



**Wai 863 #SOC 12**

**IN THE WAITANGI TRIBUNAL**

**IN THE MATTER OF**      **WAI 770 #1-1(c)**

**AND**

**IN THE MATTER OF**      **The Karaitiana Te  
Korou Whanau**

**AND**

**IN THE MATTER OF**      **Edward Karaitiana  
and Others**

**AMENDED STATEMENT OF CLAIM**

**Dated this 14<sup>th</sup> day of April 2003**

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## **1 Preamble**

- A) This Amended Statement of Claim amends the Wai 770 Statement of Claim. The Claimants are members of The Karaitiana Te Korou Whanau.
- B) This claim covers such issues as Crown purchases, the operation of the Native Land Court, the law of succession, education, the Wairarapa lakes (although not pleaded to herewith) and thereby the historic dispossession of the claimants' forebears and indeed other Wairarapa Maori of their tribal estate.<sup>1</sup>
- C) In particular this claim focuses on the landlessness of the claimants their whanau (and also their hapu) despite the fact of their having descended from Wairarapa chiefs amongst whom was Karaitiana Te Korou.
- D) In headline terms the subject matter of the claim includes:
- (i) Crown purchases in the 1850s
  - (ii) The Native Land Court
  - (iii) The law of succession
  - (iv) Education
- E) The Claimants say, in summary, that their lands were effectively taken or wrested from them by a system of land control which did not protect their interests. The virtual landlessness of the claimants results from Crown acts and omissions after 1840.

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<sup>1</sup> In order to advance their claim the claimants rely on *Te Karaitiana Te Korou Report*, Wai 770 by Craig Innes and Bob Metcalf, Report commissioned by the Waitangi Tribunal for the Wairarapa ki Tararua (Wai 863) District inquiry, January 2003, hereafter referred to as 'Innes & Metcalf' with the respective page reference.

## **2 The Claimants**

- A) The Claimants in this claim are the Karaitiana Te Korou whanau whose ancestor Te Retimana Te Korou was a descendant of Rangitane and who had connections to Ngati Kahungunu.<sup>2</sup>

## **3 The Claim Area**

- A) The claim area extends from present day Masterton to Eketahuna, and from the Tararua range eastwards to the coast. It particularly includes the area where the claimants' forebears resided, namely Kaikokirikiri or Ngaumutawa this location being situated near present day Masterton.<sup>3</sup>

## **4 The Claim: The Cause of Action**

- A) The Claimants say:
- (i) That their claim falls within one or more of the matters referred to in Section 6 (1) of the Treaty of Waitangi Act 1975 namely:
- (a) that they are Maori, and
  - (b) they have been and continue to be or are likely to be prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions

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<sup>2</sup>See Innes & Metcalf, p. 3.

<sup>3</sup> Innes & Metcalf, p. 1 in reliance on Carter, Mita and Ballara, Angela, 'Te Korou, Te Retimana ?-1882', *Dictionary of New Zealand Biography, Department of Internal Affairs*, Wellington, 1990.p.466

adopted by, or on behalf of the Crown, their agents or their successors; and

(ii) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown;

(a) failing to guarantee the tino rangatiratanga over and rights of ownership to their lands and lakes these being taonga of theirs; and

(b) breaching its duty to actively protect the tino rangatiratanga over and rights of ownership to their said taonga; and

(c) failing to discharge its fiduciary obligation to them in respect of their said taonga; and

(d) breaching its duty to act reasonably and in good faith towards them in respect of their taonga.

## **5 Crown Purchases in the 1850s**

G) The Native Land Purchase Ordinance 1846 was accompanied by Crown policy which forced the claimants' forebears to alienate their land by selling it to the Crown.

### *Particulars: The Facts*

H) Whereas the following is alleged, namely that:<sup>4</sup>

(i) In 1848 Retimana Te Korou and Ngatuere leased land at Manaia (near Masterton) to one William Donald; and

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<sup>4</sup> Innes & Metcalf, p. 11 *et seq.*

(ii) The Crown (in particular Sir George Grey then Governor-in-Chief) conspired with Donald and Rhodes in that these parties (the Crown, Donald and Rhodes) without lawful cause agreed to the withholding of rents duly payable by the said lease agreement to the Maori landlords the purpose of which was to force the Maori owners to sell their land; and

(iii) Donald and Rhodes in conspiring with the Crown (by withholding rent) actively funded the Crown's purchase negotiations; and

(iv) In 1858 the Crown purchased the Manaia block,

I) It is therefore further alleged that the failure to pay rents on the land directly resulted in the Maori decision to sell the Manaia block rather than to continue leasing it.

