

CHAPTER 2

**THE APPLICATION FOR URGENCY, THE SCOPE AND CONDUCT OF
THE INQUIRY, AND THE PARTIES INVOLVED**

2.1 THE INQUIRY

2.1.1 Application and decision on urgency

On 5 February, 24 February, and 19 March 2004, the CNI Tribunal covering the Rotorua, Taupo, and Kaingaroa inquiry districts received the following applications from the Te Arawa taumata:

- ▶ A memorandum of counsel requesting urgency on issues relating to the Te Arawa mandating process.¹ The claim was brought because of a decision by the Crown to receive the mandate of the executive council to negotiate the settlement of the Rotorua claims. The taumata argued there is a real doubt as to whether the executive council carries the mandate for many, if not most, of the Te Arawa hapu or hapu clusters that it purports to represent.
- ▶ An application for urgency in relation to the Taniwha and Hamurana Springs.
- ▶ An application for joinder of both applications.

Judge Caren Wickliffe referred the applications to Chief Judge Joseph Williams for consideration, on the basis that they were applications that fell to his determination as chairperson of the Waitangi Tribunal.²

A judicial conference was convened on 14 April 2004 to hear oral argument in respect of the applications and a decision was subsequently issued.³ In his decision dated 4 May 2004, the chairperson noted that both the Crown and the executive council accepted that at some point the Te Arawa taumata ought to be entitled to have its complaint about the quality of the executive council's mandate heard. The critical issue was not, therefore, whether the claim should be heard, but when.

The chairperson also thought it important:

- ▶ that the Crown's recognition of the executive council's mandate was itself conditional and that there was unfinished business to be completed before the Crown's acceptance of that mandate; and

1. Wai 950 ROI, paper 2.1185

2. Paper 2.3.3

3. Papers 2.3.4, 2.3.6

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- ▶ that there had been a suggestion from one Te Arawa hui that there be a coming together of the competing leaders for the sake of Te Arawa and their claims.

The chairperson made the suggestion that the parties engage in facilitated discussions with independent facilitators.⁴ After considering submissions from all parties, and reflecting on the views therein expressed, particularly that of the executive council, which made it clear that it did not feel able to engage in discussions with the taumata, the chairperson concluded that there was insufficient common ground between the parties to justify the expenditure of time and effort on facilitated discussion.⁵ While he regretted that the matter could not be progressed in that manner, he believed it important that serious and considered challenges to the mandate should be heard as early as possible so that the Crown could be aware of any problems concerning it before it was too late. He therefore granted urgency, and a reconstituted CNI Tribunal was appointed to hear the claims of the taumata and others seeking to join.⁶

2.1.2 Inquiry planning

A number of memoranda and directions were issued by the presiding officer (Judge Wickliffe) dealing with the pre-hearing and hearing timetables.⁷ The timetable was developed with the consent of all parties.

The hearing was set down for 21, 22, 23, and 25 June 2004 at Rotorua. It was agreed by all counsel that cross-examination would be allowed only where there had been a memorandum filed in advance of the hearing signalling the name of the witness to be examined and the documents that would be put to the witnesses. This was an attempt to control and monitor the time needed for hearing the evidence.

2.1.3 Application for deferral of hearing

On 11 June 2004, Crown counsel filed a memorandum seeking a deferral of the hearing to allow the Crown to undertake its own review of the process by which the executive council achieved its mandate. On 14 June 2004, Judge Wickliffe responded by seeking an answer to the following two questions:

- ▶ What is the process that the Crown proposes to adopt to review the mandating process that it has conducted thus far in respect of Te Arawa?
- ▶ Who, outside of Nga Kaihautu o Te Arawa Executive Council, will the Crown approach to assist it with the review?⁸

4. Paper 2.3.6

5. Paper 2.3.10

6. Ibid

7. Papers 2.3.11–2.3.15

8. Paper 2.3.18

Judge Wickliffe also invited responses from claimant counsel after they had an opportunity to consider the answers provided by the Crown.

