Ngai Tahu's Tangled Web

Part 2

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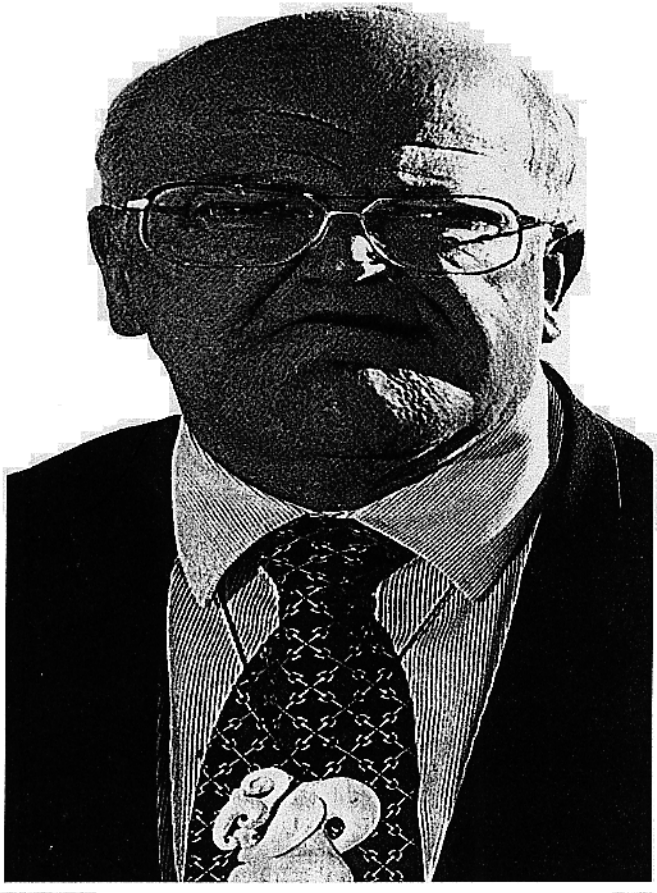
Last issue the process by which from 1844 Ngai Tahu, in 10 sales, disposed of most of the South Island to the Crown was outlined. By 1864 the Crown believed it had settled all the tribe's claims to its former territory, albeit by paying more than once to secure some blocks.

There was nothing to indicate that Ngai Tahu were unhappy with the outcome. Indeed, on several occasions they indicated they had been fairly treated and were satisfied with the result. By 1872, however, Ngai Tahu were in grievance mode and a steady stream of petitions began outlining their complaints. This article outlines the story of how the Crown responded to these claims over the next 100 years, dismissing some as unwarranted and effecting "full and final" settlements of others.



The Waitangi Tribunal, in its 1991 report, concluded that the Crown's "record of prevarication, neglect and indifference over so long a period, in facing up to its obligations, cannot be reconciled with the honour of the Crown." As a result of its recommendations another settlement is about to be made which will net the tribe $170 million, numerous pieces of South Island real estate and a raft of race-based rights and privileges.

The Tribunal claims to have conducted "a comprehensive, fair and objective inquiry into Ngai Tahu's grievances." *The Free Radical* says the evidence shows this avowal has about as much substance as most of its findings, which is to say little or none at all.

The tribe pressed two major land claims in the 70-odd years up till 1920. The first concerned an allegation that they were promised that one-tenth of the land sold would be reserved for them (the "tenths" concept) at the time of the Otago and Kemp purchases in the 1840s. Lack of space prevents an outline of the history of this claim; suffice it to say that by 1890 was proved to have been a fabrication.

The other centred on Kemp's purchase and, like the claim for tenths, had a 20-year hiatus following the signing of the deed in 1848. In fact, it originated not with Ngai Tahu but with the Native Land Court which, in 1868, decided that a provision in the purchase agreement had not been fulfilled, and they were entitled to more reserves. The issue is quite a complicated one, and requires some of the background given in the last issue to be reiterated.

Kemp's Purchase

When Henry Kemp, the Crown's purchase agent, dealt with Ngai Tahu in June 1848 he was instructed to mark out reserves of "ample portions for their present and prospective wants" before having the deed signed. However, surveying all the settlements scattered throughout 20-million acres of uncharted territory in mid-winter would have taken months, and the 500 or so Ngai Tahu who had gathered at Akaroa from as far away as Otago wanted their money immediately. So Kemp instead offered them an agreement guaranteeing them their "places of residence and plantations" which left to the Governor "the power and discretion of making us additional Reserves" when the land was surveyed.

Kemp's "vague and indefinite" arrangements were deemed unsatisfactory by Lieutenant-Governor Eyre, his immediate superior, who in the spring sent another agent, Walter Mantell, to finalise the reserves and then have Ngai Tahu sign a new deed releasing the Crown from any obligation to lay out additional reserves in future. Mantell was to make reserves of a "liberal provision for their present and future wants." He spent three months marking out 15 reserves and then returned to Akaroa to find fresh orders awaiting him from Eyre.

