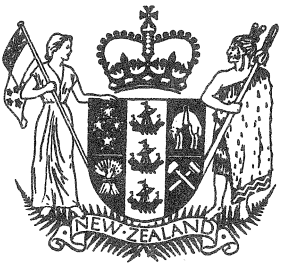


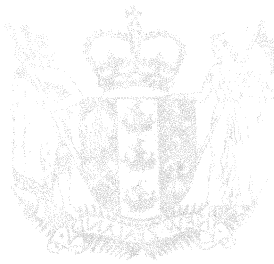
THE MAORI LAND COURTS

REPORT OF THE ROYAL COMMISSION OF INQUIRY

1980

Presented to the House of Representatives by Command of His Excellency the Governor-General

BY AUTHORITY:
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1980
Price $3.85



Kia mau ki to toko
Titiro whaka uta·

Take up your staff
And look to the future

THE ROYAL COMMISSION ON THE MAORI LAND COURTS

Chairman
The Right Honourable Sir THADDEUS PEARCEY MCCARTHY, K.B.E.

Members
W. Te R. METE-KINGI, C.B.E.
M. J. Q. POOLE

Staff
Secretary: J. F. DE LISLE
Editorial Officer: H. W. ORSMAN

Secretariat
S. D. PAEWAI
Mrs M. M. E. MCDONALD

TABLE OF CONTENTS

To His Excellency The Right Honourable Sir Keith Jacka Holyoake, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

MAY IT PLEASE YOUR EXCELLENCY

Your Excellency by Warrant dated 7 August 1978 appointed us the undersigned THADDEUS PEARCEY MCCARTHY, WHAKAARI TE RANGITAKUKU METE-KINGI, and MARCUS JOHN QUENTIN POOLE, to report upon the terms of reference stated in that Warrant.

We were required to present our report by 31 December 1979, but this date was extended by Your Excellency to 30 May 1980.

We now humbly submit our report for Your Excellency's consideration.

We have the honour to be
Your Excellency's most obedient servants,

THADDEUS MCCARTHY, Chairman.

W. TE R. METE-KINGI, Member.

MARCUS POOLE, Member.

Dated at Wellington this 16th day of May 1980.

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 MARCUS 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
MARCUS 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:

And, in particular, to inquire and report on:

1. Whether or not any part of the jurisdiction of either of the Maori Courts could be better exercised by some other Court or Tribunal, and whether or not the subject-matter of any part of that jurisdiction could be better dealt with otherwise than by a judicial body:

2. The qualifications for, the methods of appointment of, and the promotion of, Judges of the Maori Courts:

3. Whether and to what extent it is proper or desirable and practicable that Registrars of the Maori Courts perform judicial functions, and whether the appointment of appropriately qualified officers of the Maori Land Court to exercise subordinate judicial functions would be desirable, practicable, or convenient:

4. Whether and to what extent it is proper or desirable and practicable that Commissioners be appointed pursuant to and in accordance with the present statutory provisions relating thereto, or on some other basis, to exercise any part of the jurisdiction of the Maori Courts:

5. The administrative procedures and the organisation and the management of the Maori Courts, including the places appointed and the frequency and times of sittings for the dispatch of business and the arrangement of the business thereof, and the provision of adequate and appropriate staff for servicing those Courts:

6. Whether and to what extent any part of the business of the Maori Courts could be dealt with more properly or conveniently *ex parte*, or

otherwise than at a duly appointed and formal sitting of the Court, or without the necessity of notice to other parties:

7. The relationship between the Maori Courts and their staff with persons who attend the Courts (whether as applicants, parties, witnesses, or otherwise), and whether and to what extent changes in the facilities and administrative procedures of the Courts are necessary or desirable to improve that relationship and better meet the convenience of such persons:

8. The desirability or otherwise of parties being represented by counsel in every case or in any class of cases before either of the Maori Courts:

9. Any associated matters that may be thought by you to be relevant to the general objects of the inquiry:

And We hereby appoint you the said

The Right Honourable Sir THADDEUS PEARCEY MCCARTHY

to be the Chairman of the said Commission:

And for the better enabling you to carry these presents into effect you are hereby authorised and empowered to make and conduct any inquiry or investigation under these presents in such manner and at such time and place as you think expedient, with power to adjourn from time to time and place to place as you think fit, and so that these presents shall continue in force and any such inquiry may at any time and place be resumed although not regularly adjourned from time to time or from place to place:

And you are hereby strictly charged and directed that you shall not at any time publish or otherwise disclose, save to His Excellency the Governor-General, in pursuance of these presents or by His Excellency's direction, the contents of any report so made or to be made by you or any evidence or information obtained by you in the exercise of the powers hereby conferred on you, except such evidence or information as is received in the course of a sitting open to the public:

And it is hereby declared that the powers hereby conferred shall be exercisable notwithstanding the absence at any time of any one or any two of the members hereby appointed so long as the Chairman or a member deputed by the Chairman to act in his stead, and two other members, are present and concur in the exercise of the powers:

And We do further ordain that you have liberty to report your proceedings and findings under this Our Commission from time to time if you shall judge it expedient to do so:

And using all due diligence, you are required to report to His Excellency the Governor-General in writing under your hands, not later than the 31st day of December 1979, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And, lastly, it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 7th day of August 1978.

Witness The Right Honourable Sir Keith Jacka Holyoake, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

KEITH HOLYOAKE, Governor-General.

By His Excellency's Command—

R. D. MULDOON, Prime Minister.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

Amending Provisions as to Quorum of 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 MARCUS JOHN QUENTIN POOLE, of Dannevirke, barrister and solicitor:

GREETING:

WHEREAS by Our Warrant dated the 7th day of August 1978*, issued under the authority of the Letters Patent of His Late Majesty King George the Fifth dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand, you were appointed to be a Commission to inquire into and report upon the matters in Our said Warrant set out, being matters concerning the structure and operation of the Maori Land Court and the Maori Appellate Court:

And whereas by Our said Warrant it is provided that the powers thereby conferred shall be exercisable notwithstanding the absence at any time of any one or any two of the members thereby appointed so long as the Chairman or a member deputed by the Chairman to act in his stead, and two other members, are present and concur in the exercise of those powers (that provision being in these presents referred to as the quorum provision):

And whereas it is expedient that the quorum provision be revoked and a new provision substituted that the powers conferred by Our said Warrant shall be exercisable notwithstanding the absence at any time of any one of the members thereby appointed:

Now, therefore, We do hereby amend Our said Warrant by revoking the quorum provision and substituting the following provision:

"And it is hereby declared that the powers hereby conferred shall be exercisable notwithstanding the absence at any time of any one of the members hereby appointed so long as the Chairman, or a member deputed by the Chairman to act in his stead, and one other member, are present and concur in the exercise of the powers:"

And We do hereby confirm Our said Warrant and the Commission thereby constituted save as amended by these presents:

And it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 5th day of February 1979.

**New Zealand Gazette*, 10 August 1978, p. 2220

Witness The Right Honourable Sir Keith Jacka Holyoake. Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

KEITH HOLYOAKE, Governor-General.

By His Excellency's Command—

R. D. MULDOON, Prime Minister.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

Extending the Time Within Which the Royal Commission on the Maori Courts May Report

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 MARCUS JOHN QUENTIN POOLE, of Dannevirke, barrister and solicitor:

GREETING:

WHEREAS, by Our Warrant dated the 7th day of August 1978*, issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand, you were appointed to be a Commission to inquire into and report upon the matters in Our said Warrant set out, being matters concerning the structure and operation of the Maori Land Court and the Maori Appellate Court:

And whereas by Our said Warrant you were required to report to His Excellency the Governor-General, not later than the 31st day of December 1979, your findings and opinions on the matters aforesaid, together with such recommendations as you think fit to make in respect thereof:

And whereas it is expedient that the time for so reporting should be extended as hereinafter provided:

Now, therefore, We do hereby extend until the 30th day of May 1980 the time within which you are so required to report, without prejudice to the liberty conferred on you by Our said Warrant to report your proceedings and findings from time to time if you should judge it expedient to do so:

And We do hereby confirm Our said Warrant and the Commission thereby constituted, save as modified (in respect of the quorum necessary to exercise the powers thereby conferred) by Our Warrant† dated the 5th day of February 1979, and by these presents:

And it is hereby declared that these presents are issued under the authority of the Letters Patent of His Late Majesty King George the Fifth, dated the 11th day of May 1917, and under the authority of and subject to the provisions of the Commissions of Inquiry Act 1908, and with the advice and consent of the Executive Council of New Zealand.

In witness whereof We have caused this Our Commission to be issued and the Seal of New Zealand to be hereunto affixed at Wellington this 17th day of December 1979.

**New Zealand Gazette*,—10 August 1978, p. 2220
†*New Zealand Gazette*, 8 February 1979, p. 258

Witness the Right Honourable Sir Keith Jacka Holyoake, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Member of the Order of the Companions of Honour, Principal Companion of the Queen's Service Order, Governor-General and Commander-in-Chief in and over New Zealand.

KEITH HOLYOAKE, Governor-General.

By His Excellency's Command—

R. D. MULDOON, Prime Minister.

Approved in Council—

P. G. MILLEN, Clerk of the Executive Council.

PART I

Chapter 1. PREFACE

1. We submit this report to Your Excellency at a time when issues affecting the Maori people are receiving more attention than at any time in our history excepting, perhaps, the troubled days of the land wars. Maoris themselves, increasingly conscious of their racial heritage, are asserting the values of their way of life with a frequency and intensity certainly not experienced in the lifetimes of people living today. Inquiries, conferences, and seminars of one form or another, promoted by the Government or by interested cultural groups, investigate and debate all aspects of the inter-relationships of Maori and other groups in the community. A constant stream of alterations to our social and legal institutions is advocated. In this fluid situation, it is patently impossible to make confident predictions and recommendations.

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. Some aspects of that structure and operation are specified for particular but not exclusive investigation.

4. Thus it is the Court and its form and activities, and not the laws governing the ownership, possession, inheritance, or alienation of Maori land, which constitute our province, though the latter are perhaps more basic and rouse deeper feelings. Especially, we are not concerned with Government policy towards Maoridom, nor whether it is better to encourage integration (as was the most widely held view up to the early sixties), or the development of a separate culture within a community of different cultures (the more recent view). Many of the arguments we heard were based on the premise that the latter was now generally accepted as the only view held by Maoris. As we will say shortly, we do not accept that the evidence justifies such an assertion. Moreover, times and attitudes change, and no man can assert that today's philosophies and urgings will be for ever dominant.

5. We shall divide this report into three parts. Part I comprises this preface. Part II (chapters 2–11) presents historical and other material necessary for an understanding of the issues submitted to us, and also a description of the course which the inquiry followed. Part III (chapters 12–20) addresses itself to the questions posed by our warrant and contains our recommendations, themselves collected in chapter 20.

6. We must stress the limited field of our inquiry. A Royal Commission does not draft the warrant which constitutes it, but it is bound by the terms of that warrant. Some of those making submissions were disappointed at the limitations of our terms. But we must assume that these limitations are intentional and observe them. Any temptation to go beyond them was removed by our knowledge of other, mostly departmental, inquiries which were being made simultaneously into many of these wider fields.

7. Admittedly, it has not been easy to keep the two areas apart. Indeed, they often overlap. But many of those who gave evidence to this Royal Commission failed completely to see the distinction between the structure and operation of the Maori Land Court on the one hand, and the general laws governing the ownership, use, and enjoyment, and the power to alienate Maori land on the other. In consequence, much of our time was spent in listening to submissions which were plainly outside our warrant. Repeated warnings that this was so, failed to stop the flow of such submissions. Nevertheless, submissions of this character were far from valueless, for they improved our background knowledge. Moreover, they constitute a valuable source of material for students of the Court, for the Department of Maori Affairs, and indeed, for all concerned with Maori land. Copies have been deposited in the National Library. We hope that full use will be made of them in the future.

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. That definition is most complex and difficult to apply, as we shall later explain. Put very simply, such land is that which has never been alienated from Maori ownership and is still multiply-owned, predominantly by Maoris. The area of that land is estimated to be 1 224 104 ha[1] or 4.5 percent of the total area of New Zealand. But 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. This general land has been obtained by grant from the Crown to specific individuals, by purchase, or by will. There is no way of telling the total of such land-holding, but it is certainly extensive.

9. Another notable feature of our inquiry is the diversity of Maori opinion especially about the rights of alienation of interests in Maori land. To the casual consumer of news one might imagine that Maoris are a monolithic people in their opposition to any lifting of current restrictions. Though that is clearly the view of many articulate and news-conscious groups, there is on the other hand a strong body of opinion within Maoridom favouring the same freedom as the European to dispose of interests in land, whether Maori land or general land. One Maori woman of long experience of these complex issues presented the second view thus:

> The Court's big-brother/guardian attitude amounts to interference with my rights as a citizen. The Maori Courts impound the Maori in the kindergarten of our national life; they prevent us from becoming fully fledged citizens; and they condemn us to a life sentence of second class citizenship in the land of our birth.[2]

10. Indeed, more than one witness of long experience in the Court expressed the view that there are probably as many Maoris favouring freedom to alienate land as there are those who support the present restrictions. Moreover, different tribal customs about land occupation and use have survived, complicating the development of Maori land law, and promoting diversity of opinion. As a consequence we have had to be wary of facile assertions that such and such is the Maori view of a particular problem, especially as between 70 and 80 percent of Maori people now reside in urban areas, and many of these take no part at all in the formation of official Maori opinion, if there is such. In this complex situation, it is patent that whatever recommendations we make in this report are likely to be heavily challenged.

11. The Maori Land Court exists, and has existed since its foundation, to ensure ownership, use, and disposal of Maori land. Its policies and procedures are the product of that purpose; and so, though we accept that a Royal Commission has no authority to go beyond the terms of its warrant, we have felt obliged to make some comments about aspects of Maori land law in so far as it affects the operation of the Court. In doing so we hope to stimulate discussion about whether change is also desirable in those laws.

12. Eleven days after our warrant was signed by Your Excellency, namely on 18 August 1978, the then Minister of Maori Affairs introduced the Maori Affairs Bill 1978 into the House of Representatives. The House resolved to refer the Bill to a select committee of its members. The Bill was a consolidation of the Maori Affairs Act 1953 and the very many amendments to that Act. It included as well a few minor innovations. Its introduction about the same time as the appointment of this Royal Commission gave rise to questions about the future of our inquiry. We were assured by the then Minister that the Bill would not be brought back into the House before the presentation of this report—an assurance which was confirmed by the Minister's successor. We announced this assurance publicly by various means at different times during our inquiry. But we were soon made aware that there existed a great deal of confusion between various bodies representing sectors of the Maori race and opinion about where they should make their submissions or in what order. The New Zealand Maori Council ran seminars about the Bill in its present form. These included consideration of the jurisdiction of the Maori Land Court. Other bodies such as the New Zealand Maori Women's Welfare League and the Bishopric of Aotearoa also spent considerable time on the Bill. This contributed considerably to delay in our receiving submissions, the last of which did not arrive until December 1979.

