



WAITANGI TRIBUNAL

Wai 1040

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Te Paparahi o Te Raki
Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER

1. Introduction.

On 24 December 2009 claimant counsel, Ms Moana Tuwhare filed a joint memorandum of counsel with the Tribunal seeking leave for a chambers conference to be convened in Wellington (Wai 1040, #3.1.160). I convened a chambers conference on 25 February 2010 (Wai 1040, #2.5.31).

The purpose of the chambers conference was to hear arguments about hearing time requirements for the initial hearings. The conference also provided an opportunity to address a number of matters that have arisen recently in our inquiry and which I will address in these directions. These matters are:

- a) Scheduled hearing time
- b) Commencement date
- c) Hearing timetable
- d) Tribunal Report
- e) Tribunal witnesses
- f) Crown evidence
- g) Other matters
- h) Filing deadlines
- i) Tribunal panel

2. Opening Remarks

At the beginning of the conference the Tribunal clarified two other important matters.

First, claimants had expressed a concern that the Tribunal would start the hearings without a full panel. The Tribunal's position has always been that when the initial hearings start the Tribunal will have a full complement of members. Legally the Tribunal would be constrained if it was to start without a full panel as we are not able to add members once a hearing has commenced

Secondly, concern was expressed that the Tribunal had not set a date for commencing the first hearing. Confirmation of this date has always been dependent on claimant readiness (Wai1040, #2.5.26 and #2.5.29). The Tribunal still requires confirmation from claimants regarding witnesses.

Finally, we continue to be impressed by the co-ordination efforts exhibited by counsel in our inquiry. This has led to significant progress over the past two years, to the benefit of claimant communities.

3. Scheduled Hearing Time

The Tribunal has stated on a number of occasions that the initial hearings should require no more than three weeks. However, I indicated in my memorandum-directions of 21 January 2010 (Wai1040, #2.5.31) that we would consider quality arguments on this matter.

We have been persuaded by counsel to extend the initial hearing time but not to the extent that they had proposed. We now consider that the initial hearings can be extended to four weeks (20 days). The extra hearing time will allow claimants more time to present their kōrero and time for claimants and the Crown to present closings.

We remind everyone that the initial hearings are only the start of the process. As stated at the chambers conference, this Tribunal is planning stage two hearings. We recognise that claimants may initiate Treaty settlement negotiations at any time. This, however, cannot deter the Tribunal from planning ahead. With that in mind, we propose planning a full inquiry (the initial hearings plus stage two) without delay.

Why have we decided on four weeks and not three or six?

The Tribunal had originally allocated 15 days for the initial hearings. Our draft schedule proposed dedicating the first two weeks of hearings to the presentation of claimant evidence (including CFRT commissioned reports), two days for Tribunal witnesses, and three days for the Crown.

The hearing time that has been proposed by counsel seeks to stretch this to 28.5 days on Te Tiriti and He Whakaputanga. It appears the additional 13 days are in the main so the claimants can present hapū-specific kōrero, and to allow time for closings and extra time for crown witnesses. The proposal outlines 18.75 days for claimant evidence and then 9.75 days for Tribunal witnesses, Crown evidence and closings.

We have not extended the initial hearing time to six weeks as the Tribunal believes that hapū-specific evidence should mainly be presented after the initial hearings. Evidence at the initial hearings must be focused on the Tribunal's statement of issues.

Further, the substance of the hearings (i.e. the issues to be discussed) largely determine the length of time required. In this case we have a focused set of issues to guide the kōrero to be presented. There must be discipline and leadership shown in the selection process of witnesses. The simple fact is there is limited time. Claimants must seek to present their kōrero as it relates to the statement of issues within the allocated time.

In coming to our decision, we have looked at the initial hearings as part of the full inquiry. We anticipate that a full Te Paparahi o Te Raki Inquiry will need at least the amount of hearing time taken by other major Tribunal inquiries. Four weeks is very generous for the initial hearings in the context of the overall hearing time. Subsequent hearings that bring forth the full range of post-1840 historical experience are likely to be much lengthier than the sharply-focused initial hearings.

Consequently, claimants should not feel that they will not get an opportunity to have their say.

We also considered Tribunal members' availability and Tribunal and claimant resources. Each week of hearing costs, the Tribunal has limited resources and we know that claimants also have limited funding and resources.

Having extended the hearing time to four weeks (20 days) we propose dividing this as follows:

- 10 days Claimant evidence - including pōwhiri, openings and claimant evidence.
- 2.5 days Claimant technical witnesses (e.g. CFRT commissioned).
- 2.5 days Tribunal witnesses.
- 3 days Crown evidence.
- 2 days Claimant and Crown closings.

All parties need to ensure they work within these time constraints.

4. Commencement Date

Our own observations are that there does appear to be a coordinated effort being made to prepare for hearings. There is a level of cohesion not seen before. We are of the view that a confirmed date for commencing the initial hearings will help focus claimants and counsel.