J) The withholding of rent resulted in material loss for the claimants' forebears, namely,

(i) An immediate loss of income (rent)

(ii) Loss of occupancy (use of the land)

*Particulars: The Treaty Breaches*

K) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been prejudicially affected by the following namely:

*Section 6 (1)(a) Crown Ordinance & 6 (1)(c) Policy or Practice*

- (i) An Ordinance, to wit, the Land Purchase Ordinance 1846<sup>5</sup>; and thereto
  
- (ii) A Crown policy or practice or both, to wit, the Crown enjoining squatters 'from paying rent money for land thereby cutting off a major source of income for Maori owners'<sup>6</sup>, inclusive of the forebears of the claimants.

*Particulars: Relevant Principles of the Treaty*

- L) The aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;
  - (i) failed to guarantee to the forebears of the claimants the tino rangatiratanga over and rights of ownership to the Manaia block; and
  
  - (ii) breached its duty to the forebears of the claimants to actively protect the tino rangatiratanga over, rights of ownership to and use of the Manaia block; and
  
  - (iii) failed to discharge its fiduciary obligation, to wit, by conspiring with Donald and Rhodes against the forebears of the claimants the result of which was to breach a relationship of trust based upon the Treaty of Waitangi and thereby cause harm or material disadvantage or both to the forebears of the claimants; and thereto

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<sup>5</sup> Innes & Metcalf, *ibid.*

<sup>6</sup> Innes & Metcalf, *ibid.*

(iv)breached its duty to act reasonably and in good faith by acting duplicitously or dishonestly or both to actively achieve a purpose (colonial settlement) in the circumstances that were materially inconsistent with the Treaty of Waitangi.

## **6 The 1853-54 Crown Purchases**

A) The Crown purchases of these years were often concluded in a careless fashion the result of which was uncertainty as to boundaries and precisely which interests were alienated or retained. The Crown acted with undue haste in order to finally end the leasing regime. The Crown took advantage of Maori financial hardship and offered the inducement of the so-called five percent payment the promise of which was honoured more in the breach.

### *Particulars: The Facts*

B) Whereas there were specific transactions in which certain members of the claimants' forebears (Retimana, Hoana, Erihapeti or Karaitiana) participated in 1853-54, namely<sup>7</sup>:

- (i) Castlepoint
- (ii) Manawatu
- (iii) Opaki
- (iv) Whareama North
- (v) Makoura

C) And whereas there were specific transactions in which a certain forebear (Ihaia Whakamairu) participated in 1853-54, namely:

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<sup>7</sup>Innes & Metcalf, p. 15 et seq.

- (i) Castlepoint
- (ii) Te Witi (McMaster's homestead)
- (iii) Kohangawariwari
- (iv) Kaiaho

D) It is alleged by the claimants therefore that, concerning some or all of the said specific transactions, the Crown:

- (i) Poorly defined the purchase areas<sup>8</sup>; and
- (ii) Failed thereby to establish who did or who did not have a right to sell<sup>9</sup>; and
- (iii) Proceeded with undue haste<sup>10</sup>; and
- (iv) Inaccurately or carelessly translated into Maori the documents witnessing the sale<sup>11</sup>; and
- (v) Inadequately worded the documentation witnessing the sale thereby derogating from the original agreement where it concerned, inter alia, reserves<sup>12</sup>; and
- (vi) Unreasonably delayed payment of the purchase price to the financial detriment of the claimants' forebears<sup>13</sup>; and

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<sup>8</sup> Innes & Metcalf, p. 20.

<sup>9</sup> Innes & Metcalf, p. 19 & p. 22. Cf. Rigby, *Wairarapa Crown Purchases 1853-1854* (hereafter referred to as 'Rigby' and the page reference), especially at p.39.

<sup>10</sup> Innes & Metcalf, p. 82 being the authors' conclusion. See Rigby, p. 23.

