

OFFICIAL**Wai 2915, #A32**

IN THE WAITANGI TRIBUNAL

WAI 682
WAI 2915

IN THE MATTER of the Treaty of Waitangi Act 1975

A N D

IN THE MATTER of the Oranga Tamariki Urgent Inquiry (Wai 2915)

A N D

IN THE MATTER of claims by Rewiti Paraone, Kevin Prime, Erima Henare, Pita Tipene and Waihoroi Shortland on behalf of Te Runanga o Ngati Hine for and on behalf of descendants of Torongare and Hauhaua (Wai 682)

BRIEF OF EVIDENCE OF WAIHOROI PARAONE SHORTLAND**Dated this 3rd day of July 2020**

RECEIVED Waitangi Tribunal
3 Jul 2020
Ministry of Justice WELLINGTON



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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. My name is Waihoroi Paraone Shortland. I am Te Tumuhere o Te Runanga o Ngati Hine. I am also the Te Tai Tokerau representative and Chairman of Te Matawai.
2. I provide this evidence in support of Ngati Hine's claim in the Wai 2915 Oranga Tamariki Urgent Inquiry ("this Inquiry").
3. I discuss my perspectives on the following matters in the context of the issues to be addressed in this Inquiry:
 - (a) Maori worldview of tamariki and whanau;
 - (b) Te Tiriti o Waitangi; and
 - (c) The state's care and protection system for tamariki Maori.

Maori worldview of tamariki and whanau

He tamaiti, he taonga

4. The starting point for the Maori worldview of tamariki is 'he tamaiti, he taonga'; every child is precious. In the Maori world, tamariki are to be treasured, they are taonga tuku iho.
5. Whakapapa connects tamariki, through their parents, to generations of tupuna and to the atua, the spiritual world. The physical and spiritual potential of each tamaiti Maori begins at conception. Through whakapapa, they are endowed with attributes that are fundamental to their cultural, physical and spiritual wellbeing, such as mana, tapu, wairua and mauri. Rangatiratanga is the inherent birth right of all tamariki Maori.
6. A critical aspect of the wellbeing of tamariki is maintaining a balance, or harmony, across these dynamics. Any disharmony or imbalance can have a negative, and sometimes detrimental, impact on the holistic wellbeing and development of a child. To maintain harmony in the life

of a child, each aspect of their being and world must be acknowledged and enhanced. This places a responsibility on anyone that contributes to the raising of tamariki to nurture not only their physical traits, but their spiritual traits also. If this is not done, the child may never realise his or her potential and flourish.

7. Tamariki are taonga of the entire whanau, hapu and iwi. As such, it is the responsibility of the entire whanau, hapu and iwi to care for and nurture them. This is why, from a Maori perspective, it is often said that it takes a village to raise a child. There was a time when whanau were a lot more in touch with each other. The thing about the village raising the child was very true because children literally ran around the village.
8. Our task is to give our Maori ideologies credence. It is a broad cultural perspective, and anyone seeking to have a role in the life of tamariki Maori needs to understand it. Once you have an understanding, we then need to ask how we invest in that practically. Some of the investment needs to go into reconnecting with each other, with our pa harakeke, and reconnecting with our cultural roots, because in this day in age, we seem to be moving further and further apart.

Tamariki and whanau

9. When I think about tamariki or children in the traditional context of whanau, there were three broad categories:
 - (a) Tamariki whanau, which were children born of the whanau;
 - (b) Tamariki whangai, which were children that, for a number of reasons, were cared for or taken into the care of a broader whanau relationship. This seldom occurred outside of whakapapa. Usually, the child was chosen by way of a familial obligation or to further enhance whanau connections. Sometimes this tikanga was exercised to assist whanau members unable to have biological children of their own. This category is often confused with legal adoption; however, they are not the same and there are many distinctions particularly

when it comes to Pakeha law. For instance, tamariki whangai are not severed from their whakapapa and they retain the birth rights bestowed on them by their natural parents; and

