
MATAURANGA MAORI
AND
TAONGA

The Nature and Extent of Treaty Rights Held by Iwi and Hapu in

Indigenous Flora and Fauna

Cultural Heritage Objects

Valued Traditional Knowledge

David Williams

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I thank the legal counsel who have instructed me: Maui Solomon, Gina Rudland and Tania Tetitaha.

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SUMMARY

INTRODUCTION

The paramount importance of matauranga Maori, its status as a taonga and the orally recorded nature of that wisdom is stressed.

Chapter 1

The foundations of the Wai 262 claim and its kaupapa are set out, along with certain assumptions which form a starting point for the research undertaken. Some of these assumptions may need to be tested by legal argument before the Tribunal. It is seen to be the task of this report to produce an evidential basis for the consideration of the claim and legal arguments arising from it.

Chapter 2

A discussion of what is meant by matauranga Maori, noting the difficulty of ‘talking past each other’ which is likely to occur when describing the concepts of one culture in the language of another. Consideration of the relationship between matauranga Maori and scientific knowledge with a conclusion that matauranga Maori needs to be validated in its own right as a taonga. The suggestion is made that the Crown be invited to agree that matauranga Maori is indeed a Treaty-protected taonga, so that the focus of the Tribunal hearings is on appropriate measures of active protection for the taonga.

Chapter 3

A discussion of the international context for understanding the nature of claims by indigenous peoples to the protection of their traditional ecological knowledge. The role of ethnobotany in recording information on indigenous flora and fauna which is essential to enhancing the biological diversity of the planet’s ecosystems. The importance of Maori cosmogony and whakapapa in understanding the traditional ecological knowledge of

iwi and hapu in Aotearoa. The increased awareness of the importance of these issues in the light of the outcomes of the 'Earth Summit' held in Brazil in June 1992.

Chapter 4

The importance of international law, especially following the GATT:TRIPS agreements, and its significance for intellectual property law reform initiatives in New Zealand. The non-congruity evident in international law where market liberalism and globalisation are being fostered at the same time as the rights of indigenous peoples to self-determination are being developed. The importance of moving beyond intellectual property rights to embrace the notion of traditional resource rights exercised by indigenous peoples. The important contributions to this subject by Dr D Posey.

Chapter 5

The importance of indigenous peoples in the conservation of biological diversity. The distinction between 'biosphere people' and 'ecosystem people'. The tensions between the protection of wilderness areas by excluding indigenous peoples on the one hand, and the maintenance of biological diversity by empowering indigenous peoples to continue to exercise their guardianship on the other hand. Examples of Crown policies and Acts of Parliament in New Zealand which have exemplified the rapacious settlement of the country by de-afforestation and modern technologies, the introduction and protection of numerous non-indigenous plants and animals, and the protection of remnant species of endangered indigenous flora and fauna in island reserves, scenic reserves and national parks. The controversy raised by the NZ Conservation Authority's discussion paper on Maori customary use of birds and plants which illustrates the divergence between a 'biosphere' and an 'ecosystem' approach. The widespread support at hui throughout the country for a re-assertion by iwi and hapu of kaitiakitanga rights and responsibilities in numerous ways which are pertinent to this claim.

Chapter 6

Valued traditional knowledge concerning Maori cosmogony, whakapapa, and the importance of myth and legend. The vital significance of oral evidence on customary uses and matauranga Maori. A review, based on written sources, of whakapapa, customary uses and continuing importance of species named in the Statement of Claim: Kumara; Pohutukawa; Koromiko (and reference to tohunga suppression laws); Puawananga; Indigenous forests; Pupu harakeke; Tuatara; Keruru/Kukupu.

Chapter 7

The right of iwi and hapu to engage in new technologies and development as recognised by international law and the Waitangi Tribunal. The right also to not engage in development which would be inconsistent with tikanga Maori, with a particular focus on criticisms of the Human Genome Diversity Project. Recognition of further research being required. Concluding comment that te reo Maori, matauranga Maori, taonga Maori have but one home on this increasingly fragile planet - here in Aotearoa/New Zealand.

