

APPENDIX II

RECORD OF INQUIRY

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear claim Wai 789, concerning the closure of the Mokai Primary School, comprised Joanne Morris (presiding), John Baird, Areta Koopu, and Rangitihi Tahuparae.

COUNSEL

Stephen Clark appeared for the Wai 789 claimants and was assisted by Tureiti Moxham. Briar Gordon appeared for the Crown and was assisted by Rachel Ennor and Kirsty Millard.

THE FIRST HEARING

The inquiry opened at Pakaketaiari Marae at Mokai on 23 November 1999. On 23 November, the opening submission of claimant counsel was received (doc A18), and evidence was received from, and spoken to by, Ruth Forshaw (doc A12); Jocelyn Kingi (doc A13); Mohi Osborne (docs A15, A15(a)); Tuhuriwai Rangikataua (doc A9); and Koti Te Hiko (doc A10). On 24 November, submissions were received from, and spoken to by, Te Aroha Adams (doc A14); Alan (Jim) Hogan (doc A11); and Haromi Koopu (doc A8). On 25 November, submissions were received from, and spoken to by, Mere Wall (doc A16) and Te Iria Whiu (doc A17).

THE SECOND HEARING

The second hearing commenced at Pakaketaiari Marae on 13 January 2000. On 13 January, the opening submission of Crown counsel was received (doc A26, also docs A25, A28), and evidence was received from, and spoken to by, Rawiri Brell (docs A20, A20(a)); Graeme Kitto (docs A22, A22(a), (b)); and Kathleen Phillips (doc A21). On 14 January, submissions were received from, and spoken to by, Ian Hill (doc A24); Graeme Kitto; and Karen Sewell (docs A23, A23(a), (b)). On 17 January, closing submissions were received from claimant counsel (doc A29) and Crown counsel (doc A30).

RECORD OF PROCEEDINGS

1. CLAIMS

1.1 Wai 789

A claim by Mohi Moses Huirama Osborne and the Mokai Primary School board of trustees concerning the closure of the Mokai school, undated

(a) Amendment to claim 1.1, 3 October 1999

(b) Amended statement of claim, undated

2. PAPERS IN PROCEEDINGS

2.1 Direction of deputy chairperson registering claim 1.1, 6 August 1999

2.2 List of parties sent notice of claim 1.1, 11 August 1999

Declaration that notice of claim 1.1 given, 6 August 1999

2.3 Memorandum from claimant counsel to Tribunal requesting urgency, 28 July 1999

Ex parte application to the High Court at Hamilton for an interim injunction restraining the Crown from closing Mokai Primary School, 28 July 1999

Memorandum from claimant counsel to High Court at Hamilton concerning relief sought, 28 July 1999

Affidavit of Mohi Osborne in support of High Court application for interim injunction, 26 July 1999

Notice of High Court proceeding, 28 July 1999

Form for court order, undated

2.4 Direction of chairperson registering claim 1.1(a) and appointing Judge Richard Kearney to hear application for urgency, 14 October 1999