<sup>11</sup> Innes & Metcalf, p. 23. Cf. Rigby, p. 22 & p.66.

<sup>12</sup> Innes & Metcalf, pp. 19-20.

<sup>13</sup> Innes & Metcalf, p. 29. Cf. Rigby, p. 13.

(vii) Induced selling by promises of the five per cent payment when such promises were not in reality to be acted upon as agreed to.<sup>14</sup>

E) It is further alleged by the claimants that after some or all of the said land transactions the Crown failed to:

(i) Survey the boundaries of the purchases<sup>15</sup>; and

(ii) Survey reserves which had been promised<sup>16</sup>; and

(iii) Issue owners with Crown grants<sup>17</sup>; and

(iv) Remedy the uncertainty about which lands had in fact been sold and that land which in fact had not been sold; and

(v) Make the so-called five per cent payments or alternatively was erratic in those payments.

F) It is further alleged by the claimants that the Crown:

(i) Deliberately limited the extent of land reserved near Masterton for the forebears of the claimants, that same land being a significant part of their overall landholdings.<sup>18</sup>

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<sup>14</sup> Walzl, *The Wairarapa Five Per Cents 1854-1900* (hereafter referred to as 'Walzl' and the page reference), pp. 97-98.

<sup>15</sup> Innes & Metcalf, p. 82 being the authors' conclusion. See Rigby, p. 23.

<sup>16</sup> Innes & Metcalf, p. 19.

<sup>17</sup> Innes & Metcalf, p. 29.

<sup>18</sup> Innes & Metcalf, p. 20.

*Particulars: The Treaty Breaches*

- G) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been prejudicially affected by the following namely:

*Section 6 (1) (c) Policy or Practice*

- (i) A Crown policy or practice or both, to wit, the following:

(a) in the circumstances, the inducement of the five per cent payments;

(b) strategies 'sought to bring ... sources of pressure on Wairarapa Maori to transact land with the Crown by destroying the successful economic system already in place';<sup>19</sup>

(c) placing squatter requirements before Maori needs or exigencies.<sup>20</sup>

*Section 6 (1) (d) Crown Acts and Omissions after 1840*

- (ii) By acts and omissions of the Crown in its conduct of land sales (entered into with the forebears of the claimants) those same acts and omissions being the:

- (a) erroneous definition of purchase areas;
- (b) purchase from parties whose *bona fides* was uncertain;
- (c) rush into agreements with detrimental results;
- (d) careless translation of documents witnessing the sale;
- (e) denial of promised reserves;
- (f) delay in payment;

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<sup>19</sup> Walzl, *Land Purchasing in the Wairarapa 1840-1954*, p. 459.

<sup>20</sup> Walzl, *Land Purchasing in the Wairarapa 1840-1954*, *ibid.*

- (g) cancellation of some or all the five per cent payments;
- (h) failure to sufficiently survey block boundaries;
- (i) failure to survey promised reserves;
- (j) unreasonable limitation on the extent of reserves;
- (k) withholding or delay in the issue of Crown grants.

*Particulars: Relevant Principles of the Treaty*

(iii) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;

(a) failed to discharge its fiduciary obligation, to wit, by careless conduct in the aforementioned land transactions (in this section) with the forebears of the claimants the result of which was to breach a relationship of trust based upon the Treaty of Waitangi and thereby cause harm or material disadvantage or both to the forebears of the claimants; and thereto

(b) breached its duty to act reasonably and in good faith by acting illegally, unfairly or unreasonably in order to achieve a purpose (colonial settlement; see the *Crown policy G (i) (c) immediately above*) which, in its result, was materially inconsistent with the Treaty of Waitangi.

