

RACIAL DISCRIMINATION

VIOLATES

THE TREATY OF WAITANGI

Compiled by
independent researcher Hilda Phillips

A

ONE NEW ZEALAND FOUNDATION

PUBLICATION

FOREWORD

This publication includes primary source documentation which proves that the Minister of Maori Affairs is accountable for, and the chairman of the Waitangi Tribunal is directly involved in, the institutional racial discrimination which violates the Treaty of Waitangi, outlaws justice, and cancels out democracy.

Help the One New Zealand Foundation to honour the Treaty, uphold justice, and restore democracy to this country by signing our petition calling for the repeal of each and every discriminatory law on our statute book.

A handwritten signature in cursive script, reading "Peter Clark", is written over a horizontal line.

Peter Clark

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compiled by independent researcher Hilda Phillips.

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British sovereignty was proclaimed over the North Island by virtue of the Treaty of Waitangi, and over the South Island and Stewart Island "on the grounds of Discovery".

[Copies of the two Proclamations are on page 12.]

The Treaty of Waitangi is a very simple document, consisting of three Articles or sections.

[A literal translation of the Maori text and the English text of the Treaty are on page 11.]

The, still current, Maori Affairs Act 1953 (an off-spring of the Native Lands Act 1865) is a tangled maze of contradictory legislation, consisting of 473 sections, and - in addition - there are a number of other laws which MUST be read in conjunction with the Maori Affairs Act: all of which completely NEGATE Article III of the Treaty of Waitangi which guaranteed to Maoris "all the same rights" as non-Maoris.

[Excerpts from past and present legislation are on pages 18 and 19.]

A 1960 list of laws providing for differential treatment between Maori and non-Maori is on pages 22 and 23.]

The Treaty of Waitangi CANNOT be considered in isolation, but MUST take into account the whole body of Maori Affairs legislation, as well as conditions in this country both prior and subsequent to 1840.

However or whenever Maoris arrived in this country, from that unrecorded point in time until 1840, they occupied or used land and territorial fisheries ONLY for as long as they could defend it against other warring tribes (see page 17).

It was, quite simply, the (now, frequently, much-maligned) European settlers who introduced a system of law which enabled Maoris - FOR THE FIRST TIME IN THEIR HISTORY - to own land in fee simple: that is "for time without end".

The European settlers, it is true, certainly introduced a system of law which, together with other factors (such as the adoption of Christianity and intermarriage) did - indisputably - profoundly change the Maori's traditional/cultural life style. But the effect of that change in respect of the Maori's land rights is, unfortunately, very little understood by the nation at large today; and, regrettably, is being even more DANGEROUSLY misrepresented by those who should know better.

The Maori Affairs Act is administered not only by the Maori Affairs Department but, also, by Judges who preside over the 1865-constituted Maori-named Land Court and the Maori Appellate Court. Since 1975, the Chief Judge of the Maori-named Law Courts, automatically, has become chairman of the Waitangi Tribunal. The person presently wearing these two hats is Chief Judge Taihakurei (Eddie) Durie, of Maori descent.

In 1981, Chief Judge Durie reportedly told a New Zealand Law Society conference that "the law will never actually provide for Maoris and their land without a fight and actual physical violence." The following day, the news media reported that Judge Durie emphatically denied advocating violence, but he nevertheless went on to say that "Maori land law has not adequately catered for the Maori concept of group or tribal" land-ownership (see page 17). A claim which completely DISREGARDS a number of facts:

Until 1840, the "going price" for property as well as territory was often wholesale tribal massacre (see page 17). The now much-vaunted "Maori concept of group or tribal" land-ownership, in those days, was more in the nature of tribal-defence of PROPERTY as well as territory. Even within their tribal territories, a Chief's Sovereignty/Governorship/Kawanatanga could not ensure anyone's continued occupation of property, let alone that the next generation would inherit it.

The signing of the Treaty of Waitangi, and the introduction of English law, brought about a changer in the terms and conditions under which land could be OWNED.

Where the Maori's possession of land was clearly recognised (particularly amongst themselves) their unregistered "customary" right to the land was

CONFIRMED with the issue of a registrable Crown Grant proprietary title, which was recorded in Land Registry Offices. Such Maori-owned land is referred to by the Maori Affairs Act as "General Land" (see page 19).

Maori-owned "General Land", held under titles lodged in the Land & Deeds Office, "is to be found in farms, in business sites, and in town and country house section" (see page 19).

As early records in the Land & Deed Office bear testimony, "General Land" titles were issued to Maoris even prior to 1865. It also bears stressing that Maori-owned "General Land" CAN be held "in group" ownership, without any limitation on the number of owners (as advised by the Land & Deeds Office, who quoted the Land Transfer Act 1952, section 61).

Waitangi Tribunal chairman Chief Judge Durie also completely IGNORES the fact that the Treaty of Waitangi guaranteed to Maoris the undisturbed ownership of property which they "may collectively or individually possess" (see page 11).

There is a very NECESSARY distinction which must be recognised between Maori-owned land and what the Maori Affairs Act CALLS "Maori Land". Which brings us to the reason WHY the Maori-named Land Court was established.

According to Article II of the Maori as well as English text of the Treaty of Waitangi, the Maori Chiefs agreed that the Queen (or her representatives) could purchase those pieces of land which "the owner" was willing to sell (see page 11).

It is frequently claimed, as Professor Hugh Kawharu stated on page 1 of his book MAORI LAND TENURE that - in pre-European times - the WHOLE surface of New Zealand territory was under the control of a Maori tribal population. THAT JUST IS NOT SO! There were only isolated, very small groups of Maori living in the South Island, and even in the more populated North Island there were large tracts of land between the territories of the different tribes. And it was mainly the purchase of THESE areas of what, in effect, were tracts of "no man's" land (rather than the purchase

of Maori-owned land) that gave rise to many of the disputes which brought into being the Maori-named Land Court which administers the Maori Affairs legislation.

As the Waitangi Tribunal has acknowledged: "Some Maori sold land they did not own and there were continual arguments as to who had the right to sell." The Tribunal also acknowledged that the Land Court was established "to deal with the problem of suspect sellers" (Tribunal's ORAKEI REPORT, pages 28 and 29).

Waitangi Tribunal chairman, Chief Judge Durie, presides over the Court which was established to determine who was rightfully entitled to land the ownership of which was Maori-disputed (rather than Maori-owned). Maoris disputed the rights not only of other Maoris but, also, of Government-purchased and European-owned land.

BUT ... instead of fulfilling its function, the Court:

"brought into existence a regular system of concocting false claims, by which the real owners are often driven out ... In numerous instances, frauds have been (and still are being) perpetrated successfully both upon Maoris and Europeans, the true owners being defrauded by conspiracy and perjury." Furthermore: "In many instances after Maoris sold land, the property was divided in the Court and a fresh (BOGUS) title was given to Maoris who'd sold the land" (see xeroxed excerpts from official records on page 21).

A noteworthy point: On page 4 of his submission to the McCarthy Royal Commission on the Maori Courts, Judge Durie said his "great great and great grandfathers were involved in Maori land transactions and developments before and after the first judges of the Maori Land Court were appointed in 1865. (His) grandfather assisted in the prosecution of matters in the Maori Land Court, was a member of the Maori Land Board and was active in Maori Affairs generally." And he went on to say that he made his submission "primarily as a Judge, but (also) as an individual

who, in the normal course of Maori succession, might reasonably expect to one day hold an undivided interest in Maori freehold land."

BUT ... in his submission to the McCarthy Commission, Judge Durie made no mention of the fact - now acknowledged by the Waitangi Tribunal - that:

"Difficulties have arisen from failure of the Court to determine who should take title or to even record the basis or reasons for any selection or settlement ... (consequently) Original owners remain unsucceeded to this day, because they cannot be identified and no-one knows who put that name in" (Tribunal's ORAKEI REPORT, page 34: see page 21.)

But the only people who put ANY name into the Court's records - kept by the Maori Affairs Department - have been Land Court judges or Maori Affairs Department officers. And they did so mainly in respect of those areas which had no "original" Maori owners at the time the Treaty was signed.

In 1980, the McCarthy Royal Commission on the Maori Courts was justifiably outraged to find that the Court's records, kept by the Maori Affairs Department, are in a state of "severe disarray" with thousands of incomplete ownership records (AJHR 1980 H3, page 72, paragraph 6). Which is not surprising. Many are thoroughly BOGUS (see page 21).

The McCarthy Commission also found that the Maori Trust Boards are largely "tribal" in name only; with, in some instances, a far higher incidence of UNKNOWN than known owners (AJHR 1980 H3 page 31, paragraph 9).

It is land dealt with by the Maori-named Court/
Department/Trust Office

INCLUDING bogus titles

INCLUDING unknown, unidentified, and unidentifiable "owners"

INCLUDING fictitious records

which the Maori Affairs Act mistakenly CALLS "Maori Land" (see page 19), and which Judge Durie refers to as "Maori land law"!

The ill-founded nature of Chief Judge Durie's contention both about the law and "tribal" land-ownership is further illustrated by another fact, and one which URGENTLY needs to be more widely known:

In 1987, both the Maori Affairs Department and the Waitangi Tribunal acknowledged to the New Zealand Herald that there is "no comprehensive list" of which tribes were represented by the Chiefs who put their signature or mark to the Treaty of Waitangi, or which areas of land were occupied by them at the time the Treaty was signed. And a copy of the Herald's letter to a reader acknowledging how "astonished" the editor was to learn this, is on page 15.

Which brings us to another little known fact: since 1883, legal representation in the Maori-named Land Court has been permitted only by leave of the Court itself, and (I understand) is seldom granted. As has rightly been observed:

"SECRECY IS EVER THE BADGE OF FRAUD"

Those who complain about "fraud" and "injustice" are ABSOLUTELY RIGHT, but it is the Maori Affairs legislation (not the Treaty of Waitangi) which indisputably is "a sham" and "a fraud". And the injustice has been - AND STILL IS BEING - perpetrated by Land Court judges and Maori Affairs Department officers, who administer in the name of "Maoridom" a law which also applies "to any person who was not a Maori or a descendant of a Maori" (see pages 18-20).