Following receipt of all submissions, Judge Wickliffe issued a further memorandum of directions dated 17 June 2004 containing her decision on deferral. She noted that the Crown had responded to the two questions posed with the following explanations:

- ▶ The review proposal should be seen ‘in the context of monitoring the maintenance of the mandate’ and that it was ‘the current health of the mandate that would be the subject of the review’. The Crown proposed to conduct an internal and external process. The internal process would have been to consider the documents filed in the proceedings and during the mandating process to assess issues identified. The external process would have involved discussions with individuals and groups raising concerns and discussing those concerns with the executive council to allow them to respond. Once that was completed, the Crown would have been amenable to facilitated discussions to address any outstanding issues. At the end of the process, MICOTOWN would have been asked for a decision as to the durability of the mandate and then the Crown Law Office would advise the Tribunal and parties accordingly.
- ▶ The Crown would approach the following groups to assist with its review:
 - the Wai 1150 claimants;
 - Ngati Rangiwewehi, Ngati Rangiteaorere, Ngati Tahu/Ngati Whaoa, Ngati Wahiao, Ngati Whakaue, and Ngati Pikiāo; and
 - any other deponent who may be able to assist the Crown with its consideration.

All claimants opposed the deferral of the hearing and they indicated that they were ready to proceed. The individual basis of their opposition is recorded in Judge Wickliffe’s memorandum of 17 June 2004.⁹

Judge Wickliffe then determined that the hearing would proceed in accordance with the timetable agreed to by the parties. Regarding deferral, she explained that a decision to defer:

should be based on some certainty that the issues squarely before this Tribunal are or will be addressed. That requires some certainty that the interests of all Te Arawa claimants involved in these proceedings, or at least the great bulk of them, will be carefully factored into any review process proposed. That certainty can not be ascertained from the material filed to date by the Crown.

Weighed against that uncertainty, is the fact that if these claims are well founded, any timely findings and recommendations of the Tribunal will greatly assist all parties. This could only facilitate more co-operation and co-ordination, as the Crown and Te Arawa strive together to reach important milestones in the negotiation process (eg terms of negotiation and an agreement in principle). The ultimate result could only be a more enduring

9. Ibid

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and comprehensive settlement of all Te Arawa claims. Proceeding with the hearing certainly could not unsettle what has been to date a herculean effort to begin that negotiation process.¹⁰

Judge Wickliffe considered that, while the factual issues raised by the Te Arawa taumata and the other claimants might require more evidence preparation and cross-examination – particularly by the executive council and the Crown – that was not a task so overwhelming that it warranted a deferral of the hearing.

2.1.4 Scope of the inquiry

After directing claimants to file statements of claims and further particularise issues additional to, or different from, those outlined in the statement of claim filed by the Te Arawa taumata, Judge Wickliffe determined that all the claims, with the exception of the claim filed on behalf of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi, would be heard during the urgency hearing.¹¹ This was despite the Crown's protestations that it was unlikely to be in a position to respond fully to any new accusations and challenges that had 'recently come to light due to insufficient time to consider all the issues and to seek the Minister's direction'.¹² Judge Wickliffe wrote on this issue that the non-taumata claimants would probably have been granted urgency and that it seemed equally clear that an:

urgent inquiry into the Te Arawa mandating process can not proceed without having regard to the impact of that process on all the tribes of the Te Arawa confederacy. It would be wasteful of the Tribunal resources to require that all these claims be dealt with separately.¹³

2.1.5 The Tribunal hearing

The hearing was held over the period 21, 22, 23, and 25 June 2004 in Rotorua. To ensure that all the evidence was heard and that all counsel were given the opportunity to cross-examine witnesses of other parties, written affidavits or signed briefs were taken as read, some additional material was added orally, and the Tribunal held long sitting days beginning between 8.30am and 9am and finishing between 7pm and 8pm. On the last night, the sitting went to 10.30pm to ensure that all the evidence of the parties was heard. What was not foreseen during the inquiry planning was the number of witnesses that would be called and, in relation to at least two witnesses, the length of time they would be needed for cross-examination.

10. Paper 2.3.18

11. Ibid

12. Paper 3.1.92

13. Paper 2.3.18

Delay was exacerbated during the course of the hearing when leave was sought at different times by the executive council and by the Crown to introduce new evidence. Leave was granted on the basis that the probative value of that evidence outweighed any detriment or disadvantage suffered by the claimants. To deal with the claimants' concern and opposition to the introduction of that material, leave was granted for their counsel to file further evidence in reply following the hearing, with additional time also granted to file submissions in reply. The additional evidence and submissions were filed by 9 July 2004.