INTRODUCTION

PERSONAL

My name is David Vernon Williams. I am an Independent Researcher residing at 95 Western Springs Road, Morningside, Auckland 3. My formal tertiary education qualifications include undergraduate degrees in history and in law (B.A./LL.B.) from Victoria University of Wellington; a graduate degree in law (B.C.L.) from Oxford University, England, where I was a Rhodes Scholar; a doctoral research qualification from the University of Dar es Salaam, Tanzania (Ph.D.) which included an analysis of colonial legal history in New Zealand; and a diploma in theology from Oxford University (Dip. Theol.). I was employed as a legal academic at universities from 1971 to 1991. Since 1992 my primary occupation has been as a consultant contracted to research legal history and Treaty of Waitangi related legal issues. I am responsible for the *Maori Land Legislation Manual (e database)* published in two volumes by the Crown Forestry Rental Trust in 1994 and 1995. I am honorary Legal Adviser to te Pihopatanga o Aotearoa (the Maori Anglican bishopric). I have had extensive experience of Waitangi Tribunal hearings from 1977 to the present.

THE REPORT

The Wai 262 claim is usually referred to as the Indigenous Flora and Fauna claim and the focus of attention is usually upon the significance of the claim with respect to proposals by the Government to reform the law of intellectual property. In line with the kaupapa expressed in the Wai 262 Statement of Claim, I have entitled this report 'Matauranga Maori and Taonga' with a sub-title drawn from the wording of the Direction of the Tribunal commissioning research on behalf of the claimants. A major theme of the report is that the starting point for the consideration of the claim must be concepts and categories of te ao Maori, rather than commencing with Crown policies and proposals and then trying to accommodate Maori concerns in a framework and agenda for reform which has already been stipulated by those Government policies. A particular con-

1, P Dengate-Thrush, *Indigenous Flora and Fauna of New Zealand*, Waitangi Tribunal Research Series, 1995, no 1

cern is that the Government may already have adhered to a number of international law obligations which require New Zealand law to conform to international standards but without regard to the Crown's Treaty of Waitangi obligations.

The Direction commissioning research placed emphasis on obtaining evidence of traditional exercising by Maori of rights and of practices associated with exercising those rights. At the outset I must stress the paramount relevance of matauranga Maori and the fact that there is a considerable body of matauranga Maori which is only held, as that knowledge has always been held, in the repositories of oral wisdom as learned by kaumatua and kuia from their own elders before them, from whare wananga and from their own life experiences. Given the limitations of time and the relevant expertise of the researchers, this report is based primarily upon secondary sources. I am aware from reading those sources, and from my own personal experience listening to whaikorero, that evidence of matauranga Maori may well be accessible in Tribunal hearings only if there is sufficient confidence that disclosure of valued traditional knowledge will be beneficial for iwi and hapu.

It is my understanding that a key feature of the argument to be advanced by counsel for the claimants is that the body of wisdom in matauranga Maori is a taonga owed active protection under the guarantees of the Treaty of Waitangi. The difficulty is that matauranga Maori is very likely to remain inaccessible (and, indeed, is in danger of being utterly lost to future generations) unless and until the holders of the wisdom are confident that their knowledge will not be expropriated or confiscated for the benefit of non-Maori in the same way that land, fisheries, forests and other taonga have been expropriated in the past. It is therefore a matter of the utmost importance that the urgent hearing of the claim will achieve outcomes favourable to the retention of matauranga Maori and to the enhancement of the chances that future generations will continue to benefit from the wisdom passed down from former generations.

This report obviously reflects the perspectives of the author and the reports associated with it reflect the views of their respective authors. We cannot and do not purport to represent the actual views of all or any of the claimants or their counsel and expert witnesses. I am aware that the Tribunal has already commissioned, received and published a report by PC Dengate Thrush as a background paper for this claim.¹ Unlike the

Direction commissioning that paper, the Direction commissioning this report explicitly stipulates that the research report is to be on behalf of the claimants. Thus, although we cannot claim to represent the claimants as such, we have been charged with reviewing and writing up the available evidence from the claimants' perspective in so far as we understand that perspective. I am also cognisant of the fact that the Waitangi Tribunal is an inquisitional body and the report therefore includes suggestions that a number of persons with particularly relevant qualifications and experience should be called upon to give evidence which may assist the Tribunal.

It is my hope that my report, the associated reports, and the abstracts of key documents will assist the Waitangi Tribunal, the Crown Law Office and any other interested parties to grapple with the wide-ranging and very important issues which will arise in the course of the forthcoming hearings.