13. While we have no doubt that a consolidation of the 1953 Act and its different amendments will have advantage, we must say that in our view this legislation is unduly complex and difficult. Even professional people have the greatest difficulty in understanding it. What is needed more than consolidation is a much simpler and more understandable legislative treatment of this most important and troublesome area. We urge that this alternative be favourably considered.

14. Our inquiry has lasted about 17 months. In some ways it has been a frustrating experience. It was our understanding in taking it up that there were fundamental issues concerning the Court which troubled many people and called for investigation. But we soon found that few, other than the judges of the Maori Land Court, seemed at all enthusiastic about the inquiry, least of all, it sometimes seemed, the department most affected,

the Department of Maori Affairs (referred to hereafter as "the department" when the context is clear). The department's attitude changed as the inquiry progressed. Moreover, we found great difficulty in pinpointing areas where the problems were thought to exist, and the considerations which had prompted our establishment, other than in a general sense that the Court was not operating efficiently because it was not being given the administrative support needed, and because personal relations between the judiciary (or some of them) and the department's senior officers had deteriorated.

15. Because we realised that preparing submissions needs time and work, we gave what we thought was an extensive period, namely 4 months, for submissions to be sent in to us. Only one or two State departments observed this time limit and our hearings had to be delayed. For many months it appeared that there would be surprisingly few submissions sent in by those Maori organisations which we had expected to be foremost in presenting the Maori point of view. This was the situation notwithstanding exhortations from us by letter, by radio, and television, to take part in what should surely be an occasion of importance for the Maori people. This experience strengthened our early resolve, which we later carried out, to travel extensively around the different districts of the Maori Land Court, being willing to hear submissions *in situ*, often on local maraes, and talking informally with as many people as possible from local Maori communities. Then all of a sudden, in the concluding days of our sittings, we had a rush of submissions from the more important bodies which we had hoped to hear from much earlier.

16. In the end, we certainly heard large numbers of the senior members of the tribal and other Maori organisations scattered throughout the country. But the far greater number of Maoris today live in towns, and have less tribal direction and affiliation. We cannot therefore be confident that the views we heard necessarily represent the viewpoint of most Maoris. Moreover, the more articulate and outspoken groups of young Maoris, of whom one reads or hears much in the news, seemed to take only casual notice of our inquiry, and most passed by a very valuable opportunity of making representations about the Court with which they should be intimately connected. Perhaps the explanation lies in the point made by Robert Mahuta, of the University of Waikato, in *He Matapuna*, a recent publication of the New Zealand Planning Council:

> Land continues to occupy a central place in the Maori consciousness, yet I question its importance for youth today. The debate is essentially with the land-owning group—not the mass of the people. The mass of the people are young and have no prospect of ever owning land. The values that people are talking about associated with land are foreign to our young ones. Indeed, the attitudes of the land-holding group are little different from the middle-class Pakeha. Perhaps we should be subscribing to some kind of title structure which ensures group inheritance; trusteeship rather than individual ownership. Perhaps the only way in which we are going to get back to this idea of group ownership is to lose all our land before we learn our lesson. Then we work to buy it back.[3]

Whether the explanation is that our activities seemed irrelevant to many young people, we cannot say. But whatever the explanation, we must acknowledge that Maori participation in our inquiry was not as widely based as we had hoped.

17. However, in another way, our experience has been a satisfying one. Royal Commissions achieve their purposes in different ways. Some do so by inducing change through a written report; others do so in the course of the inquiry itself by inducing those taking part in the proceedings, especially State departments, to look more carefully and deeply into the issues raised, to acknowledge, at least to themselves, previous shortcomings, and to put into action remedies which are expected to go some distance along the road which the Royal Commission might follow. Sometimes reformatory steps are criticised as being taken intentionally to forestall a Royal Commission's recommendations. But even if there were to be some element of truth in that viewpoint, it matters little; it is the result which is important. The Royal Commission on Nuclear Power was an outstanding example of how official attitudes can change during the course of an inquiry; a change brought about partly by outside influences, but more often and more fully by the existence and conduct of the inquiry itself. It is easy to perceive the force of the first of these influences; it is hard to see the second. In our present inquiry the effects of the second were quite soon observed and persisted throughout. They resulted in major improvements which we discuss in detail later (chapter 11).

18. It became increasingly clear as our inquiry advanced that a very high percentage of the matters raised in submissions were those of administration rather than of principle or of fundamental structure. Many were also of long standing and could, and should, have been attended to years before by those responsible for the efficiency of the Court and its services. Some were certainly the result of an unfortunate lack of sympathy and dialogue between the judges of the Court, the Government, and the Department of Maori Affairs. Some, we were told, flowed from personality conflicts between the holders of different appointments in the overall structure. It was not surprising therefore that questions were raised about the need for a Royal Commission. Chief Judge Gillanders Scott who took a prominent part and attended all sittings (he retired from office in November), maintained that the judges doubted the need for an inquiry, though they welcomed the opportunity to bring certain matters to our attention. The Hon. Mrs W. Tirikatene-Sullivan put the contention firmly. She said:

> With respect, it is questionable whether a Royal Commission was actually necessary—because it is administrative inefficiency, and the inability to deliver the services to Maori land owners, that needs to be greatly improved. However this point must have become clearly evident to the Commission: and I have confidence that this defect will therefore be rectified henceforth.[4]

19. In a situation where administrative matters were the main concern, it was inevitable that we would be addressed on the kind of detail which did not warrant the attention of a Royal Commission. We do not propose to deal with such detail in our report. Rather we will recommend permanent machinery to cope with much of it. In the life of a court, as in a State department, change is constant, rapid, and inevitable. A Royal Commission must recognise this and recommend procedures which can accommodate the structure to change, but it is not its function to concern itself with administrative detail. This last is the task of administrators. Were we to accept that it was ours, our inquiry would have been even more extended. A choice of material to discuss from the mass of often conflicting and uncertain argument had to be made. It was not an easy job for it was one about which a variety of opinions was permissible.

20. The department accepted this, and during the inquiry various departmental administrative investigations and reforms were set in action by the Secretary. We shall outline these later. They were all along the lines of recommendations we had in mind and would have recommended. Though the steps taken have been criticised as not going far enough, we commend them. We have no doubt at all that these administrative reforms were at least speeded up and improved by the pressures for change which this Royal Commission brought to light. A happy consequence of the departmental action is that we can now submit a report which is pleasingly short.

21. Basic to our inquiry was the issue whether the Maori Land Court should continue or whether its jurisdiction should be taken over by other courts or State administrative agencies. Throughout the multitude of diverse and often conflicting points of view presented, the most insistent note was the desire of most Maoris and others associated with it for the Maori Land Court to continue, at least for some years yet. There could be no doubt that the abolition of the Court would be a deep affront to Maoris' growing pride and sense of racial confidence. This Maori viewpoint should carry weight, but it is not necessarily determinative. We agree that the Maori Land Court should not be abolished except for good reason, and certainly not merely to conform to some theoretical pattern of what a desirable overall court structure should be. The opinion we shall express later is that, though its life is running out, practical considerations are against the abolition of the Maori Land Court at this time. There will be for some years yet work for it to do which it can do as well, if not better, than any alternative body. But the need for it as a separate institution should soon pass.

22. A matter greatly impeding the efficient and economical working of the Court is the maintenance by the Court of a complex system of records of ownership and delineation of Maori land. This system, which has no statutory authority but has developed over the years, damages by its very existence the integrity of our excellent land transfer title system. Moreover, these Maori Land Court records are seriously out of date and defective. We believe that bringing an early end to this Maori Land Court title recording system could be one of the most fruitful results of our activities. As we shall later say, an end to this system should be an important, perhaps determining, factor in a decision whether there is need for the Court to continue.

23. In short then, we think that the Court should be retained. For how long, and how best it can discharge its duties while it is retained, should emerge from the body of the report which follows this preface.

24. From the early days of European government there have been many Royal Commissions and commissions of inquiry relating to Maori land and its associated problems. Most have been concerned with specific blocks of land or incidents but the following three related directly to the structure and operation of the Maori Land Court; (a) Commission of Inquiry on Native Land Laws, W. L. Rees, 1891; (b) Review of the Department of Maori Affairs, 1961, J. K. Hunn; and (c) Committee of Inquiry into Laws Affecting Maori Land and the Powers of the Maori Land Court, 1965, I. Prichard. The recommendations of these will be referred to from time to time in this report.

REFERENCES

[1]Report of the Department of Maori Affairs, 31 March 1979, p. 12.
[2]Mrs P. Te Ruihi Warner, Submission 84, p. 2.
[3]*He Matapuna*, New Zealand Planning Council, 1979, pp. 18–19.
[4]Hon. Mrs W. Tirikatene-Sullivan, Submission 82, p. 19.

PART II

Chapter 2. THE EVOLUTION OF THE MAORI COURTS

INTRODUCTION

1. The Maori Land Court of today cannot be understood without knowing why it was established in 1865, and how it has evolved since then. The detailed history of the Court has been written elsewhere.[1] We will deal here briefly with the significant events.

2. The Maori Land Court functions now, as it always has, largely independently of the main judicial system and appears to be a peculiarly New Zealand institution. It is a Court of record operating under statutes noted for their frequency of amendment and complexity. It can exercise only the powers given to it by statute and has no inherent right to decide anything which it is not empowered to do. It was set up to bring the European purchase of Maori-owned land within an orderly system, and so promote the peaceful settlement of the new colony.

3. The preamble to the Native Lands Act 1865 said:

> . . . it is expedient to amend and consolidate the laws relating to lands in the Colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof and to encourage the extinction of such proprietary rights and to provide for the conversion of such modes of ownership into titles derived from the Crown and to provide for the regulation of the descent of such lands. . . .

Thus, basically, a history of the Court is a history of land legislation since European settlement even though its jurisdiction has been extended from time to time to include social as well as land matters.

4. After European settlement, lands held according to Maori custom were brought under a system as near as possible to ownership in British law. A system of individual ownership of land was imposed on a people whose lands had always been held communally. The first work of the Maori Land Court was to name individual Maoris as the owners of all lands in New Zealand held according to Maori custom. By 1909, this was essentially completed.[2]

5. The result of forcing on the tribal ownership of Maori lands an exact system of individual and personal title has resulted in multiple individual ownership with all its attendant problems. It is ironic that there is now a growing trend to establish tribal trusts for some blocks of multiply-owned land, thus reverting to a type of pre-European communal ownership. While some see multiple individual ownership as a factor inhibiting the full use of such land, others see it has a challenge and an opportunity to return to a system of land holding closer to that of pre-European times.

6. Since completing its initial task, the Maori Land Court has several times altered its view of its underlying purpose as a result of changes in legislation reflecting changes in social attitudes. For a long time its guiding principle was said to be the protection of the Maori owners of land

from the consequences of European settlement, and from the apparent unfair bargaining capacity between Maori land owner and European. Today this paternalistic attitude is not as dominant as it once was. It was stated to us that:

> The Court exists today as a forum to facilitate and enable the utilisation of land held in multiple ownership, to facilitate owner-management of lands, and to settle differences arising within the body of owners.[3]

7. Though there is still some measure of supervisory control by some judges, Mr Justice Mahon's decision in *Alexander* v. *The Maori Appellate Court and Others* (Unreported, 28 July 1978, generally known as the Ngatihine case) shows that limits have been placed on its extent. In this judgment the learned judge said:

> The history of Maori land tenure since European settlement is a tangled tale. The conflict between tribal concepts of communal ownership and the English system of free alienation by individuals is adverted to by Speight J. in his illuminating judgment in the Bastion Point case, delivered on 20 April 1978, and he there describes the reluctant but necessary adoption by the Legislature of the principle of alienability of Maori land. That principle was made subject, perhaps belatedly, to protective control of transactions to be exercised by Maori land tribunals, a cautionary measure still preserved by Part XIX of the Maori Affairs Act 1953, and which established the Maori Land Court as a tribunal exercising those functions of supervision and guardianship upon which Mr Fulton relies in the instant case. But now, as I have said, that supervisory control has been removed in cases where trustees, approved by beneficial owners and appointed by the Maori Land Court, are invested with legal ownership of a block of land beneficially owned by a multitude of proprietors, being charged with the duty of selling or leasing the block on such terms as will best serve the interests of the communal owners by promoting the best use of the land.

LAND TENURE BEFORE 1840

8. At the beginning of the nineteenth century, the whole of New Zealand was held by Maori tribal or sub-tribal groups according to clearly defined areas of possession, and recognised, and generally accepted, rights of occupation. Even though some parts of the country were seldom visited there were no unclaimed waste lands. In 1846, Sir William Martin, the first Chief Justice in New Zealand, wrote:

> So far as yet appears, the whole surface of these Islands, or as much of it as is of any value to man, has been appropriated by the Natives, and, with the exception of the part which has been sold is held by them as property. Nowhere was any piece of land discovered or heard of [by the Commissioners] which was not owned by some person or set of persons . . .[4]

9. Although the exact custom relating to land tenure varied in different parts of the country there were basic principles in which there was general agreement. These were summarised by Mr Alexander Mackay, a judge of the Maori Land Court, in 1890 in a revised version of a collection of opinions by various authorities on Maori land tenure which had originally appeared in 1860[5]. It was generally agreed that:

(a) A Maori title was communal.
(b) Tribal rights might be classed under two heads: first, the territory which had been in possession of the tribe for several generations and to which no other claimants had been previously known; second, the territory acquired by conquest, occupation, or gift. Conquest without occupation did not confer a title.
(c) No fixed law existed in regard to Maori tenure except the law of might; customs varied with locality.
(d) The chief of the tribe must be regarded as holding his position by a double title: first, from his undoubted descent through a long line of well-known ancestors; second, as the elected head of the tribe. In the latter case he was the representative of the territorial rights of the tribe on account of his personal qualifications and influence, and was recognised as the guardian, as well as the mouthpiece, of the rights of the tribe. He had the right of veto over the disposal of land, but had only an individual right to the land like the rest of the people.
(e) The possession of land, even for a number of years, did not confer a right unless the occupation was founded on some previous *take* (i.e., root or basis of title) of which the occupation could be regarded as a consequence; and this *take* must be consistent with the ordinary rules governing and defining Maori customs.
(f) Each Maori had a right in common with the whole tribe over the disposal of the land of the tribe, and an individual right, subject to the tribal rights to land used for cultivation or for bird-, rat-, or pig-hunting. But to obtain a specific title to land held in common there must be some additional circumstances to give an individual preference over such land.
(g) Neither manorial or seignorial rights obtained among the Maoris, and the chief of the tribe had no absolute right over the territory of the various hapus, nor could he dispose of any but his own land without the concurrence of those to whom it belonged.

10. Tribal and sub-tribal boundaries were sometimes disputed, and the same land claimed by two or more groups. This often led to tribal wars and was to prove a source of friction between the tribes and the early European settlers when land sales were made by a tribe whose ownership was later contested.

Land Sales To Europeans Before 1840

11. Land was first acquired by European settlers by direct negotiation with the local chief in the presence of the tribal elders. The transaction would be discussed by the tribe and an agreement reached. On the settlement day the purchaser brought his money or trade goods to the paramount chief who distributed them to the lesser chiefs, who in turn made a distribution to the hapus. The sales were always final and such disputes as did arise were as a consequence of disagreements on boundaries between two tribes or hapus. Any such transaction was not held binding by the tribe disputing the sale which would assert its rights in a determined fashion.