- (c) Tamariki atawhai, which were children that were raised from birth outside of their own whakapapa. This relationship is the closest to being legally adopted within tikanga Maori.
10. In my view, you can look at the care, the raising, and the defining of tamariki under those three categories.
 11. I come under the category of tamariki atawhai. I was not born to my family, they are the family that fate chose for me, and I consider myself incredibly lucky that they were chosen. In my time, this relationship was formalised under the auspices of the Maori Land Court and, at one time, it was done under the auspices of the Department of Maori Affairs.
 12. When I was in my early twenties, I met my birth mother for the first time and she said to me “you must have a million questions for me”, to which I said “I don’t even have one, all I know is you made the best choice for me and the outcome was great.” My point is that my experience was the very best-case scenario. Some tamariki have not been as fortunate as I.
 13. In situations where tamariki need to be cared for outside of their immediate whanau, it is critical that the child still has access to his or her culture. It is also critical that those tasked with caring for that child, have an understanding of what that entails. Without this, regardless of whether one has the best of intentions, the child would be denied an opportunity to grow within his or her own culture. One can grow up in a home that provides for the physical needs, but without the cultural perspectives that might be available through a Maori whanau, the cultural deprivation can be quite marked.

Te Tiriti o Waitangi

14. Te Tiriti affirmed our right to be ourselves and live in accordance with our own tikanga and authority. Te Tiriti also affirmed our right to exercise rangatiratanga over our taonga; everything that we hold precious. What could possibly be more precious than our tamariki?
15. Our tupuna signed te Tiriti with the belief that the promises embedded within it would make for a future of cultural, social, economic and political prosperity for our hapu.¹
16. The state's care and protection system for tamariki Maori is yet to live up to these promises. One only has to look at the statistics to see that Maori are certainly not prospering under that regime, nor have they ever.

Rangatiratanga

17. Tino rangatiratanga begins almost at birth; it is an innate right. If we have not invested in the tino rangatiratanga of the child, then how will that child be able to express that tino rangatiratanga in the world that surrounds him? How can a child express this virtue if it has not been instilled from birth?
18. I believe that rangatiratanga is something within you and if you have not been given the tools to really discover what it is and what it can bring, or what it can manifest into and allow you to express, then you cannot truly flourish or realise your potential. I believe you have to understand rangatiratanga internally before you can express it externally.
19. The Crown presumes it is sovereign and that it therefore has the right to legislate laws and policies in relation to our tamariki, but how can this be reconciled with our inherent right under te Tiriti to exercise tino rangatiratanga? There is clearly a tension between those two concepts and for me, you can be born with tino rangatiratanga, but if it

¹ Wai 1040, #M27(e), *Ngati Hine evidence for Crown breaches of Te Tiriti o Waitangi – Te Wahanga Tuawha: Tangata* [12 September 2014], at [1].

becomes lost to you, it never has an opportunity to manifest itself in you. I think it behoves us to understand that.

20. The Crown/Oranga Tamariki has an obligation to recognise and establish a te Tiriti partnership with Ngati Hine. We have the right to exercise rangatiratanga in and outside of the systems that impact the care and protection of our tamariki. This includes in the thought, design and implementation of any law and policy.
21. The promise of the ability to exercise rangatiratanga over our taonga, to me, is the vital component that te Tiriti reminds us of in terms of this Inquiry. That is part of the agreement that we, Maori and the Crown, signed up to.

Tamariki as taonga

22. In terms of te Tiriti and this Inquiry, the most telling thing that is defined for us is he taonga te tamariki o te ao Maori, he taonga te tamaiti Maori i roto i tana ao Maori – in his Maori world, te Tiriti tells us, the child is to be treasured. We have to first inculcate this idea into all Maori as the starting point, then I think the rest will follow.
23. There are more than enough examples of where treating tamariki as taonga has borne fruit for Maori. If we look at any successful Maori in their Maori world, you will find that they have come from a background in which that is true; they have been treated as taonga by their immediate whanau, and in a broader sense by their extended whanau, hapu, iwi and Maoridom in general.
24. In life, if you ever get to the point where Maoridom in general view you as a taonga, you may get to hear the words “he taonga tenei tangata e takoto nei”. This is an acknowledgement of that concept, he taonga te mokopuna, he taonga te tamariki, he taonga te tamaiti. If you begin there, that idea grows with you for the rest of your life and the acknowledgement spreads wide. If you get to a point in life where you have displayed all those qualities that make people consider you a taonga to them, then that is a life well-lived.