He was now told to stick with the original Kemp deed, marking out only their residences and cultivations, and assure the Maoris that they would later receive any additional land thought necessary for their future wants. Mantell replied that, acting on his earlier instructions, he had already provided an area sufficient for "the present and prospective necessities of the Natives" and the reserves could be considered "finally arranged." Kemp's deed, nonetheless, with its provision for further reserves, was allowed to stand as the purchase agreement. This situation bestowed a double-whammy benefit on

Ngai Tahu - "ample" reserves already provided by Mantell, and a deed allowing for further reserves in future.

Mantell set aside 6,509 acres of mostly first class land for 646 Ngai Tahu, or just over 10 acres per head.

Ideas about the amount of land needed to provide a livelihood changed over time. In the 1840s, when Wakefield's ideal of a nation of small cultivators ruled, 50 to 80 acres were considered ample for a European family. By 1860, when the Crown purchased the west coast, pastoral farming was paying best, and Ngai Tahu living there were each reserved on average an area nearly seven times more extensive than that allotted their Canterbury cousins. The latter, not surprisingly, now felt they were hard done by.

The realisation was brought home to them more particularly when their reserves began to be subdivided into individual allotments in the 1860s. This process, undertaken at Ngai Tahu's insistence and managed by them, began at Kaiapoi reserve, where those with rights were allotted 14 acres of farmland each. Entitlement was based on lists of residents made by Mantell in 1848 but, as was found by an 1887 commission of inquiry headed by Alexander Mackay, a Native Land Court judge, owing to the "stupidity and obstinacy of the Natives," the names of some hapu members were not recorded. In some cases this resulted in them or their descendants being allotted nothing in the subdivision.

The court was engaged in settling disputes of this kind when it noticed the provision in Kemp's deed allowing for future reserves. Mantell gave evidence and might have volunteered his earlier conviction that he had fulfilled the intention of the deed by providing an area then considered ample for their future needs. But he now believed the area ought to have been larger to allow for the fact that increased settlement had lessened Ngai Tahu's traditional food supplies. It may have been this belief which led him to perjure himself, because he now told the court that he had received his amended instructions while still laying out the reserves and, following these, had at three settlements made provision for the residents' present needs only, leaving a further allocation to be made at some future time.

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Full & Final Settlement #1.

The court, following the deed, ruled that the provision of extra land was at the discretion of the Crown, who called for an opinion from Mackay, then a Commissioner of Native Reserves, who was at the Court assisting the Ngai Tahu. He thought those with rights should be allotted enough land to bring the average up to that at Kaiapoi, 14 acres per head. Mantell agreed and additional reserves totalling almost 5,000 acres were ordered, including one of 1,000 acres to be divided among those who had received no share of the original reserves. Chief Judge Fenton, who presided, thought the concessions went "as far as a just and liberal view of the clause would require," and Mackay reported to the Native Department that the matter had been "finally and satisfactorily concluded." **(Full and final settlement # 1.)**

It is not clear how the total was arrived at, because according to a census made by Mackay there were in 1868 52 fewer Ngai Tahu living on the reserves than Mantell counted in 1848, but presumably some with rights were living elsewhere. Along with 1,850 acres already added by the central and provincial governments, this brought the total area of the reserves to about 12,500 acres, nearly double the area allotted by Mantell. Later further land was given as compensation for the poorer quality of some of the land awarded in 1868, and Kaiapoi residents gained a further area as compensation for the portions of their reserve allotted to non-residents. By the end of the 1880s, therefore, the reserves made under Kemp's deed totalled about 15,500 acres, or an increase of nearly 250 per cent over the original area. So much for the Crown being, in the Tribunal's word, "niggardly."

The Grievance Industry Takes Off - Inquiry #1

The 1868 awards were made "as a final extinguishment of all claims and engagements created under Kemp's Deed," but it was not long before Ngai Tahu were complaining that they had been unfairly treated. Four years afterwards they began making a series of claims in an effort to get the deed nullified or further compensation awarded, arguing that the land granted in 1868 should not be regarded as a final settlement because they had been unprepared then to press their other claims.

An 1872 select committee was the first to hear these allegations. They were presented by the MP for Southern Maori, H.K. Taiaroa, and were based, he claimed, on a speech made in 1862 by his father, a paramount chief, who had died soon after. Taiaroa claimed, with no supporting evidence, that his father had alleged that the purchase price was merely an advance, and that Ngai Tahu had only agreed to sign Kemp's deed because he (Kemp) had threatened to have soldiers sent to take possession of their land if they refused. Lacking any corroborating evidence, the committee might have been expected to reject the claim out of hand. Instead, it recommended a further inquiry.

