

APPENDIX II

RECORD OF INQUIRY

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear claim Wai 776, concerning radio spectrum management and telecommunications development, comprised Judge Patrick John Savage (presiding), Josephine Anderson, and Professor Keith Sorrenson.

Judge Heta Hingston presided over the 15 March 1999 conference to hear the application for urgency.

COUNSEL

The counsel who appeared were Helen Cull QC, Maui Solomon, and Leo Watson for the claimant; Virginia Hardy, Helen Carrad, and Andrew Irwin for the Crown; Wayne Wedderspoon for the Ministry of Commerce; and Martin Dawson for the New Zealand Maori Council and Nga Kaiwhakapumau i te Reo.

TRIBUNAL STAFF

The Tribunal staff who assisted were Elizabeth Cox (research), Rose Daamen (research and report writing), and Turei Thompson (claims administration).

FIRST CONFERENCE

The first conference was held at the Waitangi Tribunal's offices, 110 Featherston Street, Wellington, on 15 March 1999 and considered the claimant's application for urgency.

SECOND CONFERENCE

The second conference was a teleconference on 17 March 1999 and concerned the urgent hearing.

THIRD CONFERENCE

The third conference was a teleconference on 31 March 1999 and concerned the substantive hearing.

FOURTH CONFERENCE

The fourth conference was a teleconference on 7 April 1999 and concerned the substantive hearing.

URGENT HEARING

The urgent hearing was held at the Waitangi Tribunal's offices, 110 Featherston Street, Wellington, on 19, 23, and 24 March 1999. Submissions and evidence were received from Graeme Everton, Maui Solomon, and Professor Whatarangi Winiata (for the claimants) and Katrina Bach, Virginia Hardy, Wayne Wedderspoon, and John Yeabsley (for the Crown).

SUBSTANTIVE HEARING

The substantive hearing was held at the Waitangi Tribunal's offices, 110 Featherston Street, Wellington, on 30 April, 3 and 4 May, and 10, 11, and 12 May 1999. Submissions and evidence were received from Helen Cull QC, Dr Howard Frederick, Hirini Mead, Dr Charles Royal, Dennis Sharman, Bruce Tichbon, Huirangi Waikerepuru, Piripi Walker, and Professor Whatarangi Winiata (for the claimants) and Katrina Bach, James Casey, Virginia Hardy, Alan Jamieson, Andrew McEwan, Roger Perkins, Beau Reweti, Wayne Wedderspoon, and John Yeabsley (for the Crown).

RECORD OF PROCEEDINGS**1. CLAIMS****1.1 Wai 776**

A claim by Rangiaho Everton concerning radio spectrum management and telecommunications development, undated

2. PAPERS IN PROCEEDINGS

2.1 Directions of deputy chairperson registering claim 1.1 and instructing registrar to schedule conference to hear application for urgency, 10 March 1999

- 2.2** Notice of claim 1.1, 11 March 1999
List of parties sent notice of claim 1.1, 11 March 1999
- 2.3** Application for urgency from claimant counsel, 8 March 1999
- 2.4** Paper 2.4 refiled as document A1
- 2.5** Paper 2.5 refiled as document A2
- 2.6** Paper 2.6 refiled as document A3
- 2.7** Paper 2.7 refiled as document A4
- 2.8** Paper 2.8 refiled as document A5
- 2.9** Letter from Wai 681 claimants to registrar supporting application for urgency, 15 March 1999
- 2.10** Submissions of Crown counsel concerning urgency application, 15 March 1999
- 2.11** Memorandum from claimant counsel concerning administrative matters, 16 March 1999
- 2.12** Direction of chairperson constituting Tribunal (Judge Patrick Savage, Josephine Anderson, Professor Keith Sorrenson), 17 March 1999
- 2.13** Memorandum of registrar certifying that notice of urgent hearing given, 17 March 1999
Notice of urgent hearing, 17 March 1999
List of parties sent notice of urgent hearing, 17 March 1999
- 2.14** Minutes of oral decision of Tribunal on urgency application, 15 March 1999
- 2.15** Minutes of 17 March 1999 teleconference concerning urgent hearing, undated
- 2.16** Waitangi Tribunal, *Radio Spectrum Management and Development Interim Report*, Wellington, Waitangi Tribunal, 26 March 1999
- 2.17** Letter from Crown counsel to registrar advising Tribunal of Crown's three-month deferral of auction of radio spectrum management rights, 26 March 1999
- 2.18** Letter from claimant counsel to Crown counsel concerning resolution of claim by negotiation, 30 March 1999
- 2.19** Letter from Crown counsel to claimant counsel in response to paper 2.18, 30 March 1999
- 2.20** Minutes of 31 March 1999 teleconference concerning substantive hearing, undated