The state's care and protection system for tamariki Maori

Perspectives on the past

25. I refer to my own personal experience. In a previous life, I was a Maori Community Officer and an employee of the public service in that role. There was a time, for instance, again taking my own example of being adopted, the Maori Welfare Officer who was responsible for the formal part of my adoption considered me one of her tamariki atawhai. In her view, she was just as responsible as anybody else for placing me with a family. That kind of link, between myself and that officer, was something that continued throughout our lifetimes. Every time she saw me, she was happy to remind me of that fact, that not only was I the child of my adoptive parents, but that she was responsible for creating that connection. That was something that I grew up with and it became part of my ethos when I became a Maori Welfare Officer and Maori Community Officer. There are children out there (and their parents) that I still view in this way.
26. Back in the day, people like Pita Paraone, John Dargaville and Mate Toia, just to name a few, were central in the care of Maori children in welfare. For them, the knowledge of their community and the people they served was paramount in the decisions that were made around children. Not only decisions about children, but a whole host of things, such as housing for instance. I remember when Maori Affairs handled all Maori housing, and because Maori Affairs drove a lot of these things, they got to know whanau histories, they got to know whanau connections, and they got to know when whanau were struggling so they could tap into support for those that needed it. We had a lot of organisational things that were working for our people back then.
27. With the devolution of some of those responsibilities to government agencies like Oranga Tamariki, I think there were clear cases of throwing out the baby, the bath and the bathwater all at once. For me, government agencies lost their eyes, ears, hands and legs in Maori communities. They no longer had that innate knowledge. When that went out the door, their capacity to do that type of mahi in the

communities diminished because they no longer had a connection to those communities.

28. There were times in the past, and I may be looking at the past through rose-tinted glasses, that some of these things, like the death of tamariki or harm to tamariki, did not occur. I cannot remember many incidents from when I was a child. However, it is painfully obvious that they certainly occur now, so you have to wonder whether in fact the reason for that is we have just become so disconnected from our cultural roots and cultural upbringing that we have lost touch. When did that shift occur? What actually happened to put us in this situation where everything is so out of balance? There is clearly disharmony within our whanau, within our communities, and within te ao Maori.
29. Colonisation infiltrated the lives of our tupuna, and the consequences have seeped down through the generations leaving devastation in its wake. Today, the negative impacts of colonisation can be seen in every aspect and at every level of our community. In my view, colonisation was the genesis of this disconnect and disharmony. We were told that our beliefs, our way of thinking, and our language were wrong. When you have those types of ideas drilled into you, you start to believe them and sadly this perspective is now far too prevalent among our people. We now have generations of Maori who do not practice tikanga or speak the language. This is a devastating loss for our people.
30. 'Whanau' was once the centre of te ao Maori, but the Western way of thinking tells us that it is the 'nuclear family', which does not include grandparents, cousins, aunties or uncles. Many of our whanau have more than two generations living in the home, it is very common. One could say that this is a modern-day version of 'it takes a village'. Another example of where our way of thinking differs, is that Pakeha children were seen and not heard. Maori children were present in every facet of traditional Maori life, and they were as important to the wider community as any of the adults were. Everybody had a role to

play in maintaining the balance. Maori children were not the property of their parents, they were the responsibility of us all.

31. Maybe a lot of things went unreported in the past, I do not know, but let me put it this way, if abuse happened back in the day, the wider community knew about it and they spoke up, people would step in. Sometimes it was immediate family that would take people away, they would do the uplifting themselves in order to try and resolve the situation. Often, it did. So, I am not saying that it never occurred, but I think that there were many avenues that Maori society could turn to that are no longer available now.

Oranga Tamariki: the agency and the legislation

32. Sometimes we get these new nomenclatures of agencies in the hope that by giving it a Maori name it is going to provide us with a Maori answer. The reality is that giving something a Maori name, does not make it Maori. To me, it seems wildly inappropriate to give an organisation that perpetuates inequity for Maori, a Maori name.
33. In terms of the Oranga Tamariki Act 1989, while it might provide for the establishment of strategic iwi relationships, this does not give me comfort. In my view, the processes set out in the Act are merely aspirational; they do not have the ability to rectify the systemic issues within Oranga Tamariki.
34. The Chief Executive of Oranga Tamariki may have some sort of authority vested in them through that agency, but without a Maori purview on how they might have some capacity to interpret that authority, they are lost in the woods. There is no base upon which they can exert that authority, other than that the Government has given them some Crown authority, or kawanatanga. But that does not equate at all to what is needed to express that authority. Without Maori leadership, they could never discover what is needed in a lifetime of trying. They might find similarities from a culture they might be drawn from, and they might try to relate to it that way, but it will never, and can never be the same. I am quite emphatic about that.

