

# Fisheries Bill Claim

## 2 The Claim

### 2. The Claim

2.1 In view of the background described and Maori anxiety that a fair and proper allocation be achieved, the claimants' concern over the appointment of new commissioners to oversee the task is understandable, and their wish that all that is done to that end should be seen to be done openly and transparently is not surprising. It must be read in the same context as the clear call for greater accountability to Maori, in the deed and the ensuing legislation.

The claim is limited to the method of appointment.

2.2 The 1992 Act sets the new Commission membership at not more than 13, appointed on advice of the Minister of Maori Affairs, but only after consultation. Section 16 provides that the minister shall consult:

(a) the Maori Fisheries negotiators (jointly unless it is impracticable to do by reason of absence, illness or otherwise); and

(b) such persons who are, in the Minister's opinion, representatives of Maori who are or may be beneficiaries of the Commission's assets.

Members of the old Commission are deemed to have vacated office (s16(2) 1992 Act). They were appointed by the Crown without formal provision for consultation with Maori, but may of course be re-appointed under the new scheme.

There are obvious difficulties. Who are "representatives of Maori"? Representation problems were referred to in our Fisheries Settlement Report but for the purpose of this exercise the determination of representation is left to the minister, acting, no doubt, with advice from his ministry. And who may be beneficiaries? Conceivably this could include all Maori, for we have yet to hear of any hapu devoid of any interest in fishing.

2.3 On 16 October 1992 the minister wrote to 73 Maori organisations seeking nominations for the new Commission by 30 October 1992. He believed it important that members should have "a knowledge of Tikanga Maori, an understanding of resource management principles and practices; ...a commitment to Maori development" and that there should be "a geographical balance with respect to the tribes represented".

The number written to does not indicate the number of tribes as some are represented in more than one organisation. Four urban authorities were included (Auckland and Wellington). In addition the head office and eight registries of the Maori Land Court were advised.

Hariata Gordon responded to the minister on 23 October and 7 December 1992 seeking an extension of time and the calling of a national hui. The evidence for Ngati Paoa is that there is no further material of which they are aware that the minister is to undertake any larger consultation with "representatives of Maori" and they are given to understand that a hui is not proposed. Crown counsel did not attest to any intention for wider consultation and opposed the proposal that a hui be called.

2.4 There is a change from the Deed of Settlement. The deed provided simply for consultation with the negotiators and "...Maori with beneficial interests" (3.4.2). The 1992 Act refers to the negotiators and "such persons who are, in the Minister's opinion, representatives of Maori who are or may be beneficiaries". The amendment we see as necessary, for practical reasons, but the Act must be read "in a manner that best furthers the agreements expressed in the Deed of Settlement" (s3) and the latter's reference to "Maori with beneficial interests" suggests to us that consultation should be sought widely from those representing many interested groups.

2.5 The claim was brought by Hariata Gordon for Ngati Paoa, but the Runanga o Ngati Porou and Te Iwi Moriori Trust Board joined in support, and there were submissions for Ngai Tahu Maori Trust Board, partly in support but mainly opposed. There was little time for others to be involved in the inquiry if they wished to be.

The claim as we perceive it, in light of the documents filed and the submissions, is that Ngati Paoa and those who joined with them are prejudicially affected by the consultation proposals in the 1992 Act, and are prejudicially affected by a proposed policy of the minister, in the exercise of his consultation duties not to consult collectively at a hui, and that the Act and the policy are to that extent inconsistent with the principles of the Treaty.

By way of relief a hui is sought. The formal Ngati Paoa claim went further to contend that the hui should make the selection.

Were a claim well founded we would still need to consider whether in all the circumstances the relief sought, or any other relief, should be given (s6(3) Treaty of Waitangi Act 1975).

2.6 In support of the claim it was contended:

- \* Consultation between Maori and the Crown is a major issue, and consultation appropriate to the case should be carefully conceived;
- \* In this case, the appointments and the method of appointment are critical to the integrity of a process where serious questions of fairness and equity amongst Maori are involved;
- \* The Crown alone should not determine the consultation procedure. Consultation should be on mutually acceptable terms;
- \* The appointment process should be fully transparent and fair. The proposed process is not;

- \* The proposed method of appointment does not capture the intention of the deed for a more accountable Maori body;
- \* It is inappropriate for the minister to determine Maori representatives. It is the rangatiratanga of the tribes to choose their own;
- \* The Maori negotiators have no mandate to advise on appointments and do not represent Maori (Ngati Paoa, Ngati Porou runanga); or, the negotiator's mandate to advise on appointments is in the settlement deed, but as they have no mandate to represent iwi, the minister should prefer iwi advice (Ngai Tahu Maori Trust Board);
- \* The Crown should not treat with Maori separately, but collectively at a hui;
- \* That the minister should not decide the appointments. The minister should appoint those settled upon at a hui;
- \* The minister should not in any event appoint without prior reference to a hui;
- \* The policy of calling for nominations with the minister setting the criteria and making the decision, is not consultation;
- \* The Crown relied on the collective voice of Maori at hui to proceed with the Sealord's transaction, and that process should continue to apply to the appointment;
- \* There is no provision for the commission to consult with Maori with regard to the allocation of the existing assets of the commission including those of Aotearoa Fisheries Limited. There should be such provision as the optimum method of allocation was not finally settled at the last Hui-a-Tau.

#### 2.7 In opposition it was contended:

- \* The Treaty is between iwi and the Crown not Maori and the Crown. The duty of the Crown is to deal with its individual iwi Treaty partners. Ngai Tahu entered into the Treaty on its own accord and requires the Crown to deal with it on that basis (Ngai Tahu Maori Trust Board);
- \* There is no duty on the Crown to call a national hui. Nor is one required (Crown);
- \* By its circular letter to 73 Maori groups of 16 October 1992, the Crown has undertaken a comprehensive consultation with a wide range of Maori organisations (Crown);
- \* Care should be taken in the appointments in view of the substantial assets involved. Such care cannot properly be exercised at a general hui except after long preparation of which time does not allow (Ngai Tahu Maori Trust Board);
- \* The concerns of small tribes like Ngati Paoa are met by the procedures in place for allocation schemes and other matters to be settled in consultation with Maori (Crown);

\* Sealord's was not mainly settled after national hui, but after hui that were region or iwi specific. There is no established precedent for national hui as a general rule (Ngai Tahu Maori Trust Board).

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*Waitangi Tribunal, Department of Justice, Wellington.*