

BEFORE THE WAITANGI TRIBUNAL

WAI

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

**A claim by Herbert Rerekura, for himself and
for and on behalf of the Rerekura Whānau
("the claimants")**

STATEMENT OF CLAIM
Dated: 8th September 2017

Counsel Acting:

**Charl Hirschfeld/Tony Sinclair/Barney Tupara
Ranfurly Chambers
Barristers-at-Law
10 Kaihu Street, Auckland 0627
Mobile (021)2289757**

charl@ranfurlychambers.co.nz

MAY IT PLEASE THE TRIBUNAL

THE CLAIM

1. This claim seeks an inquiry by the Waitangi Tribunal into the prejudicial effects suffered or likely to be suffered by Herbert Rerekura and the Rerekura Whānau (“the claimants”).
2. The claim is about the Crown’s acts and omissions in Claimants’ which led to prejudice in terms of the principles of the Treaty of Waitangi.
3. In particular the allegation in this claim is that the Crown failed to recognise the sovereignty, independence and tino rangatiratanga of the Claimants AND the Crown has exceeded its kawanatanga obligations.

THE CLAIMANTS

4. The Claimants are Herbert Rerekura, who brings this claim for himself and on behalf of the Rerekura Whānau.
5. The claim area is the tribal rohe of ...
6. The Claimants are of ... descent.

SECTION 6(1)

7. The claimants say that the claims herein fall within one or more of the matters referred to in section 6(1) of the Treaty of Waitangi Act 1975 namely:
 - a. They are Māori; and
 - b. They have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.

PRINCIPLES OF TE TIRITI Ō WAITANGI

8. Without attempting to limit te Tiriti and its interpretation, the following Treaty principles ground the cause of action pleaded herein.

The Treaty Principles

Rangatiratanga/Kawanatanga

9. In the 1987 hearing in the Court of Appeal of the 'Lands' case, the finding was reached that the kawanatanga given to the Crown was subject to the guarantee to protect tino rangatiratanga. Any Crown–Maori relationship which did not properly limit the sovereignty of the Crown so as properly to protect the autonomy of Maori could not have been consistent with the Treaty.¹

Partnership

10. Within the judgment of the 1987 'Lands' case, the Treaty was discussed as having created an enduring relationship of a fiduciary nature akin to a partnership. From this partnership, a duty had arisen for the partners to act reasonably, honourably and in good faith. (Sometimes this is presented as a principle in itself). The Court, however, would not state the degree or value of respective interests of the parties in the partnership.²

Consultation

11. The Crown's duty to make informed decisions was seen as an inherent element of the Crown's obligation to act in good faith. A particular focus revolved around the nature and level of the Crown's consultation with Maori. The courts did not find that the Crown had an absolute duty to consult. It was accepted that in some cases the Crown may already possess sufficient information without consultation needing to occur. In other cases, however, extensive consultation may be required. According to the courts, the degree of consultation depended on the importance and the nature of the issue³.

Active Protection

12. The 1987 'Lands' case in the Court of Appeal noted "...the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable". The Court viewed the

¹ Wai 1040, #AA33, p.11.

² Wai 1040, #AA33, p.11.

³ Wai 1040, #AA33, p.12.

Crown's responsibilities as being analogous to having fiduciary duties towards Maori.⁴

Remedies

13. The Crown has a duty to remedy past breaches, which involves the granting of redress.⁵

The modern context of te Tiriti

14. The Treaty is a living document which must be interpreted in a contemporary setting.
15. The Treaty is an agreement that can be adapted to meet new circumstances; it should be treated as an evolving social contract.⁶
16. New principles are constantly emerging; it is near impossible to draft an exhaustive list of the principles.⁷
17. A flexible approach needs to be adopted when applying the principles that emulate from the treaty.⁸

CAUSE OF ACTION – THE CROWN'S FAILURE TO RECOGNISE THE CLAIMANTS' SOVEREIGNTY, INDEPENDENCE AND TINO RANGATIRATANGA AND HAVING EXCEEDED ITS KAWANATANGA OBLIGATIONS

Allegations

18. In breach of the Treaty Principles of Rangatiratanga/Kawanatanga, Partnership, Consultation and Active Protection the Crown has failed to recognise the sovereignty, independence and tino rangatiratanga of the Claimants AND the Crown has exceeded its kawanatanga obligations.

Particulars

Rates Demand

⁴ Wai 1040, #AA33, p.12.

⁵ *New Zealand Māori Council v Attorney General* [1987] 1 NZLR at 666.

⁶ *Ibid* at 52.

⁷ National Overview Report, Waitangi Tribunal, Volume II, Appendix 9, page 7.