35. At the moment, although discussions have taken place, Ngati Hine do not have a formal relationship with Oranga Tamariki. I understand that Oranga Tamariki has developed a Memorandum of Understanding with some iwi, but the only Memorandum of Understanding that I am aware of between Oranga Tamariki and Ngati Hine is te Tiriti o Waitangi. Perhaps the Crown is seeking to initiate that relationship because we have a hauora, and that is what we are signalling; that we have an infrastructure that could serve the needs of our people. However, we certainly do not yet have anything substantial with Oranga Tamariki as far as I am aware.
36. I understand that Oranga Tamariki has made changes to the way it operates and has implemented an array of new policies geared at addressing the inequities their practices create for Maori, but, in my view, there still appears to be an absence of a Maori worldview within their policies. Government agencies generally have set guidelines that they must align themselves to. It is going to take a lot of courage to step outside of those guidelines and try and create a new and innovative way of coming to terms with the systemic problems that exist between our culture and their system. I do not think there is a willingness to do that inherently, at least I have not seen it yet.
37. If there is a policy that attempts to incorporate a Maori worldview, it is certainly not understood or applied in an appropriate way by Oranga Tamariki. If it were, we would not be in the situation that we are currently in, with tamariki Maori being uplifted at the whim of social workers, many of whom have no understanding of Maori concepts. I believe that the current system is not compliant with te Tiriti, it is clearly not working for our people.
38. As I have said, Oranga Tamariki lack that innate knowledge, and they lack the capacity to investigate, or to know, or to link into the Maori world. There is a lack of cultural competence in that agency that, prior to the devolution of Maori affairs, existed and was practiced by Maori staff within the communities they lived and worked.

39. We are losing those people within our community that have the practical knowledge, we are losing them at the top end at a startling rate and we are losing tamariki at the bottom end at an equally startling rate.

The uplifting of tamariki Maori

40. The number of tamariki Maori being taken into state care is not just higher than the number of non-Maori, it is *much* higher. When Maori babies are five times more likely to be taken into care than non-Maori babies and three Maori babies are uplifted every week (on average), something is clearly wrong with the law that gives Oranga Tamariki the authority to do that.
41. It would not take too much stretching of the imagination to say that if the system were compliant with te Tiriti, the disproportionality would likely decrease, and less Maori children would be taken into state care. This is another point that I am quite emphatic about.
42. If the laws and policies relating to the care and protection of tamariki Maori were more than just aspirational strategies, we probably would not be having this discussion. These policies need to be developed by Maori, for Maori, and then practically applied with a deeper understanding of tikanga and the Maori worldview.
43. Because the agencies are usually Government-driven, it is evident that they lack the understanding of these things that are so important to tamariki Maori. Government agencies are often not represented by people who have an understanding of the needs of tamariki Maori. This needs to come from a Maori base and they do not have the people in their midst who are able to present with these credentials. When you do not have people with the right credentials presenting at the time of need, then the solution is usually going to begin at the wrong place.
44. In situations where Oranga Tamariki are uplifting tamariki Maori without due consideration for the Maori worldview, there is no understanding by them of the effect that uplifting will have on the child. This means that they probably have not really explored the kaupapa

and tikanga that is available to draw from; it is simply dismissed. By focusing on a small part of the issue, which might pertain to the safety of the child, without a cognisance of those other factors, the child will inevitably struggle with its own identity and with its own capacity to understand who they are. I do not mean knowing that they are Maori, but what it is that makes them Maori, or how they express the innate nature of being Maori if they do not have a pathway to those things.

