

KI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI.....

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

**a claim by DR. TIMOTI KARETU, TINA
OLSEN-RATANA and DAME IRITANA
TE RANGI TAWHIWHIRANGI on behalf
of TE KŌHANGA REO NATIONAL
TRUST BOARD**

**BRIEF OF EVIDENCE OF TINA OLSEN-RATANA IN SUPPORT OF
APPLICATION FOR URGENCY**

Dated 25 JULY 2011

**CHEN PALMER PUBLIC AND EMPLOYMENT LAW SPECIALISTS
BARRISTERS AND SOLICITORS
WELLINGTON**

**MAI CHEN
TELEPHONE: 04 499 8990
FACSIMILE: 04 499 8992
P O Box 2160
DX SP26503
WELLINGTON**

**BRIEF OF EVIDENCE OF TINA OLSEN-RATANA IN SUPPORT OF
APPLICATION FOR URGENCY**

Dated 25 July 2011

1. My name is Tina Olsen-Ratana. My principle iwi affiliation is Ngāti Porou.
2. I am the Co-Chair of Te Kōhanga Reo National Trust Board (“**the Trust Board**”) and a claimant in this proceeding. I am authorised to give this brief of evidence on behalf of the Trust Board.
3. I have been the Co-Chair of the Trust Board for the past 2 years and a Trustee for around 4 years (since 2007).
4. I have read the brief of evidence by Dame Iritana Te Rangi Tawhiwhirangi in support of the application for urgency, and I confirm that it is accurate, to the best of my knowledge.
5. Currently the Trust Board has 471 Kōhanga Reo chartered to it which represent 9,364 mokopuna.
6. In this brief I explain my own personal experience with Kōhanga Reo, from the first Kōhanga Reo in 1982 to present. I also explain, from 2007, the tripartite arrangement between the Trust Board and the Crown which was formally established in 2003, and how this has resulted in further decline of Kōhanga Reo. I also set out the need for urgency given the impending conclusion of consultation on the Early Childhood Education Taskforce Report (“**the Report**”) on 8 August 2011, following which officials will make recommendations to the Minister. Cabinet is then likely to take a decision which will have an irreversible effect on the sustainability of Kōhanga Reo.

Te Kōhanga Reo

7. I was one of the first parents to send my children to the first Kōhanga Reo in 1982 at Pukeatua Kokiri, Wainuiomata. I have put four children through Kōhanga Reo, and my mokopuna. I am therefore very familiar with the history

and kaupapa of Kōhanga Reo, both as a parent and grandparent and as member of the Trust Board.

8. I grew up in a city and during a period where speaking Te Reo Māori was not actively encouraged. When I had my children, I wanted them to grow up with Te Reo Māori so I sent them to Kōhanga Reo.
9. In 1982 I did not really appreciate what Kōhanga Reo involved. However, the kuia (including my mother) in my community were really excited about Kōhanga Reo, so I trusted them and sent my children there.
10. I was encouraged, along with other parents, to go into the Kōhanga Reo and help out where I could, whenever I was available. Slowly the kuia seemed to work out the skills that each parent had and started positioning parents into roles, for example, those who were energetic worked with the kids.
11. That was the first time in my life I had seen traditional harakeke toys, tools, and games. I had not been brought up with that. We did things like “bobbing for eels” and singing waiata. It soon became apparent to me that Kōhanga Reo was not just about the language – it was more than that – it was about custom and culture, which I was learning about for the first time. In addition, a key part of Kōhanga Reo was about the parents and whānau, not just the children. I was able to ask questions and learn from kuia.
12. Up until 1989, the Department of Māori Affairs’ role was to support the establishment of Kōhanga Reo. At that stage the Department worked collectively with communities.
13. From 1990, the Trust Board was required to work with the Ministry of Education, as Kōhanga Reo were brought within the regime for early childhood services. This was a decision made unilaterally by the Crown.
14. This fundamentally changed the character of Kōhanga Reo because it meant that Kōhanga had to comply with the requirements for providers of early childhood education. For example:

- (a) Early childhood services are about the relationship between teacher and child however no one person could be identified as a teacher in Kōhanga Reo. The learning came from whānau and kaumatua who all contributed to the development of whānau and mokopuna. However the requirement for qualified teachers resulted in a lack of emphasis on kaumatua, for example, which meant that roles have had to change. This has had the effect of discouraging kaumatua, particularly kuia, from actively participating in the daily activities of Kōhanga Reo;
 - (b) Most Kōhanga Reo are classed as “Whānau-Led” services as opposed to “Teacher-Led” services. Kōhanga Reo are neither of these;
 - (c) Another example is health and safety requirements. I am aware that one Kōhanga Reo was told that it should have plastic toys available for children in place of harakeke toys the children made. However, this was part of the holistic learning that takes place in Kōhanga Reo. For example, the children in making the toys would have learnt about the planting and cutting and weaving of the harakeke as part of the process.
15. Dame Iritana Tawhiwhirangi addresses these matters in greater detail in her brief of evidence, and I confirm that her account of the changes or regulations imposed on Kōhanga Reo by the Crown is accurate to the best of my knowledge.
16. The cumulative effect of these changes has been to deny or undermine the kaupapa of Kōhanga Reo. Effectively, Kōhanga Reo have been forced to conform to a non-Māori model, and to perform a narrow role (early childhood education) which they were not designed or intended to perform. As a consequence, there has been a steady decline in Kōhanga Reo. Kōhanga Reo have had to spend more time meeting requirements of the Ministry of Education and function more like early childhood services. As set out above, Kōhanga Reo was not intended to just be about education for tamariki. It was

more than that – it was about whānau development and holistic immersion in Te Reo, customs and culture for everyone.

Tripartite arrangements

17. The history of the relationship between the Crown and the Trust Board is addressed in detail by Dame Iritana Tawhiwhirangi in her brief of evidence. My evidence is confined to the developments that have occurred in that relationship since 2007.
18. On 27 March 2003 the Trust Board, Te Puni Kōkiri and the Ministry of Education (“**the Tripartite Group**”) formalised their relationship through a tripartite relationship agreement (“**the Tripartite Agreement**”). That agreement is at **Appendix 1**.
19. When I joined the Trust Board as a Trustee in 2007, the relationship between the Tripartite Group had failed. Meetings were infrequent and unproductive and the Crown appeared to lack any real commitment. As a result, the Trust Board was concerned that the relationship was drifting.
20. This was a matter of serious concern to the Trust Board because Kōhanga Reo were (and still are) in a period of decline relative to their peak during the early 1990s. The restrictions placed on Kōhanga Reo by the Crown as a consequence of its unilateral decision to treat them as early childhood education providers made it difficult to find adequate premises or teachers. Our kaupapa, which revolved around the involvement of kaumatua in marae settings, was denied by the Crown. As a result the numbers of Kōhanga Reo dropped from their peak of about 817 Kōhanga Reo in 1993 to 471 in 2011.
21. During a meeting with Minister Horomia on or around 21 March 2008, which I attended, we discussed the problems created for Kōhanga Reo by the early childhood education regulatory framework and funding inequities. As a result of that meeting there was a working group established consisting of Te Puni Kōkiri, Ministry of Education and the Trust Board.

22. Evolving out of the working group, a series of meetings took place between the Tripartite Group, which I attended, between 2008 and 2010. There were no formal minutes of meetings taken as such, however, I took my own notes at most of those meetings. A summary based on my notes is at **Appendix 2**.
23. At this time, the Trust Board had been working with the Ministry of Education to agree licensing criteria and deal with concerns about how the Ministry's requirements were contrary to the kaupapa of Kōhanga Reo. Again, that work did not lead anywhere. It did not result in any changes in the relationship between the Trust Board and the Crown, or any new or improved recognition of the kaupapa of Kōhanga Reo.
24. An example of the problems faced by the Trust Board when trying to progress work with the Ministry of Education was that the Ministry insisted that the Māori text of the licensing criteria include a disclaimer that:

If there is a difference or conflict between the two versions, the version prescribed by the Minister [i.e. the English version] shall take precedence.

To date licensing criteria have not been finalised.

25. In September 2008, the Tripartite Kōhanga Reo Funding, Quality and Sustainability Working Group (“**the Working Group**”) was established which consisted of members from each of the Tripartite Group. The Terms of Reference for the Working Group are **attached (Appendix 3)**.
26. Arising out of the Working Group was a report that was commissioned by the Ministry of Education. A draft report was produced for comment by the Tripartite Group in October 2010. However, like the other matters I have referred to, that draft report failed to go anywhere. It was never finalised and its recommendations were not adopted.
27. In addition, I felt (and I am aware other members of the Trust Board felt) that the Ministry was attempting to change the Terms of Reference of the Working Group to make it a review of the governance of the Trust Board.

