OFFICIAL

Wai 2490, #A28
Wai 2341: #A28
Wai 2429: #A19
Wai 2431: #A19
Wai 2433: #A19
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Wai 2437: #A19
Wai 2438: #A19
Wai 2440: #A19
Wai 2442: #A19
Wai 2443: #A1

IN THE WAITANGI TRIBUNAL

WAI 1531
WAI 1957
WAI 1968
WAI 2005
WAI 2061

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim by Te Enga Harris on behalf of the Wiremu Hemi Harris and Meri Otene whanau and on behalf of Ngati Rangi, Ngati Here, Ngati Tupoto, Ngati Hohaitoko, Ngati Kopuru, Te Rarawa and Ngati Uenuku; and a claim by Wiremu Reihana for and on behalf of Ngati Tautahi ki Te Iringa hapu; and a claim by Reuben Porter on behalf of himself, his whanau, Kaitangata, Nga Tahawai and Whanau Pani; and a claim by Denise Egen on behalf of herself, her whanau and Te Mahurehure; and a claim by James Te Tuhi on behalf of himself, his whanau and Te Hikutu.

Brief of Evidence of Te Enga Harris

Dated 11 June 2014

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. My name is Te Enga Harris. This urgency claim is made on behalf of myself, my whanau and members of Ngāti Rangi Ngāti Here, Ngāti Tupoto, Ngāti Hohaitoko, Ngāti Kopuru, Te Rarawa and Ngāti Uenuku, the Wai 1531 claimants of the Te Paparahi o Te Raki District Inquiry.

2. We do not wish to be represented by Te Rōpū o Tūhoronuku ("Tūhoronuku"). We want our claims to be heard and reported on by the Tribunal and then we want the opportunity to negotiate and settle our Treaty claims for ourselves. We believe our inclusion within Tūhoronuku's Deed of Mandate, will prevent this from happening.

3. The Wai 1531 claim is currently before the Waitangi Tribunal as part of the Stage II Te Paparahi o Te Raki Inquiry. That claim details how we have been prejudicially affected by the policies, practices, actions and omissions of the Crown through the alienation of land in the Northland Inquiry District through the Native Land Court, land development schemes and through public works takings. In that respect the Crown has breached the principles of the Treaty of Waitangi. Our 1531 Treaty of Waitangi claim also relates to actions and legislative regimes of the Crown relating to Wards of the State and Mental Health, which have had a major personal effect on myself and my whanau.

4. The Ministry of Social Development wanted to settle my grievance relating to Wards of the State through compensation. The terms of the settlement required that a payment would be made without acknowledgement of their liability. I refused their compensation, it seemed like hush money. I made a decision to instead persue a claim through the Waitangi Tribunal.

5. I cannot emphasise enough the importance of these claims. The two relating to Wards of the State and Mental Health in particular are very unique and personal to my whanau. Tūhoronuku should not be able to negotiate settlement of these claims on our behalf. Tūhoronuku cannot possibly represent us in the settlement of these claims when they have no

understanding of what we have suffered or lost. Our claims are worthy of being addressed by the Crown separately and in their own right.

6. This brief of evidence is accompanied by an application for an urgent hearing in relation to the Crown's 2014 decision to recognise the Tūhoronuku Deed of Mandate.

The Tūhoronuku Mandate

7. In 2008 at the Annual General Meeting for Te Rūnanga Ā Iwi O Ngāpuhi ("TRAION"), the sub-committee Tūhoronuku was formed. The main purpose of the establishment of Tūhoronuku was to explore settlement options for Ngāpuhi Te Tiriti o Waitangi claims.

8. In 2009, Tūhoronuku entered into discussions with the Crown, focusing on seeking a Deed of Mandate from Ngāpuhi to enter into direct negotiations with the Crown, to be centred on achieving a single, comprehensive settlement for all Ngāpuhi Treaty of Waitangi claims. The settlement area as described in the Tūhoronuku Deed of Mandate includes the area covered by the Ngāti Tautahi ki Te Iringa claim.

9. In January 2011, the Crown endorsed the Tūhoronuku Deed of Mandate Strategy and called for public submissions.

10. In September 2011, a ballot vote confirmed 76.4% of Ngaphui who voted decided they were in favour of the Tūhoronuku Mandate. Amendments were made, and in July 2013, the Crown called for public submissions on the amended mandate. The amended mandate continued to include Ngāti Tautahi ki Te Iringa.

11. 63% of the submissions opposed the Tūhoronuku Mandate.