**7 Post 1854 Crown Purchases, Five Percent Payments and Other Matters**

A) Whereas it is alleged against the Crown that having delayed payment of the purchase prices in the 1853-54 period (as

aforementioned) the result of which caused financial detriment to the claimants' forebears<sup>21</sup>; and

B) Whereas specific land transactions were entered into between the Crown and certain members of the claimants' forebears (Karaitiana, Erihapeti, Retimana or Ihaia Whakamairu) between 1855 and 1873 namely:

- (i) Castle-Point (1855)
- (ii) Kaiaho and Kuripuni (1858)
- (iii) Manaia (1858)
- (iv) Korakonui and Ngapaiaka (1859)
- (v) Maungaraki (1859)
- (vi) Mataikona Block (1859)
- (vii) Matapihi-Rangitumau (1860)
- (viii) Te Whanga (1860)
- (ix) Te Kohutu (1863)
- (x) Whangaehu (1864)
- (xi) Seventy Mile Bush (1871)
- (xii) Upper Tauheru (1872)
- (xiii) Kurumainono (1872)
- (xiv) Maungaraki (1872)
- (xv) Ngatapu No.2 (part of) (1872)
- (xvi) Tararua (1873)
- (xvii) Maungaraki (1873)
- (xviii) Kurumahinono (1873)

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<sup>21</sup> Innes & Metcalf, p. 41 et seq.

*Particulars: The Facts*

- C) Wherefore it is alleged, in respect of some or all of the said blocks of land in which the claimants' forebears had interests (aforementioned), that the Crown:

*Concerning the five per cent payments/fund*

- (i) Withheld five per cent payments when they were expressly or implicitly payable<sup>22</sup>; or
- (ii) Unreasonably delayed five per cent payments<sup>23</sup>; and
- (iii) Remitted the five per cent payments erratically and in an ad hoc fashion<sup>24</sup>; and
- (iv) Paid individuals five per cent payments when other members of the claimants' forebears were also entitled to the same<sup>25</sup>; and
- (v) Paid individuals five per cent payments when such individuals were not entitled to such payments<sup>26</sup>;
- (vi) Only made five per cent payments where the same had been expressly provided for in writing in the documentation witnessing the land transaction that thereby being contrary to what had been agreed upon<sup>27</sup>; and
- (vii) In any event, failed to develop responsible and equitable policy on the five per cent fund<sup>28</sup>; and thereby

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<sup>22</sup> Innes & Metcalf, p. 31. Generally see also Walzl p.97-98.

<sup>23</sup> Walzl, p. 97.

<sup>24</sup> Innes & Metcalf, p. 29.

<sup>25</sup> Innes & Metcalf, p. 32.

<sup>26</sup> Innes & Metcalf, ibid.

<sup>27</sup> Walzl, p. 97.

<sup>28</sup> Walzl, ibid.

- (viii) Failed to act in remitting the five per cent payments in accordance with or consistent with the Treaty of Waitangi; and
- (ix) Failed to establish the five per cent payments as an endowment fund for projects which generally or specifically benefited the claimants' forebears, indeed other Waiarapa Maori as originally promised and agreed to<sup>29</sup>; and
- (x) Failed to establish in particular schools, hospitals or flour mills from the five per cent fund<sup>30</sup>; and
- (xi) Failed to discontinue payment for poor, insufficient or non-existent medical services being paid out of the five per cent fund when the same had been the subject of complaint<sup>31</sup>; and
- (xii) Misdirected five per cent payments by funding developments which were geographically remote and therefore of little or no relevance to the claimants' forebears<sup>32</sup>; and
- (xiii) Failed to account for the land receipts as originally promised and expressly agreed to<sup>33</sup>;
- (xiv) Sought ultimately to end five per cent payments unilaterally<sup>34</sup>;  
and
- (xv) Failed to remedy any or all of the foregoing

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<sup>29</sup> Walzl, *ibid.*

<sup>30</sup> Innes & Metcalf, p. 36.

<sup>31</sup> Innes & Metcalf, *ibid.*

<sup>32</sup> Innes & Metcalf, p. 37.

<sup>33</sup> Innes & Metcalf, *ibid.*

<sup>34</sup> Walzl, p. 97.

*Concerning other matters*

- (xvi) Preyed upon the impoverishment and hunger of the claimants' forebears as part of a strategy to secure the purchase of their lands<sup>35</sup>; and
- (xvii) Failed to establish who were or who were not right holders where land purchases encompassed overlapping areas<sup>36</sup>; and
- (xviii) Unreasonably delayed or failed to issue Crown grants in respect of reserved lands<sup>37</sup>; and
- (xix) Failed to remedy any or all of the foregoing.