It is important to note that Crown counsel, Mr Soper, was due to present legal submissions for the Crown on the third day of the hearing but he waived that right until he heard the evidence for the executive council. As it happened, neither he nor Mr Stone for the council was able to address the Tribunal orally. Instead, they filed their written submissions which have been fully considered by this Tribunal. We thank counsel for their cooperation in this regard whilst noting the concern subsequently expressed by the Crown.¹⁴

2.2 THE CLAIMANTS

Five statements of claim were filed in the context of the present inquiry: Wai 1150, Wai 1173, Wai 1174, Wai 1175, and Wai 1180.

2.2.1 Wai 1150

The Wai 1150 claim was filed by Pihopa Kingi, Pirihiira Fenwick, and Malcolm Short for the Te Arawa taumata. It is closely linked to the earlier Wai 791 claim, filed on 20 August 1999 by the Right Reverend Manuhuia Bennett, Tumu Te Heuheu, and Rangiuira Briggs.

Wai 791 is often referred to as the VIP claim and was brought on behalf of a significant number of claimants throughout the whole CNI area. It aimed to serve as an 'umbrella claim' for a large number of other claims from all three CNI districts in the Waitangi Tribunal process: Rotorua, Taupo, and Kaingaroa (known under the VIP project as the north, south, and central districts).

As we outlined in chapter 1, the VIP project was formally set up in 1999 and initially had a taumata, or leadership, made up of the three people who became the named claimants in the Wai 791 claim.¹⁵ Of this group, Bishop Bennett was the representative for the northern region, Tumu Te Heuheu represented the southern region, and Rangiuira Briggs represented the central region. Two CFRT appointees were also added to the taumata. At the time of his death, in December 2001, Bishop Bennett was the chairperson.

14. See, further, paper 2.3.21

15. Document A11(a), pp141, 163–164

In early 2002, the vIP taumata was expanded to nine members (not including the CFRT appointees), being three for each region.¹⁶ The members for the northern district were Bishop Whakahuihui Vercoe, Sir Howard Morrison, and Pirihiira Fenwick.¹⁷ This group effectively constituted a Rotorua district, or Te Arawa, taumata within the larger vIP taumata. Tumu Te Heuheu took over as chairperson of the main vIP taumata, while, within that, Bishop Vercoe became the chairperson of the Te Arawa taumata.¹⁸ From the vIP annual report for 2001–02, it appears that Sir Howard Morrison’s place was subsequently taken by Pihopa Kingi.¹⁹

When the Wai 1150 claim was filed, in April 2004, Bishop Vercoe was convalescing from an illness. The claim was therefore lodged in the name of Malcolm Short as an alternate for Bishop Vercoe, along with Pihopa Kingi and Pirihiira Fenwick. In terms of the role they play, the named claimants in Wai 1150 may thus be said to be the successors to the original Te Arawa representative on the vIP taumata of the Wai 791 claim.

Overall, the Wai 1150 statement of claim highlights issues of both policy and process with regards to mandating, citing seven main points of grievance.

The claimants state that the Crown did not respect the rangatiratanga principle of the Treaty of Waitangi, which they describe as ‘the right of the Maori tribes to have their own institutions, processes and policies respected by the Crown’.

In relation to this, they claim that the Crown assisted and supported a person (namely, Rawiri Te Whare) to institute mandate strategies for Te Arawa ‘without gaining an appropriate tribal consent first, and without prior inquiry of other bodies which might have an authority in this regard’. They state that this is also contrary to the rangatiratanga principle of the Treaty.

Thirdly, they say that the council’s deed of mandate ‘purports to convey to Kaihautu Executive the right to negotiate a settlement of individual property claims, when no authority was given by the individuals affected’, and they claim that the Crown’s recognition of the deed is therefore contrary to article 3 of the Treaty.

Their next three points of grievance relate to what they allege to be breaches by the Crown of its duty to act in good faith:

- ▶ they state that the Crown has recognised the executive council despite its structure never being mandated by Te Arawa iwi/hapu;
- ▶ they claim lack of procedural fairness, on a number of points, in the implementation of the mandating process; and
- ▶ they claim that the Crown ‘failed to act fairly and evenly’ and that it did not ensure procedural fairness in the assessment and recognition of the deed of mandate.