28. Despite the fact that the Tripartite Group had not worked previously, we attempted to re-establish the Tripartite Agreement. However, again, this did not result in any progress being made on the part of the Crown.

ECE Taskforce Report

29. In October 2010 Hon Anne Tolley, Minister of Education, established the ECE Taskforce to review the effectiveness of ECE spending and to make recommendations on proposed improvements for the sector.
30. The first that I or the Trust Board heard about the ECE Taskforce (“**the Taskforce**”) was in or around November 2010 through rumours that Minister Tolley had made a media statement about the Taskforce.
31. In or around November 2010, the Trust Board invited Minister Tolley and Minister Sharples to an informal meeting over lunch, which the Trust Board had called to express its disappointment at not being involved with the Te Reo Māori Review. The Taskforce was also discussed. I attended that meeting. We suggested that we be included on the Taskforce, however Minister Tolley told us it was too late as the appointments had been made but that she would get back to us about our input and that she would make sure the Taskforce took into account the Trust Board’s view.
32. Following that meeting, there was no suggestion that the Taskforce was considering recommendations that would affect Kōhanga Reo, and the Taskforce made no effort to contact the Trust Board directly or otherwise engage with Kōhanga Reo as part of its review process. However, as a result of that meeting we were consulted in relation to the Te Reo Māori Review undertaken by Te Puni Kokiri.
33. On this basis, we did not expect the Taskforce would make any recommendations which would have significant implications for Kōhanga Reo. Our expectation, following the meeting with the Ministers and the subsequent consultation with Te Puni Kokiri on the Te Reo Maori Review, was that the Trust Board would be consulted directly by the Taskforce if it intended to make such recommendations.

34. On 1 June 2011, the Trust Board received a copy of the Report. A copy of the Report is **attached (Appendix 4)**.
35. The Recommendations in the Report that impacted on the Trust Board and Kōhanga Reo included:
- (a) An immediate focus on system quality and the effectiveness of government spending, including strengthening accountability measures for Kōhanga Reo;
 - (b) That the Trust allow Kōhanga Reo to receive capital funding through the Trust from the Ministry of Education's Discretionary Grants Scheme without incurring repayments by them to the Trust, and that the Government agrees to a process to support future funding commitments previously met by the Property Putea including, specifically, funding for Te Arahiko, Māori Language Training, Resource Development and Research; and
 - (c) Devolution of Kōhanga from the Trust to iwi within five years, facilitated by the Ministry of Education and Te Puni Kokiri;
 - (d) Comments regarding the disproportionate number of supplementary ERO reviews of Kōhanga Reo.
36. The Trust Board was not adequately consulted about the Report or about the findings made in that Report which adversely affect the Trust Board.
37. I understand that the head office of the Trust Board may have been copied on emails sent to a sector list but the Trust Board was not directly consulted and did not know about the findings that were to be made in the Report. The Ministry of Education has said that the Report was an independent report and therefore contains independent views. However, the Ministry had a responsibility to ensure that the process adopted, including the terms of reference, involved consultation with the Trust Board, consistent with the principle of partnership under the Treaty and the good faith relationship under the Tripartite Agreement. Further, following our meeting with Ministers in or

around November 2010, we expected if there was anything affecting Kōhanga Reo or the Trust Board that it would be raised directly with us. The Trust Board only received direct contact from Te Puni Kōkiri and the Ministry of Education regarding the Report after the Trust Board raised concerns.