45. I understand that some uplifts are pre-determined before birth, and that certain whanau histories are known to Oranga Tamariki. Where that exists, it is almost incumbent on Oranga Tamariki to have explored every avenue before they get to the point where uplifting at the time of birth or soon after becomes a real option. They need to attempt to address these things before the child arrives. That does not currently appear to be a part of the culture of Oranga Tamariki, so that is a form of denial.
46. A number of uplifts happen after the birth. People will say that some things fall through the cracks. Well, nothing falls through a crack unless someone left a big hole there that they forgot to fix. If there is a situation after the birth that sends signals that there is a hole for the child to fall through, our job is to try to fix the hole, rather than remove the child. Again, I am not denying that in some circumstances uplifting a child is necessary, but that should be the last resort, not the only option.
47. Oranga Tamariki seem to be focused on taking the shortest and easiest route, rather than the one where a lot more investment and investigation needs to take place. A lot more supporting of and consultation with parents and whanau should take place before and after birth. This may demand that the process is Maori-led when it concerns tamariki Maori, and for some time we have not played a leading role in that process.
48. Oranga Tamariki put it down to being concerned for the safety of the child, well, most Maori are concerned for the safety of their tamariki. With that said, we cannot close our eyes to the fact that there are

tamariki being harmed. I think we also have to accept that we have done less work in the prevention than we have in the cure. We, as Maori, need to exert our authority when we are concerned about the harm that might be done to tamariki Maori. There are certain things within te ao Maori that we have long forgotten or that have been eroded from within ourselves and our experience.

What needs to change?

49. If you ask me what needs to change, I would say a lot; a lot needs to change. The law does not go far enough, the policies are inadequate and not practiced in an appropriate manner.
50. I believe that many social workers have compassion, but compassion without understanding of the cultural perspective is just compassion. That compassion needs to be fed that innate knowledge I have spoken of, and that is the piece that is missing; cultural competency. If they want to attach Maori perspectives to their policies, then they need to practice what they preach. What we need is more Maori being educated, in our ways, in our tikanga, because, in reality, the knowledge base that once was, is no longer as broad. This is what we need to address as Maori.
51. If the agency currently charged with the responsibility of caring for and protecting our tamariki is lacking in the capacity to deliver those things, then that is where the first change has to take place. We have to grow the Maori presence there. We cannot simply say 'let's sack the CEO', that will not prove or achieve anything.
52. The latest report on Oranga Tamariki that came out recently, *He Kuku o Te Manawa*, identified many of the failings of the current system and noted six areas that need to be changed. I applaud Judge Becroft for this report, it is a good start. I look forward to the second part of the report that will include recommendations on how those changes can be made. It described the system as racist and being let down by poor social work. It suggested that devolution of authority to iwi and Maori organisations can no longer be considered optional. In my opinion,

the devolution of authority, and partnership, needs to be directed to whanau, hapu and iwi so that the relationships are within (and managed by) the community. This is a fundamental shift that needs to be provided for in the legislation.

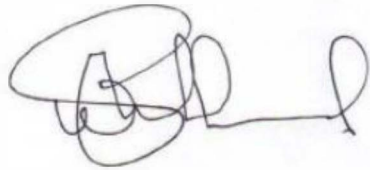
53. There have been several other reports that have been released recently that are critical of the state's care and protection system, but I cannot help but think that we need to start pushing for some Maori solutions to a Maori need. We, as Maori, are the only ones that can come up with that.
54. In terms of Ngati Hine specifically, perhaps there needs to be a korero about Ngati Hine establishing its own parallel social service system, whereby we can run our own interventions. We did this once upon a time, and things got dealt with within the community. We have to find better ways, and the better way is to see that some of these cultural perspectives are brought back into the system that we have to deal with now.
55. What is currently in place is clearly broken. As Judge Becroft said, fundamental change is needed.

Concluding remarks

56. Our tamariki are the very foundation of our future; they are our legacy and our wildest dreams personified. If we do not invest in their wellbeing, then how will they realise their potential? Rangatiratanga is their birth right and the Crown has a responsibility under te Tiriti to uphold and protect that birth right. Oranga Tamariki is failing miserably in this regard. Dramatic changes need to be made and it is incumbent on all of us to ensure that we leave a world where it is safe for tamariki Maori to be who they are.
57. We are placing our hope in today's generation to reinvent our systems, our tikanga, and our way of doing things. Through their commitment, we will find a way of instilling it in our people once again. It is imperative that we do this for our tamariki; we need to, we have to.

58. If we are silent, we are complicit; if we are silent, where will the Maori voice be found in the policies and legislation that apply to the care and protection of tamariki Maori?
59. In this matter, we have no right to remain silent nor to be silenced.

DATED this 3rd day of July 2020

A handwritten signature in black ink, appearing to be 'Waihoroi Shortland', written in a cursive style.

Waihoroi Shortland