

BEFORE THE WAITANGI TRIBUNAL

IN THE MATTER OF

Te Ture Te Tiriti o Waitangi 1975

AND

IN THE MATTER OF

An application by Te Riwhi Whao Reti, Hau Tautari Hereora, Romana Tarau, and Edward Henry Cook for Te Kapotai and Ngati Pare, for an urgent inquiry into the Tuhoronuku Deed of Mandate (Wai 2431)

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)

AFFIDAVIT OF WILLOW-JEAN PRIME IN REPLY TO THE EVIDENCE OF THE CROWN

Dated this Day of June 2014

RECEIVED Waitangi Tribunal
13 Jun 2014
Ministry of Justice WELLINGTON

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LAWYERS

MENA E PAI ANA KI TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI:

I WILLOW-JEAN PRIME of Pakaraka swear as follows:

1. My hapu Te Kapotai and Ngati Hine have filed separate applications for an urgent inquiry into the Crown's recognition of the Tuhoronuku Deed of Mandate. On 23 April I filed an affidavit in support of the application by Te Kapotai.
2. I now wish to address Maureen Hickey's affidavit for both Te Kapotai and Ngati Hine, and then go on to provide the Tribunal with new evidence in respect of the Tuhoronuku Election process, in-so-far as it affects Te Kapotai.

Mandating

3. At paragraph 8 of her affidavit Ms Hickey says:

...Mandating is the process by which the claimant group chooses representatives and gives them the authority to enter into discussions and agreements with the Crown on their behalf...The Crown has a monitoring role to ensure the mandate process is fair, open and transparent.¹

4. In our application, we explained to the Tribunal that, over the past four years, the Tuhoronuku mandate process has been aided by the Crown and it has been neither fair nor transparent.
5. The mandate process that was carried out by the Crown and Tuhoronuku was not fair in that, from the very outset our hapu was included in a settlement model that we did not consent to or support. This was unfair because the settlement model proposed was for a single, comprehensive settlement of all Ngapuhi claims and this did not provide for the rights of our hapu to achieve a fair, robust and durable settlement of our Te Tiriti o Waitangi grievances against the Crown. What has now transpired is that the Crown has endorsed the Tuhoronuku Deed of Mandate and our hapu are now being forced into a negotiations process and into being

¹ Affidavit of Maureen Hickey, 3 June 2014, para 8.

represented by an entity that we do not support nor consent to. Tuhoronuku simply does not have a mandate or the authority to engage in discussions and reach agreements on behalf of our hapu.

6. The Crown cannot demonstrate a Ngati Hine or Te Kapotai mandate that would grant Tuhoronuku that authority. For this reason I challenge the Crown where it maintains that it has monitored the mandate process to ensure that it was transparent, open and fair. If the process was open, fair and transparent we would not be engaged in this Tribunal process today and Tuhoronuku would have our support to get on with negotiations.
7. The Crown for its part in the mandate process went too far. The Crown overstepped the line where you would consider it to be taking a monitoring role. The Official Information Act material filed with my first affidavit shows that the Crown and Tuhoronuku have been working together from the outset to advance a mandate process toward achieving a single comprehensive settlement of all Ngapuhi claims. The Crown is clear that this is its preference. However it is not ours. The collusion between the Crown and Tuhoronuku means that our hapu and others have had no choice in this process. I again reiterate that we have not chosen these representatives nor given them the authority to enter negotiations on our behalf.
8. I also question paragraph 23 of Ms Hickey's affidavit where she says:

In April 2009, the Runanga held thirteen hui throughout Ngapuhi's rohe, in the main centres elsewhere in New Zealand, and in Sydney to gauge the interest in entering direct negotiations to settle Ngapuhi claims.
9. I attended all of these hui and I challenge this. I would like to see minutes and resolutions from the hui which would lead the Crown to make such an assessment. The summaries and the reports from these hui were woefully inadequate. In my view, these hui were poorly attended and the information presented to those in attendance was inaccurate and misleading.

Crown preference for a single settlement

10. I take issue with the Crown's reasoning for its preference for a single settlement contained at paragraphs 30.1 – 30.6 of Ms Hickey's affidavit, where she states that a single comprehensive settlement will decrease overlapping claims, be more practical, be more cohesive and efficient.
11. If the last four years of the mandate process has shown anything, it is that a single comprehensive settlement is not more practical, more efficient nor more cohesive than an alternative settlement model. This is in fact the longest and most expensive mandate process followed by the Crown and my view is, that this is not because Ngapuhi is the largest claimant group it has ever dealt with, it is because the settlement model advanced by the Crown is not appropriate and it has therefore been met with significant resistance and challenge.
12. I participated in 18 months of mediation and facilitation with Te Kotahitanga o Nga Hapu Ngapuhi and Tuhoronuku to try and amend the proposed single settlement model of Tuhoronuku. Alternative models, for regional based settlements with the option to negotiate overlapping/generic redress, were developed and proposed by Tukoroirangi Morgan. However these were rejected by Tuhoronuku and the Crown still went on to endorse Tuhoronuku because, at the end of the day, what Tuhoronuku was proposing was also the Crown's preference. I think this is central to understanding how tightly the Crown and Tuhoronuku have controlled and manipulated the process.
13. It is frustrating that the Crown claims that it has been fair and even-handed, saying that it has supported both parties to resolve the issues through the facilitation and mediation processes. This process has been unfair as ultimately Tuhoronuku and the Crown had the power to determine what, if any, changes would be made. On a number of occasions, either Tuhoronuku or the Crown simply refused to complete the processes and adopt recommendations. We therefore feel that they were simply ticking a box to give the impression that they were being fair.