- 2.21** Minutes of 7 April 1999 teleconference concerning substantive hearing, undated
- 2.22** Memorandum of registrar certifying that notice of substantive hearing given, 12 April 1999
Notice of substantive hearing, 12 April 1999
List of parties sent notice of substantive hearing, 12 April 1999
- 2.23** Memorandum of registrar certifying that amended notice of substantive hearing given, 15 April 1999
Amended notice of substantive hearing, 15 April 1999
List of parties sent amended notice of substantive hearing, 15 April 1999
- 2.24** Application of claimant counsel for issue of summons for Bruce Tichbon, 19 April 1999
- 2.25** Waitangi Tribunal summons for Bruce Tichbon, 22 April 1999
- 2.26** Direction of Tribunal concerning family connection between presiding officer and Wai 681 claimant and amalgamation of Wai 681 with Wai 776, 22 April 1999
- 2.27** Direction of deputy chairperson registering amendment to Wai 681 and declining request for Wai 681 to be heard with Wai 776, 22 April 1999

3. RESEARCH COMMISSIONS

- 3.1** Direction of Tribunal authorising claimant counsel to commission Professor Howard Frederick and Tiotira Hapeto to prepare report concerning nature and value of radio spectrum and role of Maori in telecommunications, 9 April 1999
- 3.2** Direction of Tribunal authorising claimant counsel to commission Bruce Tichbon to prepare report concerning implications for Maori of obtaining share in radio spectrum management, 9 April 1999

RECORD OF DOCUMENTS

A. DOCUMENTS RECEIVED UP TO END OF URGENT HEARING

- A1** Brief of evidence of Professor Whatarangi Winiata in support of application for urgency, 8 March 1999
- A2** Supporting documents to document A1, consisting of assorted correspondence concerning the radio spectrum, 15 April 1996 – 5 November 1998
- A3** Brief of evidence of Graeme Everton in support of application for urgency, 8 March 1999

- A4** Supporting documents to document A3
 ‘Statement of Claim: Wai 150’, appendix 2 of Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies*, Wellington, Brooker and Friend Ltd, 1990, pp 49–68
 ‘The Treaty’, chapter 8 of *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies*, pp 39–44
 Ministry of Commerce, *A Strategic Framework for Radio Spectrum Management in New Zealand*, Wellington, Ministry of Commerce, September 1997
 Bruce Tichbon, ‘Implications of Radio Spectrum for Maori Language and Culture’, report commissioned by Te Puni Kokiri, December 1998
- A5** Brief of evidence of Graeme Everton, 15 March 1999
- A6** Letter from Ministry of Commerce to Graeme Everton concerning request under Official Information Act 1982 for Ministry documents relating to the radio spectrum claim, 9 March 1999
 Minutes of 18 December 1998 Cabinet meeting concerning outstanding issues in the auction of radio spectrum rights in 2GHz band (CAB(98)M48/23)
 Minutes of 16 December 1998 Cabinet Economic Committee meeting concerning outstanding issues in the auction of radio spectrum rights in 2GHz band (ECO(98)M36/3), undated
 ‘Auction of Radio Spectrum in the 2GHz Band (1710–2300MHz) – Outstanding Issues’, Cabinet Economic Committee paper, undated
 Ministry of Commerce briefing paper for Minister of Communications concerning outstanding issues in the auction of radio spectrum rights in 2GHz band, 11 December 1998
- A7** Brief of evidence of Graeme Everton, 18 March 1999
- A8** Opening submissions of claimant counsel, 17 March 1999
- A9** Te Wananga o Raukawa, *Studies in Matauranga Maori: Prospectus 1999*, Otaki, Te Wananga o Raukawa, 1999, pp 35–36
- A10** Table entitled ‘Electromagnetic Spectrum’, undated
- A11** ‘Section B: Documents’, papers submitted to the World Telecommunication Development Conference, Valletta, Malta, 23 March–1 April 1998
- A12** Indicative synopsis of evidence of Huirangi Waikerepuru, undated
- A13** Brief of evidence of Wayne Wedderspoon, March 1999
- A14** Brief of evidence of John Yeabsley, March 1999
- A15** Brief of evidence of Katrina Bach, March 1999
 (a) Ministry of Commerce, *Draft Management Plan 2GHz Band (1.7–2.3GHz)*, Wellington, Ministry of Commerce, June 1997

A15—*continued*

(b) Letter from Minister of Communications to Office of the National Maori Organisations concerning creation of management rights for 2GHz and 25–29GHz frequency ranges, 20 November 1997

(c) Cabinet Economic Committee paper from the Office of Minister of Communications concerning the auction of radio spectrum in the 2GHz band (outstanding issues)

