

Maori Electoral Option Report

4 - The Crown's Funding Proposals

4.1 - Introduction

Chapter 4

The Crown's Funding Proposals

4.1 Introduction

Having settled the relevant Treaty principles which are applicable to the circumstances of this claim, it is necessary now to examine the funding proposals of the Crown to determine whether, in the prevailing circumstances, they afford reasonable protection to Maori rights to political representation under the Electoral Act 1993 with particular reference to the Maori Electoral Option to be exercised between 15 February and 14 April 1994. In short, the question is whether the Crown has allocated sufficient resources to meet its Treaty obligations.

At the outset of his submissions Crown counsel cautioned the tribunal that the allocation of resources is inherently a political matter and one of the principal functions of executive government. He referred to it as a complex task, involving a constant assessment and reassessment of priorities, a consideration of the current economic circumstances and the demands of remaining accountable to all New Zealand citizens. The tribunal, he suggested, should be very cautious in reviewing decisions involving the allocation of resources; the jurisdiction of the tribunal, he submitted, is confined to assessing breaches of the principles of the Treaty.

The tribunal accepts that the allocation of resources is inherently a political matter and an important task of executive government. We also accept that our jurisdiction is largely confined to assessing breaches of Treaty principles. In this case, however, it is clear that the Crown has a duty in terms of the Treaty principles we have discussed to allocate resources by way of funding to ensure as far as it reasonably can that Maori are enrolled and are adequately informed on the issues relevant to the exercise of their option as to which roll they wish to be registered on. Whether the Crown, in making the financial and other provisions it has, has acted in breach of Treaty principles is the very question before us. We are required to make an assessment on the evidence before us as to whether the Crown has allocated sufficient resources to meet its Treaty obligations .

That there is a need for government funding was acknowledged by Crown counsel who told us that the Crown is committed to encouraging and promoting Maori participation in the electoral process. That there are special needs and problems associated with the current level of involvement by Maori is acknowledged by the Crown. The provision of resources by the Crown towards specific Maori awareness campaigns over the last 18 months was cited by Crown counsel as an express acknowledgment of the difficulties of ensuring that Maori play a full role in the electoral process. The tribunal acknowledges, as have the claimants, the past contribution made by the Crown. We have been invited by Crown counsel to have regard to these various past contributions, financial and otherwise, in assessing the reasonableness of the Crown's policy in terms of the principles of the Treaty. It is clear, notwithstanding his earlier cautionary admonition, that Crown counsel expects

us to form an opinion on whether or not the Crown resources specifically targeted at the Maori Electoral Option are reasonable in the prevailing circumstances. In this he is clearly correct. Indeed, having determined the relevant Treaty principles applicable to this claim, it is the very question the tribunal has to determine. Accordingly we now turn to consider that question.

Waitangi Tribunal, Department of Justice, Wellington.

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4.2 - Crown Action to Promote Greater Maori Participation in the Electoral Process

4.2 Crown Action to Promote Greater Maori Participation in the Electoral Process
Crown Counsel submitted that, in assessing the reasonableness of the Crown's policy in terms of Treaty principles, the tribunal should have regard to certain steps that the Crown has taken to promote greater Maori participation in the electoral process. This we now do in the order set out by Crown counsel in his written submission (B1).

(a) The establishment of a Royal Commission on the Electoral System

The Royal Commission on the Electoral System (which included a Maori member) deliberated and reported at length, among many other matters, on the issue of Maori representation in Parliament and participation in the electoral process. Its report, Crown counsel submitted, can be viewed as the genesis of the current reform.

The tribunal acknowledges the great value and influence of the Royal Commission's report. The Commission recommended that MMP be adopted and that the four Maori seats be abolished. The Commission recognised that the abolition of the seats could arouse strong feeling in the Maori community. This proved prophetic. In the event, as a result of the widespread expression of this strong feeling on the part of Maori, the proposal in the Electoral Roll to abolish the Maori seats was revoked. Maori are now required, very soon after the result of the November 1993 referendum and in the relatively short time frame of two months, to decide on which roll they wish to be registered. In so deciding they will face complex issues on which a significant number will need information and education. As many as possible of the up to 60,000 not at present on the rolls will need to be enrolled and similarly informed. It is, by any standard, a major task.

(b) Maori Participation in the Electoral Law Reforms

The provision by the Crown of \$374,091 (including GST) to Maori for consultation and the preparation of a submission to the Parliamentary Electoral Law Select Committee

Evidence on this and later advances by the Crown to Maori was given to the tribunal by Professor Ngatata Love, who is Professor of Management and Dean of Business Studies at Massey University. We record the following from the evidence of Professor Love (A7)

- Professor Love, together with Mr Wiremu (Bill) Katene, co-convenes a Steering Committee which was formed in March 1993 to ensure Maori participation in electoral law reforms. The Steering Committee comprises representatives from all three national Maori organisations: the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League. The Committee was formed because of concerns that Maori were not properly informed of the implications of the electoral reforms as proposed by the then Electoral Reform Bill which abolished the four Maori constituency seats.
- The Steering Committee was concerned that, despite significant proposed changes to

the basis of future representation in Parliament for Maori, very few submissions had been made by Maori to the Electoral Law Select Committee. A critical issue stressed in the Report of the Royal Commission was that there should be adequate consultation with Maori.