Lastly, they allege compromise of their right to claim, stating that the Crown proceeded

16. Document A11(a), p373

17. Wai 791 ROI, doc A100, p3

18. Document A11(a), p373; claim 1.1.1, para 1.6

19. Document A11(a), p373

to recognise the mandate claimed by the executive council when the question of whether it should do so was before the Waitangi Tribunal. They state that the effect of this was to prejudice rights of hearing and determination provided for by the Treaty of Waitangi Act 1975.

2.2.2 Wai 1173

The named claimant in Wai 1173 is David Whata-Wickliffe, who states that the claim is brought on behalf of eight named kinship groups 'insofar as it relates to their Waitangi Tribunal claims (Wai 164, 193, 194, 195, 196, 197, 198, 199, 295, 929, 296, 564, 1032) all of which are represented by the Ngati Tamakari Claims Committee'.

Mr Whata-Wickliffe adopts the seven points of grievance expressed by the Te Arawa taumata in Wai 1150. While the statement of claim is not particularised further than this, later submissions have made it clear that Mr Whata-Wickliffe has an issue over the way the disposition of hapu seats on the executive council was decided. In particular, he queries why some small hapu have been allocated a seat and other hapu such as Ngati Tamakari have not.²⁰

2.2.3 Wai 1174

Wai 1174 was filed by Ms Sykes, acting for the following claimants:

- ▶ Te Ariki Morehu, of Ngati Makino (Wai 275);
- ▶ Stephen Hohepa and Te Kapua Watene, of Ngati Tuteniu (Wai 980); and
- ▶ Isobella Fox, of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi (Wai 21(a)).

As such, the claim represents the interests of three distinct groups of claimants.

(1) *Ngati Makino*

In 1994 and 1995, Ngati Makino (Wai 275) were party to the eastern Bay of Plenty inquiry. In the report that followed that inquiry, the eastern Bay of Plenty Tribunal wrote:

Through historical associations, Tuwharetoa, Ngati Awa, and Te Arawa all saw Ngati Makino as part of them. Clearly, there are whakapapa links to each, but in the course of the hearings it became clear that they saw their main link as being with Te Arawa. They place significance on a line of descent from Hei and his son Waitaha-a-Hei of the Arawa canoe.²¹

(2) *Ngati Tuteniu (Wai 980)*

Material presented in evidence by the Te Arawa taumata states that Ngati Tuteniu have close links to Ngati Rangiteaorere and Ngati Uenukukopako.²² This accords with Rangi Easthope's

20. See, for example, doc A43; paper 3.3.16

21. Waitangi Tribunal, *The Ngati Awa Raupatu Report* (Wellington: Legislation Direct, 1999), p22

22. Document A11(a), pp492, 524

2.2.3(3)

statement during the hearing, under cross-examination by Ms Sykes, that the ancestor Tuteniu was a grandson of Rangiteaorere, and that Ngati Tuteniu and Ngati Rangiteaorere have a close relationship.²³

(3) Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi

Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi (Wai 21(a)) are part of the Ngati Tuwharetoa ki Kawerau grouping that signed a deed of settlement with the Crown in June 2003, although the issues in Wai 21(a) have been specifically excluded from that settlement and in evidence this claimant group stressed their independence from Tuwharetoa ki Kawerau.²⁴ According to evidence presented during the eastern Bay of Plenty inquiry, the Tuwharetoa ki Kawerau people are descended from Tuwharetoa-i-te-aupouri, who was born at Otamarakau. Today, Ngati Tuwharetoa are more associated with the Taupo area, but some Tuwharetoa hapu remained in the Kawerau area. Ngai Tamarangi are among them.²⁵

(4) The issues of claim

The issues of claim in Wai 1174 are not particularised to each of the above groups but are rather of a generic nature and relate to the way in which the Crown's mandating and negotiation policies have been applied within the Te Arawa region. The claimants allege that the Crown has 'actively attempted to displace the rangatiratanga of Te Arawa and its constituent hapu and iwi'. They state that this has occurred at two levels: in the development of the Crown's settlement policy relative to Te Arawa; and in the implementation of that policy. In particular, they question the development and application of the Crown's 'large, natural groupings' policy in the context of Te Arawa.