12. Despite this opposition, on 14 February 2014, the Crown officially recognised the Tūhoronuku Deed of Mandate, which continues to include Ngāti Tautahi ki Te Iringa.

13. By way of Memorandum of Counsel, on 15 May 2014, we sought to become an interested party in of an urgent hearing in relation to the Crown's recognition of the Tūhoronuku Mandate. We have decided we wish to become Claimants in our own right.

The Claimants and the Waitangi Tribunal

14. We are yet to present evidence before the Waitangi Tribunal, but we wish and plan to continue with the Stage II Te Paparahi o Te Raki Inquiry hearings, and to have a finding made on the Crown's breaches of Te Tiriti by the Waitangi Tribunal.

15. Much time and effort has gone into the preparation of our Treaty claims over many years.

16. I am worried that if Tūhoronuku settles, our claims will be swept away.

17. I understand that it may take years for the Waitangi Tribunal to report on our claims. But the way things are going, Tūhoronuku will have already settled before then. This means the Tribunal will not have the opportunity to make a finding on our claims. After all we have suffered, this is the ultimate insult. Further, it is a breach of Te Tiriti.

18. All our time and effort will be wasted and our claims will be all but wiped out, and their worth will not be recognised.

19. My whanau and I have suffered atrocities at the hands of the Crown. It is of great importance to me to have my grievances heard before the Tribunal and determine the redress with the Crown. We have a right to be party to any negotiations with the Crown relating to the settlement of our claim. Tūhoronuku does not have a right to decide on our behalf how our grievances should be addressed.

Pre-determination

20. From what I have seen, we never really stood a chance against Tūhoronuku. They have always been the Crown's "horse" and the Crown

has backed them since the very beginning both financially and in terms of support, guidance and advice. No other groups who want to oppose the mandate have been assisted in this way.

Crown funding

21. In 2009, when Te Runanga A Iwi o Ngāpuhi was said to have only just begun their discussions with the Crown regarding seeking a Deed of Mandate from Ngāpuhi, the Minister for Treaty of Waitangi Negotiations, the Honourable Christopher Finlayson, approved a payment of NZ$140,000 as a "contribution to the costs of them (Ngāpuhi) consulting their people in relation to how they want to be represented in Treaty settlement negotiations." A copy of the relevant information contained in an Aide Memoire prepared for Mr Finlayson's meeting with Sonny Tau, Chairperson of Te Runanga A Iwi o Ngāpuhi, is **attached** at pages 1 to 18 of the Exhibits.

22. In the speaking notes attached to that Aide Memoire, at page 4 of Appendix 1, Mr Finalyson is advised to express to Mr Tau that "the Crown has to be careful not to be seen to be 'picking winners' before your people have spoken". The notes go on to detail that "it is unusual for the Crown to provide funding to a group at this stage of the process" and that as a rule, groups would not be reimbursed for personnel costs during the pre-mandating stage. But, for Ngāpuhi, the Crown made an exception. The notes state that Mr Finlayson had "authorised my officials to make an immediate payment of $140,000 to the Runanga" in addition to the claimant funding it would receive if a mandate was secured.

23. This doesn't seem right. Mr Finlayson talks about not "picking winners" but his actions show that that is exactly what the Crown did. They picked Ngāpuhi, and by extension Tūhoronuku, as their 'winner' and gave them the funding they needed to get the job done, even though, by their own admission, it was outside their policy. I don't see anything fair or transparent in that.

24. Tūhoronuku were very aware that they were being picked as winners. In correspondence with OTS, released under an Official Information Act request (identities concealed) dated 21 January 2011, it was commented

that "Tūhoronuku also explained...that...while they were aware and open to discussions they had some concerns around acting as if they have the mandate to negotiate a settlement on behalf of Ngāpuhi before they do. Ngāpuhi knew people would start to talk. They knew that the rest of us would be able to see through the Crown's claims that they hadn't made any concrete decisions about a mandate yet. The Crown always told us the process was fair and robust and transparent but from what I've seen, I don't think it was.

25. On 9 June 2011, the Deputy Director of OTS wrote a letter to an undisclosed recipient regarding an upcoming meeting with the Right Honourable Jim Bolger. A copy of that letter is **attached** at pages 19 to 22 of the Exhibits. Mr Bolger facilitated discussions between Tūhoronuku and Te Kotāhitanga o Nga Hapu Ngāpuhi ("Kotāhitanga") regarding Ngāpuhi's approach to achieving a single settlement to resolve all Ngāpuhi Treaty claims. In the letter, OTS confirms they will cover the travel costs of the representatives travelling to attend the meeting. No one else in our claimant community was ever offered these kinds of resources to attend hui discussing the Mandate.

