

Maori Development Corporation Report

Appendix 5

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Tribunal Commissioned Evidence

In a preliminary report dated 25 June 1993 (A16), the qualifications of Graham and Susan Butterworth are recorded. Both have M.A degrees and are the authors of *The Maori Trustee*, a scholarly history of that office published in 1992. Mr Butterworth was, from 1986 to 1990, Director of Research for what was then the Department of Maori Affairs and subsequently became the Iwi Transition Agency (Te Tai). In that capacity he co-authored, with Hepora Young, a bilingual history of the Department of Maori Affairs entitled *Maori Affairs*, published in 1990. (A16:1-2) Accompanying the 25 June report by Mr and Mrs Butterworth were excerpts from both the abovementioned books, relevant to the background to the formation of the MDC. (A17, A20)

The 25 June report provides a brief overview of the political climate prior to the creation of the MDC, records two preliminary findings reached by Mr and Mrs Butterworth and directs the tribunal's attention to three issues. The writers' first finding is that the government intended a long-term commitment to the MDC, probably of at least a decade, although eventually its shareholding would be replaced by some form of Maori ownership. Their second finding is that the government expected eventually to recover its capital investment in the MDC but that this would be effected by transfer to Maori on favourable terms. (A16:5-6)

The three issues identified are, first, whether the government's involvement in the MDC stems from its Treaty obligations. Mr and Mrs Butterworth regard it as "straightforward" that this is the case, even if it was not the language commonly employed at the time.(A16:7) Secondly, the question is raised whether the government's withdrawal from the MDC would in some legal way jeopardise the shareholding of the Maori Trustee. (A16:7-9). Finally identified is the question whether the government has an express or implied obligation to maintain the character of the MDC as a vehicle for Maori commercial activity and, if so, for how long. (A16:9)

In a fuller report submitted on 28 June (A16(a)), Mr and Mrs Butterworth elaborated upon the events leading up to the creation of the MDC. They emphasised both the limited time and sources of information available to them in compiling the report, expressing particular concern that the documents comprising A1 in the tribunal's

record

of documents and supplied by the Crown under the Official Information Act, were biased sources of information because they had been selected by interested parties. (A16(a):1-2) They noted:

Insofar as the time allows we have tried to corroborate key interpretations from several sources but as a matter of professional principle and in fairness to the Tribunal and counsel we acknowledge that this work is more rough hewn than we would like. (A16(a):2)

The following summary of the evidence of Mr and Mrs Butterworth is taken from their two reports and their answers, at the hearing, to questions from counsel and the tribunal.

By way of general background, Mr and Mrs Butterworth highlighted the diversity of Maori opinion in the early 1980s as to how best to address Maori grievances and the crystallisation of the Treaty-based approach only after the 1987 New Zealand Maori Council v Attorney-General case. They commented that because the creation of the MDC pre-dated that case, the documents relating to its formation reflect the more diverse philosophies of the time. (A16:3)

After outlining the Muldoon government's support of the Tu Tangata programme, with its emphasis on economic and social self-reliance, and the radical restructuring of the Department of Maori Affairs, Mr and Mrs Butterworth state that, after December 1983, the drive for economic development continued with the appointment of Bruce Robinson as the department's Senior Deputy Secretary with special responsibility for economic development.

They outline a number of changes heralded by the election of the 1984 Labour government; its determination to resolve Maori grievances, give greater importance to the Treaty of Waitangi, end the social and economic imbalance between Maori and other New Zealanders and, in particular, its acceptance of the need to end Maori welfare dependency and to reverse the negative outcomes thereby created. The Kawenata resulting from the Hui Taumata, called by the government in October 1984, is emphasised as being a vital force in the creation of the MDC. Importantly, it analysed Maori problems in terms of welfare dependency and called for a decade of development and, it is said, the Minister of Maori Affairs attempted to implement the Kawenata within the limits of his authority and the resources he could win from the system. (A16:4-5)

Also noted is a corollary of the need to end welfare dependency: the need to assist Maori organisations and individuals to become major economic players. At the time there was deep concern that there was only one publicly listed Maori company and that

Maori assets were largely tied up in land and yielding low returns. Mr and Mrs Butterworth state that the MDC was intended to assist Maori to invest in new industries and to gain economic clout in the marketplace. Further, while initially the

government and the Maori Trustee would be major shareholders, in the long term some form of Maori ownership would replace them. (A16:5)

The spirit of exuberance in the years between 1984 and 1987 is recalled by Mr and Mrs Butterworth and stated to be an essential part of the context of the MDC's creation. (A16(a):3-4) Also emphasised is the spirit of the Hui Taumata's Kawenata which, the writers' say, reveals that not only money but pride, self-respect and independence were at stake in its call for a "quantum leap in Maori economic development". (A16(a):8)

Outlining the response to the Kawenata's proposals for a Maori Economic Development Commission and a Maori Development Bank, Mr and Mrs Butterworth commented on the report produced in February 1986 by the Commission:

It placed considerable emphasis upon the development of Maori land and asked that an additional \$38.5 million should be injected into Vote: Maori Affairs in 1986. From 1986/87 to 1989/90 they wanted a total of \$136.5 million. (A16(a):10)

While Mr and Mrs Butterworth had accepted, in their book *The Maori Trustee*, that the MDC flowed from this report, they note the disagreement of Bruce Robinson, Maori Trustee and Senior Deputy Secretary in the Department of Maori Affairs at the time. His view, they record, is that the Commission's idea was not feasible since it revolved around rural lending at concessionary rates (A16(a):10) contrary to Mr Robinson's view, ultimately preferred by the government, that lack of business skills rather than access to cheaper capital was the primary problem in Maori economic underdevelopment. (A16(a):15) It was also Mr Robinson's view that the Treasury needed to be involved in the next stage of events and Mr and Mrs Butterworth highlight the role the Treasury played in chairing the Steering Committee which made its favourable interim report in September 1986. (A16(a):10-12)

Mr and Mrs Butterworth place considerable reliance upon the information supplied to them by Mr Robinson in the course of preparing their reports for the tribunal. They note that, because of his roles at the time, particularly in his office as Maori Trustee where he sought to improve efficiency and profitability, he was a key player in the events leading up to the creation of the MDC. They also note that, at that time, Mr Robinson confidently expected to play a vital role in the MDC's operations: he would be a Director and a major shareholder, enjoyed the confidence of the two future shareholding Ministers of the Crown, had a good relationship with the Treasury and had contact with all the important Maori leaders. (A16(a):12,16)

They record that the "Hawaiian Loans Affair" which became public in December 1986 gave a push to the whole matter, forcing a sweeping review of government policy on Maori business. Mr Robinson's explanation of the situation was that the Finance Minister, the Hon. Mr Roger Douglas:

... felt that something needed to be done in the commercial area and he liked the idea of a one-off capital sum to create a commercial organisation without

the mixed objectives that were held to have generated low rates of return in other Maori enterprises such as incorporations. As Mr Robinson put it, he [Mr Douglas] was attracted to the idea of giving seed potatoes rather than chips to Maori. (A16(a):12)

Another point to emerge from the interviews with Mr Robinson was the haste or, as Mr Butterworth described it to the tribunal, the "opportunism" with which the MDC was established. Mr Robinson's explanation was that the important thing was to get the MDC up and running and that a lot of issues were not fully explored. (A16(a):13) Mr and Mrs Butterworth highlight the lack of information about the government's future intentions with regard to the MDC. They state:

We asked for a copy of the Articles of Association of the MDC to see what light this would throw upon the question of future withdrawal of any of the parties and the disposal of their shares. To our surprise the Articles appear to be a completely standard commercial formula making no reference to any special status of the Crown or any particular Maori character. This all tends to confirm Mr Robinson's comments about the haste with which MDC was established. Clearly the path of least resistance was followed and the standard formula used. (A16(a):15-16)

Mr Robinson's hope that the Maori Trustee's office and the MDC would enjoy a strong working relationship were impeded, Mr and Mrs Butterworth state, by three things: the difficulties of getting a social service oriented institution to work with a very financially focused organisation; Mr Robinson's retirement in November 1987 and the share market crash one month earlier. (A16(a):16-18) Commenting on the crucial importance of the share market crash, Mr and Mrs Butterworth state:

This utterly changed the economic climate and hence the strategy of the MDC. The MDC had seen itself working as a financial intermediary for Maori people. This had included raising capital. After the crash the conservative borrowing policies of most Maori economic institutions had left them in relatively good financial shape. Deregulation had also brought in new banking institutions. Mr Dyall [MDC's Secretary] in an interview on 7 May 1990 thought that these newcomers were actually targeting the stronger Maori institutions and thereby taking business away from the MDC. Interest rates were also being pushed up so that it was hard for MDC to borrow and on-lend competitively. At that point in time MDC was essentially a finance broker and project packager on a fee-for-service basis for Maori clients.

Things were difficult but the Poutama Trust had been a lifeline with its income covering a lot of the MDC's costs. Both of us recollect that Mr Dyall indicated that the MDC might be forced to become an industrial company making large investments in established companies.

Certainly both of us took from the interview that the MDC was very much in survival mode and the sharemarket crash and resulting economic recession had badly upset their plans. (A16(a):18-19)

The final matter reported on by Mr and Mrs Butterworth is Mr Robinson's view, expressed in an interview on 26 June 1993, of what was intended, upon the formation of the MDC, with regard to the future of the Crown's shareholding. In their words:

... he explained that the Crown's future role in MDC and the mechanism for its exit was left imprecise. "It was surmised and discussed how the Government would move out but nothing was really finalised. There was even a question mark or two as to whether it would really succeed."