In the course of the inquiry, however, it became apparent that the groups involved in this claim had rather different concerns. The Wai 21(a) claimants, for example, were anxious that their claim, having been listed in the executive council's deed of mandate, would be included in the proposed Te Arawa negotiations. However, in their closing submissions, counsel for Wai 21(a) recorded that their clients' issue of grievance had 'largely been resolved by way of undertakings received from the Crown during the hearing process'.²⁶

Ngati Makino, for their part, expressed a particular grievance in that the Crown had already recognised a deed of mandate from Ngati Makino and had agreed to terms of negotiation, yet their claim had been included in the executive council's deed of mandate and the Crown was seeking to persuade them to join with the kaihautu for the purposes of negotiation and settlement.²⁷

23. Rangi Easthope, oral evidence

24. Document A40, para 3; doc A41, para 3. In respect of the exclusion from the settlement, see <http://nz01.terabyte.co.nz/ots/DocumentLibrary/2003settlementsupdate.pdf>; MICOTOWN to Tomairangi Fox, 13 March 2002 (Wai 21/o).

25. Waitangi Tribunal, *The Ngati Awa Raupatu Report*, pp19–21

26. Paper 3.3.15, para 1.2

27. Ibid, paras 3.5–3.10, 3.26–3.27, 4.2

2.2.4 Wai 1175

The named claimants in Wai 1175 are David Potter and Andre Paterson. The claimant group includes a cluster of nine other claims, of which Wai 996 is the lead claim, and ‘those members of the iwi who are members of the Te Rangatiratanga o Ngati Rangitihī Inc’. The latter body was set up in 2003 and has a committee that is representative of ‘most of the major Rangitihī trusts’.²⁸

Wai 996 was filed in March 2002 and was, at that time, one of only two claims filed specifically on behalf of Ngati Rangitihī, the other claim being Wai 524 (see below). Since then, other Ngati Rangitihī claims have been filed and all except Wai 524 are part of the Wai 996 cluster. There is a difference of opinion between the claimants in the Wai 996 cluster, on the one hand, and the Wai 524 claimants, on the other, as to who (or what modern legal entity) best represents the interests of the traditional kinship group known as Ngati Rangitihī.

Apart from general claims about the Crown failing to respect tino rangatiratanga and to act in good faith towards Ngati Rangitihī, it is the Wai 1175 claimants’ particular contention that the Crown’s mandating process has been ‘damaging to the social relationships within Ngati Rangitihī’. They also claim that the Crown’s process has been ‘undermining of the political and cultural relationships of the people’ and has caused ‘division and discontent and aggravated intra hapu and whanau tensions and disputes’. The statement of claim particularises a number of ways in which they say this has come about. For example, they say that certain hui were not properly advertised or did not confer a proper mandate (or both), and that the Crown had insufficient grounds to believe that a proper mandate had been achieved on behalf of Ngati Rangitihī. They further cite dissatisfaction over the way in which the Crown addressed their submission on the executive council’s deed of mandate and object to the concept and conduct of a ‘reconfirmation hui’ held in May 2004.

The core of the Wai 1175 claim thus relates more to the application of the Crown’s mandate policy than to the policy itself.

2.2.5 Wai 1180

The Wai 1180 statement of claim was filed by Tame McCausland on behalf of Waitaha (Wai 664). Waitaha are a coastal Bay of Plenty people, and the Wai 664 claim has already been partly heard in the Tauranga moana inquiry. The Tribunal’s report on that inquiry is due out shortly. In the CNI inquiry, there is at least one other claim (Wai 702) that states a specific link to Waitaha, but the claimants in that claim have not sought to participate in the present urgent inquiry.

The kinship group of Waitaha is descended from Hei, who arrived on the Te Arawa waka along with Tamatekapua, Tia, Ngatoroirangi, and a number of others. Printed genealogies

28. Document A44(a), para 19

and texts show Hei and Tia as brothers, being sons of Tuamatua (also written Atuamatua). The tupuna Waitaha was a son of Hei, while Tapuika was a son of Tia.²⁹

The Wai 1180 statement of claim alleges that the Crown failed to respect the tino rangatira-tanga of Waitaha, and failed to act honourably, reasonably, and with the utmost good faith, when it attempted to pressure the Waitaha people into joining Nga Kaihautu o Te Arawa against their will. The claimant states that, although Waitaha are of the Te Arawa waka, they are not part of the confederation of Te Arawa or of the Te Arawa Trust Board, and they have a raupatu claim that is wholly unrelated to the claims of the rest of Te Arawa. Further, the claimant seeks recommendations from the Tribunal that the Crown should ‘ensure that it develops policies to protect the interests of claimant groups whose interests are marginal to larger iwi groupings’.