In fact, race was NEVER a pre-requisite in the ownership of land to which the so-called "Maori Affairs" legislation applies (see page 18).

Which means that, since 1865 - sanctioned by Parliament - Land Court judges and Maori Affairs Department officers have systematically disregarded and COMPLETELY IGNORED the legal rights of NON-Maoris subject to the jurisdiction of the law they administer. For over a century Land Court judges and Maori Affairs Department officers have exercised a pernicious, iniquitous, unethical, immoral, unjust, and TOTALLY UNWARRANTED racial criterion in their administration of the law and in

disbursing the Department's multi-million dollar resources. The 1987 allocation to the Maori Affairs Department was \$236.2 million - made to an establishment guilty of a COLOSSAL miscarriage of justice against every citizen of this country, Maoris included.

In his introduction to the Government green paper on the proposed Ministry of Maori Affairs, Mr Wetere referred to the Maori's "historic grievances".

But Mr Wetere OMITTED to say that the "historic grievances" have been - and still are being - perpetrated by the establishment for which he is accountable! See excerpts from official records on page 21.

And Mr Wetere made no mention of the NON-Maoris who - since 1865 - have had their legitimate rights to land overturned by the establishment for which he is now accountable. Many non-Maoris lost not only land legitimately bought but, also, the purchase price paid for it.

Legally and morally, there are many non-Maoris ALSO entitled to retrospective compensation, but only Maoris can lodge a claim with the Waitangi Tribunal!

The Waitangi Tribunal was constituted when Matiu Rata was Minister of Maori Affairs. Later, Mr Rata became one of the Maori fisheries negotiators. He is also the Muriwhenua representative. In its MURIWHENUA FISHING REPORT (page 319) the Tribunal contends that "the Crown was obliged to negotiate with its Muriwhenua partner". But according to Article I of the Treaty of Waitangi, the Chiefs agreed to:

"give up to the Queen of England for ever all the Governorship (kawanatanga)" over their respective territories. From then on, all Maoris - INCLUDING THE CHIEFS THEMSELVES - became subjects (NOT "partners") of the Crown. And, as subjects of the Crown, all those descended from the tangata whenua are now New Zealand citizens ENTITLED - as guaranteed in Article III of the Treaty - to "all the same rights"

as non-Maori citizens of this country: no less,
and certainly no more!

In its MURIWHENUA REPORT (page 304), the Waitangi Tribunal contends that "there has been an almost total denial of Maori fishing rights." That is just not true!

The Fisheries legislation is amongst the laws classified as "Maori privilege" in the 1960 Hunn report on the Department of Maori Affairs (see page 22).

(Mr. Walter Nash) Hunn report released by Minister of Maori Affairs 17-1-1961 to public.

According to the Maori Fisheries Bill (page 4, k:vi): "All New Zealanders involved in fishing should be subject to the same laws." But, as the Bill later makes clear (page 17, 92E) the PROHIBITION ON DISCRIMINATION applies only to "local non-commercial fishery."

BUT discrimination is nonetheless "discriminatory" on an ethnic/tribal commercial fishery basis!

Opposition spokesman on Maori Affairs, Mr Winston Peters, is absolutely right about the Maori Fisheries Bill being "a con-job which emasculates the Treaty of Waitangi". Mr Peters also told the Taradale Rotary Club on February 11, 1988, that:

"In the Maori Affairs portfolio, we have

- constant and verifiable abuses of taxpayers money;
- gross mismanagement at the highest levels;
- an inability to present factual evidence to Parliament;"

Mr Peters, quite rightly, went on to say that Maori Affairs policy "is an unmitigated disaster".

BUT ... Mr Peters OMITTED to say that the whole concept of "Maori Affairs" is an unmitigated con-job by an establishment which uses land/language/culture as symbols of ethnic identity to veil its nefarious nature!

Mr Peters also OMITTED to say that the chairman of the Waitangi Tribunal is Chief Judge of the Maori-named Law Courts which have systematically perverted the course of justice.

And, significantly, Mr Peters - WHO REPRESENTS A GENERAL ELECTORATE - made no mention of the NON-Maoris subject to the jurisdiction of the Maori-named Law Courts masquerading as a Maori Affairs Department! (see pages 19 and 20).

And that is the guts of the problem: the inexcusable and WRONGFUL institutional racial discrimination perpetrated in the NAME of Maoridom, currently aided and abetted by the Waitangi Tribunal. The collusion between the Maori-named Law Courts and the Waitangi Tribunal is now further entrenched in the Treaty of Waitangi Amendment Act introduced in December 1988. According to the Act, where a question "arises in proceedings before the Tribunal, the Tribunal may refer that question to the Maori Land Court for decision."

In other words: the Waitangi Tribunal is empowered by Parliament to refer questions to the Court which "brought into existence a regular system of concocting false claims", been guilty of the most unmitigated "conspiracy", "perjury", and "fraud", and which Maoris wanted abolished over 100 years ago! (see pages 20 and 21.)

already
proven } -

As matters now stand, the chairman of the Waitangi Tribunal is Chief Judge of the Maori-named Law Courts which created the grievances the Tribunal was established to investigate. A situation absolutely contrary to natural justice: "no man may be a judge of his own cause". Especially when, as is the case:

- (a) the present Chief Judge has personal expectations in respect of land dealt with by his Court (see page 4); and
- (b) the "grievances" are proving to be claims of the most outrageous nature, and the Tribunal's

recommendations on an ethnic/tribal basis are so thoroughly ill-founded. (see pages 5 and 21.)

MPs on both sides of our House of Representatives, as well as the news media, blather about "bad race relations". BUT ... inter-marriage is LIVING PROOF of good race relations. In fact (as Witi Ihimaera acknowledged on page 35 of his book MAORI, published by the Government printer), there are now "few, if any, full-blooded Maori in New Zealand". Today, many Maori eyes now look out of white faces, and European (or other) blood flows in the veins of most, if not all, those with brown skins. Such a degree of intermarriage alone dictates the need for ONE system of law which applies equally to everyone.

There is only ONE way the Government CAN act in a manner that is consistent with the principles of the Treaty of Waitangi, and that is for Parliament to honour its obligations under the Treaty

by abolishing the Maori-named Law Courts masquerading as a Maori Affairs Department

by abolishing all the Court/Department's satellite bodies, including the Waitangi Tribunal

by abolishing the Maori seats in Parliament

by repealing every discriminatory law on our statute book

by rejecting the proposed Ministry of Maori Affairs

by rejecting the proposed 5-year Iwi Transition Agency

by rejecting the Maori Fisheries Bill

AND TO DO SO WITHOUT DELAY. Democratic justice demands it. The honour of the 512 Chiefs who were signatories to the Treaty of Waitangi - and all their descendants - commands it.

A Literal English Translation of the Maori Text of the Treaty of Waitangi, Signed at Waitangi on 6 February 1840, and afterwards by about 500 chiefs.

VICTORIA, the Queen of England, in her kind (gracious) thoughtfulness to the Chiefs and Hapus of New Zealand, and her desire to preserve to them their chieftainship and their land, and that peace and quietness may be kept with them, because a great number of the people of her tribe have settled in this country, and (more) will come, has thought it right to send a chief [an officer] as one who will make a statement to [negotiate with] the Maori people of New Zealand. Let the Maori chiefs accept the governorship [Kawanatanga] of the Queen over all parts of this country and the Islands. Now, the Queen desires to arrange the governorship lest evils should come to the Maori people and the Europeans who are living here without law. Now, the Queen has been pleased to send me, William Hobson, a Captain in the Royal Navy to be Governor for all the places of New Zealand which are now given up or which shall be given up to the Queen. And she says to the Chiefs of the Confederation of the Hapus of New Zealand and the other chiefs, these are the laws spoken of. This is the first. The Chiefs of the Confederation, and all those chiefs who have not joined in that Confederation give up to the Queen of England for ever all the Governorship [Kawanatanga] of their lands.

This is the second. The Queen of England agrees and consents [to give] to the Chiefs, the Hapus, and all the people of New Zealand the full chieftainship [Rangatiratanga] [of?] their lands, their villages, and all their possessions but the Chiefs of the Confederation and all the other Chiefs give to the Queen the purchasing of those pieces of land which the owner is willing to sell; subject to the arranging of payment which will be agreed to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.

This is the third. This is the arrangement for the consent to the governorship of the Queen. The Queen will protect all the Maori people of New Zealand, and give them all the same rights as those of the people of England.

WILLIAM HOBSON, Consul
and Lieutenant-Governor

Now, we the chiefs of the Confederation of the Hapus of New Zealand, here assembled at Waitangi, and we, the chiefs of New Zealand, see the meaning of these words and accept them, and we agree to all of them. Here we put our names and our marks.

English Version.

HER MAJESTY VICTORIA, Queen of the United Kingdom of Great Britain and Ireland, regarding with Her Royal Favor the Native Chiefs and Tribes of New Zealand, and anxious to protect their just Rights and Property, and to secure to them the enjoyment of Peace and Good Order, has deemed it necessary, in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand, and the rapid extension of Emigration both from Europe and Australia which is still in progress, to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands. Her Majesty, therefore, being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the Native population and to Her subjects, has been graciously pleased to empower and authorize me, WILLIAM HOBSON, a Captain in Her Majesty's Royal Navy, Consul, and Lieutenant-Governor of such parts of New Zealand as may be, or hereafter shall be, ceded to Her Majesty, to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First.

The Chiefs of the Confederation of the United Tribes of New Zealand, and the separate and independent Chiefs who have not become members of the Confederation, cede to Her Majesty the Queen of England, absolutely and without reservation, all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second.

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand, and to the respective families and individuals thereof, the full, exclusive, and undisturbed possession of their Lands and Estates, Forests, Fisheries, and other properties which they may collectively or individually possess, so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the Individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate, at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third.

In consideration thereof, Her Majesty the Queen of England extends to the Natives of New Zealand Her Royal protection, and imparts to them all the Rights and Privileges of British subjects.

W. HOBSON,
Lieutenant-Governor.

PROCLAMATION.