26. In another letter dated 19 July 2011, regarding a Ngāpuhi facilitation hui held on 21 July 2011, OTS confirms that at this stage they have already contributed around NZ$10,000 to NZ$12,000 of "public monies" to consultation costs however they would still consider payment of further costs as appropriate. A copy of that letter is **attached** at pages 23 to 24 of the Exhibits. The writer justifies this spending saying "as this is public monies, there has to be a high degree of transparency and accountability" but this seems like mere lip service to me. The Crown had clearly picked their winner and was willing to continue to fund their pre-mandate consultations.

27. On 6 September 2011, Sonny Tau wrote to the Rt.Hon Jim Bolger and included a 'Draft Working Party Terms of Reference'. A copy of that document is **attached** at page 26 to 28 of the Exhibits. At paragraph 17 under 'Resourcing', Mr Tau writes that "The Crown shall resource members of the working party to participate fully in this process." The Crown wouldn't have invested so much in Tūhoronuku or their affiliates, if

they hadn't intended for them to secure a Ngāpuhi mandate. This is evidence that Tūhoronuku knew they could count on the Crown's financial backing. The rest of the claimant community has never been offered this kind of support from the Crown. We have always been told we should get involved and have our say, but they never helped us make any real contribution to the Mandate discussions the way they helped Tūhoronuku.

28. On 25 November 2011, Mr Finlayson wrote to Tūhoronuku and Kotāhitanga to advise that he had "approved pre-mandate claimant funding of NZ$20,000" to assist the Te Whaiti working group in resolving outstanding issues following earlier meetings with the Minister. A copy of that letter is **attached** at page 29 of the Exhibits. Another letter dated the same day outlined that in addition to this funding, Te Puni Kokiri ("TPK"), who attended hui as an independent party, also committed to provide Te Whaiti with an additional NZ$20,000 for the purposes of facilitating further hui discussions. A copy of that letter is **attached** at page 30 to 36 of the Exhibits. That is a lot of money for anyone in our claimant community particularly when other opposing groups weren't given the same kind of support. The playing field was never going to be level when one side was continuously being propped up by Crown funding.

29. It would be naïve to think the Crown-funded mandating process was a one way street. It's no surprise to us that the Crown-funded consultations had a later impact on the Deed of Mandate itself. In a letter from Mr Finlayson to Tūhoronuku and Kotāhitanga, dated 31 January 2013, the Minister clearly outlined that it was "unacceptable for a Ngāpuhi deed of mandate to include a mechanism that enables withdrawal of individual hapu or groupings." A copy of the letter is **attached** at pages 37 to 42 of the Exhibits. As we have seen, this has been a point of great discontent for many of us affected by the Deed of Mandate. We never got a say about whether we wanted to be in, and then to add insult to injury, we have been robbed of the opportunity to get ourselves out. This letter shows that was clearly a Crown requirement before approval, and given all the funding they provided, it's not surprising Tūhoronuku felt bound to obey.

30. Tūhoronuku, despite the internal Ngāpuhi disagreements that may have slowed their progress, were always aware their chances of success in

getting a Deed of Mandate were high. In a letter dated 1 February 2013, from Sonny Tau to Ministers Finlayson and Sharples, Mr Tau, expressed Ngāpuhi's hope "that by the end of 2014 Ngāpuhi and the Crown will be writing a settlement Bill." A copy is **attached** at page 43 of the Exhibits. This letter is dated over a year before the Crown formally approved Tūhoronuku's Deed of Mandate. However, it is not surprising Tūhoronuku felt so positive about their chances. They had received significant financial backing and guidance from the Crown and its entities, since the very beginning and could see that their close working relationship with the Crown was always going to pay off.

31. It is apparent however that Tūhoronuku does not feel the same sense of kinship for us or others in the claimant community who stand in the way of an easy, quiet settlement. In a Ngāpuhi Information Hui observer report dated 29 June 2010 chaired by Sonny Tau, a copy of which is **attached** at pages 44 to 46 of the Exhibits, a question was asked regarding whether Tūhoronuku would support hapu to develop alternative mandating models. The response was that Tūhoronuku would not support hapu to work against them. When asked "is this just a box to tick on the way to mandate?" the answer was "In a way, yes, this is an information hui. The next round of hui will be to get a mandate." I think this makes it pretty clear that even early on in the discussions, Tūhoronuku knew that through the relationship they were building with the Crown, they were onto a sure thing. They might have held a lot of different information hui and discussions but they never really took us seriously. What sealed our fate was the fact that the Crown then set out to actively help Tūhoronuku to make sure our opinions didn't count.