Land Sales To Europeans After 1840

12. When British Government was established in New Zealand in 1840, Captain Hobson, the Governor elect, was instructed to treat with the

Maoris for their recognition of the Queen's sovereignty in exchange for the rights and privileges of British nationality, and for the right of pre-emption over their lands. The Treaty of Waitangi guaranteed the signatories and their tribes full rights to their lands, fisheries, and forests so long as it was their wish to retain those in their possession. However, it was also agreed that the Crown had the exclusive right to extinguish a Maori title by purchase if it was the Maori owners' wish.

13. Thus direct purchase of land by European settlers from Maori owners was stopped. The Government became an intermediary, and negotiations for land purchases took place in the same direct and open manner as previously but between a Government land purchasing officer and the Maori owners. However, there followed periods when the Government permitted direct sales of Maori land to Europeans. Before 1865 nearly the whole of the South Island and large areas of the North Island were purchased from the original owners.

14. By the 1850s it was evident that the Maoris and the settlers were rivals for possession of the land. The Government came under constant pressure from settlers to speed up land purchase procedure, while there was a growing reluctance on the part of many Maoris to sell. Thus, as shortcuts in methods of acquiring land were used, conflict between Maori and European became inevitable.

15. In 1859 Governor Gore Browne sanctioned the sale of Taranaki land at Waitara long coveted by the settlers. The land was offered to the Government by a chief whose right to sell was disputed at the time, and was ultimately officially admitted to be invalid. The dispute was the direct cause of 12 years of bitter, sporadic fighting between Maori and European. It was followed by the confiscation of lands belonging to those tribes who took up arms against the Crown, and to some others.

16. The troubles following disputed land sales made the Government realise that if land was to be peacefully acquired from the Maoris, the question of ownership according to Maori custom must first be decided by some competent tribunal.

Land Acts And The Establishment Of The Maori Land Court

17. The Native Land Act 1862 made provision for a Maori Land Court to decide the ownership of Maori lands. The preamble to the Act stated:

> It would greatly promote the peaceful settlement of the Colony and the advancement and civilisation of the natives if their rights to land were ascertained, defined and declared and if the ownership of such lands when so ascertained, defined and declared were assimilated as nearly as possible to the ownership of land according to British law.

However no tribunal was set up until after the Native Land Act 1865 (superseding the 1862 Act) was passed. The Native Land Court was then constituted to investigate, determine, and record the titles of Maori customary land.

18. The first Chief Judge of the Court was Mr F. D. Fenton, an English solicitor who had served with distinction in other official positions in the colony. In 1866 he laid down the following principle which set the precedent for all Land Court judgments:

> Having found it absolutely necessary to fix some point of time, at which the titles, as far as this Court is concerned, must be regarded as settled, we have decided that that point of time must be the establishment of British Government in 1840, and all persons who

> are proved to have been the actual owners or possessors of land at that time must (with their successors) be regarded as the owners or possessors of these lands now, except in cases where changes of ownership or possession have subsequently taken place, with the consent, expressed or tacit, of the Government or without its actual interference to prevent these changes . . . Of course the rule cannot be so strictly applied in the Native Lands Court where the questions to be tried are rights between the Maoris *inter se* but even in that Court the rule is adhered to, except in rare instances.[6]

19. Following the investigation and determination of the titles, the Act allowed land to be declared to be the property of a tribe if the area exceeded 5000 acres. However, very few certificates of title were issued in the names of the tribe or hapu. As pointed out by a Commission of Inquiry in 1891:

> Had this been done the difficulties, the frauds and the sufferings, with their attendant loss and litigation, which have brought about a state of confusion regarding the titles to land, would never have occurred.[7]

20. Moreover, individual names could be placed on the certificate of title without the name of the tribe to which they belonged if the number did not exceed 10. The Court often required the Maori owners to choose 10 or fewer from their number to be named on the certificate. It was generally believed by the Maori people that the persons named were trustees for the tribe. However, the certificates of title and Crown grants showed them as absolute owners, for the Land Transfer Act did not permit the notation of trusts on the register.

21. As soon as the titles were vested in individuals, land purchasing officers and settlers would deal with them for purchases, leases, and mortgages. Large areas were sold, in many cases against the wishes of the greater number of the tribal group and without financial benefit to them. The Court at that time had no authority to control the disposal of Maori land or the terms upon which such disposals were made. Thus many injustices were perpetrated, and the spirit and intention of the Act subverted.

22. The Native Land Act 1867 attempted a remedy. Under this Act certificates of title could still be issued to 10 of the owners, but the names of all other owners were to be registered in the Court and endorsed on the back of the certificate. The land could neither be sold nor mortgaged until it had been subdivided, but could be leased for a term not exceeding 21 years by the 10 named on the face of the certificate. These named 10 seemed to benefit more from rent moneys than the other owners, but the Act was instrumental in preventing the disposal of large areas without the knowledge or consent of the tribes.

23. The 1873 Native Land Act replaced the certificate of the previous Act with a memorial of ownership on which were listed the names of every member of the tribe or hapu. However, it was not the tribe as such which owned the land, but each member became an owner as an individual.

24. By 1885 the Court had determined the title to over 9.8 million acres of land. However, a flood of legislation in the 1880s dealing with Maori lands and the powers and jurisdiction of the Court caused confusion in land dealing, and in the relations of the Maori people with the Court.

25. The Court came under increasing hostile criticism especially from Mr W. L. Rees, a prominent lawyer and a former member of Parliament, who had been closely associated with Maori land matters. In 1891 Rees,

again a member of Parliament, was appointed chairman of a commission whose other members were Mr Thomas Mackay and Mr James (later Sir James) Carroll, M.P. The commission was charged with answering the questions:

(1) What are the origin, nature, and extent of the present defects: (a) in Native land laws; (b) in the alienation of interests in Native land; and (c) the Native Land Courts?

(2) What are the principles on which the Native lands should henceforth be administered, so as to benefit both Natives and Europeans and promote settlement?[8]

26. The report of the Rees Commission was harshly critical of both the Legislature and the Court. Reading it today, one is forced to agree when it says:

> Were it not that the facts are vouched upon the testimony of men whose character is above suspicion and whose knowledge is undoubted, it would be well-nigh impossible to believe that such a state of disorder could exist.[9]

The men referred to were the most eminent members of the legal profession of the day.

27. Mr Mackay dissented from many portions of the report but died before he was able to produce a minority report. Mr Carroll dissented from the views of the report on the question of the Crown resuming the right of pre-emption over lands owned by Maoris.

28. The 1894 Native Land Act, as a result of the Rees Commission's recommendations and of a Maori group petition to Parliament, made extensive changes to the legislation governing the Court. Provision was made to establish the Native Appellate Court, and special jurisdiction was conferred upon the Chief Judge to remedy the effect of any mistake, error, or omission in the court records or of any erroneous decision on a point of law. The prime concern was still to determine and establish titles to Maori customary land. Freehold titles were created for Maori land bringing it under the provisions of the Land Transfer Act.

29. Maori Land Boards were established by the 1900 Native Lands Administration Act. Whereas the Court was set up to determine titles to Maori land, the Maori Land Boards were established to administer Maori lands. The land boards had power to:

(a) Grant confirmation of alienations of Native land;

(b) Administer large areas of Native land vested in the board in trust for the Native owners;

(c) Act as statutory agent of the Native owners in respect of certain areas set apart for Native settlement;

(d) Control the administration and the disposition of Native land by resolutions of the assembled Native owners.

The land boards operated only in the North Island. The work of the board in the South Island was done by the Native Land Court.

30. The Native Land Act 1909 was the first codification of matters relating to Maori land. The Act drafted by the then Solicitor-General, J. W. Salmond (later Sir John Salmond), has been recognised as a model of draftsmanship both in and beyond New Zealand. Subsequent legislation has followed its form. It was a consolidation, with amendments, of no less than 69 statutes, or portions of statutes, relating to Maori lands.

31. The Acts of 1894 and 1909 restored the faith and trust of the Maori people in the Native Land Court. The Court was there in a parental role protecting the Maori people against unwished-for loss of their land, and the Maori Land Boards helped with its administration.

32. A judge of the Court was president of the board in each board district. He thus assumed both a judicial and an administrative role. This sytem continued for many years, and was the genesis of the Court's incursion into administrative matters. The boards themselves were abolished in 1952, and the greater part of their authority vested in the Maori Trustee.

33. Between 1910 and 1920 the main functions of the Native Land Court were to investigate and grant titles and then to partition them. These functions were in very many cases followed by the legalisation of sales (by confirmations or otherwise), first by the Court and later by the Maori Land Boards. In 1932 the right of the boards to grant confirmation of alienations was transferred to the Maori Land Court.

34. With the Court's increased jurisdiction and the restored trust of the Maori people, the Court sitting became an increasingly important part of the Maori way of life. It was attended by many others than those directly concerned with the matters being decided. The usual formality of European courts was not strictly observed. The Maori Land Court became a "people's court".

35. The Act was continually amended, with the Maori Affairs Act 1953 the next complete consolidation. This Act also introduced some important new provisions. The Court was empowered to vest uneconomic interests (defined as a beneficial freehold interest which did not exceed £25) in the Maori Trustee subject to his acceptance. A conversion fund was also established to enable the optional purchase of uneconomic interests not exceeding £50 in value. The 1953 Act and its amendments govern the present constitution and jurisdiction of the Maori Land Court.

36. In 1961 Mr J. K. (later Sir Jack) Hunn, in a report[10] on the activities of the Department of Maori Affairs, pointed out that, as the Maori Land Court was within 5 years of its centenary and had long since completed its original task, a review of its functions and procedures was timely. In 1964 a Committee of Inquiry was set up comprising Mr Ivor Prichard, a former Chief Judge of the Maori Land Court and Mr H. T. Waetford, Special Titles Officer of the Department of Maori Affairs. The Government wished to consider "what measures should be adopted to improve the titles to Maori land and to make for the better use of it". Among other questions the committee was asked:

> Should the powers and jurisdiction of the Maori Land Court be added to or reduced, whether in respect of the probate jurisdiction; the confirmation of alienations, the creation of trusts for Maori freehold land; or otherwise.[11]

The committee reported in 1965, and its report will hereafter be referred to as the "Prichard Report". The Maori Affairs Amendment Act 1967 incorporated many of its recommendations.

37. The recommendations of the Prichard Report and the ensuing Maori Affairs Amendment Act 1967 were strongly opposed by Maori organisations. Although the report was an attempt to tackle the problems of multiple ownership and the uneconomic interests, the implications of the methods proposed were suspect to many Maoris.

38. According to Kawharu there were three dominant themes in the Maori reaction:[12]

(1) Fear that the proposed legislation reform would make the Maori more vulnerable than ever to the loss of his land through what in effect would be compulsory sale. This would occur by the compulsory acquisition of "uneconomic interests" by the Maori Trustee.

(2) Belief in the latent ability of the Maori to make efficient use of his land himself.

(3) Hope that the tools of finance and training would be made available on an adequate scale as the State's contribution to a joint enterprise made in the national interest.

39. The most significant changes made by this Act were the provision, subject to certain conditions, for the Europeanisation of land owned by four or fewer beneficial owners, and the making of Europeans holding undivided interests in Maori land subject to the Court's jurisdiction for the first time.

40. In 1974, the Maori Affairs Amendment Act repealed the unpopular measures concerning the alienation and compulsory acquisition of uneconomic interests. It was made more difficult for land held in multiple ownership to be alienated.

41. According to Judge Russell, the 1974 Act may prove to be the most important Maori land legislation enacted this century.[13] Under section 58 there is provision for pieces of land held under separate titles, but which could be more conveniently dealt with as one block, to be amalgamated and vested in the owners without cancelling the original titles. Judge Russell considered that increasing use of this provision, and that of vesting interests in land in trustees, could provide the means for Maori people to resume control of their land no matter how fragmented.

> Maori land would again be administered by the tribe for the benefit of the tribe not as the result of outside pressure or changes in the legislation, but by a series of individual decisions by individual owners of individual blocks of land over a long period of time.[14]

42. In 1978, the 1953 Act and its amendments were consolidated in a Maori Affairs Bill which at the time of writing is before a select committee. None of the small number of new provisions has important implications, and the Bill is essentially a tidying up of existing legislation. Although its provisions have been discussed by Maori Councils and other Maori organisations, both the previous and present Minister of Maori Affairs have stated that the Bill will not be proceeded with until our Royal Commission has reported.

43. The legislation affecting the Maori Land Courts has been noteworthy for the frequency with which it has been amended in the past, and for the present complexity of the resulting Acts. Since 1865 there have been almost annual amendments to the Acts affecting the jurisdiction and constitution of the Court. In 1888 eight amending Acts were passed, and in 1889, nine. The 1953 Maori Affairs Act has been amended each year by a Maori Purposes Act or a Maori Affairs Amendment Act. This has produced a body of legislation which is a morass for the legal profession and leads to very great difficulties for the Maori people in dealing with their land. The Maori Affairs Bill 1978 has done little to remedy the extraordinary complexity of Maori land law.

44. The reasons for the present frequency of amendment are not easy to find. In the early days of British colonial rule, the Acts were amended because of the rapidly changing relations between the Maori people and European settlers in their dealings over land.

45. We were told that today amendments may have their origin in representations made to the Minister by the Maori people through their tribal councils, or the New Zealand Maori Council.[15] Pressure brought on the Government by different tribes, or by incorporations, for changes in the Act might well contradict one another. The role of the department in introducing amendments is by no means clear. A former Secretary for Maori Affairs informed us that the departmental solicitors rather than the Crown Law Office had always drafted new legislation. This practice could result in departmental convenience being an important factor in submitting legislation to Parliament. There are many instances of hastily drawn legislation introducing unintended complications and anomalies calling for almost immediate amendment. The check of referral to the judges of the Maori Land Court, or to the New Zealand Law Society, was in recent years almost never used. The 1973 Government white paper on proposed amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and other related Acts (hereafter referred to as the Rata White Paper) was widely circulated but contained no reference to a proposal to amend the important provision relating to succession to the undivided interests of a Maori who died intestate.

46. The present method of producing legislation affecting Maori land is often criticised as unsatisfactory, and considered as reflecting an absence of an overall philosophy of the place and use of Maori land in New Zealand today. Some of those appearing before us had such a philosophy. Those favouring the extension of incorporation and trust ownership of Maori land saw this as a move back to a pre-European, communal land tenure. We do not know how widespread these views are, but it does appear that satisfactory Maori land law can be produced only if a general philosophy of multiple land-ownership and land use is hammered out.

CHANGES IN JURISDICTION OF THE MAORI LAND COURT

47. The jurisdiction of the Maori Land Court has grown considerably since 1865 when it had no functions other than to investigate the titles of land held according to Maori custom. The Court had then no authority to exercise control over the alienation of Maori lands. The jurisdiction continued to increase until it was reduced by the 1967 Act. A more extensive jurisdiction over partition, as well as the power to create private roads, was given by the Native Land Court Act 1886.