2.5 List of parties sent notice of claim 1.1(a), 15 October 1999

Declaration that notice of claim 1.1(a) given, 3 October 1999

2.6 Notice of conference to hear application for urgency, 15 October 1999

2.7 Direction of Judge Kearney granting application for urgency, 2 November 1999

2.8 Memorandum from Crown counsel to Tribunal concerning proposed date of first hearing, 4 November 1999

2.9 Facsimile from claimant counsel to Tribunal concerning proposed date of first hearing, 8 November 1999

- 2.10** Direction of chairperson constituting Tribunal of Joanne Morris (presiding), John Baird, Areta Koopu, and Rangitihi Tahuparae to hear claim, 10 November 1999
- 2.11** Notice of first hearing, 10 November 1999
List of parties sent notice of first hearing, 10 November 1999
Declaration that notice of first hearing given, 10 November 1999
- 2.12** Letter from Crown counsel to registrar requesting judicial conference to discuss first hearing, 11 November 1999
- 2.13** Facsimile from Tribunal to Crown counsel concerning hearing of claimant and Crown evidence, 12 November 1999
- 2.14** Letter from Crown counsel to registrar concerning first hearing and statement of claim, 12 November 1999
- 2.15** Direction of Tribunal registering claim 1.1(b), 25 November 1999
- 2.16** Memorandum of Tribunal concerning evidence to be provided, 29 November 1999
- 2.17** Memorandum from Crown counsel to Tribunal concerning second hearing, 1 December 1999
- 2.18** Facsimile from claimant counsel to Tribunal concerning second hearing, 3 December 1999
- 2.19** Directions of Tribunal concerning second hearing, 14 December 1999
- 2.20** Notice of second hearing, 14 December 1999
List of parties sent notice of second hearing, 16 December 1999
Declaration that notice of second hearing given, 15 December 1999
- 2.21** Brief of evidence of Alan (Jim) Hogan, 17 December 1999
Assorted claimant evidence requested by Tribunal, various dates
Covering letter from claimant counsel to Tribunal, 23 December 1999
- 2.22** Assorted Crown evidence requested by Tribunal, 24 December 1999
- 2.23** Memorandum from Crown counsel to Tribunal concerning insertion of Treaty clause into Education Act 1989, 20 January 2000
- 2.24** Memorandum of claimant counsel to Tribunal responding to paper 2.23, 21 January 2000
- 2.25** Memorandum from Crown counsel to Tribunal responding to paper 2.24, 23 February 2000

RECORD OF DOCUMENTS

A. TO END OF SECOND HEARING

- A1** Affidavit of Mohi Osborne supporting application for urgent hearing, 21 October 1999
- A2** Reasons for declining application for interim relief, 4 October 1999, Justice Hammond, High Court Hamilton M198/99
- A3** Submissions of claimant counsel supporting application for urgency, 21 October 1999
- A4** Facsimile from Minister of Maori Affairs to chairperson supporting application for urgency, 21 October 1999
- A5** Submissions of Crown counsel concerning application for urgency, 21 October 1999
- A6** Affidavit of Nicolas Smith, Minister of Education, 28 September 1999
- A6A** 'The National Education Guidelines', 26 March 1993, *New Zealand Gazette*, 1993, no 58, pp 1086–1087
- A6B** Letter from Minister of Education to chairperson, Mokai Primary School board of trustees, notifying decision in principle to close school, 27 July 1998
- A6C** Letter from chairperson, Mokai Primary School board of trustees, to district manager national operations, Ministry of Education, concerning proposed closure of school, 24 August 1998
- A6D** Letter from Minister of Education to chairperson, Mokai Primary School board of trustees, in response to document A6C, 11 December 1998
- A6E** 'Consideration of Closure of Mokai School', Ministry of Education ministerial submission s98/1584, 31 March 1999 (with attachments)
- A6F** Letter from Minister of Education to chairperson, Mokai Primary School board of trustees, confirming closure of school, 24 June 1999
- A6G** Ministerial notice declaring closure of Mokai School, 24 June 1999
- A6H** 'Closure of Mokai School (1830) Notice', 24 June 1999, *New Zealand Gazette*, 1999, no 79, p 1825
- A7** Affidavit of Kathleen Phillips, 29 September 1999
- A7A** 'Discretionary Assurance Audit Report for Mokai Primary School', Education Review Office report, 22 April 1994
Form entitled 'Response to Discretionary Assurance Audit Report Actions Required', undated
- A7B** 'Consideration of the Future of Mokai School', Ministry of Education ministerial submission s95/0721, 19 October 1995
- A7C** Letter from Graeme Kitto (for manager national operations), Ministry of Education, to principal, Mokai Primary School, concerning procedures for closure of schools, 22 September 1993