By 1874 Ngai Tahu were claiming that the deed was null and void because of Kemp's "intimidation," that Kemp, moreover, had promised not to include a large inland portion of the block in the sale but had neglected to put that undertaking in the deed, and that Mantell had promised to pay them "the large outstanding balance" due for it. A petition the following year largely repeated these claims, and alleged in addition that Mantell too had caused Ngai Tahu to yield their territory by threats, and that the price paid for Kemp's block in toto was insufficient anyway!

Inquiry #2.

The government commissioned Judge Fenton to investigate these claims. Those alleging intimidation were easily disposed of. As the Waitangi Tribunal found when dealing with the allegations against Kemp, including one that he would have the vendors killed, Ngai Tahu were willing sellers and the deed was witnessed by "reputable men," among them the Resident Magistrate.

Fenton noted that the boundaries were described in the deed, which Kemp had written in Maori and read out to the vendors, and with an accompanying map clearly indicated that the purchase encompassed all the land between the east and west coasts. They could not be questioned, Fenton ruled. As for the £2,000 originally accepted as payment for the block in 1848, now alleged to be proof that the chiefs did not know what they were doing, he responded: "It cannot be affirmed as a matter needless of proof that the price paid at the time

was insufficient. If the European race had never come into these seas the value of these Islands would still be only nominal. The immense value that now attaches to these territories is solely to be attributed to the capital and labour of the European."

He expressed surprise that none of the accusations had been made at the time of the 1868 settlement. The petitioners claimed that they were ignorant of their rights in 1868, but Fenton pointed out that they had had a "most able counsel" and the assistance of Mackay, "a most able and zealous adviser," while the Crown's agent, William Rolleston, had "displayed a desire to concede to the Natives as much as could be properly conceded."

Taiaroa responded to Fenton's findings by reiterating Ngai Tahu's claims in Parliament, and adding a couple of new ones also. The Kaiapoi chiefs had "abandoned" the sale during the negotiations in 1848, he said, while Kemp had included the inland part of the block in the deed "secretly and without authority." He again impugned Mantell's reputation and completed the slandering of two of Ngai Tahu's staunchest supporters by disparaging Mackay's role as an adviser at the court. He had "worked on the side of the Government." Fenton's report was labelled "deceitful".

Royal Commission #1

Ngai Tahu pursued the claim, and in 1879 the former governor, George Grey, now premier and trying to shore up a shaky majority in parliament, bowed to pressure from Taiaroa and set up a Royal Commission, comprising T.H. Smith & F.E. Nairn, to inquire into all the tribe's claims. For decades afterwards Ngai Tahu were to claim they had been swindled by the government's ignoring Smith's and Nairn's findings, that they were entitled to a reservation of a "large proportion" of the land sold in both the Otago and Kemp purchases. In 1910 another MP for Southern Maori, Tame Parata, declared that Smith-Nairn "was the only satisfactory inquiry that we have ever had."
Judged by standards of fairness and impartiality, however, that inquiry was a travesty. In a statement which is prescient of the Waitangi Tribunal's modus operandi, the Commissioners declared that they had "resolved to give to the Natives the fullest opportunity of stating their whole case in their own way, reserving only to ourselves the option of seeking such further evidence as we might consider necessary after their case had been put before us." They went one better than the Tribunal though in taking no evidence from the Crown.

Their two-year commission expired before they completed their inquiries, but they had heard enough to rule that Ngai Tahu would have brought their various claims before the court in 1868 had they been "properly advised." Witnesses had been "almost unanimous" that the boundaries of Kemp's block were not to include "anything beyond a strip of land on the eastern seaboard." It was "clear from the evidence" that Ngai Tahu were "not aware of the fact, or the object" of the 1868 agreement made there as a final settlement, nor were they "represented or heard in Court as parties to that agreement."

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Inquiries #3, 4 & 5.

Despite the commission's finding, most of these claims over time gradually lost any credibility they had. An 1882 committee of inquiry reiterated that the 1868 award was a "full and final settlement of all claims" under Kemp's deed. Two years later another committee endorsed this finding. It had heard a claim for the inland from Te Wetere, one of the original vendors. When shown the deed he positively denied its identity and claimed it had been fabricated for the occasion, until it was pointed out that it bore his signature, as did the receipt for the purchase money. And in 1888, before another committee, Taiaroa was examined on a claim that only a quarter of Ngai Tahu were at the 1848 sale, and conceded that the "greater number of chiefs" had signed the deed, including all those from Kaiapoi.