In the Name of Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland. By WILLIAM HOBSON, Esquire, a Captain in the Royal Navy, Lieutenant-Governor in New-Zealand.

WHEREAS, by a Treaty bearing Date the Fifth day of February, in the Year of Our Lord One Thousand Eight Hundred and Forty, made and executed by me, WILLIAM HOBSON, a Captain in the Royal Navy, Consul, and Lieutenant-Governor in New-Zealand, vested for this purpose with full Powers by Her Britannic Majesty, of the one part, and the Chiefs of the Confederation of the United Tribes of New-Zealand, and the Separate and Independent Chiefs of New-Zealand, not Members of the Confederation, of the other; and further ratified and confirmed by the adherence of the Principal Chiefs of this Island of New-Zealand, commonly called "The Northern Island"; all Rights and Powers of Sovereignty over the said Northern Island were ceded to Her Majesty the Queen of Great Britain and Ireland, absolutely and without reservation:

Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, in the Name and on the Behalf of Her Majesty, do hereby Proclaim and Declare, to all Men, that from and after the Date of the above-mentioned Treaty, the Sovereignty of the Northern Island of New-Zealand vests in Her Majesty Queen Victoria, Her Heirs and Successors for ever.

Given under my hand at Government-House, Russell, Bay of Islands, this Twenty-first Day of May, in the Year of our Lord One Thousand Eight Hundred and Forty.
(Signed,) WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
(Signed,) WILLOUGHBY SHORTLAND,
Colonial Secretary.

The "right of discovery" was one of the Maori's recognised principle rights to land. Unfortunately, the right was not considered to be as valid for the European settlers as it was deemed to be for Maoris, and "nearly the whole of the South Island was purchased by the Government". The land was purchased from Ngatitotoa, Ngai Tahu, Ngatiawa, Ngatirarua, Ngatihama, Rangitane, Ngatirahiri, Ngatikua, Ngatikoata, and Ngati-mamoe: an Abstract of Deeds of Purchase in the South Island from 1st January 1844 to 31st December 1867 is in Mackay's Compendium Vol. I Part 3, pages 3-5. NOTE: the purchases did not include the "Maori places of residence and cultivation". In addition other areas of land were set apart "for the sole benefit of Maoris". This Reserved Land was allocated by Land Court judges to Maori individuals and groups of individuals, or vested in the Maori Trustee; and a detailed account is in the 1974 Report of the Sheehan Commission of Inquiry Into Maori Reserved Land pages 321-489. NOTE: Ngai Tahu Trust Board chairman Stephen/Tipene O'Regan's father, Rolland O'Regan, was a member of the Commission, and the Commission chairman Bartholomew Sheehan was a retired Land Court Judge.

According to "An Epitome of the Ngai Tahu Case" in the Appendix to the Journal of the House of Representatives 1888 I-8 page 62: "the obligations of the Government in regard to the Maori claims in the South Island have been recognised over and over again." In spite of which, they continued to complain about being "landless", and were awarded MORE land under the South Island Landless Natives Act 1906, a schedule of which specifying areas and quantity of land awarded to named adults and children is in the 1908 NZ Gazette pages 1823-1853.

But still they continued to complain, and in 1944 the Ngai Tahu Claim Settlement Act awarded them ten thousand pounds for 30 years; now being paid annually in perpetuity to the Ngai Tahu Trust Board.

Today, the Ngai Tahu Trust Board's claim is one of many being heard by the Waitangi Tribunal, the chairman of which is Chief Judge of the Court which "brought into existence a regular system of concocting false claims": see xeroxed excerpts from official records on page Succinctly, since 1865 Land Court judges and Maori Affairs Department officers have given to some Maoris land rightfully owned by other Maoris and non-Maoris, issued BOGUS titles to Maoris after they'd sold land, and - on a thoroughly ill-founded tribal basis - fathered numerous Trust Boards, some of which are lodging claims with the Waitangi Tribunal!

PROCLAMATION.

In the Name of Her Majesty Victoria, Queen of the United Kingdom of Great Britain and Ireland. By WILLIAM HOBSON, Esquire, a Captain in the Royal Navy, Lieutenant-Governor of New-Zealand.

WHEREAS I have it in Command from Her Majesty Queen Victoria, through Her principal Secretary of State for the Colonies, to assert, on the grounds of Discovery, the Sovereign Rights of Her Majesty over the Southern Islands of New-Zealand, commonly called "The Middle Island" and "Stewart's Island"; and the Island commonly called "The Northern Island" having been ceded in sovereignty to Her Majesty:

Now, therefore, I, WILLIAM HOBSON, Lieutenant-Governor of New-Zealand, do hereby Proclaim and Declare to all men that, from and after the Date of these Presents, the full Sovereignty of the Islands of New-Zealand, extending from Thirty-four Degrees Thirty Minutes to Forty-seven Degrees Ten Minutes South Latitude, and between One Hundred and Sixty-six Degrees Five Minutes to One Hundred and Seventy-nine Degrees of East Longitude, vests in Her Majesty Queen Victoria, Her Heirs and Successors for ever.

Given under my hand at Government-House, Russell, Bay of Islands, this Twenty-first Day of May, in the Year of Our Lord One Thousand Eight Hundred and Forty.

(Signed,) WILLIAM HOBSON,
Lieutenant-Governor.

By His Excellency's command,
(Signed,) WILLOUGHBY SHORTLAND,
Colonial Secretary.

In 1975, the Government established the Waitangi Tribunal to inquire into Maori claims, and according to the Treaty of Waitangi Act:

"The Tribunal shall have exclusive authority to determine the meaning and effect of the Treaty as embodied in the two texts and decide issues raised by the differences between them."

Copies of the two texts are on page 11, and are summarised hereunder:

ARTICLE I: the Chiefs agreed to "give up/cede" to the Queen of England "for ever" all Sovereignty/Governorship/Kawanatanga over their respective territories.

ARTICLE II: consists of TWO parts:

(a) the Queen guaranteed to "all the people of New Zealand" the undisturbed ownership of their possessions/properties; and

(b) the Chiefs agreed that the Queen (or her representatives) could purchase those pieces of land which "the owner/proprietor" was willing to sell.

ARTICLE III: guaranteed to Maoris "all the same rights" as non-Maoris.

In its MURIWHENUA FISHING REPORT (page 319), the Waitangi Tribunal contends that: "The Crown was obliged to negotiate with its Muriwhenua partner." BUT, according to Article I of the Treaty, all Maoris - INCLUDING THE CHIEFS THEMSELVES - became subjects (NOT "partners") of the Crown. And, as subjects of the Crown all those descended from the tangata whenua (the original inhabitants) are today ENTITLED - as guaranteed in Article III - to "all the same rights" as non-Maori citizens of this country: no less, and certainly no more!

According to the Tribunal (MURIWHENUA REPORT, page 304), there has been "an almost total denial of Maori fishing rights". WHICH IS JUST NOT TRUE! The Fisheries legislation is amongst the laws classified as "Maori privilege" in the 1960 Hunn Report on the Maori Affairs Department (see page 22).

Furthermore, the Maori text of the Treaty does not even mention the word "fisheries". The English text does, but refers to "fisheries" in the context of "undisturbed possession ... of properties". The Maori text used the phrase "te tino Rangatiratanga" in respect of possessions/properties, the phrase being interpreted as "the full chieftainship". See hereunder:

Ko te Tuarua.

Ko te Kuini o Ingarani ka wakarite ka wakahe ki nga Rangatira, ki nga Hapu, ki nga tangata katoa o Nu Tirani, te tino Rangatiratanga o o ratou whenua o ratou kaninga me o ratou taonga katoa.

This is the second. The Queen of England agrees and consents [to give] to the Chiefs, the Hapua, and all the people of New Zealand the full chieftainship [Rangatiratanga] [of?] their lands, their villages, and all their possessions

In its ORAKEI REPORT (page 131), the Tribunal said: "The meaning of 'tino rangatiratanga' has caused us much trouble". And went on to add: "To give it the meaning both parties appear to have understood, we would render it as 'full authority'." And which the Tribunal contended referred only to Maori people. BUT te tino Rangatiratanga/full authority was guaranteed to "ki nga tangata katoa o Nu Tirani", that is to all the people of New Zealand". And "all" the people INCLUDES non-Maoris!

The Tribunal also omitted to say that, as a consequence of the Treaty, and the introduction of English laws, SLAVES as well as Chiefs acquired "te tino rangatiratanga" over property, inasmuch as Maoris who previously had

been slaves were also enabled to own land under a hitherto completely unknown fee simple title: thereby acquiring "te tino rangatiratanga/full chieftainship/full authority" over property on the same terms as Maoris who previously had been Chiefs.

Furthermore, the Tribunal made no mention of the fact that both Maori and non-Maori have had their "rangatiratanga/chieftainship/authority/legitimate right to land overthrown by the Maori-named Land Court! (see page 21)

The Tribunal also asserted in its ORAKEI REPORT (pages 3 and 4) that the Crown's purchase of land was "contrary to the Treaty of Waitangi". BUT the Chiefs agreed that the Queen (or her representatives) could purchase those pieces of land which "the owner" was willing to sell: see hereunder:

Otiia ko nga Rangatira o te Wakaminanga, me nga Rangatira katoa atu, ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua, ki te ritanga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

-but the Chiefs of the Confederation and all the other Chiefs give to the Queen the purchasing of those pieces of land which the owner is willing to sell, subject to the arranging of payment which will be agreed to by them and the purchaser who will be appointed by the Queen for the purpose of buying for her.

HOWEVER (and this, at least, the Tribunal did acknowledge): "Some Maori sold land they did not own" (ORAKEI REPORT, page 28). But the Tribunal OMITTED to say that, by selling land they did not own, Maoris violated THEIR "partnership agreement"!

A NOTEWORTHY POINT: The Crown's right of pre-emption placed the Government in an invidious position. In the event of a purchase being made from Maoris not entitled to the land in question, the Government was immediately placed in the embarrassing position of either remaining a direct party to a possible act of injustice, or having to extricate itself from that position by a double expenditure of public money.