- A7D** Letter from acting senior manager national operations, Ministry of Education, to chairperson, Mokai Primary School board of trustees, concerning proposed closure of school, 7 November 1995
- A7E** Letter from Graeme Kitto (for manager national operations), Ministry of Education, to chairperson, Mokai Primary School board of trustees, concerning consultation process, 11 December 1995
- A7F** Letter from chairperson, Mokai Primary School board of trustees, to district manager national operations, Ministry of Education, requesting the Ministry delay its recommendation on closure until after a forthcoming ERO review, 24 March 1998
- A7G** Letter from Graeme Kitto (for manager national operations), Ministry of Education, to chairperson, Mokai Primary School board of trustees, in response to document A7F, 13 May 1998
- ‘Consideration of Closure of Mokai School’, draft Ministry of Education ministerial submission, undated
- A7H** Facsimile from chairperson, Mokai Primary School board of trustees, to Graeme Kitto, Ministry of Education, giving board of trustees’ response to draft ministerial submission, 5 June 1998
- A7I** ‘Confirmed Discretionary Review Report for Mokai School’, Education Review Office report, 14 July 1998
- A7J** ‘Consideration of Closure of Mokai School’, Ministry of Education ministerial submission s98/0148, 24 July 1999
- A7K** Mokai Primary School board of trustees, ‘Charter Framework’, 1990
- A7L** Untitled Education Review Office report on Mokai Primary School, 1991
- A7M** ‘Confirmed Assurance Audit Report for Mokai Primary School’, Education Review Office report, 4 October 1993
- A7N** ‘Confirmed Discretionary Assurance Audit Report for Mokai School’, Education Review Office report, 25 July 1994
- A7O** ‘Confirmed Assurance Audit Report for Mokai Primary School’, Education Review Office report, 31 January 1997
- A7P** ‘Confirmed Discretionary Assurance Audit Report for Mokai School’, Education Review Office report, 23 December 1997
- Form entitled ‘Resonse to Discretionary Accountability Report Actions Required’, 19 January 1998
- A7Q** Education development initiative memorandum of agreement between the boards of trustees of Tihoi and Marotiri Primary Schools and the Ministry of Education concerning closure of Tihoi school, December 1995
- A7R** ‘Confirmed Accountability Review Report for Tirohanga School’, Education Review Office report, 16 October 1998, p 2
- ‘Confirmed Audit Report for Mangakino School’, Education Review Office report, January 1996, pp 2–3
- ‘Confirmed Audit Report for Tauhara School’, Education Review Office report, February 1997, p 2
- ‘Confirmed Accountability Review Report for Marotiri School’, Education Review Office report, 16 July 1999, p 2
- ‘Te Purongo o Te Tatari Kawenga Takohanga: Te Kura Kaupapa Maori o Whakarewa i Te Reo ki Tuwharetoa’, Education Review Office report, 3 February 1998, p 12

A78 Ministry of Education, *School Transport: What You Need to Know*, Wellington, Ministry of Education, 1997, pp 1, 4, 5, 9, 12

A8 Brief of evidence of Haromi Koopu, 19 November 1999

A9 Brief of evidence of Tuhuriwai Rangikataua, 19 November 1999

A10 Brief of evidence of Koti Te Hiko, 19 November 1999

A11 Brief of evidence of Alan (Jim) Hogan, 19 November 1999

A12 Brief of evidence of Ruth Forshaw, 22 November 1999

A13 Brief of evidence of Jocelyn Kingi, 19 November 1999

A14 Brief of evidence of Te Aroha Adams, 19 November 1999

A15 Brief of evidence of Mohi Osborne, 19 November 1999

(a) Affidavit of Mohi Osborne in support of High Court application for interim injunction, 26 July 1999

A16 Brief of evidence of Mere Wall, 19 November 1999

(a) Affidavit of Mere Wall in support of High Court application for judicial review, 15 September 1999

(b) Affidavit of Mere Wall in support of High Court application for judicial review, 30 September 1999

A17 Brief of evidence of Te Iria Whiu, 19 November 1999

A18 Opening submissions of claimant counsel, 23 November 1999

A19 Rosemary Johnson, *Board as the Employer: Employing School Personnel*, MultiServe Education Trust, undated

Sections 78, 78A, 79, 80, 81, 105C, 105D, 201A, 201B, 201C of, and the sixth schedule to, the Education Act 1964 (taken from unidentified CCH publication), undated