48. In 1894 the principal Act was rewritten and gave the Court the jurisdiction to:

(a) Investigate title and determine ownership;
(b) Partition land and determine relative interests;
(c) Give effect to exchanges of land between natives and the Crown;
(d) Determine successions;
(e) Grant probate and letters of administration;
(f) Render land inalienable and vary or remove any such restrictions;
(g) Determine claims based on alienations made by natives and all questions arising from conflicting claimants;
(h) Confirm alienations;

(i) Restrain any person from injuring land subject to a Court application;
(j) Determine whether land shown on a certificate of title was held in trust for natives not on the title.

49. It had been envisaged that once the title to Maori land was investigated and a land transfer title issued, all title information would be available on the land transfer register. The Court would make orders relating to succession and these would be registered. In fact, over the years, the Maori Land Court title records became a supplementary register of titles because many partitions were not surveyed, while partition orders and many other orders were not registered in the Land Registry Office. Thus a dual system of land registry arose.

50. The Native Land Act 1909 extended the jurisdiction to include more protection for the Maori people by adding several social functions, viz:

(a) Making orders for the adoption of children by natives;
(b) Appointing trustees for natives who for any reason are unable to manage their own affairs;
(c) The incorporation of the owners in common of native land;
(d) Any other matter affecting the rights of natives to real or personal property, if jurisdiction in that matter is specially conferred upon the Native Land Court by the Governor in Council.

51. The Native Land Amendment Act 1932 removed the power to confirm alienation of Maori land from the Maori Land Boards to the Native Land Court. The power to grant adoption of children was transferred from the Maori Land Court to the Magistrate's Court by the 1955 Adoption Act. The Maori Affairs Amendment Act 1967 transferred the power to grant probate and letters of administration from the Court to the Supreme Court. That Court prior to 1894 had had this jurisdiction.

52. The Maori Affairs Act 1953 and its numerous amendments have left the Court with jurisdiction over the following:

(a) The appointment of trustees for persons under disability (s. 93);
(b) The making of succession vesting orders in respect of interests in Maori land where the owner concerned died before 1 April 1968 (Part XII) and in limited cases where the owner concerned died after 1 April 1968 (s. 78A/67);
(c) The making of partition orders in respect of Maori freehold land and orders laying off roadways (ss. 173 and 415–420);
(d) The making of exchange orders and orders for the incorporation of Maori owners (s. 187, Part IV/1967);
(e) The making of vesting orders transferring interests owned in common in favour of the class of persons specified in the Act to give effect to an arrangement or agreement between transferor and transferee (s. 213);
(f) The summoning of meetings of assembled owners to consider resolutions to sell or lease when there are more than 10 owners in the block and the confirmation or rejection of resolutions passed by meetings of owners (ss. 307 and 317–321);
(g) The confirmation of alienations of Maori freehold land, by way of transfer (ss. 224, 317);
(h) The vesting of land in trustees for the purpose of facilitating the use, management or alienation of land (s. 438);

(i) The vesting of land in a Maori or a descendant of a Maori as a dwelling site (s. 440);
(j) Recommending the issue of a notice in the *Gazette* setting aside land as a Maori reservation and the appointment of trustees for such land (s. 439);
(k) The making of charging orders for rates owing on Maori land (s. 153 Rating Act 1967).

THE MAORI APPELLATE COURT

53. The Maori Appellate Court was established by the Maori Land Act 1894 to hear appeals from the Maori Land Court. Until then the only review was by way of rehearing. The Appellate Court comprises three or more judges of the Maori Land Court sitting together.

54. Notice of appeal from an order or determination of the Maori Land Court must be given within 2 months of the date of the minute of that order. All appeals to the Appellate Court are by way of a rehearing at which evidence is normally restricted to that adduced at the original hearing. However, the Appellate Court has the discretion to allow additional material to be produced if it considers such is necessary to enable it to come to a just decision.

55. A person who has been adversely affected by a Court order which he considers was wrong in fact or in law has a more immediate avenue of redress than the Appellate Court. Under section 452 of the Maori Affairs Act, application in writing may be made to the Chief Judge who has the jurisdiction to consider such cases. The Chief Judge may decline to exercise his jurisdiction or he may call for a further inquiry and report from the Maori Land Court or the Appellate Court. He may state a case for the opinion of the Supreme Court upon a point of law. If he is satisfied that a mistake has been made, he has the power to amend or cancel the original Court order. Unless he dismisses the application, his decision is subject to appeal to the Appellate Court. However, once the Appellate Court has determined an appeal, there can be no further application to the Chief Judge on the same matter.

Further Appeals

56. There is no appeal from a decision of the Maori Appellate Court to the Supreme Court or to the Court of Appeal. The observation in the foreword to the report of the Beattie Royal Commission that there are such appeals seems made in error. There is, however, power for the Appellate Court or, with the sanction of the Chief Judge, for a judge of the Maori Land Court, to state a case for the opinion of the Supreme Court on any question of law arising in the proceedings before it or him. The decision of the Supreme Court on such a case stated is subject to appeal to the Court of Appeal. A decision of the Supreme Court or the Court of Appeal on a case stated is binding on the Maori Land Court and the Appellate Court.

57. The Supreme Court has also certain powers under its jurisdiction over courts of lesser jurisdiction, to review the proceedings of both the Maori Land Court and the Appellate Court. It has this power, notwithstanding the provisions of section 64 of the Maori Affairs Act 1953 which declare that no order or proceedings of the Maori Land Court shall be removable by certiorari or otherwise into the Supreme Court. It is a matter of debate just how wide this power of review is. We shall discuss it

in chapter 12. Certainly it enables the Supreme Court to set aside any order made beyond its jurisdiction by either the Maori Land Court or the Appellate Court.

58. Although no appeal lies to the Supreme Court or the Court of Appeal, there is a right of appeal from the Appellate Court direct to the Privy Council by special leave of that Council (*In re* Matua's Will 1908 AC 448).

THE FUNCTION OF THE COURT TODAY

59. It can be seen from the above account that the Court, in exercising some parts of its jurisdiction, could be functioning more as a tribunal than as a court in the more generally accepted meaning of the word. This raises the questions which are dealt with at length in chapter 12. "What is the nature and function of the Maori Land Court? Is it an administrative tribunal, or is it a court of law?"

60. Whether its jurisdiction is exercised in a straightforward pragmatic manner, or with a measure of underlying social or economic philosophy, the Court today is quite unlike other courts in the New Zealand system. In most of its proceedings it does not deal with adversary situations. Much of its work is administrative in the sense that it takes, indeed often initiates, some action leading to the use of land. This is a long way from the earlier functions of the Court.

REFERENCES

[1]E. J. Haughey, *N.Z. Law Journal* 1976, pp. 203–210.
[2]The Native Land Act 1909, Introduction, XX.
[3]E. T. J. Durie, Submission 11, p. 15.
[4]*N.Z. Parliamentary Papers* 1890, G. 1, p. 3.
[5]*ibid*, p. 1.
[6]F. D. Fenton, *Important Judgements Delivered in the Compensation Court and Native Land Court 1866–1879*, 1879, p. 10.
[7]*N.Z. Parliamentary Papers* 1891, G. 1, p. vii.
[8]*ibid*, p. v.
[9]*ibid*, pp. xi–xii
[10]J. K. Hunn, Report on the Department of Maori Affairs 1960.
[11]Report of the Committee of Inquiry into Laws Affecting Maori Land and Powers of the Maori Land Court, 1965.
[12]I. H. Kawharu, *Maori Land Tenure, Studies of a Changing Institution*, Oxford 1977, p. 271.
[13]R. M. Russell, Submission 24, p. 19.
[14]*ibid*, p. 24.
[15]New Zealand Maori Council, Evidence p. 370.

Chapter 3. WHO IS A MAORI TODAY?

1. The Hunn Report of 1961 was the result of a general stocktaking of Maori affairs.[1] Besides giving a survey of Maori assets, both in human and material resources, it gave a projection into the future of the needs of the Maori people.

2. The report welcomed the urbanisation of the Maori. Integration of Maori and Pakeha was "official policy". It saw in the urban drift "the quickest and surest way of integrating the two species of New Zealander". A distinction was drawn between integration and assimilation. Integration was defined as: "To combine (not fuse) the Maori and Pakeha elements to form one nation wherein Maori culture remains distinct". The process of assimilation would result in a complete loss of Maori culture.

3. The report pointed out that there were 10 different statutory definitions of a Maori in the legislation. All except two were verbal rather than substantial differences. The definitions which could not be reconciled were those which defined a Maori as: (a) a person of half Maori blood or more; and (b) a descendant of a Maori.

4. The general philosophy expressed in the report was that as each generation became more integrated and self-reliant than the previous, the definition of a Maori entitled to the privileges of special legislation should become stricter. The "half blood" formula should be made universal to start with. This could later be changed to "three-quarter blood" as the numbers requiring special protection decreased. In the long run there would be no need for special legislation, and the definition would become irrelevant.

5. This philosophy, and that of the Prichard Report of 1965,[2] was overtaken by the world-wide reaction of minority ethnic groups, a reaction shared by Maoris, against an integration concept. There was a general desire for the retention of separate racial identity. However, in the 1970s, urbanisation of the Maori people and intermarriage between the races continued. The basic question "who is a Maori" still needs to be answered for the purposes of legislation affecting Maori affairs.

6. In the Maori Affairs Acts and their numerous amendments up to 1974 "Maori" was taken to mean:

> . . . 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.

After the Rata White Paper of 1973,[3] the 1974 Maori Affairs Amendment Act widened the criterion to: "Maori" means a person of the Maori race of New Zealand and includes any descendant of such a person. Thus any percentage of Maori blood, however small, now qualifies a person as a Maori.

7. Thus, as against the philosophy recommended in the Hunn Report, the class of people eligible to be legally "Maori" for the purposes of this Act and the jurisdiction of the Court was very much widened. There are still various other definitions for other statutory purposes. The implications of this widening will be discussed later in our report.

8. In many cases today, whether a person of mixed race identifies more strongly with his Maori or his European heritage does not depend on the proportion of Maori blood. Pat Hohepa has said:

> There are persons of Maori descent who are Pakeha in all but appearance and there are persons who are more European in appearance than Maori but are Maori culturally.[4]

We were told on a number of occasions that being Maori was a state of mind.

9. In the attempt to incorporate these concepts into the 1976 census of population, a two-part question on ethnic origin was introduced, with the result that:

> A total of 270 035 persons either specified themselves as being half or more Maori descent in the first part of the question or (without answering the first part) indicated in the second part of the question that they were persons of the Maori race of New Zealand or descendants of such.[5]

In each previous census the "half-blood or more" definition was used. The change has thus introduced uncertainty in the comparison of the 1976 statistics with those of previous censuses.

10. It is estimated that 65–70 000 of those who answered the second part only, were of less than half Maori descent. On the new definition, including *all* persons of less than half Maori descent, the 1976 census counted 356 847 Maoris, that is 11.4 percent of the total population. In the future, the percentage of Maoris in the total population will increase because the average annual increase in the Maori population from 1971–76 was 3.49 percent compared with 1.8 percent for the whole of New Zealand. Even allowing for some overestimation in the 3.49 percent (due to the change in the definition of "Maori"), the conclusions on the relative growth of the Maori and non-Maori parts of the population still stand.

11. The recent increase in growth rate of the Maori population has brought about differences in the age structure of the Maori from that of the total population. In 1976 29.7 percent of the total, and 45.3 percent of the Maori population were under the age of 15 years. The 1976 distribution of Maori age groups compared with that of the whole population is given in table 3.1.

Table 3.1 DISTRIBUTION OF MAORI AGE GROUPS

(*Source*: New Zealand Official Yearbook 1978, p. 70)

Age Group (Years)	Percentage in Age Group (1976 Census)	
	New Zealand Maori*	Total Population
Under 15	45.3	29.7
15–19	12.3	9.6
20–44	30.9	33.2
45–59	7.9	14.6
60 and over	3.6	13.0

*Comprises persons who describe themselves as being half or more Maori, plus those who indicated that they were persons of the Maori race of New Zealand but did not specify the degree of Maori descent.

12. The urbanisation of the Maori population has been increasing rapidly in recent years. The census of 1966 showed for the first time that the percentage of Maoris in urban areas was greater than that in rural

areas. In 1976, 76.2 percent of all Maoris were urban dwellers, and 23.8 rural. The urban population is defined as that of the 24 main urban areas plus that of all boroughs, town districts, and communities of 1000 or over. That the urbanisation has been much greater than was expected some 20 years ago is seen by figures given in the Hunn Report (p. 81) where the projection of the urban Maori for 1980 was given as 46 percent of the total Maori population.

13. Of the 270 035 Maoris in the 1976 census, 250 677 were in the North Island, the largest concentration (29 222) being in the South Auckland urban area. It is estimated that over 52 percent live and work within the urban triangle formed by the cities of Auckland, Hamilton, and Rotorua.[6]

14. Over two-thirds of the Maori urban population is under 25, and three-quarters of Maori rural youth moved to urban areas between 1961 and 1965. Over 50 percent of Maori children today have been born in urban areas.[7] Urban migration has depopulated rural areas, resulting in a difference in age structures between rural and urban populations.

15. The social changes outlined above all have implications for the working of the Maori Land Court. The rapid growth of the Maori population will inevitably bring about great increases in the ownership lists of multiply-owned land. The depopulation of rural areas means that large numbers of owners are remote from tribal lands. Many do not know that they have interests in land and have only tenuous ties with their tribal background. The spread of Maoris throughout New Zealand makes the convening of meetings of owners of land a difficult and expensive task.

16. The widened definition of "Maori" now brings a larger number of people under the provisions of the Maori Affairs Act and the jurisdiction of the Maori Land Courts.

REFERENCES

[1]J. K. Hunn, Report on the Department of Maori Affairs, 1961.
[2]Report of Committee of Inquiry into Laws Affecting Maori Land and the Powers of the Maori Land Court, 1965.
[3]Government White Paper on proposed amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and other related Acts, E. 20, Government Printer 1973.
[4]Pat Hohepa, "Maori and Pakeha: The One-people Myth", in *Tihe Mauri Ora*, Ed. Michael King, p. 100, Methuen N.Z. 1978.
[5]*New Zealand Official Yearbook* 1978, p. 69.
[6]R. T. Mahuta, "National Conference of Maori Committees" in *Nga Tumanako*, p. 19, 1978.
[7]*ibid*, p. 20.

Chapter 4. WHAT IS MAORI LAND?

1. The layman wishing to find a compact, easily understood definition of Maori land is soon in difficulties. He discovers that the term is used in at least two senses. First, it can mean "Maori land" as defined in the Maori Affairs Act and thereby made subject to the jurisdiction of the Maori Land Court. Mainly, but not exclusively, this is land which has never been alienated by its Maori owners and has been held since pre-European times. A more precise definition of the statutory term, however, involves the interpretation and application of a large number of sections as we shall show, and produces a most complex net. Second, it may mean land owned by Maoris, whether within that statutory definition or not, in which sense it will include what the Act calls general (formerly, European) land. He will also find that Maori land may be owned by a large number of Maoris, or by a few, or be solely owned. Even when there is multiple Maori ownership the ownership list may include Europeans. The result of his investigations is likely to leave him completely confused.