38. On 4 and 5 July 2011, the Trust Board wrote to the Ministry of Education and Te Puni Kōkiri regarding the inaccuracies contained within that Report and the lack of consultation. A copy of those letters are **attached (Appendix 5)**.
39. On 5 and 7 July 2011, the Trust Board met with officials from the Ministry of Education and Te Puni Kōkiri about our concerns. I attended the 7 July meeting on behalf of the Trust Board. At that meeting, Jan Breakwell, from the Ministry, said that we could provide **feedback** on the Report in line with the process that was already happening, with the consultation ending on 8 August. That is because Cabinet is likely to be making decisions in the week ending 26 August 2011. The Ministry repeated that we could provide feedback in line with the process adopted in its letter of 8 July (**Appendix 6**). The 7 July meeting and the letter from the Ministry made me realise that despite our meetings and concerns, nothing was actually going to change. They were basically just telling us to take part in the consultation period. We wrote back to the Ministry about how disappointing their response was (also see **Appendix 7**).
40. As the consultation period in relation to the Report ends shortly on 8 August 2011, we have had to file this claim under urgency, and send a letter to the Ministry of Education and Te Puni Kōkiri setting out our substantive concerns with the Report (**Appendix 8**).
41. I am **seriously** concerned about what the release of the Report will ultimately mean for the Trust Board and for Kōhanga Reo. I am concerned that if the recommendations made in the Report are acted upon this will be the end for Kōhanga Reo as the Māori initiative it once was.
42. The Report is based upon a misconception of Kōhanga Reo and does not take into account its kaupapa. In particular, it contains a misconception of Kōhanga

Reo in terms of quality. The quality framework it assesses Kōhanga Reo against requires mainstream early childhood education qualifications – it does not recognise our kaupapa or the value of our kaumatua and fluent Te Reo Māori speakers. If the Report proceeds, I am concerned that this misconception will erode the kaupapa of Kōhanga Reo even further. The Report will result in unfair criticism that Kōhanga provide poor quality early childhood education and mokopuna are unsafe. This will in turn result in Kōhanga Reo being further forced to assimilate to an early childhood education model and whānau discontinuing their participation and that of their mokopuna from Kōhanga Reo and either enrolling mokopuna in early childhood education services, or removing them from pre-school education entirely. In the meantime, the numbers of native speakers raised in te reo will continue to dwindle and they will not be able to pass on their knowledge to the new generation.

43. Kōhanga Reo have found it difficult to overcome these setbacks in the past. Once whānau remove themselves and their mokopuna, most do not return. This means any decline in numbers of mokopuna attending Kōhanga Reo is likely to be permanent. It also has long-term consequences for the survival of Te Reo Māori. Mokopuna who do not attend Kōhanga Reo may still learn Te Reo, but few people ever become fluent if they are from a non-fluent speaking whanau unless they acquire Te Reo during early years. This means that any damage caused to Kōhanga Reo as a consequence of the Report is likely to be irrevocable.
44. The Trust Board is the Kaitiaki of the Kōhanga Reo kaupapa. It does not own Kōhanga Reo. Kōhanga Reo and its kaupapa are owned by whānau. The Trust Board's role is to protect and support the kaupapa of Kōhanga Reo. The recommendations in the Report will further threaten the kaupapa that Kōhanga Reo has left and the ability of the Trust Board to act as Kaitiaki. The Trust Board acts upon the mandate of Kōhanga Reo whānau. The Report removes the right of Māori to govern and be in control of and responsible for their own tāonga. It is not for the Crown to step in and make suggestions regarding devolution. Māori have the “right to live and be as Māori” and if the

recommendations made in the Report are implemented then that right will be taken away.

45. As part of its Kaitiaki role, the Trust Board has tried to work with the Crown in good faith on many occasions so that the kaupapa of Kōhanga Reo would be acknowledged and understood. But we have never been able to get a commitment from the Crown to address our fundamental concerns about the way Kōhanga Reo have been marginalised and undermined. Nor has it made any commitment to move Kōhanga Reo out of the early childhood education regulatory framework. Rather, they have proposed a return to the Tripartite arrangement. For the reasons I have given above, I am concerned that this is not adequate. The Tripartite arrangement has not served Kōhanga Reo well in the past. Bringing this claim is therefore the last resort for addressing the Trust Board's concerns in relation to the ECE Taskforce Report.
46. There is a history of over 20 years of policies to unwind if we want to make Kōhanga Reo sustainable. We need to go back to when Kōhanga Reo was a success, as it was with the support of the Department of Māori Affairs. We want to bring back the value provided by kaumatua and the kaupapa.
47. In order for Kōhanga Reo to survive it must be acknowledged that they are an expression of Māori tikanga and a taonga, both in their own right and as a means of fostering Te Reo Māori. Kōhanga are not simply early childhood education centres.
48. I therefore ask the Tribunal to hear the Trust Board's claim urgently, before irreversible damage is done through the decisions which are likely to be made following the conclusion of consultation on the Report on 8 August 2011.



Tina Olsen-Ratana