MultiServe Education Trust, 'Strategic Planning: A Process', flow chart, 1998

Ian Gardiner, *Schools and their Legal Requirements: A Practical and Common Sense Approach to Legal Obligations and Requirements in Managing a School*, MultiServe Education Trust, undated

MultiServe Education Trust, *Resourcing School Operations: Understanding School Finances*, MultiServe Education Trust, undated

Ian Gardiner, *Student's Learning Environment: Managing School Property – Board and Crown Responsibility*, MultiServe Education Trust, undated

A20 Brief of evidence of Rawiri Brell, 24 December 1999

(a) Appendix to document A20

A21 Brief of evidence of Kathleen Phillips, December 1999

A22 Brief of evidence of Graeme Kitto, 24 December 1999

- (a) Excerpts from two unnamed documents concerning social studies in the New Zealand curriculum, undated
- (b) Page of logbook showing entries from 29 January to March 11 (no year specified)

A23 Brief of evidence of Karen Sewell, 19 January 2000

- (a) Diagram entitled 'School Governance Model', undated
Diagram entitled 'Lines of Responsibility within ERO', undated
Education Review Office, *Departmental Forecast Report for the Year Ending 30 June 2000*, Wellington, Education Review Office, 1999
- (b) Handwritten addition to document A23, January 2000

A24 Brief of evidence of Ian Hill, 7 January 2000

A25

- (1) Page entitled 'Crown Responses to Waitangi Tribunal Questions', undated
- (2) New Zealand Government, *Tomorrow's Schools: The Reform of Education Administration in New Zealand*, Wellington, New Zealand Government Printing Office, August 1988
- (3) Table entitled 'ERO Reports, 1991–1999, Mokai School', undated
- (3A) Untitled Education Review Office report on Mokai Primary School, 1991
- (3B) 'Confirmed Assurance Audit Report for Mokai Primary School', Education Review Office report, 4 October 1993
- (3C) 'Confirmed Discretionary Assurance Audit Report for Mokai Primary School', Education Review Office report, 22 April 1994
- (3D) 'Confirmed Discretionary Assurance Audit Report for Mokai School', Education Review Office report, 25 July 1994
- (3E) 'Confirmed Assurance Audit Report for Mokai Primary School', Education Review Office report, 31 January 1997
- (3F) 'Confirmed Discretionary Assurance Audit Report for Mokai School', Education Review Office report, 23 December 1997
- (3G) 'Confirmed Discretionary Review Report for Mokai School', Education Review Office report, 14 July 1998, pp 1–5
- (4A) 'Principal's Report, 1 January 1991–31 December 1991', report presented to the Mokai Primary School annual general meeting, 11 August 1992
- (4B) 'Principal's Report, 1 January 1992–31 December 1992', report presented to the Mokai Primary School annual general meeting, 28 July 1993
- (4C) Handwritten document on Mokai Primary School letterhead entitled 'Chairperson's Report 1993', 1993
Handwritten document on Mokai Primary School letterhead entitled 'Principal's Report 1993', 1993
- (4D) Handwritten document entitled 'Mokai Primary School BOT: Chairperson's Report 1994', 1994
Handwritten document on Mokai Primary School letterhead entitled '1994 Principal's Annual Report', 1994