(d) Minutes of 18 December 1998 Cabinet meeting concerning outstanding issues in the auction of radio spectrum rights in 2GHz band (CAB(98)M48/23)

(e) Letter from the Minister of Maori Affairs to the Treasurer concerning Te Puni Kokiri report *Implications of Radio Spectrum for Maori Language and Culture*, 15 December 1998

(f) ‘Minister of Communications Announces Radio Spectrum Auction’, New Zealand Executive Government news release, 22 December 1998

(g) Correspondence concerning Graeme Everton’s request under the Official Information Act 1982 for Te Puni Kokiri and Ministry of Commerce documents relating to the radio spectrum claim, 22 January 1999 – 12 March 1999

A16 Letter from the Ministry of Commerce to Graeme Everton concerning ITU-D study question 14/1, 13 January 1999

Letter from the Ministry of Commerce to the International Telecommunication Union concerning ITU-D study question 14/1, 13 January 1999

Letter from the Ministry of Commerce to Graeme Everton concerning ITU-D study question 14/1, 12 February 1999

A17 Opening submissions of Crown counsel, undated

A18 Printouts of an overhead projector presentation concerning the radio spectrum, radio communications, the ITU International Radio Regulations, and the Radiocommunication Act 1989, undated

A19 Christian A Herter jnr, ‘The Electromagnetic Spectrum: A Critical Natural Resource’, *Natural Resources Journal*, vol 25, July 1985, pp 651–663

A20 Wayne Wedderspoon, ‘Radio Spectrum Management: The New Zealand Approach’, speech given in Sydney, October 1995

A21 New Zealand Maori Council and Nga Kaiwhakapumau i te Reo, ‘Maori Views on the Radio Spectrum’, unpublished paper, October 1989

A22 Te Puni Kokiri, *The National Maori Language Survey: Te Mahi Rangahau Reo Maori*, Wellington, Te Puni Kokiri, c1995, p 64

A23 The Broadcasting Amendment Bill (No 2) 1998 and explanatory note

A24 Extracts from Dr Graham Butler, *Impact 2001: How Information Technology Will Change New Zealand*, Wellington, Communications Arts Wellington Ltd, 1996 (printout of parts of <http://www.moc.govt.nz/itag/impact/impact.html>)

A25 Closing submissions of claimant counsel, 24 March 1999

A26 Closing submissions of Crown counsel, undated

B. DOCUMENTS RECEIVED UP TO END OF SUBSTANTIVE HEARING

B1 Document removed from record

B2 Brief of evidence of Dr Howard Frederick, 19 April 1999

B3 Brief of evidence of Te Ahukaramu Royal, 19 April 1999

B4 Brief of evidence of Dennis Sharman, 19 April 1999

B5 Document removed from record

B6 Brief of evidence of Piripi Walker, undated

B7 Victoria University of Wellington, 'The Staff of the New Zealand Internet Institute: Dr Howard Frederick' (printout of http://www.nzii.org.nz/about/howard_frederick.html, 16 October 1998)

List entitled 'Relevant Publications [of Dr Frederick] in the Last Five Years'

B8 Bruce Tichbon, 'Implications of Radio Spectrum for Maori Language and Culture', report commissioned by Te Puni Kokiri, December 1998

B9 Briefs of evidence of Huirangi Waikerepuru, 20 April 1999

B10 Brief of evidence of Professor Hirini Mead, 20 April 1999

B11 Brief of evidence of Professor Whatarangi Winiata, 20 April 1999

B12 Brief of evidence of Andrew McEwan, 23 April 1999

B13 Document removed from record

B14 Brief of evidence of Alan Jamieson, 25 April 1999

B15 Brief of evidence of John Yeabsley, 26 April 1999

B16 Curriculum vitae of John Yeabsley, undated

B17 United States Congress: Office of Technology Assessment, *Telecommunications Technology and Native Americans: Opportunities and Challenges* (OTA-ITC-621), Washington DC, United States Government Printing Office, August 1995