*Particulars: The Treaty Breaches*

- A) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been prejudicially affected by the following namely:

*Section 6 (1) (c) Policy or Practice*

- (i) A Crown policy or practice or both, to wit, the following:

*Concerning the five per cent payments/fund*

- (a) to exaggerate or, alternatively, to purposely overstate the quality and character of five per cent payments (i.e. the *combination* of cash and the future disbursement of services and capital assets) during negotiations for Crown purchases, the purpose of which was to induce the forebears of the claimants and other Wairarapa Maori into

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<sup>35</sup> Innes & Metcalf, p. 52.

<sup>36</sup> Innes & Metcalf, p. 52 & p. 82.

<sup>37</sup> Innes & Metcalf, p. 49.

an agreement of sale for the freehold of their land; and after the agreement had been entered into,

- (b) to attenuate the Crown's obligations by converting the Crown's full promises for five per cent payments into disparate *ad hoc* cash remittances, the effect of which was, over time, to divest the Crown of its responsibility to provide the disbursements agreed to for services and capital assets.

*Section 6 (1) (d) Crown Acts and Omissions after 1840*

- (ii) By acts and omissions of the Crown in its conduct *after* land sales (had been entered into with the forebears of the claimants) those same acts and omissions being the:

- (a) withholding of the five per cent payments when due; or

- (b) unreasonable delay in remitting five per cent payments when due; and

- (c) remitting five per cent payments erratically when they were paid; and

- (d) paying individuals five per cent payments when other members of the claimants' forebears were also entitled to the same; and

- (e) paying individuals five per cent payments when such individuals were not entitled to such payments;

- (f) making five per cent payments *only* where the same had been expressly provided for in writing in the documentation witnessing the land transaction that thereby being contrary to what had been agreed upon; and
- (g) failing to develop responsible and equitable policy on the five per cent fund; and thereby
- (h) failing to act in remitting the five per cent payments in accordance with or consistent with the Treaty of Waitangi; and
- (i) failing to establish the five per cent payments as an endowment fund for projects which generally or specifically benefited the claimants' forebears, indeed other Wairarapa Maori as originally promised and agreed to; and
- (j) failing to establish in particular schools, hospitals or flour mills from the five per cent fund; and
- (k) failing to discontinue payment for poor, insufficient or non-existent medical services being paid out of the five per cent fund when the same had been the subject of complaint; and
- (l) failing to account for the land receipts as originally promised and expressly agreed to; and
- (m) misdirecting five per cent payments by funding developments which were geographically remote and

therefore of little or no relevance to the claimants' forebears; and

(n) seeking ultimately to end five per cent payments unilaterally; and

(o) failing to remedy any or all of the foregoing

*Concerning other matters*

(p) preying upon the impoverishment and hunger of the claimants' forebears as part of a strategy to secure the purchase of their lands; and

(q) failing to establish who were or who were not right holders where land purchases encompassed overlapping areas; and

(r) unreasonably delaying or failing to issue Crown grants in respect of reserved lands; and

(s) failing to remedy any or all of the foregoing.

*Particulars: Relevant Principles of the Treaty*

B) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;

(i) failed to discharge its fiduciary obligation, to wit, by careless conduct in the aforementioned land transactions (in this section) with the forebears of the claimants the result of which was to breach a relationship of trust based upon the

Treaty of Waitangi and thereby cause harm or material disadvantage or both to the forebears of the claimants; and thereto

- (ii) breached its duty to act reasonably and in good faith by acting illegally, unfairly or unreasonably in order to achieve a purpose (colonial settlement) which, in its result, was materially inconsistent with the Treaty of Waitangi.

## **8 The Native Land Court 1865 to 1900**

- A) The operational native land court system was, in practice, the reification of English jurisprudence, and thereby the harbinger of alienation (even if not immediate) of Maori men and women from their land in more ways than one. In an investigation of title by the Native Land Court, tikanga overall was supplanted. Debt induced by the land court process was a prodigious consumer of the tribal estate.