2.3 THE RESPONDENTS

2.3.1 The Crown

Crown policy with respect to the Treaty claims settlement process is set by Cabinet on the advice of the Cabinet Policy Committee and, in particular, the Minister in Charge of Treaty of Waitangi Negotiations. The process leading up to that is described in the Tribunal’s *Pakakohi and Tangahoe Settlement Claims Report*:

The Minister, in turn, is advised by the Office of Treaty Settlements (OTS). That office obtains input to its policy advice, and to its development of processes to implement Crown policy, from other Crown agencies (most notably Te Puni Kokiri (TPK) – the Ministry of Maori Development) as well as from Maori communities.³⁰

OTS has laid out the Crown’s policy and practices with regard to settling Treaty claims in its book *Ka Tika a Muri, Ka Tika a Mua – Healing the Past, Building a Future*.³¹

The claims in the present inquiry centred on:

- ▶ aspects of the Crown’s overall policy with regard to the mandating process;
- ▶ aspects of the practical application of that policy; and
- ▶ aspects of the Crown’s overall settlement policy.

At the hearing, the Crown was represented by the Crown Law Office and the main Crown witness was the director of the Office of Treaty Settlements.

29. Document A113A, paras 3–5

30. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p2

31. Office of Treaty Settlements, *Ka Tika a Muri, Ka Tika a Mua: He Tohutohu Whakamarama i nga Whakataunga Kereme e pa ana ki te Tiriti o Waitangi me nga Whakaritenga ki te Karauna – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd ed (Wellington: Office of Treaty Settlements, [2002])

2.3.2 The executive council of Nga Kaihautu o Te Arawa

The executive council of Nga Kaihautu o Te Arawa does not have a Treaty claim registered with the Tribunal and has not been a full party to any Tribunal hearing, although it does send representatives to CNI judicial conferences as observers. Rather, the council states that its role is as ‘a vehicle through which Te Arawa are to collectively negotiate for the settlement of historical Treaty claims’.³² This highlights a difference between the claims process, which by law requires that claims be lodged by named individuals, and the settlement process, which requires that negotiation and settlement be carried out with iwi and hapu.

According to the council, the issues raised in the urgent inquiry ‘relate squarely to the mandate of the Executive Council’ and not to the Crown’s policy and process. As such, they say, the issues are not ones that lend themselves to a Tribunal inquiry. Rather, they are political issues internal to Te Arawa and should be dealt with internally.³³

2.4 OTHER PARTIES

2.4.1 Ngati Rangitihi (Wai 524)

The Ngati Rangitihi (Wai 524) claimants were not directly party to the inquiry but counsel sought leave to represent their interests in relation to certain claims brought against the Crown by the Ngati Rangitihi (Wai 1175) claimants.

Wai 524 was filed in 1995 by Leith Comer, Nirai Raureti, William Savage, Marion Amai, Duke Kepa, and Anapeka Tuna. They stated that it was brought on behalf of themselves ‘and the Ngati Rangitihi people in general’. Kaumatua Henry Pryor was subsequently named as a spokesperson for the claim and, in the public notification of the council’s deed of mandate, was listed as the Ngati Rangitihi representative on the council.³⁴

The main interest of the Wai 524 claimants in the present inquiry was in relation to assertions by the Wai 1175 claimants that:

- ▶ no mandate had been conferred by Ngati Rangitihi for anyone to represent them on the council; and
- ▶ the council has no mandate to represent Ngati Rangitihi in negotiations with the Crown.