2. In the early days of European colonisation, the Government began to replace the land tenure system according to Maori customary lore by one in which individual ownership replaced group ownership. As has been stressed by Mrs Hilda Phillips, Maoris from those days could, and did, hold land under two different systems:[1] (a) under English land law where a registered, indefeasible legal title was issued by the Crown; and (b) under Maori Land Court jurisdiction where there was an unregistered right under Maori custom. (This gave an "unstable" title which was sometimes disputed.) A dual system of recording land ownership still exists. The ownership of general (European) land and of some Maori land is registered in the Land Registry Office, but ownership of the remaining Maori land is recorded in orders of the Maori Land Court. Almost all customary titles have long since been transferred into freehold titles. Maori land thus consists of customary land and Maori freehold land. It is with the latter that we will be concerned.

3. The distinction today between general land and Maori freehold land given in the Maori Affairs Act 1953 (as amended) rests on a legal nicety. Once it was quite clear-cut. It is now the distinction between "a subsisting estate in fee simple" (in the case of general land) and "a beneficial estate in fee simple, whether legal or equitable" (in respect of Maori freehold land). A subsisting estate *may* be beneficial while a beneficial estate must be subsisting. These legal technicalities do not help the layman towards a clearer understanding of what today is meant by Maori land.

4. Section 2 (2) of the Maori Affairs Act, 1953 specifies at length, in six sub-clauses and four sub-paragraphs, circumstances determining whether land is Maori freehold land or not. However, even this is not fully complete because there are other provisions in various statutes which declare certain lands to be Maori freehold land. As these conditions have changed several times since 1865 (and no doubt will change in the future), it can be seen that the concept of Maori freehold land cannot be simply defined once and for all. It means whatever current legislation says it means.

5. The difficulties of achieving a simple definition are implicitly recognised in section 30 (1) (i) of the Maori Affairs Act 1953 under which the Court has jurisdiction "to determine for the purposes of any proceedings in the Court or for any other purpose whether any specified land is Maori freehold land or is general land". Some owners in multiply-owned blocks may now claim, because of circumstances of descent, to be European and not Maori. Some owners may be Europeans who purchased undivided interests in the blocks prior to 1967. The land in each case is subject to the Court which further has the power under section 30 (1) (h) to determine whether a person is a Maori or a European.

6. For the purposes of our inquiry we will take Maori freehold land to mean that land which comes under the jurisdiction of the Maori Land Court, though we recognise that in certain instances the Court has jurisdiction over general land. While this may be criticised as begging the question, a complete precise definition would only confuse matters in our present discussion.

7. The main characteristic of much Maori land is that it is multiply-owned. This is the result of forcing a system of European land tenure on a communal society. The widening of the definition of "Maori" will eventually lead to a state of affairs where the continued classification of land on a racial basis will be hard to justify. Although this is some way away, it will be a logical outcome of present conditions.

8. While saying this, we fully acknowledge that a large part of Maoridom regards the classification of land as "Maori land" as a main basis of the cultural identity of the Maori people. No changes in land classification could be made without the consent of the Maori people. However, we do not think that the full implications of the wider definition of "Maori" on land tenure have been appreciated. Unless in the future those owners of Maori land with small fractions of Maori blood identify with their Maori culture (have a "Maori state of mind") then changes in the present system of land tenure would appear to be inevitable. There have been changes in the last 100 years and there will be changes in the future. We regard it as essential that whatever alterations are made should be the result of a consensus in Maoridom that they are necessary to meet changed social circumstances. They must not be imposed.

9. It should be pointed out that multiple ownership of land is not a Maori phenomenon. It exists in Europe, Quebec, in many parts of South-east Asia, and in the Pacific Islands. Fragmented agricultural holdings in the member countries of the Organisation for European Economic Co-operation in 1955 were estimated at 28 million ha comprising several million farms. National authorities have initiated schemes for the consolidation of such farms into more manageable and economic farming units.[2]

EXTENT OF MAORI LAND

10. When discussing the extent of Maori land we refer only to those lands which come under the technical definition of the Act and are subject to the jurisdiction of the Maori Land Court. At 31 March 1979, the area of Maori land was approximately 1 224 104 ha or 4.5 percent of the total area of New Zealand. Only 70 451 ha of this is in the South Island. Maori land makes up 10.7 percent of the North Island and 0.5 percent of the South Island. The approximate area and type of tenure of Maori land in

each of the Maori Land Court districts are shown in appendix 1. The boundaries of the districts are shown in appendix 2.

11. By the end of the nineteenth century the greater part of New Zealand had been changed from Maori land to European (now general) land. A report placed before Parliament in 1919 gave:

	ha
Papatipu or customary lands left	6 465
Leased to Europeans	1 256 096
Held by Maori owners	764 144
	2 026 705

For comparison, the area of New Zealand is 26 905 700 ha.

12. In the last 60 years about 802 000 ha has, for various reasons, changed its designation from Maori land to general land. The most significant movement resulted from the Maori Affairs Amendment Act 1967, which provided for land owned by up to four owners being declared general land.

13. The statistics on the extent of Maori land are compiled from Maori Land Court records and refer to those lands covered by the statutory definition. As has been pointed out by Mrs Phillips, this does not represent the total Maori land holdings. Individual Maoris own general land so that there is a distinction between Maori landowners and "Maori-land" owners. According to Mrs Phillips, any discussion of Maori land tenure must also consider the rights Maoris have in general land. Though we acknowledge the justice of this contention, we fail to see how, because of the terms of our inquiry, we can take this factor into account. Land for which certificates of title have been issued by the Land Registry Office are not classified according to ethnic group of the owners. There is no way in which the area of general land held by Maoris can be readily estimated. For example, Maoris buy building sites in urban areas, and farms, on general land. The Prichard Report estimated that for the year 1964, Maoris bought considerably more land in value than they sold. We have no way of knowing whether or not this is a typical result for recent years.

14. We agree that the figures usually given for the amount of land left in Maori hands underestimates the true position. But we have no way of finding out by how much the figures are underestimated, and we do not think that any oversight of the dual rights of land tenure bears the largest share of the responsibility for recent grievances on Maori land questions. It may be true that:

> . . . when the Maori's dual land-ownership is given the recognition—and consideration—it so rightly merits, it will be seen that the Maori's history in relation to land ownership is by no means as "sad" as the nation has been led to believe.[3]

However, we have no way of testing this hypothesis.

15. The widespread change in Maori thinking about the ownership of small undivided interests in Maori land is well illustrated by comparing views often expressed to us with those in the Prichard Report. The whole philosophy of that report was that multiple ownership resulting in fragmentation and a vast number of uneconomic interests was an evil. Everybody's land was nobody's land. The idea of owners retaining small interests because of considerations of "turangawaewae" was only mentioned twice to that committee of inquiry and was never a serious

issue. Fourteen years later the climate of opinion has markedly changed. Turangawaewae has become an important consideration. Conversion is not generally favoured.

16. Indeed, according to Professor Kawharu, the change of opinion took place immediately after the publication of the Pritchard Report. In his book *Maori Land Tenure* he describes the series of meetings held throughout New Zealand to discuss the report. It appeared to the New Zealand Maori Council:

> . . . that the Committee of Inquiry had gone out of its way to exaggerate fragmentation (the "fragmentation bogey") in order to justify increasing the conversion limit and making the Crown, rather than the Maori Trustee, the converting agent. Ruthless application of these powers would undoubtedly see the speedy alienation of what tribal land remained.[4]

17. The Prichard Committee held 46 well-attended meetings with Maori groups, and, from its report it appears that, the ideas which were so forcibly expressed after its publication were scarcely raised during its hearings. The New Zealand Maori Council was consulted both before and after the public hearings. We find difficulty in believing that a committee presided over by a retired Chief Judge of the Maori Land Court misinterpreted the views expressed to it. It seems more likely that there has been a widespread change of opinion in Maoridom or a failure on the part of Maori people to state their opinions.

INCORPORATIONS AND TRUSTS

18. One of the results of the change in opinion was the growth of a positive move towards finding ways of using Maori land for the economic benefit of the owners rather than a more negative attitude of not alienating land just because it was part of the Maori heritage. Whereas previously multiple ownership and fragmentation had for some been a bar to economic use, it was realised that legislative provisions did exist to allow ways of overcoming the obstacles.

19. The Act had for a long time provided for the corporate management of land through incorporation or the appointment of trustees to manage land for a large number of owners. There had been moves very early in the colonisation period towards tribal management of Maori lands in Poverty Bay and the Urewera. The East Coast Native Trust formed in the 1860s had a chequered career and part survives today as the Mangatu Incorporation. The owners of the Mangatu Blocks were incorporated for the first time under the Mangatu Empowering Act 1893.

20. Incorporation generally was first introduced in the Native Land Court Act 1894. Smith has asserted that:

> Its original purpose was not to provide for the best and most economic use by the Maori owners of their lands, but to facilitate the alienation of Maori lands for the purposes of colonisation and settlement, by introducing a mode of alienation by numerous bodies of owners.[5]

21. Be that as it may, the Native Land Act of 1909 gave power to an elected committee of management to organise the development of an estate on behalf of the owners who would be shareholders in the undertaking. The ideas were implemented first on the East Coast under the leadership of Sir Apirana Ngata.

22. Incorporation has enabled Maoris to offer an uncluttered title to the land as security for the purposes of borrowing money for land development. The incorporation functions as a single legal entity able to enter into contracts on behalf of an unlimited number who might own the land as tenants in common. The size of land involved was of no account. The smallest is less than a hectare while the largest is over 40 000 ha. The incorporation is kin-based, and individuals become members through an accident of birth. The number of members increases rapidly through succession, so that there are problems of fragmentation of shares. The rights of management are vested in a management committee appointed by the Maori Land Court which may, but is not bound to, accept the nominations made by the owners of the land. The jurisdiction under which incorporations work is contained in Part IV, Maori Affairs Amendment Act 1967.

23. The distribution of Maori incorporations by Maori Land Court districts at 31 March 1977 (latest complete departmental figures available) is given below:

	No.	Area (ha)
Tokerau	19	23 600
Waikato-Maniapoto	15	16 500
Waiariki	35	53 900
Tairawhiti	72	122 700
Aotea	21	97 600
Ikaroa	7	8 300
South Island	10	8 400
	179	331 000

There has been a steady growth since 1965 in the area of land under incorporation control. In the North Island approximately 72 000 ha have been added.

24. Sir Apirana Ngata described the incorporation system as having been "evolved by Maoris to suit Maori needs", and in 1940 wrote:

> The system known as incorporation of native land owners is in effect an adaptation of the tribal system, the hierarchy of chiefs being represented by the committee of management.[6]

25. Forming incorporations is not the only means for the effective management of land held in multiple ownership. The larger incorporations continue to operate well but in recent years a more popular form of management has been by trusts established under section 438 of the Act. The trust system seems acceptable to many Maori owners, either as a permanent arrangement or as a prelude to the establishment of an incorporation. It is also usually easier to form. However, the costs of administration are by no means negligible.

26. The number of orders made by the Court each year since 1961 for the vesting of land in trustees under section 438 is given below:

1962 ...	84	1968 ...	241	1974 ...	316
1963 ...	62	1969 ...	331	1975 ...	272
1964 ...	228	1970 ...	491	1976 ...	361
1965 ...	373	1971 ...	570	1977 ...	425
1966 ...	319	1972 ...	363	1978 ...	432
1967 ...	262	1973 ...	435	1979 ...	688

27. In the past the Court tended to create separate trusts for individual blocks. Although this is still done, there has been a marked increase in single trusts covering numerous blocks. This process has been noticeable in the Tuwharetoa District around Lake Taupo. Recently there have been established such trusts as the East Taupo Forest Trust on 30 521 ha covering 61 blocks, the Owhaoko (Deer and Recreational) Trust on 26 796 ha covering 13 blocks, and Rotoaira Forest Trust on 22 584 ha covering 78 blocks, and many more. Others have been established for the sale or exchange with the Crown of lands sought for public reserves, for residential subdivisions, for milling of native timbers, and for general farming purposes. In some cases the trustees are efficient, sophisticated managers running large commercial enterprises.

28. The trust type of organisation is well suited for land management on a tribal or hapu basis, and there have been moves to form more tribal trusts. The successful establishment of incorporations and trusts has shown that, contrary to a view widely held in the early 1960s, multiple ownership is not necessarily a bar to the economic use of land. Success, however, will come only with the will to co-operate, access to technical advice and to capital for development, together with managerial skills of a high order in the trustees and boards of management.

29. It must not be thought that the desire for corporate management is universal in Maoridom. There are differences of opinion. Judge Durie said to us:

> Today, Maori opinion is divided and the different approaches are apparent in many of those who appear before me. On the one hand some prefer arrangements on succession to avoid fragmentation, or, by vesting order, exchange, gifts and sales, have expended time and money to enable one of their number to acquire a predominant interest. Others are active in buying shares of close and distant relatives alike with a view to acquiring sole ownership of the whole, or to be able to partition out a part. On the other hand, others prefer that all entitled should succeed no matter how large or small the interest. There are those opposed to one person acquiring a predominant share and would prefer to lease, even although, in order to favour a relative, the rental might be quite nominal. There are those who oppose partition and prefer that all should be part of a common venture.
>
> There are those who would sell readily on the open market and there are those who would restrict sales to within the tribe, or the family. This became very apparent recently when some owners decided to sell on the open market, a section within a distinctive Maori Village.
>
> I would be unable to guess which view predominates.[7]

30. The increase in the willingness to consider corporate ownership through incorporations and trusts has had a considerable effect on the work of the Court. It becomes involved in setting up forms of management for what are, in some cases, very large commercial undertakings. Besides the provision of technical information and advice on appropriate land management, there are often problems of reconciling differences in opinion between various factions of owners. According to Judge Durie, the Court itself has been largely responsible for promoting the formation of trusts. The Court is thus in a powerful position in being able to influence the form and extent of corporate land management. Some judges who use this power see the Court as an agent in advising owners of land held in

multiple ownership about ways of achieving optimum management of their land. At the other extreme would be judges who see the Court's role as that of exercising its jurisdiction on the applications which come before it without any general underlying philosophy on land management. Our view of the preferable role of the Court in such areas is to be found in chapter 12.

REFERENCES

[1]Mrs Hilda Phillips, Submission 25.
[2]*Land Consolidation: Cheaper and More Simplified Methods*, Report of OEEC Seminar, Wiesbaden, 1955.
[3]*supra*[1], p. 9.
[4]I. H. Kawharu, *Maori Land Tenure. Studies of a Changing Institution*, Oxford 1977, p. 270.
[5]N. Smith, *Maori Land Corporations*, A. H. and A. W. Reed, 1962, p. 71.
[6]Sir Apirana Ngata, Quoted in Submission 11, E. T. J. Durie, p. 18.
[7]*ibid*, p. 19.

