

Hemaima Rauputu



We welcome Hemaima Rauputu to McCaw Lewis. Hemaima joined the Māori Legal team at McCaw Lewis in April 2011, with a particular focus on assisting clients in the Te Paparahi o te Raki District Inquiry (Northland Inquiry).

Hemaima is of Ngāti Maniapoto descent (Ngāti Waiora and Ngāti Rungaterangi) and graduated from the University of Waikato in February 2010 with a Bachelor of Laws and Bachelor of Arts (Majoring in Te Reo and Tikanga Māori). She spent some time with McCaw Lewis in 2010 while undertaking her Professional Legal Studies.

Hemaima was admitted to the bar in February 2011. She is also currently undertaking her Master of Laws Degree at the University of Waikato.

Te Wiki o Te Reo Māori – Manaakitanga

During 4 - 11 July 2011 McCaw Lewis celebrated Te Wiki o Te Reo Māori. In line with this year's theme "manaakitanga", our celebrations included the whole firm participating in Te Reo classes, waiata practices and other important aspects of Te Reo Māori me ona tikanga such as learning daily whakatauki.

One whakatauki was of Ngati Hine leader Sir James Hēnare when he spoke, in 1985, before the Waitangi Tribunal as it heard the Māori language claim -

"Ko te reo te mauri o te mana Māori"
"The language is the life force of mana Māori"

The Politics of Charity By Melissa Gibson

Charitable Status

One of New Zealand's high profile 'charities' has recently been de-registered with the Charities Commission. The High Court recently decided that Greenpeace did not qualify for charitable status. This means that Greenpeace no longer receives a tax exemption from income tax and resident withholding tax. For an entity the size of Greenpeace, this is huge money. Understandably, Greenpeace intends to appeal this decision to the Court of Appeal.

Being Charitable

To be charitable, an entity must have purposes within one of the following categories:

- Advancement of education
- Advancement of religion
- Relief of poverty
- Other benefit to the community.

The entity must also benefit a significant sector of the public.

Political Purposes

In 1917, the High Court held that a trust for political purposes is not charitable because the court has no means of judging whether the proposed law change will benefit the public.

In later years, the courts have held that organisations promoting political activities are not charitable because the court has no way of determining if a proposed law change will benefit the public. Also, even if the evidence points towards a law change benefitting the public, the case must be decided on the basic principle that the law is right as it stands.

Non-Charitable Purposes

An organisation with non-charitable purposes can still qualify for registration if the non-charitable purposes are additional to the charitable purposes and are not independent. The Charities Commission will look at the level of importance of the political purpose and whether the political purpose has become an independent activity when deciding this.

Greenpeace

The Court held that the Commission was correct to find that political activities do not fall within the definition of charitable purpose in line with earlier cases. Further, potentially illegal activity such as trespass is not charitable. Greenpeace's purposes of promoting disarmament and peace are non-charitable. The extent to which Greenpeace relied on its political activities to advance its causes meant that the political element could not be regarded as ancillary to Greenpeace's charitable purposes.

It is hard to see how Greenpeace can be successful in the Court of Appeal. For reasons of public policy, the Court will not grant charitable status to an entity that commits illegal acts. For similar reasons, it is the role of the Court to uphold the law as set out by Parliament and not to condone acts in defiance of that law.

Registered charities including Māori charitable entities need to be aware that the Charities Commission is constantly reviewing the practices of registered charities to ensure that the “charity” reflects the purpose of the word and in fact carries out charitable purposes.

There are a number of useful resources and information sheets available in relation to charities on the Charities Commission website www.charities.govt.nz.

Melissa Gibson can be contacted at melissa.gibson@mccawlewis.co.nz

A statutory right to Tribunal recommendations and remedy hearings

By Eloise Lonnberg

In *Haronga v Waitangi Tribunal*, the Supreme Court of New Zealand recently found that, in cases where the Waitangi Tribunal has found that a claimant group has a well founded claim in relation to the return of Crown forest land, the Tribunal must determine whether or not to make a binding recommendation for the return of that land.

The Court said that the Tribunal’s statutory obligation of inquiry into every claim is *not* fully discharged simply through the Tribunal finding a Treaty breach.

This case dealt specifically with a claim where the remedy sought was return of licensed Crown forest land. In such cases, the Tribunal must consider whether the land is to be returned, and to which Māori or group of Māori. This means that the Tribunal cannot refuse to consider an application for a hearing regarding the compulsory return of Crown forest land.

The Supreme Court said that, where there are ongoing settlement negotiations with the Crown about the particular Crown forest lands, the Tribunal should hear these types of

claims with urgency. If the Tribunal did not fulfil the above requirements, the claimant would risk ‘significant and irreversible prejudice’ as they would lose the right to have their claim properly heard (where the rest of the claimant group reaches a settlement with the Crown).

The impacts of this case are yet to be seen, but it is likely to have an effect on claimants in the Waitangi Tribunal, as well as iwi/hapū undertaking direct negotiations with the Crown.

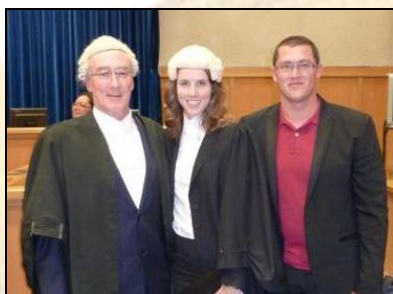
Māori Land Seminars In Kawhia With Glenn Tootill

As a means to give back to the community, Glenn is presenting a free Māori Land Clinic in Kawhia. The clinic consists of a one hour seminar followed by individual consultations.

These are held in Kawhia on the second Wednesday of the month from 10am–1pm. Anyone is welcome to attend and all questions on Māori land are welcome.

The next clinic is planned for Wednesday 10 August 2011. The seminar will be on Māori Reserved Land leases.

Admission to the Bar



Eloise Lonnberg was admitted to the bar in early June 2011 and is now a solicitor and barrister of the High Court of New Zealand. Eloise continues to work primarily on the Te Rohe Pōtae District Inquiry and on a number of civil dispute projects.

Ka mau te wehi Eloise!

WAITANGI TRIBUNAL UPDATE

Whanganui

The Tribunal is currently in the report writing phase. The Tribunal has given a July 2012 timeframe for delivery of the truncated report on the key issues. This will enable claimants to enter into negotiations. We have recently sought an update from the Tribunal as to its progress and are currently awaiting a response.

Te Rohe Pōtae

Judge Ambler has recently issued directions determining that the next Judicial Conference will be held in Wellington in August. This will be an important opportunity to discuss a range of issues that will impact on the interlocutory and hearing process of the inquiry.

Taihape: Rangitikei ki Rangipo

A Judicial Conference was held in Taihape on Monday 27 June 2011 to finalise the research programme and Inquiry planning. Chief Judge Isaac is due to issue a direction as to forward planning following that Judicial Conference.

Porirua ki Manawatū

A facilitation hui was held between Raukawa affiliated claimants on 13 June 2011 to discuss a united approach for progressing their claims. A Judicial Conference has since been held for non-Raukawa affiliated claimants on 13 July 2011 to discuss how these claimants propose to progress their claims before the Tribunal.

Te Paparahi o Te Raki (Northland)

The Tribunal is now in a dual phase of report writing for Stage 1 of the Northland Inquiry on He Whakaputanga and Te Tiriti and preparing for Stage 2 hearings. The Tribunal has recently issued directions setting out a number of key dates for the Stage 2 Interlocutory process, in particular, that amended Statements of Claim be filed by 30 September 2011. Parties will have just over a year to prepare for hearing.