### *Particulars: The Facts*

- B) Whereas certain members of the claimants' forebears had part or exclusive interests in certain named blocks of land, thus being in total size approximately thirty six thousand acres and respectively known as:

- (i) Akura
- (ii) Kai o Te Atua
- (iii) Kurumahinono
- (iv) Manaia
- (v) Mangapokia

- (vi) Mataikona
- (vii) Nga Umu Tawa
- (viii) Ngaipu
- (ix) Okurupatu
- (x) Taumataraiia
- (xi) Te Ahitainga
- (xii) Te Kohutu
- (xiii) Te Oreore
- (xiv) Te Weraiti
- (xv) Waipoua
- (xvi) Whangaehu
- (xvii) Whangaehu No 2

C) And whereas certain members of the claimants' forebears in which they had part interests in certain other named blocks of land respectively known as:

- (i) Tararua
- (ii) Whareama
- (iii) Rangataua
- (iv) Opaki

*Crown Action: The Creation of the Native Land Court*

D) It is therefore alleged that the legislation constituting the Native Land Court and all subsequent attendant legislation thereto caused or permitted land belonging to, and over which tino rangatiratanga was exercised by, the claimants' forebears to be amenable to or become unreasonably burdened by survey liens, charges or other debt such that it gave rise to circumstances which effectively, and in fact, did result in the forced alienation of, or loss of real legal interest in, the said claimants' forebears' land.

*Crown Omission: The Failure to Remedy Prejudice Caused*

- E) And wherefore it is further alleged in the Crown omitting to act to remedy prejudice caused to the claimants' forebears by the establishment of the Native Land Court, thereby explicitly or implicitly pursuing a policy to individualize Maori land interests and actively promote Pakeha settlement on lands made available by alienations consequent upon Native Land Court title investigation, the Crown failed to protect the land interests of the claimants' forebears, whereby such failure gave rise to circumstances which effectively, and in fact, did result in the forced alienation of, or loss of real legal interest in, the said claimants' forebears' land.

*Particulars: The Treaty Breaches*

- C) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been prejudicially affected by the following namely:

*Section 6 (1) (a) an Act*

- (i) An Act of the Legislature of New Zealand, to wit, the Native Land Act 1862 and the Native Land Act 1865 and legislation attendant thereto.

*Section 6 (1) (c) Policy or Practice*

- (ii) A Crown policy or practice or both, to wit, the following:
- (a) The establishment of the Native Land Court in order to individualize Maori land interests; and

- (b) The promotion of Pakeha settlement on lands made available by alienations consequent upon Native Land Court title investigation.

*Section 6 (1) (d) Crown Omissions after 1840*

- (iii) By the Crown omitting to remedy the effects of the Native Land Court system on behalf of the claimants' forebears, whereby such omission gave rise to circumstances which effectively, and in fact, did result in the forced alienation of, or loss of real legal interest in, the said claimants' forebears' land.

*Particulars: Relevant Principles of the Treaty*

- D) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;
  - (i) failed to guarantee to the forebears of the claimants the tino rangatiratanga over the said land; and
  - (ii) breached its duty to the forebears of the claimants to actively protect the tino rangatiratanga over, rights of ownership to and use of the said land; and
  - (iii) failed to discharge its fiduciary obligation, to wit, implementing policy and practice (individualisation and pakeha settlement) the result of which was to breach a relationship of trust based upon the Treaty of Waitangi and thereby cause harm or material disadvantage or both to the forebears of the claimants; and thereto

- (iv) breached its duty to act reasonably and in good faith by failing to remedy the claimants' forebears unreasonable land loss caused by the Native Land Court system.

## 9 Succession

- A) Maori customary rules of succession were significantly modified by the Native Land Court and outcomes in that Court did not reflect a tikanga based view of succession when it ought to have.

### *Particulars: The Facts*

- B) Whereas in the matter of a will executed by Retimana Te Korou before his death in March 1882<sup>38</sup> in which he devised land as named in his will it is alleged therefore that the colonial law on succession after 1840 as it affected the Maori and therefore the forbears of the claimants in this case was:

- (i) *Per se* unfair, in that of itself it derogated from the Maori custom (i.e., tikanga) in the case of succession; and
- (ii) Confusing or ambivalent; and
- (iii) Not the subject of consultation before its passage into statute law.<sup>39</sup>

- C) Wherefore it is further alleged that the Crown has failed to guarantee the forbears of the claimants in this case of this claim, rangatiratanga over and the rights of ownership to real, which they

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<sup>38</sup> Innes & Metcalf, p. 65 et seq.