This committee also heard Rolleston challenge Taiaroa's assertion that Ngai Tahu had not been prepared to submit all their claims in 1868. "[L]etter after letter was sent out stating that the Court would sit to hear their claims; and Natives were present from all parts," he said. He and Mackay had taken them to the survey office to define upon the maps the lands they wished to have, "and the awards were made upon the Natives' own selection in fulfilment of the promises in the deed and the award of the Court. It was a matter of agreement between both parties to accept the decision of the Court." Mantell, when examined, agreed that at the time the Maoris had seemed satisfied with the outcome.

Nevertheless, Ngai Tahu's hopes of the Crown conceding them further reserves were not yet dashed.

Royal Commission #2

The 1888 committee had sat to consider a report by Mackay, who had been commissioned to inquire into cases of landless Ngai Tahu and allegations that their reserves were too small to maintain them. He made no investigation of landless Ngai Tahu, but he did have a decided opinion on whether those living within Kemp's purchase had adequate land.

According to Mackay, evidence given by Mantell in 1868 showed that Ngai Tahu in 1848 had been "coerced into accepting as little [land] as they could be induced to receive." Mantell had made reserves for their "present wants" only, leaving further land to be allotted later. His allocation of 10 acres per head was based on a count of 637 residents, but it was "not unreasonable" to assume that the number which ought to have been provided for was 1,000. It was a "condition" of the deed that the government set apart additional lands afterwards but that had been only "partially fulfilled" in 1868. European settlement had confined Ngai Tahu to their reserves and destroyed many of their old sources of food. "Their ordinary subsistence failing them through these causes, and lacking the energy or ability of supplementing their means of livelihood by labour" they were left to lead "a life of misery and semi-starvation on the few acres set apart for them."

Mackay held that the government remained under an obligation to fulfil the terms of Kemp's purchase, and that the best way to discharge it would be to provide further reserves, and a large endowment of land to be managed by trustees as well. Using a formula of his own devising, McKay valued Kemp's block at £124,533. With Crown waste lands selling for a minimum £1 an acre, the purchase price would have enabled the vendors to buy 124,533 acres. However, even this area would have been insufficient to provide for the needs of 1,000 Ngai Tahu, he believed. On the

basis that they required 100,000 acres for endowment purposes, and 50 acres each to live on, he calculated that, allowing for existing reserves, the tribe was entitled to additional 130,700 acres.

Mackay's report contained numerous errors of fact and was based on so many arbitrary assumptions that the committee would have been justified in dismissing it on these grounds alone. By quoting selectively from Mantell's 1868 evidence he made out that no settlement in Kemp's block had received its due quota of reserves in 1848. In fact, Mantell had testified that at only three settlements had he not provided for the residents' future needs, and even that statement, as we have seen, was perjury. Nor did he admit to coercing the residents into accepting minimum reserves. He had "consulted their wishes" as to locality, and "contended with them" over quantity. Only at the reserves that he claimed to have marked out after receiving new orders did he admit to fixing the area "at the smallest number I could induce the Natives to accept."

Nor was it a "condition" of the deed that the government made additional reserves. Such provision was to be at the Governor's discretion. And Mackay's contention that the court had only partially fulfilled this provision in 1868 overlooked his own role in its proceedings, and also contradicted his assertions in two earlier reports that its award had been a final settlement.

His assumptions that there were 263 Ngai Tahu missed in Mantell's census, and that the Crown needed to leave each resident 150 acres to fulfil the terms of Kemp's deed were nothing more than that, suppositions unsupported by any evidence. In a later report he was to maintain that Mantell omitted 843 Ngai Tahu, again without offering any proof for the assertion. But his valuation of the block , £124,533, was probably the most arbitrary of his postulations. A later commission (1920) valued it at half that amount. And Mackay's calculations took no account of the value of existing reserves. Five years earlier those in Canterbury were estimated to be now worth £126,967, and this took no account of the 5,000-odd acres secured under Kemp's deed in Otago.
The Tribunal, in 1991, thought McKay's a "well-documented and convincingly reasoned" report which showed "that in the view of perhaps the best informed European of the time, grave injustices had been done to Ngai Tahu which required to be remedied." The 1888 committee, however, were less impressed. They thought Mackay had ignored his brief to gauge the degree of landlessness among Ngai Tahu and merely written "a lengthened report of the [Kemp purchase] negotiations, and his view of the engagements connected therewith, which, to say the least, are not in accordance with any view he appears to have expressed or entertained prior to the date of his appointment."

In making its recommendations the 1888 committee largely ignored McKay's report and followed the advice of Rolleston, who was examined as a past under-secretary of Native Affairs and participant in the 1868 court proceedings who had also sat on the 1882 committee of inquiry. Rolleston was disparaging of Mackay's motives as well as his proposal. The policy of successive governments had been to make the "paternal care" of the Maoris "a vanishing quantity" and to promote "habits of industry." But some Native commissioners had "had a tendency towards fostering unfortunate claims, and towards the permanent creation of a Native Department." Mackay's proposal was "a striking instance of what I mean - the creation of a trust, an administration, a department; and the Natives would get very little out of it."