Even the Tribunal has acknowledged that "there were continual arguments as to who had the right to sell" (ORAKEI REPORT, page 28). And went on to explain that the Land Court was established "to deal with the problem of suspect sellers (and) to determine ownership prior to sale" (page 29).

HOWEVER: as the Tribunal itself has acknowledged:

"Difficulties have arisen from failure of the Court to determine who should take title or to even record the basis or reasons for any selection or settlement."
Consequently: "Original owners remain unsucceeded to this day, because they cannot be identified and no-one knows who put that name in". (ORAKEI REPORT, page 34, a xeroxed excerpt of which is on page 21.)

BUT the only people who put ANY name into the Court's records - kept by the Maori Affairs Department - have been Land Court judges or Maori Affairs Department officers. Furthermore, the names were often "put in" after Maoris sold land: see primary source documentation on page 21.

The Tribunal talks about Maori "ancestral tribal land". BUT, in 1980, the McCarthy Commission was justifiably outraged to find that the Maori Trust Boards are largely "tribal" in name only. The Commission cited one instance in which there were purported to be 6,000 "owners" but payments could only be made to "the 753 owners whose addresses were known and whose dividends were \$5 or more" (AJHR 1980 H3 page 31, paragraph 9).

It also bears stressing: (a) there is "no comprehensive list" of WHICH AREAS were occupied by WHICH TRIBES (see page 15); (b) the concept of "tribal" land-ownership was fathered by Land Court judges and Maori Affairs Department officers mainly in respect of those areas which had no "original" Maori owners at the time the Treaty was signed; and (c) of the

known owners, many have been **WRONGFULLY** and **WRONGLY** named by Land Court judges and Maori Affairs Department officers (see primary source documentation on page 21).

IN SPITE OF WHICH, the Treaty of Waitangi Amendment Act - introduced in December 1988 - now empowers the Waitangi Tribunal to "refer a question to the Maori Land Court for decision".

BUT IT IS THE COURT'S DECISIONS
WHICH HAVE VIOLATED THE TREATY OF WAITANGI!

As matters now stand, if Bishop Reeves (or anyone else - as Governor General) - puts his signature to any "Maori/Affairs Policy" legislation, other than to repeal it, he will be directly responsible for perpetuating the establishment

which violates the terms and the principles of the Treaty of Waitangi

which outlaws justice for those of Maori descent as well as for the non-Maori citizens of this country

which cancels out democracy

which abrogates the Crown's integrity

which dishonours the Chief's "partnership agreement"

And which Maoris wanted abolished over 100 years ago: see page 20.



Editor's Office
The New Zealand Herald
Proprietors Wilson & Horton Ltd
P.O. Box 32
Auckland 1

June 15, 1987.

Mr. M. J. Bennetts,

COPY included with
Mrs. Bennetts' permission.

Dear Mr. Bennetts,

Thank you for your letter inquiring about the Treaty of Waitangi. I am sorry that you should have had to write again, but the question is not as simple as we had thought.

We have made extensive inquiries and the short answer seems to be that no comprehensive list exists of the chiefs who signed the treaty, the tribes they represented and the areas they came from. I found this so hard to believe that I have had our research staff check again, but inquiries to the Waitangi Tribunal (which I would have expected to have such information), the Department of Maori Affairs, the Auckland Public Library Maori section, the reference section of the Auckland University library, and the department of Maori studies at Auckland University, all came up with the same answer.

There are, it seems, about six versions of the treaty, and the signatures are not very clear. Many in fact were not signatures but simply marks. I enclose a typical sheet of signatures, taken from a facsimile of the original document, so you can get some idea of the style. Some tribes have made their own transcriptions of the sections that concern them, but so far as we can discover no one has ever analysed the whole document (or series of documents) in the way you suggest.

As I am sure you will, I find this quite astonishing, and I have asked our Maori affairs reporter to inquire further into the question with a view to writing an article. That may in itself take some time, but I am sure that it will interest a great many of our readers, including yourself.

With best wishes, I am,

Yours faithfully,

D. S. Milne,
DEPUTY EDITOR

Since Mrs. Bennetts sent me the above letter I have appealed to both Mr. Milne and Mr. P.J. Scherer (the Editor) to publish the Herald's own findings.
Without avail!

SOME OF THE STATUTORY INTERPRETATIONS OF "A MAORI":

The Native Lands Act 1865 defined a Maori as "an aboriginal Native ... and shall include all half-castes and their descendants (by) Natives."

The Qualification of Electors Act 1879 defined a Maori as "an aboriginal inhabitant of New Zealand and includes any half-caste living as a member of a native tribe according to their customs and usages and any descendants of such half-cast (by) a Maori woman" (my emphasis).

The Electoral Act 1893 defined a Maori as being "an aboriginal inhabitant of New Zealand and includes half-castes and their descendants by natives" (my emphasis).

The Native Land Court Act 1894 defined a Maori as "an aboriginal native of New Zealand, and includes half-castes and their descendants."

The Native Land Act 1909 defined a Maori as "a person belonging to the aboriginal race of New Zealand, and includes a half-caste and a person intermediate in blood between half-castes and persons of pure descent from that race."

At which point it seems opportune to mention that many people of Maori descent were registered on general electoral rolls, including full-blooded Maoris, even PRIOR to 1867 (when separate representation was introduced); and they continued to do so until section 39(2) of the Electoral Act 1956 introduced an extraordinary provision, namely that: "a Maori (other than a half-caste) shall not be qualified to be registered as an elector of any European electoral district." Which raises an interesting question: were there, by 1956, no longer any full-blooded Maoris alive to object to what - in effect - amounted to an arbitrary exclusion from a previously enjoyed right?

The Maori Affairs Amendment Act 1974 placed an unrestricted limit on the definition of a Maori, decreeing that: "'Maori' means a person of the Maori race of New Zealand; and includes any descendant of such a person". NOTE: the then Minister of Maori Affairs, Mr Matiu Rata, said "it was not mandatory for people of Maori descent to be classified as Maori". Which prompted me to ask: "when is a Maori a Maori? And who decides for statistical racial categories - such as population figures?" (RECENT LAW, September 1975)

The Electoral Amendment Act 1975 adopted the 1974 definition, but added the rider which came to be referred to as "the Maori option". According to the 1975 Act, a Maori is now defined as "a person of the Maori race of New Zealand; and includes any descendant of such a person who elects to be considered as a Maori for the purposes of the Electoral Act" (my emphasis). As the Wicks Commission commented: "The placement of the semi-colon creates difficulties in interpretation".

In effect, officialdom can no longer say who is - and who isn't - of Maori descent.

Background of Customary Title.

The tribe having now been broken and divided into sections, living at a distance from each other, claiming separate portions of the tribal lands, and virtually relinquishing any right over the other parts, and each section forming practically a separate and independent tribe, the next action which they took having any effect on the nature of Maori title or tenure was to commence making war against each other. War, also with alien tribes broke out—war of the most inhuman and merciless description raged from that time out with very little cessation. Massacre and can-

nibalism because the order of the day and night; no man's life was safe; all old metes, and bounds, and titles were overthrown and a new Native title to land arose—the title by conquest, or *te rau o te patu*. And amongst the established principles by which the Native Land Court is guided in determining the rights of claimants and counter-claimants is that of scrupulously respecting the rights of a successful murder and treachery.

Judge Durie's contention about "the Maori concept of group or tribal ownership" of land completely IGNORES the following facts:

a) Until 1840, the "going price" for land was often wholesale tribal massacre.

b) There is "no comprehensive list" of which tribes were represented by the Chiefs who were signatories to the Treaty of Waitangi, or which areas of land were occupied by them at the time the Treaty was signed: see page 15. In addition, an UNKNOWN number of tribes did not sign the Treaty.

c) The concept of "tribal" land-ownership (particularly in perpetuity) was fathered by Land Court judges and Maori Affairs Department officers who have never issued a "tribal" title, but who have issued BOGUS titles to Maoris after they sold land: see page 21.

d) What Judge Durie refers to as "Maori land law" is the Maori Affairs Act which, in spite of its racial name, applies to land owned by "any person who was not a Maori or a descendant of a Maori": see page 19.

e) Since 1865, Land Court judges and Maori Affairs Department officers have systematically IGNORED the legal rights of NON-Maoris subject to the jurisdiction of the law they administer.

Whatever land or territorial fishing rights Maoris may have had prior to 1840 were not inviolate even in their own lifetime.

Until 1840, it was - quite simply - a case of "let them take who have the power, let them keep who can"!

In pre-European times, the Maoris "spiritual" values had little regard for the sanctity of human life.

VIOLENCE NO SOLUTION SAYS JUDGE

Press Association-

Wellington

Judge E. T. Durie, Chief Judge of the Maori Land Court, emphasised yesterday that he does not believe in violence as a way of resolving Maori land claims.

Judge Durie said a report from the New Zealand Law Society conference in Dunedin suggested that he promoted or in some way commended violence in the resolution of Maori land claims.

(The report quoted Judge Durie as saying, "The message behind Bastion Pt could be that the law will never actually provide for Maoris and their land without a fight and actual physical violence.")

Judge Durie said yesterday that he did not promote or commend violence to resolve Maori land claims. "I want to make it quite clear that I do not, and never have done. I have consistently promoted the resolution of disputes by consultation and an endeavour to understand and to accommodate opposing points of view and conflicting values.

Tribal Lines

"The view given at the Law Society conference, to which I invite, is that Maori land law has not adequately catered for certain Maori concepts and aspirations, including the Maori concept of group or tribal ownership and development.

"Certain examples were given at the conference to suggest that development

along group or tribal lines is still a preferred alternative to individual development in certain cases.

"My view, given at the conference, is that general Maori land law as it exists today does not adequately facilitate this type of growth. Of the examples given, only one appeared to me to contemplate as a matter of law that the land and assets concerned might be held for the benefit of a general class of persons.

Concerned

"That example was the result of a particular struggle, and my concern was that Maori people might see, in that, that such objectives are to be achieved by a struggle of that sort.