<sup>39</sup> See for reference Dingle, B.A., Wills, Probate and Succession: a discussion report for the Gregory-Mare Whanau, A3, Wai 177 Series, Wai 686# D-3, Waitangi Tribunal, 1995.

were entitled to by Maori custom (i.e., tikanga), and also thereby failed to actively protect their taonga.

D) And whereas in the matter of the succession concerning the estate of Karatiana Te Korou who died in August 1901<sup>40</sup> it is alleged therefore that the colonial law on intestate succession after 1840 as it affected the Maori and therefore the forbears of the claimants in this case was:

(i) *Per se* unfair, in that of itself it derogated from the Maori custom (i.e., tikanga) in the case of succession; and

E) Wherefore it is further alleged that the Crown has failed to guarantee the forbears of the claimants in this case of this claim, rangatiratanga over and the rights of ownership to real and personal property, which they were entitled to by Maori custom (i.e., tikanga), and also thereby failed to actively protect their taonga.

*Particulars: The Treaty Breaches*

E) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been directly or indirectly prejudicially affected by the following namely:

*Section 6 (1) (a) Acts*

(i) Acts of the Legislature of New Zealand, to wit, the Intestate Native Succession Act 1861, Native Land Act 1865, Native Land Act 1873, Native Land Court Act 1880, Native Succession Act

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<sup>40</sup> Innes & Metcalf, p. 73.

1881, Native Land Court Act 1886, Native Land Laws Amendment Act 1890, Native Land Court Act 1894.

*Particulars: Relevant Principles of the Treaty*

- F) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;
- (i) failed to guarantee to the forebears of the claimants the tino rangatiratanga over the said land affected by succession in this instance; and
  - (ii) breached its duty to the forebears of the claimants to actively protect the tino rangatiratanga over, rights of ownership to and use of the said land affected by succession in this instance.

**10 Education: Bishop's Reserve**

- A) The Crown regularly neglected the proper provision of education for Maori in the Wairarapa and this impacted adversely on the forebears of the claimants. In this instance, a substantial acreage had been set aside for the church to provide the service, but when this was no longer possible or practical the Crown was in a position to take over in providing that education. In the event, it purposefully neglected to do so.

*Particulars: The Facts*

- B) Whereas in or about 1853 Wairarapa Maori including the claimants' forebears donated the certain lands known as Bishop's Reserve to facilitate the education of their people situated at Papawai and Kuripuni, and such gift of land and the reason for its

giving being known to the Crown it is therefore alleged that the Crown:

- C) Failed in its duty to provide education to the claimants' forebears between 1853 or at such later date as the Crown was reasonably able to provide the same (namely 1867) and 1905.

*Particulars: The Treaty Breaches*

- D) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been prejudicially affected by the following namely:

*Section 6 (1) (c) Policy or Practice & Section 6 (1) (d) Crown Omissions after 1840*

- (i) A Crown policy or practice or both, to wit, the following:
  - (a) The withholding of educational services to Wairarapa Maori; and
  - (b) By the Crown disregarding the provisions of the Native Schools Act 1867

*Particulars: Relevant Principles of the Treaty*

- G) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;
  - (i) failed to discharge its fiduciary obligation, to wit, neglecting to provide educational services to Wairarapa Maori the result of which was to breach a relationship of trust based upon the Treaty of Waitangi and thereby cause harm or material

disadvantage or both to the forebears of the claimants; and thereto

- (ii) breached its duty to act reasonably and in good faith by failing to remedy the claimants' forebears complaints about the omission to provide educational services.

### **11 Recommendations Sought**

- A) The claimants seek the following from the Waitangi Tribunal;
  - (i) A finding of the facts in their favour;
  - (ii) A finding that their claim is well founded;
  - (iii) An apology from the Crown;
  - (iv) A recommendation for return of land where appropriate under section 8A of the Treaty of Waitangi Act 1975;
  - (v) A recommendation for monetary compensation.

*Charl Hirschfeld*

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**Charl Hirschfeld/Tavake Barron Afeaki**  
Counsel for the Claimants

To: The Registrar  
Waitangi Tribunal

To: Counsel for the Crown

