

# The Pouakani Report 1993

## Appendices

### 3 Memorandum from Waitangi Tribunal Concerning Claimants' Costs

TO The Hon K T Wetere, Minister of Maori Affairs  
AND The Hon W P Jeffries, Minister of Justice, Chairperson of the Cabinet  
Committee on Treaty of Waitangi Issues.

This claim is made by John Hanita Paki on behalf of himself and the Titiraupenga Trusts. The Titiraupenga Trusts are separate trusts created by orders of the Maori Land Court made under Section 438 of the Maori Affairs Act 1953. The order creating the Titiraupenga Trust vested Pouakani C No. 1B Sec. 1 and Pouakani C No. 1B Sec. 2 in Trustees. The order creating the Pouakani B9B trust vested Pou-a-Kani B No 9B in trustees.

Mr Paki's claim was received by the Tribunal on 27 March 1987. On 16 May 1989 the Tribunal appointed Counsel, whose fees are being paid by the Tribunal, to assist Mr Paki. On 14 June 1990 the Tribunal determined that \$10,000 be paid for the Claimants' research expenses and reserved leave for the Claimant to apply for a further payment following the release of the Tribunal's findings and recommendations or earlier following the release of any interim report that the Tribunal might issue.

The Claimants had incurred research and legal expenses prior to the lodging of their claim with the Tribunal. Following the receipt of their claim by the Tribunal the Claimants became involved in proceedings in the High Court, the Maori Land Court and in an application to the Chief Judge of the Maori Land Court for the exercise of his jurisdiction under Section 452 of the Maori Affairs Act 1953. This litigation arose because it was not in fact possible to define on the ground boundaries that official records showed as having been defined by survey.

Legal and research expenses incurred by the Claimants both before the lodging of their claim and between the lodging of the claim and the appointment of Counsel to assist them, as well as the costs of the other proceedings, have put the Claimants deeply in debt. We are informed that creditors of the Trusts are in the process of selling up the lands of the Trusts.

The Tribunal does not have jurisdiction to award costs against the Crown. If it had such jurisdiction we would have been able to make such an award and give our reasons later. But the Tribunal has only power to make a recommendation. Such a recommendation must be supported by a full explanation of the reasons for the recommendation.

The complexities of this claim are the reason why the Claimants are now so deeply in debt. These complexities are also the reason why it is not possible for the Tribunal to issue a brief report. While a great deal of material was placed before the Tribunal our own investigations into this material and examination of the plans, field books and

other old records of the Department of Survey and Land Information have produced more relevant information.

Past reports of the Tribunal have been the product of careful consideration of the claim before the Tribunal. We do not think that in the case of the Pouakani claim the Claimants' creditors should dictate how much time the Tribunal should give to the consideration of the claim.

We have therefore decided to submit this memorandum to you and to ask that as an interim measure the Crown take over the Claimants' indebtedness in order to protect the Claimants from having their lands sold up for money borrowed for legal and research expenses incurred in making the present claim to the Tribunal and in associated proceedings in the High Court, the Maori Land Court and on the application to the Chief Judge of the Maori Land Court.

The facts are known to the Crown Counsel who appeared in these various proceedings and the Crown now has other units outside the Tribunal itself to advise it on such matters.

Put in its simplest form, the Crown took land for survey costs from the owners in whom pou-a-Kani B No 9B was vested by an order of the Maori Land Court made on 24 July 1899 but those owners did not in fact receive a surveyed title to their land.

The reason is clear from an exchange of correspondence in 1947 on Lands & Survey Department file 20/451. This correspondence deals with adjoining land. The final paragraph of a memorandum dated 3 February 1947 from the Registrar of the Maori Land Court to the Chief Surveyor reads:

"I am informed ... that the ... boundary ... has never been cut or pegged and I should be obliged if you could inform me how this came about".

The Chief Surveyor replied on 25 February 1947.

"With regard to the last paragraph of your memorandum, it appears that the boundary lines on Plan 6406 were merely calculated in order to save the natives the cost of survey, a method which present survey regulations will not permit".

Had all the boundary lines of Pou-a-Kani B No 9B been cut and pegged last century the descendants of the original owners would not have been involved this century in ruinous litigation in the Supreme Court and the Maori Land Court.

DATED the 19 day of July 1990.  
Judge R M Russell, Presiding Officer  
Copy to Mr P Heath, Counsel for Claimants  
Mr C.T. Young, Crown Law Office

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*Waitangi Tribunal, Department of Justice, Wellington.*