"I certainly do not seek to convey the thought that the resolution of such matters lies in violence. I do seek to convey the thought that Maori land law might better accommodate growth along Maori lines if we are to avoid the type of struggle referred to.

"I am most concerned with the construction that has been placed upon my comments and I am equally concerned to correct any wrong impressions that may have been given."

II. In construing this Act the words and phrases following shall have the meanings hereby attached to them respectively unless there be something in the context or the subject matter repugnant to or inconsistent with such meanings—

"Native" shall mean an aboriginal Native of the Colony of New Zealand and shall include all half-castes and their descendants by Natives.

"Native Land" shall mean lands in the Colony which are owned by Natives under their customs or usages.

"Hereditaments" shall mean land the subject of tenure or held under title derived from the Crown or any estate interest therein or arising thereout.

"Registrar of Deeds" shall mean the Registrar of Deeds for the district in which the hereditaments conveyed or dealt with are situate.

Repeal of Acts and Ordinances.

III. "The Native Land Purchase Ordinance Session VII. No. 19" "The Intestate Natives' Succession Act 1861" "The Native Lands Act 1862" and "The Native Lands Act Amendment Act 1861" are hereby repealed.

In-house proceedings to be completed under this Act.

IV. Provided always that proceedings heretofore commenced and now in progress under any of the said Acts may be continued and perfected under and in manner provided by this Act so far as the circumstances of each case are compatible with the objects and provisions of this Act.

1. CONSTITUTION OF COURT. Native Land Court.

I. CONSTITUTION OF COURT UNDER THIS ACT.

V. The Native Land Court of New Zealand (hereinafter called the Court) shall be a Court of Record for the investigation of the titles of persons to Native Land for the determination of the succession of Natives to Native Lands and to hereditaments of which the Native owner shall have died intestate and for the other purposes hereinafter set forth.

The Land Court was established "to deal with the problem of suspect sellers" (see page 4). The term "Hereditaments" was introduced to denote Maori-owned land held under a Crown Grant proprietary title. The term "Native Land" was coined to denote land "not being comprised in any Crown Grant title." The term "Native Land" applied only to land which came within the jurisdiction of the Court, and was introduced to denote the LEGAL STATUS (not the racial ownership) of land dealt with by the Court. The phrase "land ... owned by Natives" should rightly have been included in the interpretation of "Hereditaments". Instead, the phrase was interpolated into the definition of "Native Land".

The Native Land Court Act 1894 replaced the term "Hereditaments" with the term (just) "Land".

The Native Land Court Act, 1894 separated the terms "Native Land" and "customary land", completely reversing the meaning of the term!

The Native Land Act 1909 replaced the term "Land" with the term "European Land".

The Native Land Act 1909 introduced the term "Native freehold land", thereby drawing a distinction between customary and freehold "Maori Land".

The Maori Purposes Act 1975 s16 changed the term "European Land" to "General Land".

The term "Native" was changed to "Maori" by the Maori Purposes Act 1947 Part I s2(4).

All these terms "Hereditaments/Land/ European Land/General Land" denote Maori-owned land held under titles lodged in Land Registry Offices.

The Native Land Acts are now embodied in the Maori Affairs Act 1953, section 2 of which states that "Maori Land" means customary or freehold land, the former being "held by Maoris", and the latter "owned by a Maori". All "customary land" has long since been transferred into freehold titles, and as the Maori Affairs Act itself acknowledges such land is also owned by Europeans: s93(1) and "any person who was NOT a Maori or a descendant of a Maori": s133(4) - see page 19.

NOTE: Early records in the Land & Deeds Office bear testimony to the fact that "General Land" titles were issued to Maoris prior to 1865. And that is how most Maori-owned land is held today: see page 19.

In today's race-conscious world, it is difficult to believe that any Government could have been so foolhardy as to introduce the terms "Native/Maori Land" and "European Land" to denote the LEGAL status of land that was not conditional upon "the ethnic status of the owner". But that, precisely, is what happened. A fact clearly recognised by the New Zealand Maori Council: see page 23.

An Act to consolidate and amend certain provisions of the law relating to the Maori Trustee
[26 November 1953]

1. Short Title and commencement—(1) This Act may be cited as the Maori Trustee Act 1953.

(2) This Act shall come into force on the 1st day of April 1954.

2. This Act to be read with Maori Affairs Act 1953—

(1) Unless the context otherwise requires, terms and expressions that are defined in the Maori Affairs Act 1953 have, when used in this Act, the meanings that are given thereto by that Act.

(2) The powers conferred on the Maori Trustee by this Act are in addition to the powers conferred on him by the Maori Affairs Act 1953, and nothing in either of the said Acts shall be construed to limit the provisions of the other Act.

Maori Trust Office

3. Maori Trust Office continued—(1) There shall be an office of the Public Service to be called the Maori Trust Office, which shall be the same office as that existing under the same name at the commencement of this Act.

(2) All officers of the [Department of Maori Affairs established under the Maori Affairs Act 1953] shall, without further appointment, be officers of the Maori Trust Office.

C. 1930, No. 93, s. 3

In sub (2) the words in square brackets were substituted for the words "Maori and Island Affairs Department established under the Maori and Island Affairs Department Act 1948" (as substituted by s 8(1) of the Maori and Island Affairs Department Act 1954) by s 3(1) of the Maori Affairs Amendment Act 1974 which came into force on 1 April 1975. See S.R. 1975/29

Appointment and General Functions of Maori Trustee and of His Deputy

4. Appointment of Maori Trustee and his Deputy—(1) For the purposes of this Act there shall be appointed officers of the [Department of Maori Affairs] to be known respectively as the Maori Trustee and the Deputy Maori Trustee.

NOTE: As these Acts also apply to Europeans and "any person who was not a Maori or a descendant of a Maori" the term "Maori" as applied to law/land/Court/Department/Trust Office is a MISNOMER!

"Alienation" means, with respect to Maori land, the making or grant of any transfer, sale, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable (other than a disposition by will), of or affecting customary land or the legal or equitable fee simple of freehold land or any share therein; and includes a contract to make any such alienation and also includes the surrender or variation of a lease or licence and the variation of the terms of any other alienation as hereinbefore defined:
"Beneficial estate" or "beneficial interest" does not include an estate or interest vested in any person by way of trust, mortgage, or charge:
"Chief Judge" means the Chief Judge of the Maori Land Court:
"Court" means, as the case may require, the Maori Land Court or the Maori Appellate Court:
["Department" means the Department of Maori Affairs:]
"European" means any person other than a Maori, and includes a body corporate:
["General land] owned by Maoris" means [General land] which [is owned for a beneficial estate in fee simple by more than 4 persons of whom a majority are Maoris...]:
"Land" includes Crown land, [General land], and Maori land as those terms (subject to the special provisions contained in subsection (2) of this section) are herein defined, that is to say:
"Crown land" means any land other than Maori land which has not been alienated from the Crown for a subsisting estate in fee simple:
"Customary land" means land which, being vested in the Crown, is held by Maoris for the descendants of Maoris under the customs and usages of the Maori people:
["General land]" means any land other than Maori land which has been alienated from the Crown for a subsisting estate in fee simple [and includes any land which, pursuant to the provisions of Part I or Part IV of the Maori Affairs Amendment Act 1967, ceases to be Maori land]:
"Maori land" means customary land or Maori freehold land:
"Maori freehold land" means land other than [General land] which or any undivided share in which is owned by a Maori for a beneficial estate in fee simple, whether legal or equitable:

66
64
disability) is entitled at law or in equity to any interest in any real or personal property (other than customary land), or if any European (being a person under disability) is entitled at law or in equity to any share or interest in Maori freehold land, the Court may, if it thinks fit, on the application of that person or of any other person, make an order appointing a trustee or trustees of the person so under disability in respect of the property or any defined part thereof to which he is so entitled:

In the words of the McCarthy Royal Commission on the Maori Courts:

8. There is a common misconception about Maori land ownership which needs immediate correction here. The Maori Land Court's jurisdiction applies chiefly to "Maori Land" as defined in the Maori Affairs Act 1953. The area of that land is estimated to be 1 224 104 ha' or 4.5 percent of the total area of New Zealand. It is widely, but mistakenly, understood that that figure, often quoted, includes all land owned by Maoris. That is not so. The amount of other land ("general land" as it is called in the legislation) owned by Maoris is very considerable, and is to be found in farms, in business sites, and in town and country house sections.

But there is a far more SERIOUS misconception about the term "Maori Land": a term which does NOT depend upon "the ethnic status of the owner". Furthermore, many "Maori Land" titles are BOGUS: see pages 20 and 21.

Hereunder is an excerpt from page xxiii of the New Zealand Maori Council's (10-years-in-the-writing) Maori Affairs Bill introduced into Parliament April 29, 1987:


PART VIII

STATUS OF LAND

This Part is also new in form, although it brings together a number of related provisions scattered throughout the present Act. As the aim of the legislation is to ensure that Maori land remains in Maori ownership, it is necessary to identify what is Maori land and what is not. Further, restrictions on the future alienation of Maori land will be undermined if land loses the status of Maori land too easily. Thirdly, the status of land has an important practical aspect as the jurisdiction of the Court is to depend on that status, rather than on the ethnic status of the owner.

The Maori Council completely IGNORES the following facts:

- a) The NON-ethnic status of the land dealt with by the Court which was established "to deal with the problem of suspect sellers" (see page 4).
- b) That most Maori-owned land is held under "General Land" titles (see page 19).
- c) That Maoris have long been "disgusted" with the workings of the Court, and wanted it abolished over 100 years ago: see Herald articles hereunder.

100 YEARS AGO  from Herald files

Lands Bill Scorned By Maoris

Khikibi, Saturday.

Mr Ballance's Native Land Bill of this session, so far as its provisions are known, is not more acceptable to the natives than that of last year.

It is the working of the Native Lands Courts that they are disgusted with such cases as those at which Sir Robert Stout's Bill points at and others where the real owners have been deprived of their land altogether.

Another great cause of discontent is the case with which bogus claims are admitted; and that, in some cases where the claims are admitted; and that, in some cases where the claims of certain natives have been rejected by the Court, the names of these natives have been put into the certificates afterwards.