"It cannot be affirmed as a matter needless of proof that the price paid at the time was insufficient. If the European race had never come into these seas the value of these Islands would still be only nominal. The immense value that now attaches to these territories is solely to be attributed to the capital and labour of the European." - Judge Fenton

Ngai Tahu, Rolleston said, were "not fully or profitably occupying the reserves they already have. They are simply letting the land, and not occupying or cultivating more than a portion of it; and the tendency of the enlargement of these reserves is to create a people living in idleness," which was never the intention of the government. Mackay's proposal "would tend, not to civilisation, but the creation of an idle and degraded race; and it is extremely desirable that no step should be taken to prevent a labouring class from arising among the Natives. In the formation of that class among the Natives lies, to my mind, the future salvation of the race."

Rolleston thought the existing reserves "more than ample now, but the question is whether we can deal with individual cases of hardship or want. I think no Native should be without reasonable means of settlement upon land to keep him from absolute want." The committee agreed, although it took two more sessions to complete its report. It ruled that the provisions regarding reserves in Kemp's deed had been fulfilled, "although not in so liberal a spirit as may have been suitable to the case," but concluded that it may be "expedient" to grant more land to those without enough "to enable them to support themselves by labour on it." Its final report in 1890 recommended a further inquiry so that relief might be provided for these Ngai Tahu, as its evidence showed that their present provision was "by no means sufficient."

Royal Commission #3

This commission was also given to Mackay who, having already decided on a minimum of 50 acres per person, was bound to find that the vast majority of Ngai Tahu were entitled to more land. Few outside the chiefs' families would have managed to aggregate that amount when the reserves were subdivided. And so it proved. During his tour of Ngai Tahu's settlements he heard "the same statement made everywhere that the land is insufficient to maintain the owners on it. Even those who owned comparatively large areas made the same complaint." His report listed the holdings of 2,212 Maoris of Ngai Tahu descent, including half- and quarter-castes living amongst Europeans. Of these, according to the Tribunal's tabulation, only about one in ten had sufficient land according to his criteria.

These latter included H.K. Taiaroa, MP, whose holdings were too numerous for him to recall them all for the 1888 committee, and who now asked Mackay what the government intended doing about people like himself who owned portions of various reserves. Most Ngai Tahu, though, were, according to Mackay, obliged "to eke out a precarious livelihood" on small uneconomic sections, although Mackay saw "no absolute cases of destitution." Indeed, there were signs of affluence — most of them had wooden houses, "which in some cases are fairly well furnished," and were decently clad and had sufficient food — but these were deceptive, he thought. Anyone who knew them well found it "a most puzzling problem" how they managed to exist. They got by, he believed "on the credit obtainable from the tradesmen, and if that was stopped

many of them would be reduced to pauperism."

He listed several circumstances that had led to their impoverishment: the contributions made to aid Taiaroa in pressing their claims (!); the numerous meetings held to discuss these; a "house-building craze"; leasing their lands in order to get them fenced; and the fact that in "agricultural pursuits they are very backward."

This was true as far as it went. Mackay heard numerous complaints from people who in the mid-1870s had over-stretched themselves to subscribe to Taiaroa's fund for prosecuting their land claims in England. Taiaroa himself did not disclose his own contribution, although having pocketed £1,000 of the £5,000 payment for the Princes Street reserve (see insert) in 1874 it may reasonably be assumed not to have been large. The consensus among the petitioners seemed to be that £3,500 was collected, but as one petitioner complained, "no account has ever been rendered as to how the money was spent." All they could be sure of was that the English courts had never been troubled with their claims.

The house-building mania and the excessive time spent talking over their claims were confirmed by the Reverend J.W. Stack in his annual reports on the state of Canterbury Ngai Tahu during the 1870s. But Stack, who lived at the Kaiapoi reserve, noted other causes of their indigence which Mackay had missed. One was "their habits of reckless improvidence." Another was the "survival of many of their old communistic customs relating to property" which checked industry "by compelling the industrious to support the idle."

Mostly though he found they were poor because they were slothful, especially when it came to working their land: "With all the necessary appliances, and, as a rule, the best soil in the province, the Maoris do not cultivate enough for their own support. They prefer letting their lands, though the rental they receive is but a fraction of what they might obtain by working the soil themselves, and goes but a little way towards the necessaries of life. ... Neither the pressure of want, nor the prospect of gain, nor the advice of friends, prevail to induce the Maoris here to cultivate their lands."