A25—*continued*

- (4E) Letter from Sheila Richmond, Ministry of Education, to chairperson, Mokai Primary School board of trustees, concerning submission of 1995 annual report, 2 July 1996
- (4F) ‘Chairmans Report’, report presented to the Mokai Primary School board of trustees’ annual general meeting, 30 May 1997
- Document entitled ‘Principal’s Report for the Year Ending 31 December 1997’, 7 May 1997
- (4G) Document entitled ‘Mokai School: Chairperson’s Report’, 31 December 1997
- Document entitled ‘Mokai School: Principal’s Report’, 31 December 1997
- (4H) Document entitled ‘Mokai School: Chairperson’s Report’, undated
- Document entitled ‘Mokai School: Principal’s Report’, undated
- (5) Sections 60A, 61, 62, 63, 75, 76, 147, 154, 155, 155A, and 156 of the Education Act 1989
- (6) ‘The National Education Guidelines’, 26 March 1993, *New Zealand Gazette*, 1993, no 58, pp 1086–1087
- (7) ‘Notice Amending the National Administration Guidelines’, 22 November 1999, *New Zealand Gazette*, 25 November 1999, no 177, pp 4229–4230
- (8) Education Review Office, *Good Practice in Far North Schools*, Wellington, Education Review Office, 1999
- (9) Ministry of Education, *The New Zealand Curriculum Framework*, Wellington, Learning Media: Ministry of Education, 1993
- (10) Letter from chairperson, Mokai Primary School board of trustees, to district manager national operations, Ministry of Education, concerning proposed closure of school, 24 August 1998
- (11) Table entitled ‘Options for Maori Language Learning for Mokai School Students when the School Closes’, undated
- Table entitled ‘Mokai School: Access to Alternative Bilingual Education’, undated
- (12) Letter from Minister of Education to chairperson, Mokai Primary School board of trustees, confirming closure of school, 24 June 1999
- ‘Closure of Mokai School (1830) Notice’, 24 June 1999, *New Zealand Gazette*, 1999, no 79, p 1825
- (13) Affidavit of Nicolas Smith, Minister of Education, 28 September 1999, pp 1, 10–12
- (14) Mary Sinclair, ‘Schools Support Project: An Overview of the Ministry Safety Net for Schools at Risk and our Proactive Schooling Improvement Strategy to Minimise Risk Occurring’, Ministry of Education presentation to Skill New Zealand, 4 November 1999
- Document entitled ‘Schooling Improvement Projects’, undated
- (15) Assorted tables concerning Mokai Primary School rolls, various dates
- (16) Ministry of Education, *Education Circular*, 1999, no 37 (8 November 1999)
- (17) Table entitled ‘Schools near Mokai’, undated
- Hand-drawn road map of Taupo and environs, showing Mokai
- (18) Mokai Primary School board of trustees, ‘Charter Framework’, 1990
- (19) Mokai Primary School logbook, p 129
- (20) Letter from Graeme Kitto, Ministry of Education, to principal, Mokai Primary School, concerning procedures for closure of schools, 22 September 1993
- (21) Minutes of hui held to discuss Mokai Primary School roll, 22 February 1999
- (22) Document entitled ‘Summary of Support Made Available to Board and Principal of Mokai School’, undated
- Multipage table entitled ‘Chronology of Events’, undated

(23) Lester Flockton and Terry Crooks, 'Mathematics Assessment Results, 1997', University of Otago Education Assessment Research Unit National Education Monitoring Report 9, 1998

Terry Crooks and Lester Flockton, 'Listening and Viewing Assessment Results, 1998', University of Otago Education Assessment Research Unit National Education Monitoring Report 10, 1999

(24) Education Review Office, *Small Primary Schools*, Wellington, Education Review Office, 1999

(25) Education Review Office, *Improving Schooling on the East Coast*, Wellington, Education Review Office, October 1997

(26) Education Review Office, *School Governance and Student Achievement*, Wellington, Education Review Office, June 1999

(27) Education Review Office, *Good Schools – Poor Schools*, Wellington, Education Review Office, 1998

(28) *Te Rehita*, Teacher Registration Board newsletter, October 1999, p 1
Sections 130A to 130H of the Education Act 1989

(29) Two-page table entitled 'Schools Closed since 1 October 1989', 28 September 1999
Table entitled 'Schools Closed since 1 October 1989', 15 November 1999

A26 Opening submissions of Crown counsel, 13 January 2000

A27 Vacant

A28 'Landmark Agreement between Tuwharetoa and Ministry of Education Heading into Next Millennium', joint press release of Ministry of Education and Tuwharetoa Trust Board, undated

A29 Closing submissions of claimant counsel, 17 January 2000

A30 Closing submissions of Crown counsel, 17 January 2000