⁸ National Overview Report, Waitangi Tribunal, Volume II, Appendix 9, page 7.

19. The Claimants are being required to pay rates to the South Taranaki District Council (“the Council”).
20. The whenua against which those rates are being charged is the Claimants’ papakainga.
21. A description of *papakāinga* is:⁹

original home, home base, village, communal Māori land - sometimes written as one word, papakāinga.
22. The Claimants’ papakainga is also their tūrangawaewae.
23. A description of *tūrangawaewae* is:¹⁰

domicile, standing, place where one has the right to stand - place where one has rights of residence and belonging through kinship and whakapapa.
24. The Claimants’ papakainga is therefore of cultural and spiritual significance to the Claimants’.
25. The requirement to pay rates has been imposed on the Claimants by the Council.
26. To be able to impose the payment of rates, the Council has implemented enabling legislation introduced by the Crown, namely the Local Government (Rating) Act 2002¹¹ (“the Act”).
27. The Act does not refer to Te Tiriti o Waitangi (“Te Tiriti”) in any of its provisions.
28. In response, and in the exercise of their sovereignty, independence and tino rangatiratanga the Claimants have refused to pay the rates imposed upon them.
29. Due to the Claimants’ refusal to pay rates the Council is threatening to sell the Claimants’ papakainga.

⁹ <http://maoridictionary.co.nz/>.

¹⁰ <http://maoridictionary.co.nz/>.

¹¹ <http://legislation.govt.nz/act/public/>.

30. The Claimants' papakainga also has a mortgage to the TSB Bank ("the Bank") registered against it.
31. The Claimants have ensured the mortgage payments are paid on time each month.
32. However due to the Claimants' refusal to pay rates the Bank is also threatening to sell the Claimants' papakainga.
33. The te reo version of Te Tiriti, Article 2 provides:

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

34. The imposition of rates by the Council is contrary to Te Tiriti, particularly the Claimants' *te tino rangatiratanga o o ratou wenua*.
35. That is the imposition of rates by the Council in relation to the Claimants' papakainga required the free, prior and informed consent of the Claimants, which was not sought, neither was it given.
36. The Claimants' refusal to pay rates, in turn, is in the exercise the Claimants' *te tino rangatiratanga o o ratou wenua*, which the Claimants are entitled to exercise.
37. Furthermore, the threatened sale of the Claimants' papakainga is contrary to Te Tiriti, particularly the Claimants' *te tino rangatiratanga o ... o ratou kainga*.
38. That is Te Tiriti protects the Claimants' papakainga.
39. The threatened sale of the Claimants' papakainga therefore contravenes and undermines that protection.

40. The Waitangi Tribunal has found as follows:¹²

The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.

The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.

41. That is:¹³

It was an arrangement that explicitly guaranteed rangatira their 'tino rangatiratanga', their independence and full chiefly authority, while seeking for the Crown the power of 'kawanatanga', which was essentially explained as the authority to control settlers. This was an arrangement that the rangatira were prepared to accept, and indeed welcome.

42. Those findings of the Waitangi Tribunal are applicable to the Claimants refusal to pay rates.

43. And by imposing the payment of rates, the Crown has exceeded its kawanatanga obligations.

Prejudice

44. By virtue of the foregoing particulars, the Claimants have suffered the following prejudice:

- a. The imposition of rates;
- b. The non-recognition of the Claimants' sovereignty, independence and tino rangatiratanga;
- c. The threatened sale of the Claimants' papakainga.

Relief Sought

45. The Claimants seek the following relief:

¹² The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, paragraph 10.4.4, p.529.

¹³ The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry, paragraph 10.4.4, p.528.

- a. Findings that the Crown has enabled the imposition of rates;
- b. Findings that the Crown has failed to recognise the Claimants' sovereignty, independence and tino rangatiratanga;
- c. Findings that The threatened sale of the Claimants' papakainga;
- d. Any other such recommendation that the Tribunal should consider appropriate.

RIGHT TO AMEND CLAIM

46. The claimants reserve the right subject to the Tribunal's direction to amend this statement of claim from time to time as may be appropriate.

Charl Hirschfeld
Counsel Acting

Tony Sinclair
Counsel Acting

Barney Tūpara
Counsel Acting

This Statement of Claim is filed by Charl Hirschfeld/Tony Sinclair/Barney Tūpara, solicitors and representatives for the abovementioned claimants. The address for service of the claimants is at the offices of Ranfurly Chambers, Barristers-at-Law, 10 Kaihu Street, Northcote, Auckland, 0627, Mobile: 021-2289757, Email: charl@ranfurlychambers.co.nz.