It is the administration of these Courts that they object to as altogether unsatisfactory, but on Mr Ballance's Native Committees they look with even greater distrust. They would far sooner trust to the judgment of a European than a Maori tribunal.

In no case can it be said that Mr Ballance has met their wants or removed the objections of the natives which stand in the way of a settlement of the land question satisfactory to both races.

— June 7, 1886.

Abolish Lands Court — Chiefs

100 YEARS AGO  from Herald files

principal tribes in the North Island. Paora Tubaere, of Orakel, was unanimously elected to take charge of the proceedings.

The question of past administration of native affairs was thoroughly discussed, and much dissatisfaction was expressed.

Resolutions were drawn up and numerously signed, praying that the Native Lands Court should be abolished.

Numerous cases were quoted to show that much injury had been done to the natives under the various Land Court Acts, and it was alleged that in the very cases where European Judges would be expected to give a fair, unbiased, and impartial judgement — that is, in cases where two or more tribes were the owners of a certain block of land, wrongful awards had been frequently made.

— April 7, 1884.

Many NON-Maoris have also "been deprived of their land altogether" (see page 21); losing not only land legitimately bought but, also, the purchase price paid for it!

The Land Court was intended to be a purely stop-gap Court of Law. It is still in existence, disguised as a Maori Affairs Department. All officers of the Department are "without further appointment, officers of the Maori Trust Office" (see page 19). And one of the Court's functions is vesting land in the Maori Trustee for the benefit of the Maori owners "if any": Maori Reserved Land Act 1955, section 5.

That there may be NO Maori owners is not surprising: much of the land which came within the Court's jurisdiction is part of those tracts which, at the time the Treaty was signed, had no "original" Maori owners. Most Maori-owned land, it bears repeating and stressing, is held under the general land law of the country and is referred to by the Maori Affairs Act as "General Land".

Hereunder, xeroxed excerpts from the Rees Commission's report to Parliament from the Appendix to the Journal of the House of Representatives 1891 G1:

NATIVE LAND COURT. : Now called the Maori Land Court

It has brought into existence a regular system of collecting false claims, by which the real owners are often driven out, and their land given to clever rogues of their own race.

page xli

In numerous instances frauds have been perpetrated successfully both upon Natives and Europeans; the most honest and straightforward dealing has not been sufficient to protect purchasers from loss and injury, while the Courts have been imposed upon and the true owners defrauded by conspiracy and perjury.

page xlii

We were told at nearly every meeting of the Natives that the Maoris had from time to time suffered serious injuries at the hands of the Government. They alleged that the Native Department and its officers, especially of late, had interfered in many ways with the surveys of land, the actions and decisions of the Judges in the determination of titles, and the sittings of the Court. So far had this feeling been engendered in the minds of the Natives as to cause large numbers of them to distrust the Court.

page xlii

NATIVE LAND COURT GIVING TWO DISTINCT TITLES.

Titles given by the Native land law are indistinct and uncertain. In many instances Natives have sold to Europeans, and the title of the purchaser is registered under the Land Transfer Act. Then the property is divided in the Native Land Court, and a fresh title given to the Natives who have already sold.

BOGUS

page xviii

* The "Native land law" is now embodied in the Maori Affairs Act 1953, excerpts of which are on page 19.

As explained on page 4, the Native/Maori-named Court was established to determine who was rightfully entitled to land the ownership of which was Maori-disputed (rather than Maori-owned). Maoris disputed the rights not only of other Maoris but, also, of European-owned and Government-purchased land.

BUT, in the words of the Waitangi Tribunal:

Difficulties have arisen from the failure of the Court to determine who should take title or to even record the basis or reasons for any selection or settlement. Subsequent allegations that the wrong people made the choice, that key people were not at the discussion, or the like, can be neither proved nor disproved. Original owners remain unsucceeded to this day, because they cannot be identified and no-one knows who put that name in. (In one case it was unsuccessfully argued that a person submitted six names for a family, each being an alias for himself. To this day five 'names' remain unsucceeded to.)

(Waitangi Tribunal's ORAKEI REPORT, page 34)

In spite of the Court's "failure to determine who should take title or to even record the basis or reasons for any selection or settlement", according to the Treaty of Waitangi Amendment Act 1988, the Tribunal is now empowered to refer questions to the Land Court for decision!

As matters now stand, the chairman of the Waitangi Tribunal is Chief Judge of the Maori-named Law Courts which created the grievances the Tribunal was established to investigate. A situation absolutely contrary to natural justice: "no man may be a judge in his own cause". Especially when, as is the case: (a) the present Chief Judge has personal expectations in respect of land dealt with by his Court (see page 4); (b) the "grievances" are proving to be claims of the most OUTRAGEOUS nature (as an example, see page 12; and (c) the Tribunal's recommendations on an ethnic/tribal basis are so thoroughly ILL-FOUNDED; see pages 14 and 15.

SECTION J

The following Index contains references to statutory provisions, regulations, etc., where there are differences in provisions relating to Maoris and Europeans.

Alphabetical Index and Classification of Material in Report Covering Legal Differentiation

NOTE → a = Privilege. c = Protective. d = Different organisation and/or procedures.
 b = Disability. e = Different organisation and/or procedures.
 Statutes in Vols. 1 to 9 of 1937 Report shown by Vol. No., then page No., then by section No.
 Other statutes up to 1936 shown by year and page No., then section No.
 Statutory regulations shown by letters S.R. followed by clause No. where only certain clauses referred to.

Subject	Reference	Classification
Absentee owners - appointment of Maori Trustees to act for	8/926-927 m. 447	a b c d
Access to Maori land	8/904-912 m. 414-432	a b c d
Administration Act 1932	8/921-922 m. 442	a b c d
Administration Act 1932	1939 No. 90 a. 26	a b c d
Administration Act 1932	142 a. 2 (2)	a b c d
Administration Act 1932	8/734 116	a b c d
Administrator - Maori land not to vest in	8/769-771 m. 133-134	a b c d
Adoptions	1779-102, esp. a. 21	a b c d
Alienation of Maori land	1939 No. 90 a. 26	a b c d
Alienation of Maori land	8/801-826 m. 311-351	a b c d
Alienation of Maori land	8/920 a. 440	a b c d
Alienation of Maori land	8/926-927 m. 446-447	a b c d
Alienations of interests in Maori reserves prohibited	9/14 a. 10	a b c d
Alienations - removal of restrictions	1939 No. 90 a. 30	a b c d
Amalgamations of titles	8/914 a. 435	a b c d
Appointment of new trustees	1930 No. 80 a. 25	a b c d
Appointment of new trustees	8/923 a. 443	a b c d
Appointment of profits and losses in joint farming undertakings	8/933-933 a. 454	a b c d
Assembled Maori owners	1939 No. 90 a. 28	a b c d
Assembled Maori owners	S. 1931-304 304-323	a b c d
Assignment of rents and royalties	8/187/81	a b c d
Assignment of rents and royalties	8/717 a. 217	a b c d
Assignment of rents and royalties	9/193 a. 39	a b c d
Attestation of documents	8/753 a. 111	a b c d
Attestation of documents	8/807-808 a. 322	a b c d
Attestation of documents	8/941-841 a. 464	a b c d
Attestation of documents	8/933-936 m. 433-438	a b c d
Bankruptcy - protection of Maori land from	8/903 a. 216	a b c d
Beneficial interests - restriction on alienation of	1/584 a. 97	a b c d
Bills of exchange	1/588-602 m. 17-30	a b c d
Births registration	General 1933 I p. 310	a b c d
Births registration	S.R. 1947/75, 1932/130, 1933/69	a b c d
Births registration	8/717-721 m. 2-16	a b c d
Board of Maori Affairs	1939 No. 90 a. 32	a b c d
Carpentry training	1931 V 943-1167 esp. a. 30	a b c d
Ceding of lands for mining	8/941-942 a. 464	a b c d
Chattel securities	8/919-920 m. 322-331	a b c d
Compensation for improvements in farm leases	1931 VII 633 a. 22	a b c d
Compensation for land taken	1931 VII 644-667 m. 102-106	a b c d
Compensation for land taken	1939 No. 96 a. 4	a b c d
Compensation money - investment	8/737-738 a. 47	a b c d
Consent to services	1939/799-805 m. 3-11	a b c d
Confirmation of alienations	8/808-818 m. 324-333	a b c d
Consolidated orders	8/921-925 a. 445	a b c d
Consolidation	8/794-801 m. 193-210	a b c d
Contracts enforcement	2/731-732 a. 2 (3) (b)	a b c d
Convention Fund	8/777-779 m. 149-154	a b c d
Cook Islands Act 1913	1938/831-1107	a b c d
Crown land - vesting in Maoris	8/915-916 m. 436-437	a b c d
Crown purchase of Maori land	8/927-928 m. 232-268	a b c d
Deaths registration	1/611-612 a. 36	a b c d
Deaths registration	1/616 a. 33	a b c d
Deaths registration	General 1933 I p. 310	a b c d
Deaths registration	S.R. 1947/75, 1932/130, 1933/69	a b c d
Deaths registration	8/776-777 a. 147	a b c d
Deaths registration	8/717 m. 3-4	a b c d
Decreased Maoris - vest due to Department of Maori Affairs	8/862-899 m. 374-383	a b c d
Development of Maori land	8/932-933 a. 454	a b c d
Disability - trustees for persons under	8/747-754 m. 81-109	a b c d
Devalence - taking land for	7/530 a. 89	a b c d
Education	1931 IV 567 a. 7	a b c d
Education	1931 II 1038 a. 69	a b c d
Education	1933/913-917 a. 18	a b c d
Education	1943/234-237 a. 12	a b c d
Education	1947/844-845 a. 13	a b c d
Education	1945/776-777 a. 7	a b c d
Education	1937 II 962 a. 7-14	a b c d
Education	9/169-170 a. 10	a b c d
Education	S.R. 1933/39 and 1933/178	a b c d