It is curious that Mackay never mentioned this. He merely alluded to a "listlessness" engendered by their being "compelled to abandon their old and inexpensive mode of life and adopt new and uncongenial habits that require more means than they have at command to maintain." Yet in an earlier report he had been scathing about "their constitutional indolence and want of forethought, as particularly manifested in their scanty cultivations and unfenced pastures." Then he had judged their poverty was "entirely attributable to their own indolence and apathy," and considered there was "very little question but that the Natives might be in more comfortable circumstances if they would only exert themselves." Now he was recommending that they be given more land and the income from a massive endowment.

Two years after this report, in 1893, Mackay and the surveyor-general were appointed to compile a list of South Island Maoris with insufficient land and assign them sections. They did not complete the task until 1905, attributing the long delay to the lack of available Crown land.. They found 4,064 Maoris had insufficient land, most of them Ngai Tahu, and assigned them a total of 142,118 acres to bring their holdings up to 50 acres for each adult and 20 acres for each child.

The Waitangi Tribunal characterised this exercise as "a cruel hoax," noting that much of the land was in remote locations and "completely unsuitable" for settlement purposes. Most of that allotted to Ngai Tahu was in Southland, the bulk of it west of the Waiau River, where Mackay had found the local Maoris "very desirous" of obtaining a block. He had judged it a district where land "best suited for Native purposes" was available.

South Island Landless Natives Act, 1906.

The 1906 South Island Landless Natives Act gave effect to Mackay's allocations. Ngai Tahu did not regard it as satisfactory.

Inquiry #6.

In 1910 the tribe restated its case for further reserves to a Native Affairs Committee. The King's Counsel representing them explained that his clients' grievances related only to the Otago and Kemp purchases, as in all other sales they "consider that all the promises have been adequately fulfilled." No submissions regarding the Otago tenths claim were made, their counsel concentrating all his efforts on undermining the award of the 1868 settlement (full & final settlement #1) , "because if we once get rid of the view that that was a satisfaction of these claims, then we have a perfectly open course before us."

To this end he argued that, as the court in 1868 had made its award only eight days after it found that one of the clauses in Kemp's deed remained unfulfilled, it was "obvious" that it was made "without consulting the Natives, without giving them an opportunity of being present" and was really "a piece of high-handed tyranny on the part of the Court." That such was the position had been "recognised by repeated commissions," he maintained.

In fact, as has been seen, the Ngai Tahu aside, the main players in the events of 1868 all agreed had been given every opportunity to press their claims. A more likely reason for their failing to do so is that the grievances did not then exist, or more than eight days were needed to concoct some. Nor had "repeated commissions" found otherwise. Only Smith-Nairn & Mackay had questioned the finality of the 1868 awards, but by misrepresenting the proceedings & findings of the committees of 1872, 1878, & 1889, the King's Counsel made it sound as though they too supported Ngai Tahu's case. As a result, the 1910 committee recommended a petition to government for favourable consideration.

Ngai Tahu, Rolleston said, were "not fully or profitably occupying the reserves they already have. They are simply letting the land, and not occupying or cultivating more than a portion of it; and the tendency of the enlargement of these reserves is to create a people living in idleness."

Royal Commission #4

With a world war intervening, the claim was not considered till 1920, when a Royal Commission under the chief judge of the Native Land Court investigated it. It decided that the 1868 proceedings had indeed been sprung on Ngai Tahu "without previous warning or notice," and found that this was scarcely "the kind of investigation contemplated" by the Act which constituted the court in 1865. If that award bound the 1920 commission it would "but perpetuate a wrong," since the judge and the witnesses on whose evidence the decision was based "all agree that the Natives ought to have been met in a more liberal spirit." Here the commission was referring to Mackay's and Mantell's recantations, and to Fenton's comment in his 1876 report that had Mackay recommended an award larger than 14 acres per head he "should certainly have sanctioned it."

The commission sought to evaluate what would have constituted a liberal award. "Certainly not 14 acres per head," it ruled, the number of landless Ngai Tahu proved this "beyond all doubt." A lack of suitable land precluded it making more reserves to fulfil the deed and it saw "but one way left" to compensate Ngai Tahu: to award it a sum of money equivalent to what Ngai Tahu could have received had the block been sold without any conditions attached, minus any valuable consideration they may have received.

"With all the necessary appliances, and, as a rule, the best soil in the province, the Maoris do not cultivate enough for their own support. They prefer letting their lands, though the rental they receive is but a fraction of what they might obtain by working the soil themselves, and goes but a little way towards the necessaries of life. ... Neither the pressure of want, nor the prospect of gain, nor the advice of friends, prevail to induce the Maoris here to cultivate their lands."
- Rev J.W.Stack

From the block's 20 million acres the commission deducted the "absolutely valueless land" and existing reserves, along with Banks Peninsula and the west coast, bought under separate deeds, to arrive at a saleable balance of 12.5 million acres, to which, after much consideration, it assigned a value of 1.5d per acre This put its worth at £78,125. Deducting the £2,000 purchase price and adding 72 years' interest at 5%, and a 1% [£3,825] contribution towards the "heavy expenses" incurred by Ngai Tahu in pressing the claim, it arrived at a sum of £354,000, which it recommended as full compensation.

