their areas had difficulty asking questions, or worse still, were prevented from having a conversation because Kotahitanga monopolised their time. ...Kotahitanga leadership have allowed intimidation to be the normal modus operandi. Ngāpuhi have heard often of the arguments held in Te Kotahitanga hui about who speaks without regard to whether there is a mandate from respective hapū to do so. ...If there is a prejudice it isn't one created by Tuhoronuku or the Crown.

12. I vehemently reject this suggestion. Overall I would congratulate TKONHN on their achievements and success. I am a member of TKONHN because Ngati Hine said go there and serve our people. It has been a forum where I have been able to meet and get to know people I may never have known, learn

⁵ *Brief of Evidence of Titewhai Harawira, 20 November 2014, paras 71-73.*

about others and their histories, and form new friendships. I have learnt a lot.

13. TKONHN hui are mainly held on our marae around Ngapuhi and are generally run in accordance with tikanga. There is an agenda and there are facilitators (the Co-chairs). I think the Tribunal only needs to look at the long series of correspondence and nature of the engagements between TKONHN and the Crown to note that TKONHN was in fact a well-established and well-functioning collective. Just because TKONHN held an alternative view to Tuhoronuku about how the settlement should proceed and conducted itself with different tikanga or modes of representation and operation to Tuhoronuku, did not mean that TKONHN was dysfunctional, that there were no other alternative models for settlement or that we were not established enough to discuss settlement matters.
14. The way TKONHN operates, which is why it has been so effective, is that whanau and hapu are able to come and speak freely, others at the hui may not share their view and they are told so. That behaviour, or tikanga, which is what I prefer to call it, was how I saw people conducting themselves at the Tuhoronuku hui – they wanted to go to these hui and express their views. They wanted to be heard, they wanted their questions answered, they wanted their concerns to be acted on. However, all that happened is that they were continually suppressed, told not to speak and ask questions and if they did ask questions, Tuhoronuku did not always give them answers and there was a huge sense of dissatisfaction. We have had to continue to attend hui to represent the views and concerns of our collective, we needed to raise the issues we had with the Tuhoronuku mandate process, ask the questions and do whatever we could to inform the people of the issues with the way in which Tuhoronuku was choosing to proceed and conduct itself. We would not have had to do this if the Crown and Tuhoronuku had listened to our hapu and not forced us to stay in the mandate against our wishes. In my view, the behaviour of TKONHN members that Ms Harawira describes as “*intimidation*”, was in fact people trying to express their alternative view and being suppressed. I see it more as a clash between groups that operate under different regimes to each other.

15. At paragraph 76, Ms Harawira goes on to say:⁶

It is commonly understood that Kotahitanga hui are poorly led, where individuals with no mandate from hapu stand to represent the hapu. Those who oppose Tuhoronuku do so for no good reason. It is commonly understood that Kotahitanga hui are poorly conducted where individuals with no mandate form hapu stand to represent that hapu.

16. I disagree. The people who attend TKONHN hui have helped develop the type of leadership that TKONHN has today. Those who attend TKONHN come for a number of reasons; to progress their claims, to be informed, to participate in the decision making that involves their future, to meet and talk with others, and for whanaungatanga. The membership of TKONHN is fluid and consists of a mix of hapu kaikorero and representatives, taiwhenua representatives, individuals and claimants. For the most part, when decisions are made they are made by those who are there to represent their hapu interests or the taiwhenua. Who is TKONHN to challenge someone who says they are “the kaikorero” for their hapu? If the hapu has an issue with that, they would come to the hui and raise it. One such example is when Te Rau Allen challenged Matua John Alexander regarding a Te Whiu matter.
17. Some examples that illustrate TKONHN’s excellent leadership and innate ability to unite and organise themselves are:
- (a) The successful execution and prosecution of the Initial Stage 1 Hearings, the Stage 1 Report having since been released;
 - (b) The fact that we are also over half way through the Stage 2 Hearings; and
 - (c) Our representation of hapu and claimants positions throughout the Tuhoronuku mandate process.

⁶ *Brief of Evidence of Titewhai Harawira*, 20 November 2014, para 76.