Subject	Reference	Classification
Electoral provisions	4/341-440, m. 11, 23, 25, 39, and 41	a b c d
Encroachment - relief against	1939 No. 90 a. 37	a b c d
Enforcement of covenants against lessees	8/817-818 a. 239	a b c d
Errors of Court - correction of	8/930-931 a. 432	a b c d
Europeanisation	8/912-914 m. 433, 433a	a b c d
Europeanisation	8/940-941 m. 462-463	a b c d
Exchange	4/792-794 m. 187-192	a b c d
Exchange	8/830-831 m. 261-264	a b c d
Execution by creditors - protection from	8/933-936 m. 453-456	a b c d
Executor - Maori land does not vest in, as such	8/769-771 m. 133-134	a b c d
Family benefit capitalisation	1938 617 (whole Act)	a b c d
Family protection	S.R. 1939/37	a b c d
Fencing	8/760-763 m. 118-123	a b c d
Fencing	4/871-873 m. 3 and 4	a b c d
Finance for roading	8/970-971 a. 441	a b c d
Fishing rights	1939 No. 90 a. 24	a b c d
Fishing rights	1931 VI 101-102 cl. 2	a b c d
Fishing rights	8/781-782 a. 10	a b c d
Fishing rights	3/233 a. 46	a b c d
Fishing rights	3/304-305 a. 76	a b c d
Fishing rights	3/313-314 a. 2	a b c d
Fishing rights	9/31-36 a. 14	a b c d
Fishing rights	9/148-149 a. 33	a b c d
Fishing rights	5/419-420 a. 64	a b c d
Fishing rights	8/806 a. 218	a b c d
Fishing rights	8/834-839 a. 318	a b c d
Fishing rights	8/927-929 m. 449-450	a b c d
Fishing rights	8/937-938 a. 453	a b c d
Fishing rights	1931 V 973-977 m. 64-68	a b c d
Fishing rights	1931 V 992-993 a. 103	a b c d
Fishing rights	9/220-221 a. 33	a b c d
Fishing rights	9/116-117 a. 89	a b c d
Fishing rights	9/3-28 (whole Act)	a b c d
Fishing rights	8/939 a. 461	a b c d
Fishing rights	1939 No. 90 a. 31-33	a b c d
Fishing rights	7/346-351 m. 158-164	a b c d
Fishing rights	8/834-832 m. 269-303	a b c d
Fishing rights	1938/420 m. 3 and 6	a b c d
Fishing rights	1939 No. 90 m. 22-23	a b c d
Fishing rights	S.R. 1933/194	a b c d
Fishing rights	8/757 a. 130	a b c d
Fishing rights	8/744-745 m. 71-77	a b c d
Fishing rights	8/758-760 m. 116-117	a b c d
Fishing rights	8/935 a. 456 (1) (a)	a b c d
Fishing rights	8/779-783 m. 153-160	a b c d
Fishing rights	8/812-813 a. 231	a b c d
Fishing rights	8/937-933 a. 454	a b c d
Fishing rights	1939 No. 90 a. 28	a b c d
Fishing rights	6/692-693 a. 17a	a b c d
Fishing rights	7/642 a. 61	a b c d
Fishing rights	8/936-937 a. 457	a b c d
Fishing rights	1939 No. 90 a. 26	a b c d
Fishing rights	1938/1402-1414 a. 18	a b c d
Fishing rights	1939 No. 90 m. 8-15	a b c d
Fishing rights	7/569-573 m. 23 to 25	a b c d
Fishing rights	7/336-338 a. 3	a b c d
Fishing rights	7/547-594 m. 3 and 7	a b c d
Fishing rights	8/783 a. 173 (1)	a b c d
Fishing rights	7/243-246 m. 73 (1) and 75	a b c d
Fishing rights	7/774-775 m. 56-57	a b c d
Fishing rights	8/929-930 a. 451	a b c d
Fishing rights	8/814-826 m. 234-251	a b c d
Fishing rights	8/827-862 m. 304-323	a b c d
Fishing rights	8/864-878 m. 341-362	a b c d
Fishing rights	8/889-896 m. 386-404	a b c d
Fishing rights	8/763-767 m. 125-130	a b c d
Fishing rights	8/744-746 m. 71-77	a b c d
Fishing rights	8/164-165 a. 6	a b c d
Fishing rights	8/260 a. 2	a b c d
Fishing rights	9/132-139 m. 39-49	a b c d
Fishing rights	8/333-392	a b c d
Fishing rights	8/399 a. 6	a b c d
Fishing rights	8/937 a. 458	a b c d
Fishing rights	8/164-165 a. 6	a b c d
Fishing rights	8/260 a. 2	a b c d
Fishing rights	9/132-139 m. 39-49	a b c d
Fishing rights	7/739 a. 17 (2)	a b c d
Fishing rights	8/732-744 m. 37-70 S.R. 1934/162	a b c d
Fishing rights	9/3-28 (whole Act)	a b c d
Fishing rights	8/939 a. 461	a b c d
Fishing rights	1939 No. 90 m. 31-33	a b c d
Fishing rights	6/749 a. 4	a b c d
Fishing rights	6/782-784 m. 141-151	a b c d
Fishing rights	8/714-948 (most of Act)	a b c d
Fishing rights	S.R. 1934/162	a b c d
Fishing rights	8/862-869 m. 316-383	a b c d
Fishing rights	8/932-933 a. 454	a b c d
Fishing rights	9/65-77 esp. m. 4 and 12	a b c d
Fishing rights	9/219 a. 32 (1) (c)	a b c d

NOTE

Excerpt from the 1960 Hunn report on the Department of Maori Affairs.

221. All the statute books have been scanned to take stock of the differentiation between Maoris and Europeans that exists in the legislation today. A list of the points is given in Appendix F, and an exposition of them has been set out in a separate paper of 28 pages. The list reveals that differentiation occurs on 82 subjects, classified as follows:

- (a) Maori privilege 58
- (b) Maori disability 35
- (c) Maori protection 69
- (d) Different procedure 102

Subject	Reference	Classification
Maori Purposes - permanent appropriation of £7,000	1933 I 813 s. 105 1931 I 1001 s. 65	a . . .
Maori Rehabilitation Finance Committee	8/720-721 s. 10-11 1941/314 s. 13	a . . . c d
Maori reservations	8/918-919 s. 439	a . . .
Maori reserves	9/79-129 (whole Act) 1935/103-107 s. 6 1937 I 309-311 s. 33 1931 II 1038 s. 69	b . . . c d
Maori schools	1957 II 962-965 ss. 7-14 S.R. 1943/39, 1953/178	a . . . d
Maori Soldiers' Trust	8/165-173 (whole Act) 1939 No. 90 s. 35 8/767-768 s. 131	a . . . d
Maori succession duty	9/131-163 (whole Act)	a . . . c d
Maori tribal organisation	9/175-202 (whole Act)	a . . .
Maori Trust Boards	1938 I 422-423 s. 9 9/203-231 (whole Act) 8/714-848 esp. ss. 92, 147, 139-154 9/79-129 (whole Act) 9/233-274 (whole Act)	a . . . c d
Maori Trust Office	9/149-152 s. 34-38 8/756 s. 78-79 (privileges abolished)	a . . . d
Maori villages	8/747-748 s. 92	a . . . c d
Marriages	9/632 s. 2	a . . .
Mental patients	1931 V 943-1167 ss. 30, 32, 33, 39, 35, 64, 65, 86, 103, 431	a b c e d
Mining	2/654 s. 43	a . . .
Misnom - trustees for	8/747-754 ss. 91-109	a . . . c
Mortgage advances by Crown	8/538 s. 460	a . . . d
Muttonbirds	9/40-41 s. 109	a . . .
Name - change of	1/599-600 s. 17A 1939 No. 25 s. 3	a . . . d
National Historic Places Trust	6/105 s. 5	a . . .
New Zealand Geographic Board	1946/48 s. 3	a . . .
Noxious weeds	1930/782-783 ss. 7 (3), 14-15 8/889-896 ss. 386-404	b c d
Oysters	5/293 s. 46 9/148-149 s. 33	a . . .
Parliamentary elections	4/341-440 ss. 11, 23, 25, 39, 41	a b . . . d
Partition	8/784-791 ss. 173-186 8/911 s. 432	a . . . d
Petroleum	1937/244, 248 ss. 24, 30	b c . . .
Pipi	5/293 s. 46 9/148-149 s. 33	a . . .
Probate	8/763-767 ss. 125-130	a . . . d
Prohibition orders	9/157-158 s. 48A	a . . . e d
Protection of Maori land interests from creditors	8/763-769 s. 132	a . . . c
Protection of Public Trusts	1937 I 309-311 s. 33	b . . .
Protection of State Advances Corporation	1935/105-107 s. 6	b . . .
Public Works - land taken for	1931 VII 633 s. 22 1939 No. 66 s. 4 8/827-833 ss. 252-268 1935 I 196-197 ss. 49-51 1935 I 158-159 ss. 95 (3), 98-99 1934 I 505-507 s. 5 1931 VII 1007 s. 77 1931 VII 1017-1025 ss. 101-118 1934 I 217-219 s. 5	a . . . d
Purchase of Maori land by Crown	9/84 s. 10 8/805 s. 217	b c . . .
Rabbits	1933 I 674, 699 ss. 13 (1) (b), 60 8/915-916 ss. 436-437 2/306 s. 206 8/900-912 ss. 414-432	a . . . d
Ratana Settlement	1939 No. 90 s. 24 1938/1109-1289 (whole Act)	a . . . d
Rates	1931 IV 538 s. 3 9/147-148 s. 32	a . . . e d
Rents and royalties-- Restrictions on assignment	1933 I 699 s. 60 1943/324-326 s. 12 1943/333-337 s. 12 1943/276-277 s. 7 1947/844-845 s. 13 9/169-170 s. 10 S.R. 1933/39, 1933/178 S.R. 1938/152 8/148-149 s. 33	a . . . d
Reserves and domains	1949/799-805 ss. 2-11 8/867-889 ss. 326-383	a . . . e
Reverting Crown land in Maoris	3/293 s. 46	a . . .
Rivers, navigable, beds of vested in Crown	9/148-149 s. 33	a . . .
Roads and roadways	8/822-823 s. 247	a . . . e
Samoa Act 1921	1948 II 1231-1376 (whole Act)	a . . .
Sand drift	1931 VI s. 91	a . . .
Sanitation		
Scenic reserves		
Scholarships		
Searches of title		
Seaweed - edible		
Servicemen - concessions to		
Settlement of Maori land by Maoris		
Shellfish		
Sinking fund for compensation for lessees' improvements		
Social security		