· In early March 1993 a paper and proposal "Electoral Reform Bill - Maori Participation" was submitted to the then Minister of Maori Affairs. The proposal was for a concentrated consultation campaign, involving 25 regional hui and one national hui over a four month time frame to 30 June 1993. The intention was to inform Maori of the implications of the Bill, seek feedback and submit that feedback to the Select Committee for its consideration. Funding of \$785,250 (including GST) was sought for that campaign.

· The Minister of Maori Affairs declined to offer assistance and submissions were accordingly made to the Minister of Justice who, on 13 April 1993, approved a substantially modified programme for the purpose of:

- ensuring that Maori were fully and independently informed on the implications of the proposed electoral reforms;
- obtaining feedback from Maori so that full and complete submissions reflecting that feedback could be made to the Electoral Law Select Committee by 12 May 1993, and
- ensuring that the Government was aware of the views of the Maori people on the question of Maori representation.

Funding of \$374,091 (including GST) was made available for the campaign.

· The time frame for consultation - 30 days - was extremely short and was limited by time and budgetary constraints. Regional hui were therefore reduced in number from the planned 25, to 18, culminating in a two day national hui at Turangawaewae Marae. Notwithstanding the reduced time frame for consultation, and of necessity, the reduction in the number of regional hui, the Steering Committee was of the view that funding approved for the campaign was insufficient, and approached Te Puni Kokiri, on 15 April 1993, for additional assistance, namely

- resources to provide constitutional law expertise for the campaign;
- assistance to host the national hui at Turangawaewae Marae;

The request for assistance was declined.

· The consultation exercise was carried out over a two week period, using three teams, each with three people, to present the issues and receive and document feedback at assigned hui - each team presented at six hui. The national hui at Turangawaewae Marae was held on 4 and 5 May 1993, following which a comprehensive report with recommendations was presented to the Electoral Law Select Committee on 18 May 1993. The Select Committee attended for a time after the hui.

· Professor Love and his colleagues believe the submissions were instrumental in influencing significant amendments to the Electoral Reform Bill, in particular the retention of separate Maori constituency representation under MMP with provision for those seats to vary according to the number of Maori who elect to be enrolled on the Maori roll.

· While the Steering Committee had signalled at the outset that funding of \$374,091 was insufficient to carry out this crucial consultation exercise, its ability to complete the task was dependent on both voluntary and subsidised help given by many people, and on the project management and administrative support provided by the Crown/Congress Joint Working Party.

The tribunal notes that this programme, although by no means comprehensive in its coverage, did result in the restoration of Maori constituency seats. But it bore only a marginal relevance to the issue now before Maori - the need to enrol many thousands

of unregistered Maori and the exercise of a critically important electoral option.

(c) Maori Voter Enrolments: Trial Period

The next item referred to by Crown counsel was the provision of \$65,250 (including GST) to the Steering Committee to undertake a trial voter enrolment programme.

Professor Love (A7) told us

- That during the earlier consultation programme on the Electoral Reform Bill it became evident that large numbers of Maori were not enrolled on either the Maori or General electoral rolls.
- After meetings with officials in the Department of Justice and the Electoral Enrolment Office of New Zealand Post it was clear that the "mainstream" methods used to encourage people to register as electors were not reaching a large percentage of Maori. These mainstream methods included radio and television advertising in non-Maori media and mail drops.
- It was suggested to the Electoral Enrolment Office that a different approach to Maori voter enrolments should be adopted; that approach to be based on Maori infrastructures and networks at whanau, hapu and Iwi level.
- The Electoral Enrolment Office agreed to co-operate and finance a trial project in the Elsdon/Titahi Bay area of Porirua utilising the services and methodology suggested by the Steering Committee. This involved using a project team of young Maori with the ability to tap into the myriad of Maori networks to encourage Maori to enrol as electors.
- The two-week field trial, preceded by a two-week planning period, was conducted in July 1993. It was completed on time with excellent results: 2,018 voters were enrolled; 1,323 were Maori of whom 459 were in the Elsdon/Titahi Bay area (target for this ward being 300). Enrolments were achieved at \$28.81 per enrolment, a figure understood to be considerably lower than other methods used in past enrolment campaigns. In addition to the 1,323 Maori some 695 non-Maori were also enrolled. The tribunal notes that this trial project effectively demonstrated what could be done by the new approach and was a successful pilot study.

(d) Maori Voter Enrolments: Further Campaign

The provision of \$100,000 (including GST) to the Love/Katene Steering Committee for the further promotion of Maori enrolment for the 1993 General Election. This was a direct outcome of the successful Elsdon/Titahi Bay trial.

At the invitation of the Electoral Enrolment Office the Steering Committee, on 5 August 1993, submitted a proposal and budget for undertaking enrolments in some 12 areas. The areas were

South Auckland Kaitia

Kaikohe/Moerawa/Kawakawa Whangarei

Hamilton/Ngaruawahia/Huntly Te Awamutu

Tokoroa Taupo

Mt Maunganui Whakatane West

Gisborne Hastings/Flaxmere

According to Electoral Enrolment Office statistics Maori voter enrolments were particularly low in these locations, there being some 18,300 Maori who were not enrolled.