Chapter 5. FRAGMENTATION OF INTEREST IN MAORI LAND

1. The utilisation, ownership, and management of land has throughout history aroused emotion and contention. The emphasis placed on these factors is different in different societies and in any particular society varies from time to time. In New Zealand we have seen the attempt to integrate Maori land into an English system change more recently towards the growth of a more communal system of control by its owners by means of trusts and incorporations. A consequence of European settlement of New Zealand was the imposition of English land tenure based on individual title to land. Although in some of the earlier legislation (see chapter 2) there was provision for the issue of land titles to tribes, in the event the communal occupancy of land by Maoris received inadequate attention. Chief Judge Fenton in the Papakura claim for succession said in 1867:

> Instead of subordinating English tenures to Maori customs it will be the duty of the Court, in administering this Act, to cause as rapid an introduction amongst the Maoris, not only of English tenures, but of the English rules of descent, as can be secured without violently shocking Maori prejudices.[1]

2. The Court determined the relative shares of the owners in Maori land according to what it considered were the rights of individuals in what had formerly been communal property. If a Maori died without leaving a will disposing of his land interests they were vested in the persons beneficially entitled according to the Court's view of Maori custom whereby all the children of the deceased succeeded equally but the surviving spouse had no rights of succession. The majority of Maoris died intestate and with each generation of children succeeding to the land interests of its parents the number of owners in a block of land normally increased rapidly. The individual shares become smaller and smaller. This process of fragmentation has inevitably brought about serious consequences for the administrative management and economic utilisation of lands for the benefit of the owners. Norman Smith said in *Maori Land Law*, 1962:

> Maori titles have become congested because of it [fragmentation]; the difficulties of searching them with accuracy have magnified; the presence of large numbers of owners in a title tends to create litigation over disputes as to occupationary rights for which partition is not always a possible or even a practicable remedy; and the owners are frequently persuaded to sell because fragmentation has reduced their shares in the land to such an uneconomic standard that no real use can be made of them by the owners.[2]

Maori Customary Occupation

3. Fragmentation of interests in Maori land had never worried Maoris before the coming of Europeans. All land was tribally held without any individual ownership, and was acquired by occupation, conquest, or gift. Individual stewardship was granted where an individual with tribal consent occupied a given area for the sustenance of his family, and in

areas where groups of families had rights of hunting, cultivation, and harvesting of herbs, timber, and allied products. In this manner all land in a tribal area was held by the various hapus, and groups making up the tribe. Similarly, fishing rights on rivers, lakes, and the seashore, and use of coastal products as well as deep sea fishing, were granted to individuals and hapu groups. These rights of use and occupation were covered by the Maori term ahi ka, the "lighted fire", which required the individuals and the groups to keep their rights to their areas either by living permanently on the land or frequently returning to it.

4. There was no such thing as "absentee ownership"; the individual or group had to keep the home fires burning. When individuals or groups needed more space the tribe made provision to cover this need. There have been instances where tribal gifts of land were made to persons from another tribe when a marriage took place, and the tribes gave or granted areas to the parties to enable them to live with their "in-laws". If the alliance broke up the land reverted to the original owners. All tribesmen shared in the tribal territory, but prisoners of war had no land rights unless admitted by marriage into the tribe. The right of occupation to all land was, however, ultimately subject to one's strength to hold it against all comers.

5. Land was something to be used and cherished and kept in production for present needs, and held in trust for future generations. Care was taken to "rest" those areas which were showing signs of over-use; in these cases a rahui was declared to allow that area to recover, much like the present-day restrictions imposed by Government in the harvesting of toheroa and other sea foods. Timber was reserved for special uses such as canoe building, houses, fencing, bridges. The taking of timber was controlled by a tohunga who directed the felling and removal of timber, thence under the direction of another tohunga, who dealt in the craft of building houses or canoes and other products.

6. Land and the produce from it was the backbone of Maoridom, the base of Maori life. The survival of the tribe depended on access to enough land to ensure a constant food supply. The term papa "earth" was used in the traditional tales, and papatipu meant land in its first known tribal state owned by the tribal groups as a whole. The European found the papatipu state irksome and contrary to his individualistic tastes, and set out to change Maori ownership by the imposition of his own concepts of ownership.

7. Many Maoris were quick to see short-term advantages of individual ownership, and the chance to be free of the chief's veto in land dealings and use. Others were more cautious and combined their resources to counteract the trends of alienation to the European settlers. In some cases alienation led to armed conflict which in turn led to confiscation by the Government of some of the best Maori farming lands, especially in Taranaki, Waikato, and the Bay of Plenty (see chapter 2). The Government under pressure to provide land for incoming European settlers facilitated alienation by waiving from time to time its pre-emptive rights of acquisition. By the early part of this century, most of Maori tribal lands had changed hands. It is estimated by some that 60 million acres had moved from tribal to mainly European ownership and the bulk of this was by sale. The colonisation of New Zealand by increasing numbers of European settlers and the rapid decline in the Maori population made such a movement inevitable.

Administrative Consequences

8. The imposition of individual shares in the land left under multiple Maori ownership has resulted in an enormous administrative burden on the department, and in many cases has introduced obstacles to the best use of the land. When most Maori people lived on or near their land, and the population was relatively static, multiple ownership did not cause insuperable administrative difficulties. All this has changed in the last 30–40 years with a vastly increased and a much more mobile Maori people. Many ownership lists have grown enormously long, and most owners live at a distance from their land interests. Many find it not worth their while to claim succession rights.

9. The Trust Department of the New Zealand Insurance Co. Ltd. submitted to us details of small shareholdings for the Rotoiti 15 Trust for which it is the trustee.[3] There are 6000 owners in the trust, and in 1978 dividends of $38,760 were available for distribution. Cheques were prepared for the 753 owners whose addresses were known and whose dividends were $5 or more. The total amount paid out was $19,984. The division of shareholdings is shown below:

No. of Shares Held	Percentage of Owners	No. of Owners	Percentage of Shares Held
More than 100	6	300	50
51–100	7	350	18
11– 50	29	1 450	25
1– 10	40	1 950	6
Less than 1	18	900	Less than 1

10. The Prichard Report had given many striking examples of multiple ownership as it existed in 1965. For the 40 156 blocks of Maori freehold land, the distribution according to the number of owners was as follows:

No. of Owners	Solely or Jointly Owned	2–10 Owners	11–100 Owners	101–1000 Owners	Over 1000 Owners
No. of blocks ...	15 087	13 315	10 287	1 411	56
Percentage ...	37.6	33.2	25.6	3.5	Less than 0.1

We give in appendix 3 some current examples of fragmentation. It will be noted that interests valued at only a few cents have been succeeded to by large numbers of people.

11. This state of affairs has brought about intolerable problems for the department in keeping ownership lists up to date, in distributing smaller and smaller dividends from leasehold land to individual owners, and in arranging meetings of owners in an attempt to organise land-use schemes. From the 1953 legislation onwards there have been attempts to find solutions, acceptable to the Maori people, to the problems brought about by the present land tenure and succession arrangements. Some schemes have been introduced and then found to be unacceptable. Some have caused only a temporary halt to an ever-growing problem.

12. In the first departmental submission, the Secretary said that the official overview of the problems facing the Maori Land Court was:

> . . . the hard core of practical difficulty stems from multiple land ownership—this is the major factor pointing to the continued existence of the Maori Courts.

and again:

> Maori Land Court activity stems for the most part from problems almost peculiar to Maori land ownership. The greatest of these difficulties are decision-making and management arising from plural land ownership. These difficulties preclude owners from doing for themselves things which, in the case of general land, are done by the owner—what may be called for want of a better word "conveyancing" activities.[4]

13. The Prichard Report had earlier come to similar conclusions saying:

(a) Fragmentation and unsatisfactory partitions are evils which hinder or prevent absolutely the proper use of Maori lands;
(b) These two conditions create others just as unsatisfactory, one of them being the requirement of excessive and ever-growing staff, and the other that small shares tend to be lost for the reason that on the death of an owner his issue have no knowledge of them;
(c) Fragmentation will become progressively worse unless urgent drastic remedial action is undertaken.[5]

14. In an attempt to deal with fragmentation on succession the concept of uneconomic interests was introduced into Maori land legislation by the Maori Affairs Act 1953. Section 137 (3) of the Act defined "uneconomic interests" to mean "a beneficial freehold interest the value of which, in the opinion of the Court does not exceed the sum of £25". The Court was prohibited, save in specified circumstances, from vesting such uneconomic interests in a beneficiary or in anyone else but instead had to offer them for sale to the Maori Trustee.

15. Part XIII of the Act established under the management of the Maori Trustee a fund known as the "conversion fund" which was financed from the accumulated profits of the Maori Trustee and the former land boards. Purchase money for buying small interests in Maori land and for administering these interests came from the fund. The interests could be sold by the Maori Trustee to any Maori, to a corporate body of owners, or to the Crown for Maori housing or Maori land development, but not to any other person. Land sold to a Maori continued to be Maori land. Money derived from the sale of land or from leasing while awaiting sale, would return to the fund. When the Maori Trustee had accumulated in the fund enough interests in a block of land to make up an economically viable area, he could partition out the area and offer it for sale. Acquisitions could be made by agreement or, in some circumstances, without agreement.

16. The Maori Trustee was given express power to decline any interests. That provision was intended to meet such cases as where there would be undue difficulty in valuation (as in the case of timber lands), or where the position was complicated by reason of some existing mortgage. The effect of the words "in the opinion of the Court" appearing in the definition of an uneconomic interest was that in practice the Court frequently assessed the value of an interest to be in excess of £25, so that the interest would not be deemed uneconomic. Provisions for the extinguishing of uneconomic interests, otherwise than on succession, were made elsewhere in the Act: on partition (section 181); consolidation of land (section 200); amalgamation of titles (section 435); and consolidation of orders of title (section 445).

17. The 1961 Hunn Report offered its conclusions on fragmentation of Maori land for discussion with the Maori people. They were:

(1) *To Arrest Further Fragmentation of Titles.*

(a) Disallow partition into holdings under £50 value.

(b) Disallow multiple succession under £50 value.

(c) Increase the £10 rule to £50 and make it mandatory. [The so-called £10 rule was brought in by legislation in 1957. It enabled the Court to vest the whole of the interest of a deceased person in any one or more persons to the exclusion of any other provided that the excluded beneficiary's share did not exceed £10.]

(d) Alter the definition of "uneconomic interest" from "not exceeding £25" to "not exceeding £50".

(e) Make maximum use of the Conversion Fund to acquire "uneconomic interests" in usable land and accumulate them in the name of the Maori Trustee.

(2) *To Reduce Existing Fragmentation of Titles*

(a) Resort to "live buying" of interests in usable land and accumulate them in the name of the Maori Trustee.

(b) Encourage incorporations to exercise their power of acquiring equitable interests in their land.

(c) Consider incorporating any Maori tribe that shows it can purchase and consolidate land interests regionally.

(3) *To Finance This System of Title Simplification*

(a) Use the Conversion Fund to the limit.

(b) Obtain legislative authority to borrow unclaimed moneys if conserved as capital for investment.

(c) Borrow from Treasury, if necessary, at low interest rate.

(d) Repay advances out of sale proceeds if interests realised or otherwise out of rents.[6]

18. Then later the 1965 Prichard Report suggested some quite radical changes to the laws of succession to Maori land interests contained in the Maori Affairs Act 1953. It recommended that the law of succession on intestacy to Maori land interests be made the same as for Europeans, and that the lands owned by the deceased pass to an administrator who should make application to the Court for succession.

19. To deal with the fragmentation problem the Prichard Committee recommended that the cut-off figure for uneconomic interests previously set at £25 be increased, and it suggested that the tempo for converting these interests be speeded. They suggested that owners who had intimated a desire to buy up shares in a block of multiply-owned land should not have their interests converted.

20. The committee remarked that incorporation, in spite of fragmentation, would be the means of preserving considerable areas of Maori land as such, and considered that incorporations would themselves probably acquire the smaller shares as the owners would find it too costly to service them.

21. The Maori Affairs Amendment Act 1967 stemmed almost entirely from the conclusions and recommendations of the Prichard Report. One significant change was that the persons entitled to succeed to Maori land interests of Maoris dying after 1 April 1968 were henceforth to be determined on the same basis as if the deceased were a European. Except in an estate of considerable value, the effect of this proved to be that the surviving spouse of the deceased was usually the sole beneficiary and thus became solely entitled to the interests of Maori lands of the deceased.

This, however, merely deferred fragmentation of the interests, as on the death of the surviving spouse, the interests would then normally pass to the children.

22. Other relevant changes to the law were made by Part VII of the same Act. This effected amendments to the Maori Affairs Act 1953 in respect of use of the conversion fund. Section 124 authorised the Maori Trustee to acquire without the Court's recommendation, an uneconomic interest during the exercise of the Court's jurisdiction under certain sections of the 1953 Act, namely section 181 (partition of land), section 200 (the carrying into effect of a consolidation scheme), section 435 (the amalgamation of titles), and section 445 (the issue of consolidated title orders). Before 1967 the Maori Trustee could acquire such interests only on the recommendation of the Court. There was also provision in the amendment for the Maori Trustee to acquire these interests in Maori reserved land and Maori vested land, to buy other interests in such land, and to sell the leases of such land to a Maori, a descendant of a Maori, or to a Maori trust board.

23. Some sections of Maoridom were displeased at these changes, and in 1972 a Labour Administration enacted the Maori Affairs Amendment Act 1974. This Act repealed a number of provisions contained in the 1967 amendment and in the 1953 Act concerning the use of the conversion fund, and succession. The 1974 Act was based principally on policies stated by the Labour Government in its election manifesto on Maori affairs where it was declared that Maori land should be retained in the hands of its owners. The policy of the Government was reached after representations were made by groups of Maori people at meetings held throughout the country. Objections to the provisions about Maori succession in the 1967 Act were often voiced at these meetings.

24. The relevant alterations made to the law by the 1974 amendment are:

(a) Those parts of section 136 of 1953 Act relating to the £10 rule (see paragraph 17) of uneconomic interests were repealed (section 136 otherwise continues to apply in respect of persons dying prior to 1 April 1968).

(b) Section 137 of the principal Act defining uneconomic interests and providing for their disposal was repealed.

(c) Succession to undivided interests in Maori land on intestacy became determined once again by Maori custom, with a life/remarriage interest to the surviving spouse.

(d) The provisions for purchase of uneconomic and other interests in reserved land and vested land for sale to lessees were repealed.

Present operation of the conversion fund is virtually limited to purchase of shares from Maoris or their personal representatives if the purchase money is to be used by the vendor for housing, or for payment of estate debts.

25. Family arrangements are used as a further means of controlling fragmentation. The Court may with the consent of a beneficiary, vest the whole or any part of the share of that beneficiary in any other person or persons, section 136 Maori Affairs Act 1953. This has been brought forward into present legislation, section 78A Maori Affairs Amendment Act 1967, inserted by section 17 Maori Purposes (No. 2) Act 1973. This section authorises the Court to give effect to an arrangement or agreement notwithstanding that any of the persons concerned has not agreed or objects. In fact beneficiaries generally agree to such arrangements. Family

arrangements, however, have proved to be only of limited value in dealing with fragmentation, because, usually only interests of small value are divided in this way. Fragmentation is still proceeding at a considerable rate.