The objection made to Mackay's valuation might be repeated here: any value placed on a commodity years after its sale can only be arbitrary. Its historical value is nothing more or less than what the parties to the transaction agreed to at the time. But that aside, the commission made a large error when it estimated the saleable balance at 12.5 million acres. It thought the area of the west coast was five million acres when in fact it was 7.5 million, leaving a balance of 10 million acres. On its own valuation, then, it ought to have recommended compensation of just over £281,000.

Native Land Claim Adjustment Act, 1928

Over the next few years the Native Land Court worked to determine who would be the Ngai Tahu beneficiaries of any settlement, and in 1928 a Native Land Claim Adjustment Act was passed.

Although no decision had been made on whether the recommendation of the commission would be given effect to, the Act established the Ngai Tahu Trust Board as a vehicle for discussing and arranging the terms of any settlement.

Full & Final Settlement #2

In 1935, in the depths of the Great Depression, the government offered £100,000 in full settlement, but was rebuffed by the Board. Negotiations resumed in 1938 with a Ngai Tahu delegation led by Sir Eruera Tirikatene, MP for Southern Maori, and these led eventually to the passing of the Ngai Tahu Claim Settlement Act in 1944. This was an Act "to effect a Final Settlement of the Ngai Tahu Claim" and provided for £300,000 to be paid in 30 yearly instalments of £10,000 each. The money was lodged with the Native Trustee while Sir Eruera and his people made "a second examination" of the offer, and in 1946, approval having been given, the settlement was sealed by the Ngai Tahu Trust Board Bill. **(Full & Final Settlement #2)** The payments were scheduled to end in April, 1973.

In 1969 Ngai Tahu, under Frank Winter, the chairman of the Board, petitioned parliament asking for the 1944 Act to be revoked and new legislation enacted providing for the payment of $20,000 a year to the board in perpetuity "in full and final settlement of the Ngai Tahu Claim." The petitioners denied that the 1944 settlement was "fair or equitable" and alleged that it "was not and never has been accepted by the Ngai Tahu Tribe as effecting a full and final settlement of their claim."

Inquiry #7.

The petition was heard by the Maori Affairs Committee in 1971 and rejected, then given further consideration the next year on a technicality and rejected again.

To the 1971 committee Mr Winter stated that the 1944 legislation was introduced without the knowledge of more than "a handful" of the beneficiaries, and that the proposed settlement was "discussed at a meeting of three or four persons at Moeraki and then announced virtually as a fait accompli at a larger meeting at Temuka." Committee member, Whetu Tirikatene-Sullivan, daughter of the late Sir Eruera, told the House that these assertions were "totally inaccurate" and had been "completely refuted." From May 1943 until the passage of the December 1944 Act "numerous" meetings were held in both the North and South Islands, she averred, and before the 1946 legislation was passed "as many as 80 meetings" were held with the beneficiaries. Furthermore, in official deputations to the government since, the Ngai Tahu Trust Board had "specifically endorsed their continuing acceptance" of the 1944 settlement.

The Crown submitted that the 1944 settlement and its 1973 adjustment barred Ngai Tahu from seeking any further relief in respect of Kemp's purchase but the Tribunal was not impressed by its arguments. Ngai Tahu could not be prevented from re-opening old claims now that a later Act gave them the right to make claims based on breaches of the Treaty going back to 1840, it ruled.

In 1972 the petitioners conceded that Ngai Tahu had accepted the 1944 settlement but asked to present an amended petition because "the people at the time of the settlement were not fully aware of the effects. They thought they would be getting a lump sum of $600,000 [£300,000]." The committee could not legally allow this, but it agreed to hear their submissions anyway. (!) As no fresh evidence was produced the committee was unable to alter its recommendation.

Mrs Tirikatene-Sullivan told the House that the petition was submitted before she was told of it, otherwise she would have made the petitioners aware of the inaccuracy that caused it to fail. As for the claim that the beneficiaries had been unaware of the Act's effects: at the 80-odd specially convened meetings "there were 109 movers and seconders of formal resolutions which accepted a compensation payment of £10,000 a year for 30 years. This was the specific proposal they accepted." Of those 109, 93 were now dead. About half of Mr Winter's 10 supporters had told the committee they were overseas at the time of the meetings, she said. "But they

endeavoured to give *ex post facto* evidence, and this was second-hand."

Full & Final Settlement #3.