- The Electoral Enrolment Office was unable to fund the proposal submitted which aimed to achieve a target of 14,210 enrolments at a cost of \$26.15 per enrolment compared with \$28.81 for Elsdon/Titahi Bay. Instead the Electoral Office agreed to provide \$100,000 (including GST) to cover the following seven locations:
South Auckland, Hamilton, Whangarei, Kaikohe, Whakatane, Hastings, Gisborne

- This enrolment campaign was based on the kanohi ki te kanohi (face to face) Maori method. It ran from 16 August to 5 October 1993. Despite the severe funding constraints, results were spectacular with 12,310 enrolments completed at an average cost of \$8.12 per enrolment. Of the 12,310 enrolments, 9,061 were Maori of whom 6,471 opted for the Maori roll. In addition there were 3,249 non-Maori enrolments.
- Professor Love attributed the success of the Maori voter campaign to the use of Maori methodology, implemented by Maori, and to the dedication and commitment of a very small project team and voluntary assistance from Maori organisations in the field. He expressed the view that with more resourcing and time, Maori voter enrolment achievements would have been more significant.

(e) Maori Voter Information Campaign

Provision of funding of \$320,066 (including GST) by the Electoral Referendum Panel. This was an independent panel (including a Maori member) commissioned by the Government to undertake an impartial education campaign to all voters on the 1993 referendum.

- At the invitation of the panel, the Steering Committee submitted a detailed proposal which involved presenting issues on the referendum to Maori using both contemporary and traditional communications techniques - mass Maori media and kanohi ki te kanohi. The proposal was modified by the Electoral Referendum Panel and the Maori Voter Information campaign (He Whakamarama Poti) was based solely on the kanohi ki te kanohi method and excluded the Maori multi-media approach. Funding was reduced accordingly.

· The Steering Committee undertook to present information to Maori at 60 regional presentation venues (marae and non-marae based). One hundred and thirty-seven presentations were in fact made, with over 6,500 Maori spoken to kanohi ki te kanohi. The use of a special video and discussion package prompted Maori organisations to discuss the issues in other fora, creating a snowball effect. Such was the effectiveness of the campaign, the Steering Committee, in its final report to the Electoral Referendum Panel, strongly recommended that the Government use this as a model for future public information dissemination campaigns for Maori. The tribunal notes Crown counsel's concurrence that the campaign, using Maori methodology, was very successful. While the campaign was concerned with the subject matter of the referendum - that is, the choice between FPP and MMP - and not the Maori option, it was of some relevance to the Maori option and could be regarded as foundation-laying among those Maori who were spoken to.

(f) Maori Voter Motivation Campaign

Provision of \$45,000 (including GST) by the Chief Electoral Officer, Department of Justice

- As part of a Voter Motivation campaign undertaken by the Chief Electoral Officer, the Steering Committee was invited to undertake a complementary motivation campaign for Maori voters.
- The Maori Voter Motivation campaign was carried out in tandem with the Maori Voter Information campaign and, in addition, by setting up stalls in key urban shopping malls and shopping centres. Members of the Steering Committee's project team were in attendance at these stalls in Auckland, Hamilton and Wellington to provide information, advice and reference material to members of the public - Maori and non-Maori alike. These activities were covered by the \$45,000.
- In addition to those Maori spoken to in the Maori Voter Information campaign discussed earlier, in excess of 4,500 Maori were spoken to in the urban centres.

Whanau discussions were generated again creating a snowball effect.

· It appears these campaigns were instrumental in influencing the higher turnout by Maori at the 1993 election. Sixty-four thousand, one hundred and sixty eight Maori on the Maori roll participated in the election compared with 48,995 in 1990. This represents a 30% increase in Maori voter participation compared with only a 2.6% increase in General roll participation.

(g) Administrative Costs

The last item of expenditure in 1993 on behalf of the Steering Committee referred to by Crown Counsel was a sum of \$11,453 (including GST), being the cost of providing the Committee, now known as INCO Services, with office accommodation, telephone, fax and related services for the duration of their contract with the Electoral Enrolment Centre to carry out the trial and subsequent wider Maori enrolment campaigns referred to in the preceding sections (c) and (d).

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4.3 - Conclusions on the 1993 Maori Electoral Campaigns

4.3 Conclusions on the 1993 Maori Electoral Campaigns

The tribunal has referred to these various 1993 campaigns carried out by the Steering Committee with the assistance of Government funding for two main reasons. First, Crown counsel urged on us that, in assessing the reasonableness of the Crown's policy in terms of the principles of the Treaty, the tribunal should have regard to the various steps the Crown has taken to promote greater Maori participation in the electoral process.

The various campaigns fell under four heads. The first was concerned with Maori participation in the electoral law reforms and took place in May 1993. While it appears to have contributed to the retention of Maori constituency seats it has no direct or immediate relevance to the Maori Electoral Option about to take place in 1994.

The second category comprised two campaigns, the first a very modest trial and the second somewhat more extensive, both directed at stimulating Maori enrolments. To the extent that they resulted in increased Maori enrolments they have made a modest contribution to the number of Maori on the roll. Regrettably, it appears that at least 50,000 and as many as 60,000 Maori are not registered as electors.

The third category concerned the Maori Voter Information campaign concerning the November referendum on FPP and MMP. While valuable, it was necessarily limited in the number of Maori who could be reached *kanohi ki te kanohi* given the available funding.

The fourth category was the Maori Voter Motivation campaign. It reached in excess of 4,500 Maori in addition to those spoken to in the information campaign and no doubt contributed - as did the other campaigns - to the 30% increase in Maori voter participation in the 1993 election compared with the 1990 election. It was not, of course, directly concerned with the forthcoming Maori Electoral Option.