26. While between 1953 and 1974 Parliament by these steps endeavoured to find a legislative solution to the problem of fragmentation, during the same time it sowed the seeds of an acceleration of the rate of fragmentation by successive amendments to section 213 of the Act (vesting orders transferring interests in land). Prior to 1953 an owner in a block of land in multiple ownership (that is more than 10 owners) could dispose of his interest only by summoning a meeting of owners. Section 213 of the 1953 Act provided a simple and inexpensive method of transfer of undivided interests by sale or gift as long as the transfer was to a Maori.

27. However, a series of amendments in 1967, 1968, 1970, 1974, and 1975, limited the disposal of interests in land by way of sale or gift. The interest may now be sold either to a Maori who is a beneficial owner in the same property (but not transferred to the estate of a deceased Maori) or it may be sold to a child or remoter issue or to a brother, sister, or parent of a beneficial owner. If the transfer is by way of gift and the interest is worth more than $100 the donor is required to appear personally in Court. A special Government valuation of the whole block in which the owner has an interest must be obtained at the transferor's expense, and the purchase money paid to the Maori Trustee if it is in excess of $100. If it is less than $100 the Court has to be satisfied that the purchase money "has in fact been received in full by the alienor either by payment being made in the presence of the Court or by subsequent payment". Judge M. C. Smith said; "Section 213 was intended to provide a simple and inexpensive procedure for dealings between the Maoris and descendants of Maoris. It is not always doing that today"; and further ". . . The provision requiring payment to be made in the presence of the Court or subsequently to the hearing is primitive, humiliating to the purchaser and embarrassing to the Court".[7]

28. The section has thus prevented an owner of an interest in Maori land from transferring it by way of sale except to a Maori co-owner or to his own family. The restrictions imposed on the transfer of such interests has converted what was intended by Parliament to be a simple conveyancing exercise, capable of being carried out by the Maori owners themselves, into a drawn out, complicated, and expensive procedure. An owner with an interest of $1,000 in a block of land worth $30,000 pays a special valuation fee not based on the $1,000 interest, but upon $30,000. While some co-owners may be willing to purchase small interests in a block of land from fellow co-owners, if the interest is of considerable value there is little chance of an owner finding another owner willing to purchase.

29. The Rata White Paper said that these restrictions were designed to preserve "the kin group" concept in a block of land.[8] The need for special valuations was justified by claims that owners of interests did not always appreciate their true worth and either sold their interests below value or possibly exposed themselves to the imposition of gift duty. The requirement to have the donor of an interest attend in Court was said to be necessary to enable the Court to be satisfied the donor knew what he was doing and appreciated the value of the interest being given.

30. The complex and restrictive provisions of section 213 as amended tended to deter Maoris during their lifetimes from disposing of small

interests to a family member and thereby reducing fragmentation. Many witnesses at our hearings found such provisions paternalistic and almost insulting to the intelligence of the Maori race. Section 213 bears the imprint of that era of paternalism which Mr Justice Mahon in the Ngatihine case considered to be behind us.

31. Efforts to legislate remedies for fragmentation through compulsory purchase of uneconomic interests proved to be extremely unpopular and led to the 1974 amending legislation. The present mood is even more strongly against any ideas of compulsory disinheritance. The concept of tribal inheritance enabling a person to identify with a particular area has assumed increasing importance even in these times of Maori urbanisation. As Judge Durie has pointed out, many Maoris today see fragmentation not as a problem, but as an answer to one—as an opportunity to return to pre-European communal land ownership:

> It is felt that when an individual's share is so small that it is not worth his sharing in the cash return, then his share might be applied to tribal or family projects with which the land is most closely associated, such as maintenance of the local marae, and recreational reserves or resorts, the provision of special scholarships or in further development of the land. Successions to that shareholder should cease and he and his descendants would have instead the right to seek a scholarship, or to return to the ancestral marae, or to holiday on certain grounds, as the case may be, on proof to the administering body, of descent from a shareholder on the ownership lists.[9]

32. The many thriving incorporations and trusts bear witness to the fact that fragmented incorporation and trust ownership can contribute to the gross national product just as efficiently as land that is individually owned. The reverting to papatipu or communal ownership in land need not be an impediment to future use or productivity if advantage is taken of the legislative provisions for incorporation or trust ownership.

33. Although the increasing number of trusts and incorporations shows that this kind of land tenure is today favoured more and more by Maoris, it would be an exaggeration to imply that there is a unanimous move in Maoridom to communal ownership. Many prefer to retain the European concept of individual ownership. There are those who order succession to their lands in ways designed to avoid fragmentation, or by means of vesting order, exchange, gift, or sale, enable one of their number to acquire a predominant interest. Others are active in buying shares of relatives with a view to acquiring sole ownership of a whole block, or to partition out a part. Judge Durie, as previously noted, remarked that he is unable to guess whether those favouring communal ownership or those favouring individualisation of title predominate among present day Maoris.

34. There will be no one acceptable solution to fragmentation. Decisions in such an area of sensitive and fundamental policy are for the Government alone. We have not been asked to advise on them. There are, however, a number of existing conditions which affect such decisions and to which we must draw Government's attention. They are:

(a) An increasing awareness by Maoris of their ability to dispose of small interests in land by will or to transfer them during their lifetimes;

(b) A growth in interest in turangawaewae which will increasingly lead successors of deceased Maoris to search out and obtain

succession to interests in Maori land irrespective of value or location. This has prompted the majority of succession applications;

(c) Many interests of deceased owners in multiply-owned blocks of land have not been acquired by the successors entitled thereto and will not be because of lack of knowledge, and the small value of such interests;

(d) Some owners of small undivided interests in land will be happy to transfer them to a hapu or tribal trust;

(e) Some will be frustrated when they cannot find any other co-owner wishing to purchase their interests and will cease to have any further dealing with those interests;

(f) Many Maoris live with the concept of individual title or ownership whether it be in a house, or in a car, and will want the right to deal with their interests in land without restrictions;

(g) While the Court has a role to play in overcoming fragmentation the problem is administrative rather than judicial. The department has perhaps the greatest role through its community development programme. We see it to be in encouraging Maoris to:

(i) Think out how they would like to deal with their interests in land;

(ii) Encourage Maoris to succeed to interests of deceased ancestors;

(iii) Encourage owners in multiply-owned land to participate at meetings where decisions on the use or management of their lands are involved;

(h) The department and all those involved in advising on problems of fragmentation could adopt the positive role of stressing the need for wills or some other arrangements to lessen further fragmentation.

REFERENCES

[1]F. D. Fenton, *Important Judgements Delivered in the Compensation Court and Native Land Court 1866–1879*, 1879.
[2]Norman Smith, *Maori Land Law*, A. H. and A. W. Reed 1962, p. 72.
[3]New Zealand Insurance Co. Ltd., Rotorua Branch, Submission 66.
[4]Department of Maori Affairs, Submission 1, p. 1.
[5]Report of Committee of Inquiry into Laws Affecting Maori Land and Power of the Maori Land Court, 1965, p. 41.
[6]J. K. Hunn, Report on the Department of Maori Affairs, 1961, pp. 74–75.
[7]M. C. Smith, Submission 3, pp. 6–7.
[8]Government White Paper on proposed amendments to the Maori Affairs Act 1953, the Maori Affairs Amendment Act 1967, and other related Acts, E. 20, Government Printer, 1973, p. 8.
[9]E. T. J. Durie, Submission 11, p. 24.

Chapter 6. RECORDING TITLE TO MAORI FREEHOLD LAND

1. The records of titles to private land in New Zealand are kept by the Lands and Deeds Division of the Department of Justice. Under the Land Transfer Act 1952 almost all privately owned land in New Zealand is held under the land transfer system. The Land Transfer Act 1879, based on the Torrens legislation enacted in South Australia in 1858, is the foundation of this country's system of recording land titles. The principle features are the registration of title in a public records system and the guarantee of that title by the State. Legal estates in land are thus acquired not by virtue of agreement entered into to acquire them but because the purchaser or grantee has registered an instrument granting him that estate. His name is recorded on the register as the registered proprietor. The certificate of title becomes the hub of the whole land transfer system. It describes the holders of the different estates or interests in the land (registered proprietor, mortgagee, lessee, etc.), gives the exact location and extent of the boundaries, and notifies the encumbrances or interests affecting the land (for example, mortgages or rights of way). Everything that should be registered on the title is recorded on it.

2. The land transfer system is a safe, efficient scheme which has served the country extremely well for over 100 years. It aims to provide ". . . security of title by means of State guarantee, simplicity by the use of standardised forms in language readily understood by laymen, accuracy by the use of precise survey data, the reduction of costs by simplification of conveyancing procedures, expedition by streamlining and constantly revising recording procedures and suitability to circumstances by relating our land registration system directly to our social and economic structures".[1]

3. But there has developed, as we have explained elsewhere in chapter 2, a system of recording the details, including ownership, of Maori land within the records of the Maori Land Court. This has led to large areas of Maori land not being brought under the land transfer system; or if it has been, the records relating to it are deficient or out of date. The result is that the benefits of the land transfer system are replaced by a cumbersome, inefficient system of records of Maori land and its ownership which puts the Maori people in their land dealings at a considerable disadvantage compared with Europeans. Because of this, title to Maori freehold land may be found either:

(a) Complete on the land transfer register;
(b) Entered on the land transfer register but incomplete. Only some of the Court orders will have been registered while the remainder are held in the Maori Land Court records;
(c) Held in the form of an order of the Maori Land Court, but with no entry in the land transfer register. Orders of the Court that constituted the title have not been registered and the whole record of title is contained in the records of the Maori Land Court.

4. A dual system of recording Maori land, with some land wholly registered in the Land Registry Office, some wholly recorded in the Maori

Land Court, and some partially recorded in both, creates a situation which is confusing to Maoris and frustrating to lawyers. Non-registration in the Land Registry Office produces enough difficulties, but partial registration is extremely dangerous, bringing into question the guarantees provided by the Land Registry Act. The cardinal principle of the Torrens system, stated in *Fels* v. *Knowles* [1906] 26 N.Z.L.R. 604, 620, is that the register is everything, but the concurrent presence of two such registers plus the existence of instruments unregistered in either, brings into doubt the certainty that should be expected from a register.

5. In many cases the only impediment to the registration of orders against the land transfer register is the failure of the parties involved to have the orders lodged in the Land Registry Office and pay the registration fees. If the registrar of the Court sought to have the orders registered he would be liable for the fees for which he does not have funds. This problem can be overcome by granting a statutory exemption from registration fees to the registrar of the Maori Land Court.

6. Chief Judge Gillanders Scott made a strong plea for all Maori land to be surveyed and brought under the land transfer system. He said:

> It is my firm conviction, and always has been, that the Torrens System must be sustained at all costs, and in no way imperilled by the Maori Land Court system. The desirable, if not essential, is that all Maori land and all customary land, be so classified by Section 30 (1) (i)/1953 order, surveyed, placed on the Land Transfer Register, and other orders registered—to the end and intent that the records coincide. I am satisfied that such is not only in the private/public interest, but is an exercise long overdue completion.[2]

7. Not all certificates of title show that Maori land is Maori land. In the first place, this can create problems caused by unregistered succession orders and partitions. In the second place, the position of a purchaser, unaware that a block purchased by him is Maori land for which the Maori Land Court has not given approval for alienation, is especially difficult. Such uncertainties imperil the land transfer system.

8. Historically it was never intended that the Maori Land Court should maintain such separate records of ownership. Indeed, even today there is no statutory justification for this procedure. In the early days of European settlement it was intended that as soon as customary Maori land had been investigated it should be made subject to the Land Transfer Act, and a certificate of title issued under the Act pursuant to a Crown grant. This procedure was allowed for in the Native Lands Acts of 1862, 1865, and 1873. However, these Acts limited the issued of Crown grants to cases where there were no more than 10 or 20 owners—the number varied in different Acts. The Native Land Court Act 1886 provided that, after the investigation of the land and the making of an order by the Court, the order itself was to be registered under the Land Transfer Act. The intermediary step of a Crown grant was removed.

9. The Native Land Court Act 1894 purported to implement a system of State guaranteed titles to Maori land. This entailed registration in the Land Registry Office. The Act made practically all titles which had been investigated by the Maori Land Court up to 1894 automatically subject to the Land Transfer Act. Detailed instructions were drawn up for the sending of the orders for title through the Chief Judge of the Maori Land Court to the district land registrar for registration. Orders for title made

by the Court after the passing of the Act were to be forwarded by the registrar of the Court to the district land registrar who was required to issue a certificate of title subject to any restrictions which may have been imposed by the Court. In the meantime the district land registrar was to embody such an order in the provisional register where it would be subject to the provisions of the Land Transfer Act. In the event many orders were never forwarded for registration in the Land Registry Office because the registration fees were not paid or because there was no acceptable survey.

10. Time and population growth have increased the number of owners of Maori land. There has been an increase in multiple ownership and the issue of partition orders. Often individual owners have wanted their own shares cut out from the parent block. The registration of these partitions in the Land Registry Office was dependent on survey, which was often not carried out. Thus there came about many partitioned blocks of land for which the only records of ownership were those held in the records of the Maori Land Court.

11. In the case of general land for which there has been compulsory registration of title since 1924, an unregistered instrument of ownership gives merely an equitable interest in the land. The legal interest follows on the issue of a certificate of title after registration. Only at that stage is ownership really secure.

12. The position in the case of Maori freehold land was further complicated by two judgments of the Court of Appeal (*The King* v. *Waiariki District Maori Land Board* [1922] N.Z.L.R. 417, and *re* Hinewaki No. 3 Block 1922 GLR 591) where it was held that a partition order of the Maori Land Court created a legal estate and not merely an equitable interest until registration. Thus we have legal recognition of the existence of two registers or records affecting title.

13. Even though a Maori owner may have legal title to his land as shown in the records of the Maori Land Court, he is disadvantaged in his dealings with it. Because of the absence of an indefeasible title as given by a certificate of title it may be difficult for him to mortgage his property. Non-registration of Maori Land Court orders prohibits lessees of unregistered leases of Maori land from being eligible for development loans offered by the Rural Bank. Although a Maori Land Court title provides proof of ownership it is not considered satisfactory security by many lenders.

14. According to Mr M. J. Miller, District Land Registrar, Napier, few orders of the Maori Land Court are now registered in his office, and then only when a certificate of title is essential as happens in cases where the land is to be transferred, leased, or mortgaged. The inconvenience and frustration caused to Maoris wishing to find details of their land was also illustrated by Mr Miller:

> We find that Maori land owners are usually well informed on matters of land tenure, more so than non Maori land owners. In spite of this, however, it is our common experience that Maori owners often travel distances to Land Registry Offices to search the title to their land and when they arrive at a Land Registry Office they unfortunately often find:
>
> (1) That there is no record of their land in the Land Registry Office, or
>
> (2) That although there is a Certificate of Title for their land we suspect that because of the lapse of time since the last registration that the Certificate of Title does not represent the

ownership as would be represented in the unregistered Orders of the Maori Land Court.[3]

15. It is widely recognised that the present system is unsatisfactory and that the creation of one record of titles in the Land Registry Office is necessary to end the confusion. There is needless expense in maintaining a dual system of land registration which gives no absolute certainty of title. E. C. Adams (a former Registrar-General of Lands) in 1959 recommended that the district land registrar should be given the same powers over Maori land as he had under the Land Transfer (Compulsory Registration of Titles) Act 1924 to bring under the Land Transfer Act privately-owned general land not previously subject to that Act.[4] The existence of such land had caused delays and unnecessary expense in conveyancing. A way of achieving district land registry control of Maori land was advanced by Adams, and in chapter 19 we survey this and other suggestions for dealing with the same problem.

