

HŌNGONGOI

Tui tui tuia ki te ora. Hui hui huia ki te marama.

Gather together for our collective wellbeing.

New Zealand Secondary School Mooting Competition



McCaw Lewis was a proud sponsor of the 2015 New Zealand Secondary Schools Mooting Competition run by Te Piringa—Faculty of Law, Waikato University. Our sponsorship package included a financial component as well as work experience opportunities for the finalists. Te Hunga Roia Māori o Aotearoa/Māori Law Society (“THRM”) also commissioned a taonga, Ipu Kōrero, to be awarded to the top Māori Mooter. McCaw Lewis also sponsored the financial component of this prize. Rachel Mullins, Co-Tumuaki of THRM and an Associate of the firm, presented the top Māori Mooter, Rebekah Te Rito from Rosehill College, with the taonga.

Congratulations

We congratulate Hemaima Rauputu, Solicitor at McCaw Lewis, and Huirama Matatahi on the new addition to their whānau. Honehira Tongikura Matatahi arrived on 4th June 2015. Ka mau te wehi!



High Court quashes *Mangātū Remedies Report*

In the most recent chapter of the *Haronga* proceedings, the applicants challenged the Waitangi Tribunal decision to decline applications for the resumption of Crown forest lands. The challenge related to the return to Mangātū of some 8,626 acres of land which Mangātū was forced to sell to the Crown in the 1960s.

A later claim was filed by the applicants seeking the return of the land as well as compensation under s 8HB of the Treaty of Waitangi Act 1975 (“the Act”). About the same time, the applicants also sought an urgent hearing of that claim, which was declined in 2009. The applicants tried to have that decision overturned and failed. In 2011 the Supreme Court ordered the Tribunal to conduct an urgent hearing.

In the *Mangātū Remedies Report*, which resulted from that urgent hearing, the Tribunal said it was inappropriate to make recommendations for any of the applicants, even though the claims were well founded. The Tribunal said that redress *should* include the return of all or some of the land, but also suggested that the redress sought was more than necessary to remove any prejudice suffered.

The applicants argued that the Tribunal had to make a decision on the return of the land. They argued that the Tribunal cannot simply make a finding that the land *should* be returned without then making a formal recommendation that the land *is* to be returned.

The High Court concluded that the Tribunal’s decision not to make binding recommendations gave rise to two distinct errors of law:

- Firstly, the Tribunal deferred to the Crown’s settlement process when it concerned itself with “fitting” the benefits of a binding recommendation into that framework.
- Secondly, the Tribunal incorrectly assessed the flexibility available to it under s 8HB. It relied on the difficulty of calibrating binding recommendations as a reason not to perform its adjudicatory function.

The Tribunal had therefore misunderstood the binding recommendation regime and, in doing so, had been swayed by irrelevant matters. The Court quashed the Report and directed that the Tribunal reconsider the applications for binding recommendations.

This decision suggests that the Tribunal should not simply defer back to Crown negotiations in order to adjourn a resumption application and effectively ‘sit on the fence’. If the Tribunal’s adjudicatory jurisdiction is invoked under s 8HB, a decision will generally be required.

The High Court has given new hope to the Mangātū Blocks shareholders, who are now waiting for the Tribunal to take a fresh look at their claim.

Waitangi Tribunal Update

Te Paparahi o Te Raki

Hearing Week 14 of the Stage Two Inquiry was hosted by the Ngā Hapū o Takutai Moana Taiwhenua at Te Tii Marae and Kerikeri RSA from 7-12 June 2015. Ngāti Rehia and Ngāti Torehina ki Mataka presented evidence during the week. Hearing Week 15 is set down for 31 August – 4 September 2015 and will be hosted by the Whangaroa Taiwhenua.

Porirua ki Manawatū

The Tribunal held a judicial conference on 30 June 2015 to discuss the Muaupoko prioritised hearings, and the research programme for the balance of the inquiry. It is proposed that the Muaupoko hearings begin in October. The casebook research programme for the balance of the inquiry is continuing.

Taihape: Rangitikei ki Rangipō

The casebook research deadline is 30 September 2015, and Ngā Kōrero Tuku Iho hearings are proposed for October – November 2015. A joint claimant/Crown Statement of Issues is to be prepared and the substantive hearings are scheduled to begin in May 2016.

Military Veterans Kaupapa Inquiry

This Inquiry is currently in the planning phase, with the Tribunal working with claimants and counsel to design how to proceed. As part of this, the Tribunal will determine which claims are eligible to be heard in the Inquiry, the nature of the Statement of Issues and how research will proceed. The first oral hearing week is scheduled for August 2015 in Gisborne.

Te Rohe Pōtae

The substantive hearings phase of the Inquiry has now concluded. We await the Tribunal's report on its findings and recommendations.

Te Ture Whenua Māori Reform

The Government is currently consulting on an exposure draft of the new Te Ture Whenua Māori Bill ("the Bill"). This is the most significant reform of Māori land law and administration since Te Ture Whenua Māori Act 1993 was passed.

McCaw Lewis has advised on Māori land law issues for over 20 years and has undertaken a comprehensive review of the Bill. As part of that review we have identified a number of changes that will have a significant impact, both positive and negative.

The Hon Te Ururoa Flavell ("the Minister") has extended the timeframe for submissions until **7 August 2015**. The Minister confirmed that the Bill will be introduced into Parliament this year and therefore it is critical that people understand what is proposed, so as to enable constructive submissions to be made by 7 August before it formally gets introduced into Parliament.

The reform is founded on four key principles being autonomy, utilisation, simplicity and safeguards, with a focus on aligning Māori land governance structures with mainstream governance entities.

One of the more significant proposed changes, is that existing Ahu Whenua Trusts and Whenua Tōpu Trusts will become private trusts that are rangatōpū. Māori Incorporations become body corporates that are rangatōpū. A rangatōpū is a governance body that has kaitiaki (trustees). The Bill proposes a three year transitional period in order for existing trusts/incorporations to transition into the new framework.

The Bill also provides that, when a Māori land owner dies intestate (without a Will), then a Whānau Trust is automatically established on succession to hold those Māori land interests. The successors do not have a choice to succeed to the interests as individuals. This is a contentious change and Māori land owners should consider the implications of this very carefully.

The changes to the current regime are significant and as a result the exposure Bill is long and complex. We are able to provide general advice on the reforms or answer any specific questions you may have about aspects relevant to you. For assistance and advice, please contact Aidan Warren at aidan.warren@mccawlewis.co.nz

Erima Henare - He uri nō Ngāti Hine

We are saddened by the recent passing of Erima Henare. Erima was a revered Ngāti Hine leader and te reo Māori advocate who worked tirelessly in the many roles he held throughout his lifetime. Erima was also a beloved father, grandfather and uncle to many. We were privileged to work with Erima over the last five years as we assisted Ngāti Hine with their Te Tiriti o Waitangi claims. Erima's wealth of knowledge and sense of humour will be deeply missed by all.

E te rangatira, hoki atu ki tō ūkaipō, okioki ai.



UPDATE: The information contained in this update is intended as a guide only. Professional advice should be sought before applying any of the information to particular circumstances. While every care has been taken in the preparation of this update, McCaw Lewis does not accept liability for any errors it may contain