The tribunal believes that, in assessing whether the funding now being made available to Maori in connection with the exercise by Maori of the option is reasonable, limited regard should be had to the 1993 expenditure we have been considering. To varying and unquantifiable degrees that expenditure has raised the consciousness of some Maori to electoral issues including MMP and has directly resulted in some increase in Maori enrolled as electors.

The second reason for our discussion of the various campaigns is because, although restricted in compass, they demonstrated that the Maori methodology of *kanohi ki te kanohi* campaigning proved to be greatly superior to more conventional means in reaching Maori.

In concluding his evidence, Professor Love stated that, while the Maori option is not new, the link under the MMP system between the numbers on the Maori roll and Maori Parliamentary representation means that the option assumes a significance that did not exist in the past. The Steering Committee considers it essential that Maori are adequately informed of the significance of the option under an MMP electoral system.

The proven methodology used in the earlier campaigns to disseminate information to Maori on what are quite complex issues provides, the Steering Committee believes, the most effective model for informing Maori of this crucial issue.

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4.4 - Crown Funding for the 1993 Maori Electoral Option

4.4 Crown Funding for the 1993 Maori Electoral Option

The Crown has made the following provision for funding the Maori Option. This was deposited to by Mr Lloyd Hunt, Business Manager of the Electoral Enrolment Centre of New Zealand Post (B1:B).

A total of \$581,000 (including GST) has been allocated by NZ Post for the purpose of the Maori option. From this sum approximately \$431,000 will be spent on a direct mail- out to each registered Maori elector advising him or her of the option and how to exercise it. It is said that NZ Post has consulted with INCO Services (the former Steering Committee) on the content and design of the material sent to individual electors and INCO Services has approved the material. Mr Hunt expressed the opinion that since 78.14% of enrolled Maori responded to the 1993 roll revision he expected that at least the same percentage of Maori electors will be reached by and take notice of the Maori option material, replying to NZ Post if they wish to chance rolls.

The tribunal notes that a little over 20% of enrolled Maori failed to respond to the 1993 roll revision and presumes that a similar proportion, unless extra steps are taken, are likely to fail to respond on this occasion. The proportion failing to respond may be higher if the recipients are not able to comprehend the full implications of the choice they are invited to make.

It is apparent that many Maori gain a better understanding from an oral communication rather than from written material through the mail.

The tribunal further notes that there are a substantial number of Maori who are not on any electoral roll. The NZ Post mail out will not reach them. There is doubt about the precise number of eligible Maori voters who are not enrolled. Brian Easton, a Research Economist and Social Statistician, has estimated the total number of eligible Maori over the age of 18 as 308,000 (A13:10). The number of Maori registered on the electoral roll was about 248,000. Mr Easton considered the "gap" of 60,000 might be taken as the number of Maori who are unenrolled.

Mr Hunt of the NZ Post Electoral Enrolment Centre gave the number of Maori registered as at 19 January 1994 as 253,252. He stated that on the basis of 1991 Census date the highest possible number of Maori eligible to enrol is 316,000. The tribunal notes that the "gap" between 253,252 and 316,000 is 62,748. If the figure of 316,000 is correct this would leave 62,748 Maori voters unenrolled. Mr Hunt pointed out, however, that the figure of 316,000 does not take into account three factors - the number of Maori deaths since the 1991 census the migration of Maori from New Zealand (or presumably returning to New Zealand) and the number of Maori who may identify as Maori for the purpose of the census but not for electoral purposes and who are therefore on the General roll (but not recorded as Maori on the General roll). Mr Hunt did not himself give an estimate of the number of unenrolled eligible Maori electors. He stated the total number of unenrolled electors as 167,000. This includes both Maori and non- Maori.

Crown Counsel advised the tribunal that Statistics New Zealand considers that the highest possible number of unenrolled eligible Maori voters would be about 60,000 but is unable to give a precise figure.

In the light of this evidence the tribunal is also unable to form an opinion on the precise number of eligible Maori voters who are not enrolled. It is apparent, however, that the number is very substantial and it would be reasonable to assume it is not less than 50,000 and may be higher.

The balance of the \$581,000, referred to above, amounting to \$150,000, is being paid by NZ Post to INCO Services in order, Mr Hunt says, to reach those Maori electors for whom the direct mail approach is not effective. In addition the sum of \$23,663 (including GST) has been spent by NZ Post on 1,200 copies of an information booklet for use at hui and by Maori leaders for the purposes of explaining the exercise of the option and its consequences in the context of the MMP electoral system.

A copy of the contract between Mr Katene and Professor Love and NZ Post Ltd signed in December 1993 was put in evidence. NZ Post undertake to pay the contractors Katene and Love \$150,000 for the performance of services designed to ensure that during the advertising campaign for the Maori option Maori are informed about the option and how they may exercise the option.

The information to be presented by the contractors Katene and Love is to include what the Maori option means; when it may be exercised; the implication of transferring from one roll to another; the process for transferring from one roll to another; and familiarisation with the Notice Concerning the Exercise of the Option. Nothing is said about attempting to enrol those many eligible voters who are not enrolled.