Mr Robinson's expectation was that at the appropriate moment he would have raised the question of the Crown's withdrawal and he added "I had hoped there would be an element of gift about the way the Crown went out." (A16(a):19-20)

When asked by the tribunal to elaborate on this point at the hearing, Mr Butterworth again stressed both Mr Robinson's key role and the opportunistic element in the creation of the MDC. He explained that everybody who is trying to create a change within a bureaucracy has to seize opportunities as they arise and address them in the appropriate ways. Therefore:

Mr Robinson was not anxious to raise questions of ultimate Crown withdrawal. (A35:18)

He added that it also needed to be borne in mind that everything was occurring with two factors in mind:

The first, that the government was determined to do something about the under-achievement gap and the second thing was that the government recognised it was in for the long haul. The decade of development that was stressed at the Hui Taumata and reiterated very strongly in the Kawenata that came out of that is I think very important to understand. People did expect that it was a long process and a decade was set, from my conversations with my colleagues because I wasn't in there in the department at the time, to signify that it was a long haul. There was no quick fix solution, there was no way you were going to reduce that within the one or two terms of the government and I think Mr Robinson was working within the assumption of the goodwill also in that period. But when it came to a withdrawal the Crown would accept that some concessions should be made to put Maori people into a stronger economic position. (A35:18-19)

Mrs Butterworth added that Mr Robinson did not envisage the Crown as a permanent partner in the MDC but nobody envisaged how they were going to get out. She then said:

In fact, there was some uncertainty indeed as to whether the whole venture would succeed. Really nobody was looking that far ahead. (A35:19)

Crown counsel asked Mr and Mrs Butterworth whether, in light of their evidence that the focus was on setting up the MDC and that the end result could be unexpected, it was fair to categorise Mr Robinson's comments about how the Crown might ultimately

exit from the company as merely his own suggestion, unsupported by the views of the time. In rejecting that interpretation, Mr Butterworth again stressed Mr Robinson's connections with all the likely decision makers of the time, particularly in the Treasury.

(A35:20-21) When Crown counsel asked whether there was any written evidence of the Crown's attitude "further down the line", Mr Butterworth replied that nobody wanted to raise those issues because they raised such thorny questions and reiterated the point that it was uncertain whether Maori could succeed in the venture. As he put it, in light of the scepticism whether Maori could make it at all, it could have been an academic question whether there was ever going to be any capital or assets to recover. (A35:21)

In response to questions from Professor Winiata and the tribunal as to whether the Maori Trustee would have invested in the MDC without the Crown's involvement, Mr Butterworth drew attention to a passage in a paper written by the Assistant Secretary to the Treasury in December 1986 to the Minister of Finance. There it is stated, with regard to the Maori Trustee's intentions as to the proposed Maori Resource Development Corporation:

We understand that he is likely to proceed even if the Crown does not participate as he accepts the desirability of separating his more commercial objectives from other statutory functions that he performs. (A35:24;A1:35)

Professor Winiata also asked whether, in light of the evidence that the Crown should, in exiting the MDC, give favourable terms to Maori, a public tender was likely to produce that result. Mr Butterworth responded:

I do not feel we can answer specifically about whether a public tender is fair or not. What I could, I believe, say as a result of our historical knowledge is that I don't believe anybody thought there would be an auction for the Crown shares of the MDC. That there would be some sort of negotiation and consultation with Maoridom ... Thinking back on the conversations with Mr Robinson, he was thinking in terms of a certain proportion of the MDC always being held in some pan-Maori way. (A35:25-26)

The tribunal then asked Mr and Mrs Butterworth whether, in their historical research, they had seen government policies or programmes which, rather than helping Maori, tended to create divisiveness. Upon receiving an affirmative answer from Mr Butterworth, he was then asked whether the proposed method of disposing of the Crown's MDC shares, whereby any Maori authorities or iwi groups with the funds could end up owning them, could be categorised as divisive. Mr Butterworth replied:

Yes, from a historical perspective it does seem to be this way. I mean that the Maori Trustee tried to be the representative of all Maoridom, the instrumentality he was creating in the end in MDC was intended to be an instrumentality for all

Maoridom and we had long talks with Mr Robinson and Mr Baker - unfortunately Mr Parore was not available - but I know both of them were very concerned that that institution should always be seen as pan-Maori and felt able to go and get a fair hearing from. (A35:26-27)

It has already been noted that Crown counsel challenged the evidential value of certain statements made in the reports and oral evidence of Mr and Mrs Butterworth and asked the tribunal to give appropriate weight to their evidence in light of the limited time and sources of information which they had available. Both claimant groups acknowledged that Mr and Mrs Butterworth had been subject to limitations of time and upon their access to information but drew attention to their previous research work relating to Maori Affairs and the Maori Trustee and Mr Butterworth's previous employment by the Department of Maori Affairs. The claimants asked that these matters be taken into account by the tribunal in weighing Mr and Mrs Butterworth's evidence. (A35:17)

Waitangi Tribunal, Department of Justice, Wellington.