Given counsel indications of readiness, we confirm that the initial hearings will begin on Monday 10 May 2010 and proceed as follows:

Week 1 May 10 - 14
Week 2 June 14 - 18

Review of hearing timetable

Week 3 August 9 - 13
Week 4 October 11 - 15

The Tribunal proposes a four week gap between hearing weeks one and two. This is based on counsel submissions that claimant evidence can be filed in advance of each of these weeks and the indications of readiness of the claimant evidence.

Following week two of the initial hearings, we are prepared to review the timetable. It may be that consideration may need to be given to allowing further time (possibly after week four) to hear further claimant evidence. We make no commitments to allowing further hearing time. We only commit to undertaking a review.

5. Hearing Timetable

Having confirmed a commencement date, counsel must now provide the Tribunal with a complete session-by-session schedule for the first week of hearings. This schedule should include the names of witnesses, and the focus of their evidence. This detailed timetable for the first week of the initial hearings must be filed by **26 April 2010** (10 working days prior to the commencement of the hearings).

We will also require a complete session-by-session schedule for the second week of hearings. This schedule should include the names of witnesses, and the focus of their evidence. This detailed timetable for the second week of the initial hearings must be filed by **1 June 2010** (10 working days prior to the commencement of the hearings).

6. Tribunal Report

The Tribunal can now confirm that it will issue a report once the initial hearings are concluded. The writing of a report requires significant Tribunal resources. This needs to be factored in with all other Tribunal activity. The Tribunal cannot say how long it will take to produce this report, because we are unsure of the resources that will be devoted to its completion.

7. Tribunal witnesses

The Tribunal can confirm that most of the evidence of Professors Belich, Salmond and Taonui will be filed in early April 2010.

8. Crown Evidence

Claimant counsel have requested that they be given sufficient time (many have said one month) to consider the evidence of Dr Paul McHugh. We note that the confirmed date for hearing will allow sufficient time for claimants to consider Dr McHugh's evidence.

9. Other Matters

Taking briefs as read

Claimants are not limited in the number of briefs they can file. The limitations are on the presentation of briefs. The Tribunal reserves the right to advise counsel of briefs that it believes can be taken as read.

Claimant Technical Witnesses

We stated in our 29 May 2009 memorandum-directions (Wai 1040, #2.5.23) that Dr Grant Phillipson was not available to present evidence at the initial hearings. The situation has not changed.

We further noted the research report of Dr Merata Kawharu as relevant to the initial hearings. The Tribunal understands that claimants do not intend to call Dr Kawharu as a witness. If that is the case, the Tribunal may wish to call her as one of its witnesses.

We also note Ms Tuwhare's comment that Mr Ralph Johnson will give evidence from his report only as it relates to He Whakaputanga and Te Tiriti, not as it relates to the Northland War.

10. Filing Deadlines

The Tribunal requires that all technical evidence be filed one month in advance of the hearing at which it is to be presented. It also requires that briefs of evidence be filed 10 clear working days (or two weeks) in advance of the hearing at which that

evidence is to be presented. The Tribunal's more detailed guidelines on filing deadlines are **attached** as **Appendix 1** to these directions.

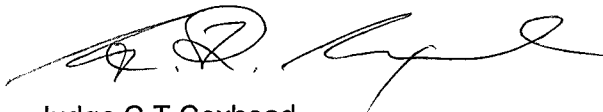
11. Tribunal Panel

With confirmation of a start date for the initial hearings the Chairperson of the Waitangi Tribunal has moved to appoint two other members to the panel for this inquiry.

The full panel is: Judge Craig Coxhead (Presiding officer), Kihi Ngatai, Dr Ranginui Walker, Joanne Morris, Keita Walker and Dr Richard Hill.

The Registrar is to send this direction to all those on the notification list for Wai 1040, Te Paparahi o Te Raki Inquiry.

DATED at Wellington this 12th day of March 2010



Judge C T Coxhead
Presiding Officer

WAITANGI TRIBUNAL

CHECKLIST OF FILING DATES FOR THE WAI 1040 TE PAPAHAHI O TE RAKI INITIAL HEARINGS

The following deadlines will apply in relation to each scheduled hearing week in the Te Paparahi o Te Raki inquiry:

1 MONTH BEFORE THE HEARING COMMENCES:

- Technical witnesses will file a brief of evidence for presentation. (Briefs must include a summary of the report focused on all relevant SOI questions.).
- Filing of Crown research reports.
- Counsel must apply to the Tribunal for leave to cross-examine witnesses (In the request, counsel should signal which witness, on which topics and the estimated duration of cross-examination).

15 WORKING DAYS BEFORE HEARING:

- Filing of written questions of clarification by counsel (These will be sent to witnesses by the Tribunal.).

10 WORKING DAYS BEFORE HEARING:

- The local counsel in conjunction with the co-ordinating counsel file a proposed hearing timetable including appropriate timing for the cross-examination; and details of any proposed site visits (on procedures regarding site visits, see the Tribunal's October 2000 'Guide to Practice and Procedure', para 5.13).

10 WORKING DAYS BEFORE HEARING:

- File all remaining tangata whenua written briefs of evidence.
- Technical witnesses submit written answers to questions of clarification.