18. TKONHN has been at the fore of these very substantial and significant successes. If there was a fault with the leadership or the entity, I would say that these achievements would not have been accomplished yet, if ever.
19. In addition, Ms Harawira goes too far when she says that the members of TKONHN have no hapu mandate.⁷ This is divisive korero. The Ngati Hine representatives on TKONHN have the mandate to be there, as do the representatives from Te Kapotai, Ngati Manu, Ngati Kuta and Te Patukeha. No one has ever challenged the mandate of these representatives who have consistently turned out to TKONHN and participated in decision making since its establishment.
20. I also reject Ms Harawira's statement where she says "*Those who oppose Tuhoronuku do so for no good reason*".⁸ I think we have consistently and clearly communicated to the Crown and Tuhoronuku the very serious reasons why we oppose the Tuhoronuku mandate process. We have done so for a very long time, and have never had a satisfactory response to the issues that we have raised.
21. At times I have been riled by comments Ms Harawira has made during hui. I have also taken exception when she has interjected and belittled people;s korero as they are speaking, and so I have spoken out at her during hui. On occasions I have had to be quite vocal with others who are more senior than me, both male and female. However, I believe I am duty bound to represent the views of the people who sent me on this journey and I have left many, many Tuhoronuku hui feeling very low and disheartened. That being said, I draw great comfort and strength from the reassurance and support I constantly receive from my whanau and hapu.

Brief of Evidence of Marcia Hau, 17 November 2014

22. Marcia Hau, at paragraphs 5 - 8 says the following:⁹

⁷ *Brief of Evidence of Titewhai Harawira*, 20 November 2014, para 76.

⁸ *Brief of Evidence of Titewhai Harawira*, 20 November 2014, para 76.

⁹ *Affidavit of Marcia Mahara Hau*, 17 November 2014, paras 5-8.

5 - I attended every meeting held by Tūhoronuku in Sydney. Because the Tūhoronuku representatives took the time to come to Sydney and because it was Ngāpuhi korero, I was interested.

6 - In the early days I didn't understand all the issues. My attendance was just to hear what was happening back home. I never really understood the significance of all of this until as recently as the last couple of years.

7 - I also attended the two meetings held by Te Rūnanga o Ngāti Hine in Sydney. This too was back in the early days and back then I did not realize that there were two separate factions vying for the 'top job'.

8 - The korero back then with both Tūhoronuku and Ngāti Hine seemed different although not clear to me.

23. I disagree with these statements. It was never about “vying for the top job”, it was about maintaining our hapu autonomy. Our hapu, under our tikanga, had decided that Tuhoronuku was not the entity that we wanted to go forth and settle Ngati Hine’s claims with the Crown.
24. Ngati Hine has always wanted a comprehensive settlement for Ngapuhi but one where the hapu are empowered and make the decisions for themselves, not by someone or something that does not have a clue what the hapu grievances are about. ‘Comprehensive’ never meant a single mandate or Tuhoronuku. Hapu signed Te Tiriti o Waitangi and that is who the injustices have been done to.
25. I am not sure which Ngati Hine hui Marcia speaks of, but it may have been one held by Uncle Wassie Shortland. I was informed that Marcia did attend one hui this year on the 21st of June 2014. Myself and others received messages and comments from people that had attended that hui in Sydney. They say that they though the hui was fantastic and very informative for all concerned. When Marcia had spoken of why she had accepted the

nomination to represent Ngati Hine on Tuhoronuku, they said that a person living in Sydney who wanted to represent and speak for Ngati Hine, might only be heard by the fish and the seagulls. They felt that Marcia and her supporters were willing to take the voice off the people at home in order to secure some putea to provide for those came to Sydney for a better life.

26. From the messages, it seemed that the majority gathered there did not support Marcia representing Ngati Hine when the home people had said 'no', and who was she to represent Ngati Hine even in Sydney when those living there did not get a say in the matter. I have enclosed one message from my whanaunga Alice George who wrote to me after this meeting.¹⁰ I have other messages that I would like to include from our whanau in Sydney however I thought it best that I first seek their consent.

27. Overall comments were that Waihoroi Shortland had provided them with a comprehensive overview of what was happening back home. Waihoroi was said to have responded to Marcia, and he was also supportive of their ideas to start up their own Sydney-based Ngati Hine entity.

28. At paragraph 9, Ms Hau goes on to say:¹¹

There were a lot of personal attacks fired at the Tuhoronuku team from the Ngati Hine representatives that came to Sydney from home. I have attended a couple of Tuhoronuku meetings in Sydney where Ngati Hine have attended and have spent their time on the floor heckling the Tuhoronuku representatives.