The contract provides that the dissemination of this information is to be achieved by the performance of some or all of the following services

1. Providing advice to NZ Post regarding the design of the envelope to be used to distribute the mail Notice Concerning the Exercise of the Option and the information to accompany the Notice.
2. Providing a telephone "information desk" and to respond to 0800 enquiries referred to them by NZ Post about the Maori option.
3. Providing to NZ Post a list of matters which would be appropriate to incorporate in an information leaflet.
4. Production of a video which may be used in presentations.
5. Distributing information packs produced by NZ Post at NZ Post's expense.
6. Advertising the Maori option by
 - conducting a national hui at the Turangawaewae Marae on 20 January 1994. (The tribunal notes that it was the hui held at Turangawaewae on 14 January 1994 which gave rise to the claim before the tribunal.)
 - conducting regional hui;
 - radio broadcasts on Aotearoa Radio and Iwi radio network link;
 - placing advertisements in four Iwi publications.
7. Establishing and staffing information booths at key supermarket malls in Auckland, Hamilton and Wellington to distribute information and advice.

It is appropriate to note at this stage that in addition to the funding by NZ Post financial and other assistance is being provided Professor Love and Mr Katene (through INCO Services) by Te Puni Kokiri.

The major component of this assistance is the secondment of some ten officers in the employ of Te Puni Kokiri from their existing duties to act as kaiwhakarite (or liaison officers) in each regional office for the period up to and including the option. These

kaiwhakarite would liaise with local representatives of the three pan-Maori groups involved in the campaign - the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League - and other interested groups. They would also facilitate campaign activities such as arranging speaking venues, organising and staffing information desks in malls and at sporting events and the distribution of written material. It is hoped to have a largely voluntary effort to sustain the campaign. The cost of the secondment of these officers from their normal duties is claimed to cost approximately \$100,000 (including GST). While as a matter of book-keeping there may be a notional cost of this amount it does not in fact constitute additional expenditure of \$100,000, as provision will already have been made for the payment of the salaries of the officers being seconded from their normal duties. In addition, Te Puni Kokiri has agreed to contribute \$35,000 (including GST) towards the cost of secretarial support services in Wellington (\$20,000), radio advertising (\$13,000) and postage (\$2,000). The Ministry will also fund ten regional training and strategy sessions on the option at a cost of \$12,400. Including the book entry for the secondment of the kaiwhakarite at a notional cost of \$100,000, the total contribution is assessed by Te Puni Kokiri at \$147,400 (including GST). The tribunal notes however that the actual cost to the Ministry is of the order of \$47,400 and possibly rather less if the secretarial support services (\$20,000) are also being rendered by seconded staff already on the pay-roll.

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4.5 - The Adequacy of the Crown Funding

4.5 The Adequacy of the Crown Funding

The Crown funding to Maori is as follows:

- \$150,000 to the contractors Ngatata/Love
- \$ 23,663 on 1,200 copies of an Information booklet
- \$ 47,000 in personnel and services by Te Puni Kokiri.
- Note: This sum excludes the \$100,000 for
- \$220,663 salaries already committed.

Associate counsel for the claimants, Hamish Hancock, in his final submission on the issue of funding, stated that the measures required to inform and educate Maori on the option and to facilitate enrolment and participation fall into two broad categories, neither of which, it is claimed, has been adequately funded:

1. Maori traditional method of communication and instruction - *kanohi ki te kanohi*. A number of witnesses testified to the critical importance of this approach.

2. Conventional method of mass communications as targeted to a specific audience.

Various witnesses spoke of the need for this as part of the Maori Electoral Option campaign.

We will consider each in turn.

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4.6 - Kanohi Ki Te Kanohi

4.6 Kanohi Ki Te Kanohi

We have recounted in some detail the various campaigns conducted by Professor Love and Mr Katene as a Steering Committee for the three pan-Maori national organisations. Each was, within the constraints of the available funding by the Crown and the limited time available, remarkably successful. That the Government agencies concerned had confidence in the techniques and methods employed in the various campaigns is evident by the repeated willingness of different official bodies to fund the various campaigns.

It is clear that the success of each of these campaigns was the reliance in each case on kanohi ki te kanohi - face to face discussion. We accept as established beyond any reasonable doubt Professor Love's conclusion that, with respect to the Maori Electoral Option, the "proven methodology used in the earlier campaigns to disseminate information to Maori on what are quite complex issues provides ... the most effective model for informing Maori of this crucial issue".

There are various reasons for the much greater effectiveness of kanohi ki te kanohi over conventional mail hand-outs and the distribution through other means of written material without personal contact and discussion. We will refer to a number of the claimants' witnesses besides Professor Love who discussed the question.

Lou Tangaere is Chairman of the Tairāwhiti District Maori Council, the Rāhui Marae Committee, Waiapu North Maori Committee and the Horouta Maori Executive. He explained that there are numerous problems inherent in contacting Maori in a rural and isolated community, particularly when the message is in print form. Speaking from his experience as a farmer in a remote and isolated part of the country he expressed the opinion that simply sending a letter or written booklet would be inadequate as a means of informing Maori of the Tairāwhiti. He explained that many families had neither telephones nor motor transport and often lived at some remove from the nearest post office. Most were serviced by rural delivery mail "which is infrequent and often unreliable". If communications are to be successful in his region Mr Tangaere said that Maori prefer to discuss serious issues face to face and this approach is critical for people who learn by listening and not reading (A12).

Maanu Paul represented the New Zealand Maori Council as an Executive member. He referred to his experience prior to last year's election participating in a kanohi ki te kanohi campaign to educate Maori about the electoral referendum. Mr Paul stated that the face to face approach was crucial to the success of the campaign. In his opinion television, newspaper and radio mass media are quite inferior public relations methodology to the kanohi ki te kanohi method (A16).