Subject	Reference	Classification
Social security income tax	7/765 s. 86A 7/348 s. 139A	a . . . d
Solicitors' costs	7/774-775 ss. 56-57 8/929-930 s. 451 8/916-918 s. 438	a . . . e d
Subdivisions, seaside, etc.	1931 VI 403-404 ss. 1-3	a . . . e d
Superstition	9/151 s. 14	a . . .
Surveys of Maori land	7/30 s. 33 8/896-900 ss. 405-413 1931 IV 568-569 ss. 2	a b . . . d
Swamp drainage rates	7/774-775 ss. 56-57 8/929-930 s. 451	a . . . e d
Taxation of solicitors' costs	8/936-937 s. 457	a . . . e d
Tenancy in common	5/419-420 s. 64	a . . . e d
Timber	8/806, 858-859 ss. 218, 318 8/927-929 ss. 449-450 8/937-938 s. 459 8/921-922 s. 442 8/914 s. 435	a b . . . e d
Titles - amalgamation	1939 No. 90 s. 25 1931 VI 403-404 ss. 1-3	a . . . e d
Tobunga suppression	8/131-163 (whole Act)	a . . . e d
Tribal organisations	8/747-754 ss. 91-109	a . . . e d
Trustees for persons under disability	8/923 s. 443	a . . . e d
Trustees - new - appointment	8/916-918 s. 438	a . . . e d
Trusts for land administration	8/923 s. 444	a . . . e d
Trusts - termination of	9/216-219 s. 30	a . . . e d
Unclaimed moneys	8/773-774 ss. 137-138 8/777-779 ss. 149-151A 8/788-789 s. 181 8/925 s. 443 (8) 9/89-91 ss. 21-24 1939/421 s. 7 8/889-896 ss. 386-404	a . . . e d
Unoccupied Maori land	9/233-274 (whole Act) 1935/103-107 s. 6	a . . . e d
Vested lands	1937 I 309-311 s. 33 1931 VI 101-102 cl. 2 9/136 s. 11	a . . . e d
Waitangi - Treaty of	9/152-155 ss. 39-45 8/927-929 ss. 449-450	a . . . e d
Wardens	9/131-163 (whole Act)	a . . . e d
Waste - prevention of	8/755-767 ss. 110-130	a . . . e d
Water supplies	9/84 s. 10	a . . .
Welfare Officers		
Wills of Maoris		

Since 1960, many more discriminatory laws have been enacted. Irrespective of whether Maori or non-Maori is privileged or disadvantaged, all are founded and perpetuated on a definition of "land" and "race" which:

- defy all logic;
- deny our shared humanity;
- undermine democracy's fundamental ethos;
- completely NEGATE Article the Third of the Treaty of Waitangi; and
- contravene the Universal Declaration of Human Rights.

- 24 -

Hereunder is a xeroxed excerpt from the Royal Commission on the Maori Courts Government-issued warrant:

Royal Commission on the Maori Courts

ELIZABETH THE SECOND, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To Our Trusty and Well-beloved the Right Honourable Sir THADDEUS PEARCEY MCCARTHY, Knight Commander of the Most Excellent Order of the British Empire, of Wellington, WHAKAARI TE RANGITAKUKU METE-KINGI, Commander of the Most Excellent Order of the British Empire, of Rata, farmer, and MARGUS JOHN QUENTIN POOLE, of Dannevirke, barrister and solicitor:

GREETING:

KNOW YE that We, reposing trust and confidence in your integrity, knowledge, and ability, do hereby nominate, constitute, and appoint you, the said

The Right Honourable Sir THADDEUS PEARCEY MCCARTHY,
WHAKAARI TE RANGITAKUKU METE-KINGI, and
MARGUS JOHN QUENTIN POOLE

to be a Commission to inquire into the structure and operation of the Maori Land Court and the Maori Appellate Court (in these presents referred to as the Maori Courts), and to report on what changes are necessary or desirable to secure the just, humane, prompt, efficient, and economical disposal of the business of the Maori Courts and to ensure the ready access of the Maori people and other claimants to those Courts for the determination of their rights now and in the future:

Hereunder is a xeroxed excerpt from page 1 of the Commission's report to Parliament: Appendix to the Journal of the House of Representatives 1980 H3:

2. Your Excellency's warrant dated 7 August 1978, directs our inquiry into the structure and operation of the Maori Land Court and the Maori Appellate Court. (We shall use the term "the Maori Land Court" or "the Court" to cover both unless the context requires otherwise.) The Court was not included in the report of the Royal Commission on the Courts (the Beattie Royal Commission) which reported on 10 August 1978 as that Royal Commission considered that it was not entitled to do so in the terms of its warrant.

3. We are required to report upon what changes are necessary or desirable to secure the just, humane, prompt, efficient, and economical disposal of the business of the Court, and to ensure the ready access of Maori and other claimants to it. These claimants include, of course, Europeans, incorporations, the Government, and others.

The Land Court's records are kept by the Maori Affairs Department; and, as the Commission went on to say (on page 72):

We have evidence that at the present time the record system is in severe disarray, with thousands of blocks of Maori land unsurveyed, records of ownership and succession incomplete, and a very large number of partitions and other orders of the Court unregistered. We have expressed our dismay that an independent record system has been permitted in a country which rightly claims to have in its land transfer system one of the finest systems of land registration in the world. It is, in our view, inexcusable that another system of recording land ownership (even if it happened to be efficient, which it is not) should have been allowed to develop. The entitlement of the people of New Zealand to depend upon the integrity and efficiency of the land transfer system is undermined by an alternative system. Plainly there is an urgent need for the Government to ensure that the Maori land records are incorporated into the land transfer system without further delay.

When all land titles ARE "incorporated into the land transfer system" (and the public has a right to know that it HAS been done), there would then be no more LEGALLY CALLED "Maori Land" but land would still be Maori-owned (see Commission's comments on page 19).

Chapter 4 of the McCarthy Commission's report to Parliament is entitled:

WHAT IS MAORI LAND?

In answer to its own question, the Commission said: "It means whatever current legislation says it means". (AJHR 1980 H3 page 22.)

But since 1865 the term "Native/Maori Land" has NEVER meant what the law says it does: see pages 18-20.

My own submission to the McCarthy Commission had a twofold thrust: (a) that most Maori-owned land is held under "General Land" titles; a fact confirmed by the Commission: see excerpt from AJHR 1980 H3 on page 19; and (b) that the term "Maori Land" was "not conditional upon, nor exclusively restricted to, the race of the owner". This fact was specifically mentioned by the Auckland Star (30.8.1979) and the NZ Herald (31.8.1979) in their respective reports on my submission. The Auckland Star report was headed: ONE LAND REGISTER ADVOCATED, which proved to be the Commission's own - most urgent - recommendation. The Herald's report was entitled TERM 'MAORI LAND' ARTIFICIAL SAYS RESEARCHER; and as the Commission indisputably recognised (see page 24) that is, indeed, the case.

Furthermore, as the Commission found, the Maori-named Land Court and the Maori Affairs Department are INSEPARABLE. In the Commission's words: "The Court was the department". (AJHR 1980 H3 page 47-4)

The Commission clearly recognised that "Europeans ... the Government, and others" are ALSO subject to the jurisdiction of the Maori-named Law Courts alias the Maori Affairs Department; but for reasons far more alarming than crass stupidity, buried its findings under a welter of regurgitated gobbledegook, dangerous double-talk, and downright racial nonsense. Consequently, I made an appeal to the New Zealand Press Council, not realising that Sir Thaddeus McCarthy had become the chairman of the Press Council; a matter dealt with in the article hereunder:

Conspiracy of silence?

THE MAORI AFFAIRS ACT is responsible for grievances which have plagued this country for over a century.

By Hilda Phillips

And it is a blistering indictment of the Royal Commission on the Maori Courts that it did not expose the statutory, judicial and bureaucratic cover-up which has been going on since 1865. There will be no justice for anyone, Maori or non-Maori, as long as we have a separate court and Government department daily deceiving the nation about the law.

As the commission found, the real function of the secretary of Maori Affairs and his department

is to service the Land Court's records. And these, as the commission found with "dismay", are in a state of "severe disarray."

But the issue is of far greater consequence than merely a matter of incompetence. It is the enormity of the departmental deception which should be exposed.

As the commission clearly recognised, land administered by the court and the department is held in either individual or multiple ownership by

either Maori or non-Maori - including the Government.

There is absolutely no "cultural" difference between the Maori and non-Maori ownership of land, even that to which the Maori Affairs Act applies.

And that information should be public knowledge.

Unfortunately the commission, under the chairmanship of Sir Thaddeus McCarthy, claimed to be bound by the terms of its warrant.

But no such restriction applies to the news medi-

ator, the New Zealand Press Council.

As the significance of the commission's findings seemed to have escaped the notice and/or understanding of the news media, I appealed to the Press Council to acquaint editors with the full findings of the commission.

As Sir Thaddeus is also chairman of the Press Council, I had the utmost confidence that the council would explain to editors that:

• The Land Court owes its existence to factors other than race.

• That the Department of Maori Affairs, which grew up around the Land

Court, is founded and perpetuated on a totally unwarranted racial basis.

• That the Maori Affairs Act is such a travesty of justice it constitutes a crime against the nation, particularly against those whom the law purports to protect.

The appeal was rejected. This decision negates the fundamental spirit of everything the Press Council is supposed to represent.

In effect, the decision makes the council party to a conspiracy of silence which has prevailed for 116 years, and that raises the question: who guards the guards?

NZ TRUTH 10.11.1981

In fact, as I was later to learn, Maoris wanted the Maori-named Land Court abolished over 100 years ago: see page 20.