29. Again, I disagree. Our small group representing our hapu and TKONHN that went to Australia in 2011, held a meeting in Sydney on Friday 16 September, the night before the Tuhoronuku hui. We shared the korero from home which we were asked to do, with our whanaunga living in Poihakena. I cannot remember if Marcia was at either of those hui, perhaps she was, but at the Saturday hui views were expressed to Tuhoronuku in a similar fashion by those who lived in Sydney and by those of us who had travelled over from

¹⁰ Exhibit A – Message from Alice George 22 June 2014.

¹¹ Affidavit of Marcia Mahara Hau, 17 November 2014, para 9.

home. Taura James is one example. Aunty Nora Rameka and her family were there too. We were there for a purpose and that was to ensure that the voices and messages of the hapu at home which we were asked to deliver on behalf of, were heard.

30. At paragraph 10, Ms Hau says:¹²

The separation between Tuhoronuku and Ngati Hine, for me, began back then. Back then, Ngati Hine were not professional in the way they presented themselves to us here in Sydney. I don't mean in their appearance, I mean in their presentation of why they were here.

31. We conducted ourselves no different to how we would conduct ourselves at home, on our marae, and with our people. Others who were at those hui who Marcia refers to, can verify that.

32. At paragraph 12, Ms Hau says:¹³

Soon after that event, Te Rūnanga o Ngāti Hine stopped coming to Sydney and there was no further contact from them. No contact and no communication with us meant no consideration from Te Rūnanga o Ngāti Hine about our views and input.

33. TRONH holds regular hui at home in Te Pewhairangi with the people of Ngati Hine. TRONH has limited resources and in that light, does what it can for the people of Ngati Hine. Although we have limited means, we practice continuous improvement of our processes as directed by the people. There is much we would like to do and would appreciate Marcia's and others help with that, whether it be physical or other.

34. When Uncle Wassie is able to travel to Sydney for other kaupapa, he tries to include a hui there with our people from Ngati Hine. Sometimes this cannot happen because the notice is too short and our relations in Poihakena have

¹² Affidavit of Marcia Mahara Hau, 17 November 2014, para 10.

¹³ Affidavit of Marcia Mahara Hau, 17 November 2014, para 12.

said, “no sorry, we can’t pull together the people in time”. We have been able to hold some hui in Auckland as well.

35. Finally, at paragraph 13, Ms Hau states:¹⁴

That wasn't the case with Tuhoronuku.

36. I reiterate here, Tuhoronuku were well funded by the Crown to enable them to travel and hold hui in New Zealand and Australia, the evidence is clear on that.

37. Ask Tuhoronuku or Marcia if they would fund themselves by their own means and volunteer their time to organise and travel to meet with the people as regularly as she claims Tuhoronuku did. What does Marcia think the answer to that would be?

38. A hui was called earlier this year by Ngati Te Ara and Ngati Kopaki to meet with Joe Davis to discuss his nomination as a representative for Ngati Kopaki on Tuhoronuku. At that time, Ngati Kopaki was against it. Mr Davis was asked if he would stand down but he said that while he had heard what his people were saying, he would not step down. Mr Davis said that he was standing because he wanted to help his people, to do something for his people. I asked him why it took something like this Tuhoronuku kaupapa to get him to want to help his people, and if you took all of that away, money included, whether he would still come back and work for his people. His response was "oh yeah, yes I would, yes".

39. I want to conclude by saying that I have read all the evidence filed in support of Tuhoronuku. I want to say that I have great respect for most of the people who were once with TKONHN but felt that they needed to join Tuhoronuku once the mandate was recognised. What disappoints me are comments made in evidence by a person or persons who now criticise the leadership of TKONHN, yet when they were participating in TKONHN they were the very ones who fully supported the leadership. It is a great shame that this process has done this to us.

40. Without the assistance of this Tribunal I cannot really see an end to these issues we have raised and the prejudice that we are suffering. I do have

¹⁴ *Affidavit of Marcia Mahara Hau*, 17 November 2014, para 13.

legitimate fears about how much further these issues can digress and what this will mean for our hapu and whanau.

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

Rowena Tana, 25 November 2014