Matiu Rata, shortly to become Minister of Maori Affairs in a new Labour government, thought the petitioners had "a real case" & advised them to submit a reworded prayer. In the event they did not need to. The following year, 1973, a month before the 1944 settlement was due to expire, Labour introduced a Bill giving effect to their wish for payments of $20,000 per year. During the Bill's first reading Mr Rata said that Ngai Tahu's petition had made it obvious to his government "that the so-called settlement of 1944 was by no means to be regarded as a fair and final settlement." Ngai Tahu had only accepted it on the basis "that in years to come a more enlightened determination would prevail." Taking into account the fluctuation in purchasing power, the view expressed by the 1921 [sic] Royal Commission, and the "very unsatisfactory" 1944 settlement, the government considered "the matter ought to be settled in a more reasonable way."

He was assured that the perpetual provision could be considered "a just and equitable settlement," he said, and that "the proposal has been well received by those concerned." **(Full & Final Settlement #3).** At the Bill's second reading three months later, however, he moderated the finality of this remark. Now he thought that while it was a "realistic attempt to meet what has been a long outstanding problem" he conceded that Ngai Tahu board "may feel that this of itself can never be considered final and absolute payment." It was all the invitation the Waitangi Tribunal needed to re-open the claim.

The Tribunal disregarded all evidence that the 1944 offer had been widely discussed before being accepted, & made no mention of the petitioners' assurance that they sought perpetual payments as a full & final settlement. It thought there was "very real doubt as to how much, if any consultation" preceded the 1944 legislation. "What in fact happened was that a unilateral settlement was reached in 1944 which was later retrospectively accepted as a fait accompli." It was not seen as binding by Ngai Tahu and had only been accepted because more "enlightened" treatment was expected in future. Nor had Mr Rata characterised the 1973 adjustment as final & irrevocable, "although no doubt the government hoped they had heard the last of it."

The Crown submitted that the 1944 settlement and its 1973 adjustment barred Ngai Tahu from seeking any further relief in respect of Kemp's purchase but the Tribunal was not impressed by its arguments. Ngai Tahu could not be prevented from re-opening old claims now that a later Act gave them the right to make claims based on breaches of the Treaty going back to 1840, it ruled. Such a submission was "not only untenable but difficult to reconcile with good faith on the part of the Crown." Furthermore, the 1944 & 1973 Acts had not discharged the Crown's obligations under the Treaty, which was "not even mentioned" in them.

But if the earlier settlements did not bar further claims, why should Ngai Tahu regard this latest one as final? The Tribunal's reassurance on this score was hardly consoling to taxpayers. It drew "a clear distinction" between a 'settlement' made before the Treaty of Waitangi Act 1975, "and without reference to or in pursuance of the principles of the Treaty," and one in which the Crown "fully implemented" the recommendations of the Tribunal. But it could not rule out the possibility that in "rare instances" its settlements would not prove binding. "There may be an exceptional case when new and highly relevant facts are discovered or new or extended Treaty principles are developed which might justify a review," it cautioned.

With the Crown footing the bill for claimants' researchers to sift every available record before a claim is presented, the likelihood of them unearthing new facts is probably remote. And if its report into the Ngai Tahu claim is any guide, any "highly relevant" facts which are found to damage the claimants' case will simply be ignored. But if appeals are to be allowed on the basis of new or extended Treaty principles the gravy train is almost certain to keep rolling for a good while yet. For the Tribunal has "exclusive authority" to determine the meaning and effect of the Treaty, and Treaty principles are whatever it deems them to be.

To be concluded.

The opportunism evident in many of Ngai Tahu's claims and the forbearance shown them by the authorities is perhaps best illustrated by the case of the Princes Street reserve. This was a 1.5-acre site on Dunedin's waterfront which in 1853 land commissioner Walter Mantell, without informing the local authorities, reserved for the local Ngai Tahu as a landing place for their boats. The Maoris never used the site and it was only years later, when the town was expanding rapidly and a quay was proposed for the spot, that the council found that what had originally been designated public land was now claimed by Ngai Tahu.
The ensuing legal wrangle went against Ngai Tahu, and Mantell, now the government's Native Minister, resigned his post in disgust. The local courts found he had reserved the site without proper authority but, with the government agreeing to give Ngai Tahu £500 for an appeal to the Privy Council, the council decided on a compromise "to save the money being squandered in law." In 1872 Ngai Tahu were paid £5,000, and later £5,000 in accrued rents, in return for signing away all claims to the land. Needless to say, Ngai Tahu did not see this as a full and final settlement, and in 1939 they returned to court seeking a ruling that their claim had not been tested on its merits. This the judge dismissed, saying they could not claim to have been unfairly treated. A claim was lodged with the Tribunal but it was unable to find that they had suffered detriment for the "loss" of a reserve which they never had title to, never made use of and yet for which they had received £10,000 in compensation.