Edward Macpherson Kohu Douglas, a Senior Lecturer in Sociology at the University of Waikato with expertise in demography, spoke particularly about the special problems of contacting and re-enrolling Maori voters in the Auckland urban area. His focus was upon Auckland because of the large number of Maori of voting age living there, including presumably thousands not on either the Maori or General roll.

Auckland now has a Maori population of well over 130,000.

Mr Douglas explained that the Maori population is younger than the non-Maori population and that half of those of voting age are 18-30. People in this range in any society, he said, have the lowest level of interest in political affairs, the lowest level of political party affiliation and the lowest level of participation in elections. Coupled with this, he continued, Maori have comparatively low levels of functional literacy and educational attainment and under-achieve in all the social statistics. Their pre-occupation, therefore, is not with the exercise of the franchise.

Mr Douglas stated that amongst Maori the single parent household is surprisingly prevalent, particularly in urban areas. About one third of all Maori households with children are headed by solo parents, usually women. These solo parent households lead to social isolation which is compounded by lack of telephones in their homes. Without telephones and with a low level of functional literacy, contact must be made on a face to face basis or through the mass electronic media.

In concluding his evidence Mr Douglas contended that the Crown must take into account that Maori have a different culture, social organisation and belief system from Pakeha. Just as enrolment procedures for Pakeha electors have been designed for Pakeha values within their cultural context, so enrolment procedures for Maori electors should be designed for Maori with their distinct values and particular social and economic circumstances in mind (A17).

George Matua Evans of Ngata Porou spoke from the perspective of rural New Zealand on the East Coast where there is a large Maori population. He referred to social problems of Maori in the area. There are also problems with television reception due to local conditions. In his opinion television cannot be relied on to get a message across and cultural issues have to be addressed on the papakainga. The literacy skills of many Maori, he said, are not great.

The constant theme throughout much of the foregoing evidence is the need to ensure that contact with Maori is made on a face to face basis on the Maori Electoral Option issue, and some witnesses also saw the need to utilise mass media education techniques as well.

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4.7 - Conventional Communications

4.7 Conventional Communications

The second of the two broad categories which Mr Hamish Hancock, for the claimants, submitted is required to inform and educate Maori on the option and to facilitate enrolment and participation, was the need to employ some conventional methods of mass communication targeted to a specific audience.

Mr Hancock submitted that, despite the limitations of conventional communication campaigns for communicating with Maori, the evidence already establishes that the Maori Electoral Option campaign must also rely on this method, including mass electronic media.

Ripeka Margaret Evans is Executive Director of Te Mangai Paho, the Maori Broadcasting Agency which is a Crown entity established under the Broadcasting Amendment Act 1993 to distribute funds for the production and broadcast of programmes in the Maori language and culture. She is also Director of Ripeka Evans and Associates, a Management and Communications Consultancy in Auckland. The consultancy specialises in research, public information and communications advice particularly to Maori and indigenous audiences.

Ms Evans considers the Maori option to be the most significant event which will affect the political status of Maori since the signing of the Treaty of Waitangi. She noted serious concerns that the action undertaken to advise and inform Maori of their right to exercise their option to vote on the Maori roll or the General roll will not be effective.

Ms Evans noted that there is substantial evidence to confirm a direct relation between mass and appropriate advising and informing and a behavioural result. She referred by way of example to the recent nationwide public health information campaign. The Crown achieved widespread success amongst the non-Maori population in lowering the death rate from Sudden Infant Death Syndrome (SIDS) - or cot death. But, by contrast, the same campaign did not impact significantly upon the Maori population when in fact the ratio of deaths from SIDS amongst the Maori population was and continues to be approximately three times higher than for the non-Maori population. Ms Evans noted that a number of reasons for the failure of the campaign amongst Maori have been confirmed by communication specialists and include:

- the failure of key messages and informants to appeal to Maori as they were not Maori
- the domination of the delivery of messages in print form
- the absence of a combined Maori mass media campaign coupled with a "face to face" (kanohi ki te kanohi) service delivery programme
- the absence of Maori role models, opinion leaders and principals in the formulation, design and delivery of a campaign matched to Maori psychograph demands.

By way of amplification of her evidence Ms Evans said that appropriate TV advertising (for example, advertising on TV 2 with its high proportion of young Maori viewers) conducted in tandem with a face to face information campaign would be

mutually reinforcing whereby the one type of campaign would "drive up the demand" for the other and vice versa.

Waitangi Tribunal, Department of Justice, Wellington.

Maori Electoral Option Report

4 - The Crown's Funding Proposals

4.8 - Measures Necessary to Fund Enrolment and Effective Participation

4.8 Measures Necessary to Fund Enrolment and Effective Participation

The tribunal finds that the evidence before it establishes that the measures required to inform and educate Maori on the Maori Electoral Option and to facilitate both enrolment and effective participation fall into two broad categories.

(a) The traditional Maori method of face to face communication and instruction (kanohi ki te kanohi) and

(b) Certain conventional methods of mass communications targeted to a specific audience, in this case Maori electors both potential and actual.

The tribunal records that the Crown has not sought to challenge the evidence which establishes the foregoing propositions.

Waitangi Tribunal, Department of Justice, Wellington.