32. At a later Mandate Information Hui held on 1 July 2010, a report of which is **attached** at pages 47 to 49 of the Exhibits, Sonny Tau told the hui "$400,000 has already been funded by the Crown – but if we don't get the mandate, the money will be lost." This just reinforces that the Crown was actively backing Tūhoronuku to be successful even though they kept telling us they hadn't made any concrete decisions about who the mandated body would be. They kept saying that this process should be led by the Claimants and that the decisions made would be up to us but I know they never would have invested so much in a group they weren't pushing to win.

33. Though damning, none of this information is surprising. The Crown has always been clear in their intentions. They've made no secret of the fact that they want to settle outstanding Treaty claims quickly and without too much fuss. This is not news to any of us. The settlement of historical Treaty claims has always been a hot topic, particularly around election time. However, settling our grievances as quickly as possible just so they can mark it as a win in their election campaigns, is in breach of what we were promised under Te Tiriti.

34. On 17 February 2014, Minster Finlayson said that those who want to withdraw from the Tūhoronuku Mandate will have to show that their efforts are as robust as those that led to the Tūhoronuku Mandate. I am at a loss as to how we are possibly supposed to make a "robust" effort to oppose Tūhoronuku when we have not been funded or supported to the same extent. The Crown has backed Tūhoronuku from the very beginning – it's too late for us to try and catch up.

35. The Crown always tried to appear impartial saying that any mandating process should be led by the claimants. But they undermined that by funding Tūhoronuku and leaving us to fend for ourselves. While Tūhoronuku hosted various hui with us under the guise of debating and addressing the future settlement of our claims, it seems like this was more of a 'tick the box' exercise so they could say we had been engaged and consulted. Meanwhile, the Crown went behind our backs and helped Tūhoronuku gain the upper hand. We never stood a chance.

Prejudice

36. We have been prejudiced and will continue to be prejudiced by the Crown's actions in the following ways:

a. By choosing to deal only with Tūhoronuku, the Crown are destroying our right to Tino Rangātiratanga guaranteed under Ti Tiriti;

b. We are being included in a group with which we have not been involved with and who we have not chosen to represent us;

c. Our right to a full and fair hearing by way of the Waitangi Tribunal Inquiry process is under threat;

d. We will lose our right to seek our own independent remedies from the Crown on the basis of findings from the Waitangi Tribunal; and

e. We are on the back foot because we, nor any other claimant groups, have received the same financial support from the Crown as Tūhoronuku to fund our campaign.

Relief Sought

37. We seek the following relief:

Findings

a. A finding that the Claimants' are cross-claimants with Ngāpuhi;

b. A finding that the Crown has failed to properly consult with the Claimants and the prejudicial effect that settlement by Tūhoronuku of the Claimants' historical Treaty claims will have on the Claimants' settlement aspirations;

c. A finding that the Crown has failed to fund the Claimants' so that they could properly partake in, consider and, if appropriate, oppose Tūhoronuku's mandating process;

d. A finding that the Claimants have a right to be heard by the Waitangi Tribunal pursuant to section 6(2) of the Treaty of Waitangi Act 1975;

e. A finding that the Claimants' right to be heard includes the right to the issuance of a report into their historical Treaty claims by the Waitangi Tribunal;

f. A finding that the Crown's intention to settle all historical Treaty claims as quickly as possible will mean that the Crown's settlement with Tūhoronuku will occur before the Waitangi Tribunal has issued a report on the Claimants' historical Treaty claims;

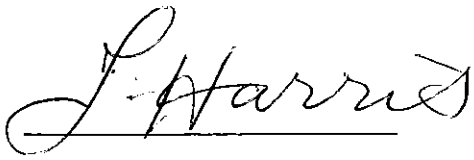
Recommendations

a. A recommendation that the Crown retract its approval of the Tūhoronuku Deed of Mandate;

b. A recommendation that the Crown does not enter into Treaty settlement negotiations with any entity until the Waitangi Tribunal has properly inquired into the Claimants' historical Treaty claims and reported thereon;

c. A recommendation that the Tribunal be allowed to hear and report on the Claimants' historical Treaty claims without further interference from the Crown; and

d. Any other relief including findings, recommendations or further redress that the Waitangi Tribunal considers appropriate in the circumstances.



Te Enga Harris