14. Te Kotahitanga o Nga Hapu Ngapuhi put a significant amount of work into both Te Roopu Whaiti and He Ara Hou, which included a number of options and recommendations, however Tuhoronuku and the Crown were selective in which ones it chose to adopt and Te Kotahitanga was entirely left out of that decision making.
15. I want to return to paragraph 30.2 where the Crown says that, “at a practical level multiple settlements would be difficult to negotiate in parallel because some hapu/sub-regions have less developed organisational structures than others and it is likely that they would be at differing times”. From my interaction with hapu and sub-regional groupings over the past four years, I can confidently say that many groups have sufficient organisational structures and a high level of cohesiveness. Many groups, such the Nga Hapu o Te Takutai Moana sub-regional collective in the Bay of Islands, are already well placed to commence the settlement process. Others, if resourced or supported by the Crown, as Tuhoronuku have been, would be able to organise themselves for a settlement process. Substantial groups like Ngati Hine, Te Kapotai and others have very well developed organisational structures and decision making processes. As the Tribunal have already heard, Te Runanga o Ngati Hine has operated under tikanga since 1887. Until the advent of Tuhoronuku there had never been a serious challenge to the authority and decision making processes of Te Kapotai. There are many strong, autonomous and well-functioning hapu that are prepared for settlement processes. The Crown is making a wrongful assumption when it says that it would be easier and more efficient to negotiate a single Ngapuhi settlement.
16. In my view, the Crowns large natural grouping and mandate policies cannot be applied in our unique context without major modifications to recognise the size and complexity of the hapu groupings. What is required is a settlement model where the mana and rangatiratanga of the hapu are recognised. That in turn, should flow through to the voting process, so that there is not one overall vote (which will be heavily skewed by those outside the rohe) but instead, votes counted for each

hapu or marae and region. In effect, as matters stand, our significant hapu opposition is masked by the overall vote.

Parallel process

17. In respect of the Crown's suggestion for a parallel process, I pose the question: Why would our hapu want to devote significant time and resources into an inquiry process, when the Crown and Tuhoronuku is engaging in negotiations that we do not support to agree on a settlement of our historic grievances against the Crown?
18. Further to that, we want a guarantee that our Waitangi Tribunal inquiry will be completed, that there will be adequate funding for the inquiry and that the jurisdiction will not be removed. In any case we do not want another group, Tuhoronuku, negotiating our claims.

Submissions on the Deed of Mandate 2013

19. At paragraph 145 of Ms Hickey's affidavit she states that the submission process was not a second vote on the mandate sought by Tuhoronuku. The Crown must surely have been concerned that, with no resourcing or assistance and in a very short period of time, 2,221 people took a direct and affirmative step to voice their opposition to the Tuhoronuku Deed of Mandate. 2,221 is not a loud minority and our hapu is not a loud minority.
20. Whether or not the submissions were pro-forma should not be relevant. This is particularly so given that the very first mandate vote is a pro-forma vote in itself.
21. We have and can continue to demonstrate substantial opposition to the Tuhoronuku Deed of Mandate from our hapu. However Tuhoronuku cannot demonstrate substantial support.

Amendments and conditions on the mandate

22. I have addressed in my first affidavit that the amendments made by Tuhoronuku to the Deed of Mandate were not substantive nor meaningful.

23. The conditions attached to the mandate by the Crown are also not substantive and meaningful. The practical effect of these conditions for our hapu, is that Tuhoronuku has been able to carry out an election process which has further entrenched divisions and then elect a new committee. The current committee, which is still in place, has been able to continue to advance negotiation matters with the Crown and the Crown has appointed a Crown negotiator. These are substantial matters which only serve to entrench a committee and process that we do not support. All the while the Crown can claim to this Tribunal that nothing is a surety yet, as it still needs to assess whether Tuhoronuku has met its conditions and buy itself more time to progress matters with Tuhoronuku. Our hapu are left to navigate our way through a convoluted and frustrating election process, and now this litigation, in order to protect our rights and interests.