Maori Electoral Option Report

4 - The Crown's Funding Proposals

4.9 - Adequacy of Present Funding Considered

4.9 Adequacy of Present Funding Considered

It is next necessary to consider whether the Crown funding made available to Maori through NZ Post and Te Puni Kokiri makes adequate provision to implement the two broad categories of activity referred to. Of the sum of \$220,663 made available by the Crown (see 4.5), the largest payment is \$150,000 to Professor Love and Mr Katene. In examining this we must consider the extent to which the nature of the services to be performed and the conditions attaching to the funding make provision for implementing the two broad categories of measures required to meet the Crown's Treaty obligation to Maori in relation the Maori Electoral Option.

In 4.4 we noted the services which, in terms of the contract between NZ Post and the Love/Katene Steering Committee, the Committee is expected to provide out of the sum of \$150,000. These services fall into the following categories:

- (a) Written communication - items 1 and 3 and 6 (advertisements in Iwi publications)
- (b) Telephone information desk and 0800 enquiries.
- (c) Video for use in presentations.
- (d) National hui (already held, in which 200-300 people attended) and various regional hui.
- (e) Radio broadcasts on certain Maori radio.
- (f) Information booths in key supermarket malls in Auckland, Hamilton and Wellington.

It is apparent that the opportunity for the traditional Maori method of face to face communication and instruction is very limited. It is not known how many regional hui are envisaged but, given the funding, they are unlikely to be numerous. These are unlikely to be attended by more than a comparatively few of the two hundred thousand or more Maori electors in urban centres. Information booths are limited to certain supermarkets in three centres only and will reach a relatively small percentage of Maori. The radio broadcasts will lack the coverage and impact of a mass TV campaign appropriately targeted. No provision is made for such a campaign.

In addition to the NZ Post funding, which totals \$173,663, is the provision of certain services by Te Puni Kokiri which the Ministry has costed at \$147,400 but which, excluding the salaries for seconded officers already provided for, involves an additional expenditure of \$47,400. However, note must nevertheless be taken of the services of the 10 kaiwhakarite who will be deployed for two and a half months to liaise with local representatives of the three national Maori groups and others involved in the campaign. It appears they will be largely dependent on the actual field work of kanohi ki te kanohi being done by voluntary workers. How effective they will be in ensuring widespread contact is not known.

It is instructive to compare the funding of \$320,066.38 provided the Love/Katene Steering Committee to undertake a reduced Maori Voter Information campaign based solely on the kanohi ki te kanohi methodology (and excluding the multi-media approach). The Crown funding for the present campaign falls well short of this sum. It

is apparent that only a very limited kanohi ki te kanohi campaign falling far short of anything approaching national coverage can be mounted on the present limited funding through NZ Post and Te Puni Kokiri.

The same observation must be made as to the prospect of an effective targeted media - especially television - campaign being undertaken. Brian Charles Scott is a Public Relations Consultant with Network Communicators, one of the country's largest public relations consultancies. In affidavit evidence (A14) Mr Scott advised the tribunal that, in his considered opinion, the information kit "Maori Option 1994, Your Choice" and the \$150,000 allocated to the campaign, whilst a useful start, would in no way be adequate for the communications task required. He recommended an indicative programme and costings for a Maori option campaign amounting to \$1,308,000 (including GST). A substantial component was \$785,000 on advertising including \$600,000 through TV 2, and, as a separate item, \$150,000 for a one-hour special Television programme.

An affidavit by Susanne Mary Wood, a Wellington Communications Consultant, was also submitted in evidence (A15). After taking into account the funding to be provided by NZ Post and Te Puni Kokiri Ms Wood saw the need to expend at least an additional \$381,500 to add value to the work already to be undertaken. Like Mr Scott, Ms Wood placed considerable emphasis on the need for a television campaign. Her proposals however made little provision for a kanohi ki te kanohi campaign.

The tribunal would stress that the outcome of the Maori Electoral Option is of the highest constitutional, political and indeed social importance to Maori. For the first time since 1867 when Maori were given the right to elect four Members of Parliament, a major change has been made which could result in a long overdue enhancement of their rangatiratanga and a significant increase in their representation and hence influence in Parliament. That the effective political representation of our citizens is of the highest importance is evident from the expenditure by the Crown for the electoral cycle in the three years to 1993/94. The expenditure for this one electoral cycle for the maintenance and updating of the electoral rolls amounted to \$47,000,000. Measured against this massive sum the additional amount required to effectively fund the Maori Electoral Option campaign is modest.

Waitangi Tribunal, Department of Justice, Wellington.

Maori Electoral Option Report

4 - The Crown's Funding Proposals

4.10 - Economic and Social Circumstances

4.10 Economic and Social Circumstances

Before stating our findings on the adequacy of the funding and associated services provided by the Crown for the Maori Electoral Option campaign, we should return to a submission by Crown counsel arising out of the judgment of the Privy Council in the Broadcasting Assets case. After quoting the passage of the judgment dealing with Treaty principles, Crown counsel submitted that the Crown's obligation under the Treaty to protect Maori citizenship rights and rights to equality is not a unqualified one. He submitted that the obligation rests on the Crown to take such steps as are reasonable having regard to, for example, economic and social circumstances. This submission was no doubt prompted by the passage in the Privy Council judgment to which he referred stating that the protective steps which it is reasonable for the Crown to take "change depending on the situation which exists at any particular time". The judgment went on to say that in times of recession the Crown may be regarded as acting reasonably in not becoming involved in heavy expenditure in order to fulfil its obligations although this would not be acceptable at a time when the economy was buoyant. Although inviting the tribunal to have regard to present economic and social circumstances Crown counsel did not adduce any evidence as to such circumstances. Before considering this matter further the tribunal notes one further important matter adverted to in the Privy Council judgment. Immediately following the reference to the situation when the economy is buoyant is the following passage

Again, if as is the case with the Maori language at the present time, a taonga is in a vulnerable state, this should be taken into account by the Crown in deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection.