- B18** Opening submissions of claimant counsel, 30 April 1999
- B19** Curriculum vitae of Bruce Tichbon, undated
- B20** Brief of evidence of Huirangi Waikerepuru, undated
- B21** Te Puni Kokiri, *The National Maori Language Survey: Te Mahi Rangahau Reo Maori*, Wellington, Te Puni Kokiri, c1995
- B22** Te Puni Kokiri, *The National Maori Language Survey: Summary Report*, Wellington, Te Puni Kokiri, c1995
- B23** Law Commission, *Justice: The Experiences of Maori Women – Te Tikanga o te Ture: Te Matauranga o nga Wahine Maori e Pa Ana ki Tenei*, New Zealand Law Commission Report 53, April 1999 (NZLC R53)
- B24** H H Turton, *Province of Auckland*, vol 1 of *Maori Deeds of Land Purchases in the North Island of New Zealand*, 2 vols, Wellington, Government Printer, 1877, pp 142–149, 152–153 (deeds 104–111, 114)
- B25** Ken Stevens, *Te Pouaka Whakaako ki te Kareti o Ngata: Telelearning and Contexts of Awareness at Ngata Memorial College*, Wellington, Te Puni Kokiri, 1998
- B26** Te Wananga o Raukawa, ‘Summary Schedule of Courses, Hours, & Credits’, in *Master of Maori and Management MMMgt*, Otaki, Te Wananga o Raukawa, 1999, pp 45–47
- B27** Professor Whatarangi Winiata, ‘Hapu and Iwi Resources and their Quantification’, *The April Report: Report of the Royal Commission on Social Policy*, 3 vols, Wellington, Royal Commission on Social Policy, April 1988, vol 3, pt 2, pp 791–803
- B28** ‘Canadians Redraw the Map: Nunavut Is Born’, *Dominion*, 27 April 1999, p 12
- B29** Mason Durie, *Te Mana, Te Kawanatanga: The Politics of Maori Self-Determination*, Auckland, Oxford University Press, 1998, p 170
- B30** Opening submissions of Crown counsel, 4 May 1999
- B31** *Adarand Constructors Inc v Secretary of Transportation and Others* 515 US 200; 132 L Ed 2d 158 (1995)
- B32** *Adarand Constructors Inc v Secretary of Transportation and Others* 965 F Supp 1556 (1997) (District Court of Colorado)
- B33** Transcript of handwritten notes of claimant counsel questioning on 30 April 1999 of Bruce Tichbon concerning evidence of John Yeabsley, undated

- B34** Summary of evidence of James Casey, undated
Curriculum vitae of James Casey, undated
- B35** Three PC disks containing Quicktime format Ericsson promotional video clip concerning wideband code division multiple access technology
- B36** Brief of evidence of Beau Reweti, 10 May 1999
- B37** Ministry of Education, *Annual Report on Maori Education, 1997/98, and Direction for 1999*, Wellington, Ministry of Education, 1998
- B38** Te Puni Kokiri, *Progress towards Closing Social and Economic Gaps between Maori and Non-Maori: A Report to the Minister of Maori Affairs*, Wellington, Te Puni Kokiri, 1998
- B39** Monitoring and Evaluation Unit, Te Puni Kokiri, *Review of the Ministry of Education: Service Delivery to Maori*, Wellington, Te Puni Kokiri, 1997, pp 27–30
- B40** Ministry of Education, *Interactive Education: An Information and Communication Technologies Strategy for Schools*, Wellington, Ministry of Education, 1998
- B41** Letter from Ministry of Education to New Zealand Council of Social Services concerning proposed amendments to section 181 of the Education Act 1989, 2 February 1999
(a) Letter from Te Wananga o Raukawa to Ministry of Education concerning proposed amendments to section 181 of the Education Act 1989, 22 March 1999
- B42** Brief of evidence of Roger Perkins, 10 May 1999
- B43** Alex Orange and John Mackie, 'Radio Spectrum Allocations in New Zealand', colour poster, Ministry of Commerce, undated
- B44** *International Telecommunication Convention, Nairobi, 1982: Final Protocol, Additional Protocols, Optional Additional Protocol, Resolutions, Recommendation and Opinions*, Geneva, General Secretariat of the International Telecommunication Union, pp 23, 88, 123
Pages 256 and 303 of unidentified book (referring to article 33 of the International Telecommunication Union convention)
- B45** Monitoring and Evaluation Branch, Te Puni Kokiri, *Review of the Ministry of Commerce: Service Delivery to Maori*, Wellington, Te Puni Kokiri, July 1998
- B46** Closing submissions of claimant counsel, undated
- B47** Additional pages to document B46
- B48** Order of 29 July 1991 concerning transfer of assets to broadcasting State-owned enterprises, Justice McGechan, High Court Wellington
- B49** Closing submissions of Crown counsel, 12 May 1999

C. DOCUMENTS RECEIVED SUBSEQUENT TO SUBSTANTIVE HEARING

c1 International Telecommunications Union, 'International Mobile Telecommunications 2000 or Future Public Land Mobile Telecommunication Systems (FPLMTS)', brochure, undated (printout of <http://www.itu.int/imt/1-info/articles/brochure/index.html>)

c2 Further submissions of Crown counsel, 14 May 1999

c3 Further closing submissions of claimant counsel, 14 May 1999

c4 Submissions of Crown counsel in response to document c3, 18 May 1999