Election process

24. Kara George and Joe George were nominated to be elected as Hapu Kaikorero to represent Te Kapotai on the Tuhoronuku Independent Mandated Authority. We do not know who nominated Kara George and Joe George but what we do know is that it only takes one individual to nominate a person. This process and these nominees were expressly opposed at our Marae meeting, Maori Committee meeting and hapu Treaty claims hui.
25. Given that two nominations were received, Electionz NZ and Tuhoronuku commenced the voting process and, at the end of that process, whoever of the two receives the most votes will be elected to represent Te Kapotai on Tuhoronuku.
26. There are a number of major issues with the situation that our hapu is now in. Under the Tuhoronuku election process, there is no minimum number of votes required, yet, in order for us to remove them from the Tuhoronuku Independent Mandated Authority, we are required to go back to our people once again and get 90 members registered with Tuhoronuku to sign forms to remove them. We are then required to hold

a hui with a minimum quorum of 60 registered members and the meeting must resolve by 75% to remove them. If we are successful the process can simply repeat itself and we are back at step one.

27. With Kara George and Joe George having been nominated, on 7 May 2014 the Independent Returning Officer from Electionz made a request to hold a hui at our marae regarding the election of the Hapu Kaikorero. At our monthly marae meeting we considered the request and passed a unanimous resolution to decline the marae booking because the trustees were concerned that this process was causing raruraru for the hapu and that we had already resolved that we were opposed to Tuhoronuku and this election process.
28. On 8 May 2014, we wrote to Electionz and advised that the request was declined on the basis that Te Kapotai and Ngati Pare have, for a number of years, opposed Tuhoronuku and still oppose this election process. We also advised that our mandated representatives for Treaty claims matters were myself and Karen Herbert. **Annexed hereto and marked with the letter "A"** is a Letter from Te Kapotai to Electionz dated 8 May 2014.
29. **Annexed hereto and marked with the letter "B"** is the email response from the Chief Returning Officer, Warwick Lampp. In his response he said "In this case the Waikare Marae booking was confirmed by the nominees for Te Kapotai, Kara George and Joe George on Friday 9 May. As a result I have subsequently publically notified the hui as attached. I therefore advise that if there are any issues about the marae booking they should be addressed with the two nominees direct". What occurred here was yet another undermining of our hapu decision making process which is that marae bookings go through the marae committee. This is not a minor issue.
30. **Annexed hereto and marked with the letter "C"** is the article that was published in the Northern Advocate on 14 May 2014 regarding the election. The title was "Waikare Marae will not take part in hui on representation".

31. In spite of our hapu objecting to Tuhoronuku and rejecting the request from Electionz to hold a hui on our marae, on Tuesday 3 June 2014, Tuhoronuku came to our marae to hold a hui to elect Hapu Kaikorero to represent Te Kapotai to the Tuhoronuku Independent Mandated Authority. The hui was well attended because our people came out once again to oppose the process and to confront Kara George and Joe George. Kipa Munro attended on behalf of Tuhoronuku, a representative from Electionz was present, as well as two staff from TPK.
32. Our hapu were unhappy about this hui being held and this resonated during the hui. Kipa Munro explained that he did not come to the marae with his Tuhoronuku hat on, which to me is misleading, and then went on to explain that the purpose of the hui was to hear from Kara and Joe. I stood and briefly recapped the past four years of the Tuhoronuku mandate process and explained how it is that our hapu finds ourselves in this position today. Kara George and Joe George spoke. A number of people spoke out in frustration and presented Kara George and Joe George with questions. I could sense anger and frustration. I asked Kara George and Joe George if, given the position of the hapu, they would withdraw their nominations. Kara said he would not and Joe said that he would have to talk to his whanau.
33. The tension or mood of the hui was such that Kipa Munro began to close the hui before any type of a voting process took place. I stood and put a resolution to the floor (below). While I was putting the resolution up Kipa was standing and trying to speak over me. I believe he was doing this to try to stop me from passing the resolution. He said that he wanted to close the hui and finish their business and that we could carry on with our own business and discussions once their meeting was closed.
34. The motion was passed by those in attendance as follows:
 - Motion:
 - a) That we oppose the two nominees for Hapu Kaikorero for Te Kapotai;
 - b) That we oppose the Tuhoronuku election process.

Moved: Marc Veldhuisen.

Seconded: Ritchie Reti.

Carried.

35. The only people who opposed the resolutions were Kara George and Joe George.
36. I spoke to the TPK staff and said that we would provide them with a copy of the resolution for their records.
37. I want the Crown to understand that these types of hui are causing raruraru and engendering division amongst our hapu, whanau and community. Our hapu relies on the goodwill and spirit of our whanau to operate and function the way it does. To renovate our marae, to operate our special status school and kohanga requires kotahitanga and our community cannot function when our whanau are divided. This settlement process is dividing us and this is real and irreversible prejudice. For the Crown to just brush this off and say that this is not prejudice is wrong and just shows a complete lack of understanding and respect for our hapu, the tikanga, spirit and conduct which we have maintained in our hapu for generations.

Withdrawal process

38. Despite numerous requests, the Crown has failed to provide us with a detailed withdrawal process, thereby continuing to force us into this flawed process.

Concluding remarks

39. It is clear that we are suffering real, significant and irreversible prejudice and we require the immediate intervention of the Waitangi Tribunal.

40. There is no alternative process. We have tried three times in mediation and facilitation to resolve our issues. These were an absolute failure.

Sworn by Willow-Jean Prime)
at this day)
of 2014 before me)

Solicitor of the High Court of New Zealand