Whether the Maori Electoral Option is in Maori terms a taonga was not argued before us and in the circumstances we make no express finding. But the right of political representation in the form of the four Parliamentary seats reserved to Maori has long been a highly valued right and expression of rangatiratanga, as is the Maori language. The right of political representation has now been enhanced by the Electoral Act 1993 and the evidence before us strongly suggests that the present rights are highly prized. The tribunal considers that, given the high importance of the fundamental constitutional rights at issue in this claim, the Crown, in the words of the Privy Council, should "take especially vigorous action" for their protection. If adequate funding is not provided for both a vigorous kanohi ki te kanohi and a targeted mass media programme to ensure that as many Maori as possible are enrolled and exercise an informed choice then Maori will be seriously prejudiced.

We return now to the current economic and social circumstances which it is said by Crown counsel are relevant in determining what steps should reasonably be taken by the Crown. In the absence of any evidence from the Crown or the claimants the tribunal in the exercise of its powers as a Commission of Inquiry has obtained for the record a copy of the State of the Nation address of the Rt. Hon. the Prime Minister,

Mr Bolger. This address was delivered at Auckland on 27 January 1994. From a comprehensive address we cite the following:

- The OECD predicts that in the March '96 year New Zealand will have the second fastest growing economy among its members.

The OECD also expects us to rank third among its 23 members in job growth in a time of international recession with trade barriers raised high against us, this has been a remarkable performance, -one that has attracted world-wide attention
New Zealand's performance has been impressive and the recovery must not be squandered.

- We now have, for the first time in 20 years, the opportunity to choose the kind of future we want for our nation and for our children and grandchildren.

- The National Government I lead into its second term has two broad strategic obligations. These are:

1. To maintain and accelerate the rate of economic growth, and
2. To enhance social cohesion in New Zealand.

- Treasury announced last Friday that the deficit at this stage of the year is \$560 million better than the October update. That is good news.

- While acknowledging that many of our social, community and environmental goals are dependent on economic growth that does not mean social and environmental issues can be put to one side until after the achievement of economic gains.

- The second [key] goal we must continue to focus on if we are to build a more cohesive nation is the issue of Maori development and Treaty of Waitangi claims.

In his concluding comments the Prime Minister noted that:

We New Zealanders have come a long way in the past few years. From being a sick economy to being a successful one.

The tribunal considers these comments largely speak for themselves. They point to an economic recovery, the need to enhance social cohesion and (as one of six key goals) to a focus on the issue of Maori development and Treaty of Waitangi claims.

We note that Maori development is important in the political sphere as well as economic and social concerns.

This claim concerns a fundamental political right which the Crown is obliged by the Treaty to take all reasonable steps to protect and nurture. The present Government merits credit for the changes to the Electoral Reform Bill incorporated in the Electoral Act 1993 which have greatly enhanced the provisions for Maori political representation in Parliament. It would be a tragedy for Maori and the country if, through lack of adequate funding, these enhanced rights prove ineffective.

The tribunal finds that, if adequate funding is not provided to facilitate a comprehensive *kanohi ki te kanohi* campaign in conjunction with an extensive and effectively targeted mass media programme, the new political rights will not be effectively implemented and Maori will be prejudicially affected.

In the light of the evidence before it the tribunal finds that the present level of funding and services being provided by the Crown through the agency of NZ Post and Te Puni Kokiri is substantially less than is required to meet the Crown's Treaty obligation to protect Maori citizenship rights and in particular the effective exercise of the Maori Electoral Option.

In coming to this conclusion the tribunal has taken into account the funds and associated services made available in 1993 to the Love/Katene Steering Committee for the various campaigns relating to the interest of Maori in electoral matters.

The tribunal has not been asked by the claimants to specify a particular sum which it considers the Crown should reasonably provide to meet its Treaty obligations. While

clearly a sum substantially greater than is at present being provided is called for, it should be considered in the light of the wider obligation on the Crown to provide for the maintenance and updating of the electoral rolls. In the three years to 1993/94 (ie one electoral cycle) a total of \$47 million has been spent for this purpose. The provision of a substantially increased sum for the purposes of the Maori Electoral Option would be a relatively small proportion of the total outgoings for electoral purposes.

Given the indifferent treatment of Maori in respect of political representation by successive governments in the past the opportunity now arises to ensure that the greatly improved statutory provisions are given full effect. It cannot be said that Maori are unwilling to play their part. Much voluntary labour and effort will be called for in the face to face campaign. Reasonableness, mutual co-operation and trust are called for to ensure an equitable outcome.

With goodwill on the part of both Treaty partners the tribunal believes that agreement could be reached on a supplementary Maori Electoral Option campaign programme which would incorporate both acceptable kanohi ki te kanohi proposals and a suitably targeted mass media programme - the necessary additional funds to be supplied by the Crown, and the Maori partner to be appropriately accountable to Government for their proper and timely implementation. The supplementary programme should be designed and funded to ensure the maximum possible participation of Maori, including those yet to be enrolled, in the Maori Electoral Option.

Waitangi Tribunal, Department of Justice, Wellington.