The Wai 524 claimants stated that this was ‘a matter of mana’ for themselves and the iwi at large, and sought to be heard publicly on parts of the Wai 1175 case. They stressed, however, that responding to the case was ‘the sole province and responsibility of the Crown’.³⁵

32. Paper 3.3.7, para 1.6

33. Ibid, paras 1.1, 1.5

34. E Barrett-Whitehead et al, ‘Final Report on the Current State of Claimant Mandate and Representation in the Rotorua Inquiry District’, report commissioned by Waitangi Tribunal, October 2002 (Wai 950 ROI, doc A3), p 48; doc A11(a), p 559

35. Paper 3.3.9, para 5

2.4.2

2.4.2 The Tuhourangi cluster (Wai 7, 204, 233, 363)

The Tuhourangi cluster of claims is made up of Wai 7, Wai 204, Wai 233, and Wai 363. Of the claims listed for potential inclusion in the CNI inquiry, these are the main claims relating specifically to Tuhourangi, although the kinship group is also closely linked with Ngati Wahiao, who have additional claims.

There are two principal named claimants in the cluster: Te Rangipuawhe Maika (Wai 7, Wai 363) and Anaru Rangiheuea (Wai 204, Wai 233). In the public notification of the council's deed of mandate, Mr Maika and Mr Rangiheuea are listed as the representatives for Tuhourangi on the council, and each filed affidavits for the urgent hearing in support of the council.³⁶

2.4.3 Ngati Taeotu, Ngati Hurungaterangi me Ngati te Kahu o Ngati Whakaue (Wai 533)

Ngati Whakaue is one of the two largest of the Te Arawa iwi and is made up of a number of hapu including Ngati Taeotu, Ngati Hurungaterangi, and Ngati Te Kahu. Among the claims listed for potential inclusion in the CNI inquiry are around nine that relate specifically to Ngati Whakaue or its hapu. Wai 533 is one of them.

Wai 533 was lodged in 1995 by 'Te Au Nikora, Hokimatemai Kahukiwa and Tobias Hona (Ben Hona, power of attorney)'.³⁷ The statement of claim specified that the named claimants were 'mandated representatives of the Ngati Hurungaterangi, Ngati Taeotu and Ngati Kahu'. Ben Hona is currently one of the kaihautu representatives for Ngati Whakaue but is not on the executive council.

At first, the Wai 533 claimants did not indicate a wish to be involved in the urgent inquiry, but they sought late leave to be included in order to answer matters that had been raised in affidavits filed by supporters of the Te Arawa taumata. In particular, they were concerned about matters that had been raised in relation to Ngati Whakaue and the extent of any mandate alleged to have been given to the taumata by its constituent hapu.³⁸

2.4.4 Ngati Whaoa (Wai 837) and Rika whanau (Wai 681)

The claimants in Wai 837 and Wai 681 did not file a separate claim in the context of the urgent inquiry but did file submissions. Their particular concern was with the conduct of the mandating hui that included Ngati Whaoa and what they saw as a resulting lack of representation in the proposed negotiations with the Crown. They also expressed concern about the facilitation of the mandating process.

36. Document A11(a), p559; docs A63, A107, A138

37. Claim by Te Au Nikora and others concerning Whakarewarewa Valley and Whakarewarewa State Forest, 26 July 1995 (Wai 533 ROI, claim 1.1)

38. Papers 3.1.100, 3.3.8; docs A112, A113

2.4.5 Tapuika (Wai 615)

Tapuika were not party to this inquiry, although reference was made to them on a number of occasions. In many respects, their situation would appear similar to that of Waitaha, but they did not file a claim in the context of the urgency and did not seek to make a submission.

2.5 SUMMARY

The key points made in this chapter are as follows:

- ▶ On 5 February 2004, the Tribunal received a memorandum of counsel requesting urgency on issues relating to the Te Arawa mandating process.
- ▶ The chairperson of the Tribunal granted urgency on 4 May 2004, following a judicial conference to hear oral argument, and the matter was referred to the CNI Tribunal.
- ▶ On 11 June 2004, the Crown sought a deferral of the hearing, which was declined.
- ▶ The hearing was held on 21, 22, 23, and 25 June 2004.
- ▶ The claims in the inquiry were brought by: Pihopa Kingi, Pirihira Fenwick, and Malcolm Short, for the Te Arawa taumata; David Whata-Wickliffe, of Ngati Tamakari; Te Ariki Morehu, of Ngati Makino; Stephen Hohepa and Te Kapua Watene, of Ngati Tuteniu; Isobella Hohipera Fox, of Ngati Tuwharetoa Te Atua Reretahi Ngai Tamarangi; David Potter and Andre Paterson, of Ngati Rangitihi; and Tame McCausland, of Waitaha.