16. In spite of the recognition of the problem, some consider that the muddle is now so great (and must become worse) that the problems of effecting a remedy are intractable. We have the department saying:

> The ideal is that all Maori land should be on the land transfer register, but it is doubtful if this is even remotely practicable. Even if the questions of the survey were all cleared up there would remain difficulties of multiple ownership with large numbers of owners holding small shares.[5]

17. There are two main obstacles to the registration of all Maori freehold land in the land transfer register and the issuing of certificates of title:

(a) The large numbers of partition orders which have never been surveyed. Section 34 (9) of the Maori Affairs Act 1953 requires the preparation of a plan of the land affected before a freehold order, or partition order, or a final vesting order made for the purposes of a consolidation scheme, can be signed and sealed. Even if the unsurveyed partitions were completed by survey, many would not meet the requirements of the law as it exists today.

(b) The multiplicity of ownership of most blocks of Maori land, and incomplete ownership lists, conflict with the purposes of the Land Registry Office.

18. These problems have been known for many years. In 1965, the Prichard Report recommended ways of dealing with fragmentation, uneconomic interests, and unsurveyed blocks. The methods proposed were found to be unacceptable soon after the report was published, but the problems were clearly recognised and have become worse since then. There was a strong plea made for one land transfer system:

> It is quite wrong for the Court to have made orders of partition without having required survey, but they exist in their 17,000 and it is of the utmost urgency that the position be rectified. We believe that New Zealand should adhere to its land transfer system and should not continue to have one good system for European land and a very poor one for Maori land. In other words one should be able to go to the Land Transfer Office and search the ownership and boundaries of all land whether European or Maori. We add to this that there should be one exception, namely that Maori Land Court orders

subsequent to the latest partition orders need not be on the Land Transfer Register when there is a prospect of registration never being necessary by reason of transfer documents being signed by the Maori Trustee or other trustee or agent.[6]

19. In 1978 the Report of the Committee Appointed to Investigate Problems Associated with Farming Maori Leasehold Land (referred to here as "the Mete-Kingi Report") concluded that in order to open up avenues of finance for leasehold farming of Maori land it would be necessary to complete the titles of all Maori land so that leases and mortgages could be registered. The report recommended:

> That the Government accept financial responsibility for survey of Maori land titles where the current or potential use of the land makes completion of the title by survey desirable.[7]

20. The transfer of all titles to Maori land to the Land Registry Office was not supported by all those who appeared before us. A few viewed such a move with suspicion and implied that the present muddle favoured the retention of Maori land in Maori hands by making purchase harder for prospective European buyers. Mr Latimer, Chairman of the New Zealand Maori Council, speaking of unsurveyed land and the tidying up of titles said: ". . . perhaps if those titles had been tidied up earlier we would have had less land".[8] Because of the existing safeguards against unwanted alienation of Maori land, we do not think that this is a valid objection.

THE SIZE OF THE PROBLEM

21. We consider that real advantages would accrue to the Maori people from a State guaranteed system of land title under the control of the Land Registry Office. They would be able to deal with their land under a system much simpler than the present one; there would be certainty of title and hence none of the disadvantages now suffered in borrowing money for land development. Conveyancing would be simpler, and an up-to-date record of title would enable steps to be taken to amalgamate uneconomic blocks and to use aggregation for the benefit of the Maori owners. However, before these benefits can be made good, the costs must be estimated. We must find out what effort in money and manpower is needed in order to compare the cost of cleaning up the muddle with those of allowing the situation to drift along, becoming worse year by year as it inevitably must.

22. We recognise that making a reliable estimate of the size of the problem is a complex matter which we have not the resources to attempt. Those appearing before us provided only partial answers. These we survey here together with already published information, and with material we requested from the department. From all this we can get an order of magnitude estimate which enables us to make recommendations for further action in chapter 19.

23. As we have noted in paragraph 17, one of the main obstacles to registering partition and other orders of the Maori Land Court is lack of adequate survey. The Mete-Kingi Report gave in an appendix the number of titles unsurveyed in each Maori Land Court district and the area of that unsurveyed land. Twenty-eight point nine percent of all Maori land titles are unsurveyed, that is, 29.3 percent of the area of Maori land. In the Tokerau (North Auckland) District 51.9 percent of Maori land titles are unsurveyed. (The percentages given in the report are incorrect and have been recalculated here.)

24. An estimate of the cost of completing the survey of all this land was given by Mr I. F. Stirling, Surveyor-General.[9] In June 1977 the Secretary for Maori Affairs and the Surveyor-General agreed that there was a need to do something about unsurveyed Maori titles. So that the extent and nature of the problem could be assessed, the Chief Surveyor, Hamilton, was asked to investigate the unsurveyed Maori Land Court partitions in the South Auckland Land District which is a part of the Waikato-Maniapoto Maori Land Court District. The titles classed as unsurveyed in the Court records were checked against Department of Lands and Survey records. It was found that 6 percent of the titles in the South Auckland Land District given by the Court records as unsurveyed had in fact been surveyed, while of the remainder only 85 percent would need surveying, for 15 percent could be completed by compiled plan. The results for South Auckland were taken as typical of the whole country, and were applied to the total area of unsurveyed partitions. Although the amount of error is not known, the resulting area said to need surveying was 269 580 ha. Taking an average cost of $7.83 per hectare (the Department of Lands and Survey figure for rural surveys), the total cost would be $2.1 million. This figure can be taken only as an approximation to the true extent of survey requirements. It does, however, indicate the magnitude of the problem.

25. In 1978 the Cabinet Committee on Expenditure approved a recommendation that the Government should accept financial responsibility for the survey of Maori land partitioned before 1 April 1968 "where the current or potential use of the land makes completion of the Court order by survey desirable". The Surveyor-General was given authority to include more recent partitions where there was a special recommendation and to make provision in the 1978–79 departmental estimates for $50,000 to meet the cost of partition surveys carried out by surveyors in private practice. An organisation was set up to implement this scheme, but it is too early yet to estimate its success.

26. It is not known what proportion of the total unsurveyed land would come within the criteria for survey laid down in the current scheme. If expenditure was continued at the rate of $50,000 a year in 1978 dollars, then it would take approximately 40 years to survey all the unsurveyed land. This gives an idea of the size of the problem.

27. Another lesson to be learned from the Waikato exercise is that the figures given by the department for unsurveyed partition orders contain errors, and that it would require considerable effort to reconcile the Court records and those of the Department of Lands and Survey to produce an accurate result. Mr T. R. Nikora, Department of Lands and Survey, Rotorua, gave an example of the difficulties involved in such an exercise by reference to the current Ruatoki land use study:

> In this study a first essential task was to produce plans of existing titles to comprise a base for tenure, physical, economic, and social studies. In order to produce the first plans it was necessary to obtain title searches. The Registrar was asked to appoint a competent member of his staff to the task and I appointed a draughtsman. First schedules of land produced from title binders showed that out of a total of 390 titles, 300 titles were unsurveyed which meant that we needed all those matters which specified the description of land.
>
> Total title areas were produced and this was then compared with a total area within a known periphery from survey information in the

Department of Lands and Survey. The two did not compare, but while there was confidence in survey information the conclusion was that there can be no confidence in title information and that land remained unaccounted for somewhere.

This then set the scene and a need for a very intensive and time-consuming search of all title records. From a staff point of view Court Staff found it difficult to identify and resurrect information from the records or to understand the purpose of the exercise. Because of competence on survey matters and an ability to correlate information with survey records the draughtsman proved more helpful but in the ultimate I had to attend to resolve more intractable problems. This work has entailed a total of 814 searches tracking through court orders from last surveys beginning as early as 1915, balancing a substantial consolidation scheme which took place in 1931 and then tracking through all court orders to current date to enable land to be accounted for and to enable future surveys to be made with confidence. This has now been achieved and I expect to refer this matter shortly to the Chief Surveyor and Registrar.

As a result of these searches it should be instructive to note matters discovered. These are:

From the title binders—Description or adequate description of land not recorded; absence of diagrams or questionable diagrams; appurtenant and dominant rights not recorded; incomplete memorial schedules; roadways not recorded and arithmetical mistakes.

From the minute books—Indecipherable writing; references to exhibit plans describing title but which have been lost or are difficult to find; arithmetical mistakes; description of land in the best available layman's terms, "square to, parallel to", without regard to topography, and rude diagrams.

From the files—A filing system which is difficult to search; papers removed to places unknown; exhibit plans purporting title removed; information relevant to the description of current titles held on files and not in title binders.

Of plans—Missing plans; missing approved consolidation scheme plans from which have been ordered many titles.

From an analysis of searches—Court orders which require referral back to the Court; Land with no current title; a need for fieldwork to clarify Court orders; no legal road or roadway to provide for the only bridge to cross the Whakatane river; unformed non-legal roads not treated with; land unwittingly left out of an amalgamation; 10 acres provided for a roadway but ignored by later court orders; and a house on someone else's land due to an impossible partition.[10]

28. At the request of the Royal Commission, the registrars of each Court district supplied updated estimates of unregistered orders and leases, and unsurveyed partition orders. They are given in table 6.1.

29. A formidable amount of work will be involved in bringing ownership lists up to date. There are blocks of land for which the ownership lists have not been changed since the titles were created several generations ago. The owners as well as their immediate descendants have died. The only possible way to trace owners of such land is by calling a meeting at a marae near the land and inviting the local people to help in tracing successors. Even where this is possible, it will be a slow process

Table 6.1 TITLE REGISTRATION DATA: UNSURVEYED PARTITIONS

(As at September 1979)

	Tokerau	Waikato	Waiariki	Tairawhiti	Aotea	Ikaroa	S. Island
Number of unregistered partition orders	3 630	2 259	4 455	4 081	1 500	644	783
Number of unsurveyed partition orders	2 411	1 173	2 148	2 666	755	357	133
Number of unregistered roadway orders	..	217	320	39	50	126	Nil
Number of unregistered leases	280	289	624	652	600	..	25
Estimate of unregistered partition and roadway orders that cannot be registered because of a change in land use	..	Nil	Not more than 5%	Nil	Not more than 3%	Nil	Not more than 10%

involving a large number of departmental staff and taking up a lot of the Court's time in dealing with succession applications.

30. The registrars were asked to give an estimate of the time in man-years to bring the ownership lists up to date. The results are shown in table 6.2.

Table 6.2 ESTIMATE OF TIME TO BRING OWNERSHIP LISTS UP TO DATE

District	Estimated Time (Man-Years)
Waikato-Manipoto	10
Waiariki	About 50
Tairawhiti	Not less than 3
Aotea	More than 5
Ikaroa	Up to 4

31. Even these rough estimates show Waiariki to be very much higher than the others. We consider that the only deduction to be made from the figures is that many years' laborious work would be needed to bring ownership lists up to date. A preliminary trial would be needed to make any precise estimate of the time required. It is clear to us that the present unsatisfactory situation of the titles for Maori land cannot be justified, and is one of the main factors militating against the economic use by Maori people of large areas of their land. In chapter 19 we discuss the various suggestions that have been made for correcting the present muddle.

REFERENCES

[1]*New Zealand Official Yearbook*, 1978, p. 282.
[2]K. Gillanders Scott, Submission 49, p. 214.
[3]M. J. Miller, Submission 46, p. 2.
[4]E. C. Adams, *New Zealand Law Journal*, 1959, p. 171.
[5]Department of Maori Affairs, Submission 1, p. 5.
[6]Prichard Report 1965, p. 44.
[7]*Farming of Maori Leasehold land*, 1978, p. 20.
[8]New Zealand Maori Council, Evidence, p. 367.
[9]I. F. Stirling, Surveyor-General, Submission 31, Appendices.
[10]T. R. Nikora, Submission 57, pp. 4–5.

Chapter 7. THE DEPARTMENT OF MAORI AFFAIRS AND THE MAORI LAND COURT

1. The Department of Maori Affairs, originating in the Protectorate Department, has had many administrative vicissitudes, and has been used for many different purposes since its foundation in 1841. This was inevitable in the changing relations between a vigorous colonial society and an equally vigorous indigenous people of quite different culture.

2. The summarised history of the department given in appendix 4 shows that it has been involved at different times in land purchasing for European settlers, and also with trying to stop wholesale alienation of Maori land to settlers. It has played a paternal role by exercising some oversight on the wellbeing of the Maori people. More recently it has attempted to encourage Maoris to administer and use their lands for their own benefit. The department has variously been associated for administrative purposes with the Defence Department, the Department of Justice, and the Department of Island Affairs. It is our aim here to deal with the history of the department only in so far as it impinges on the Maori Land Court, with which it has been associated since 1865.

3. The work and aims of the department are laid down in the Maori Affairs Act 1953 and its amendments. In doing this work the department must always have regard as far as possible to: "The retention of Maori land in the hands of its owners and its use or administration by them or for their benefit". The departmental obligations to the Court are: "To provide the clerical and administrative services necessary for the efficient functioning of the Maori Land Court".

4. The department today is a large, complex organisation of about 1000 people, of whom roughly 10 percent are in the Court and Titles Divisions. From 1900 to 1934 the Native Department, as the department was then called, comprised the Native Land Court and the Maori Land Councils, which later became the Maori Land Boards. Some of the jurisdiction then exercised by the Maori Land Boards is today exercised by the Court, so that all officers of the Native Department were then in fact officers of the Court as we know it today. The Court was the department.

5. Figures for the size of the department in former years are difficult to obtain. The Prichard Report states that in 1925 there were 70 in the department and 20 in the Maori Trust Office. By 1956 the Court staff numbered 81 which increased to 111 by 1965 as a consequence of title reconstruction activities.

6. The importance of the Court relative to other sections of the department has decreased to the stage where, at the beginning of our inquiry, the claims of many people that the Court was the poor relation in the departmental hierarchy appeared to be justified. Many examples were given in the submissions of Chief Judge Gillanders Scott and Judge Durie to show that the department was not providing the administrative services necessary for the efficient working of the Court (see chapter 9). We discuss later, too, the measures the present Secretary for Maori Affairs has taken since our inquiry began to remedy these pressing matters.

7. The decline in the relative importance of the Court in the department and in the quality of administrative service given to it has been paralleled by an increase of departmental effort towards community services. This move has necessarily affected the Court, which also suffered because of its uncertain future.

8. The Prichard Report considered:

> That the Court is in the main no longer a Court of conflicting groups as it was in the days of investigations of large and valuable blocks, but increasingly an examiner of titles that are uneconomic in size and shared by far too many owners. The duty of the Court now is to find a solution which is both desirable and practical both as to size and boundaries of blocks and as to ownership which solution is, at the very end, carried to conclusion by Court orders.[1]

The report recommended that the work of the Court could be carried out by officers of lesser status than judges, and that no further judges should be appointed.

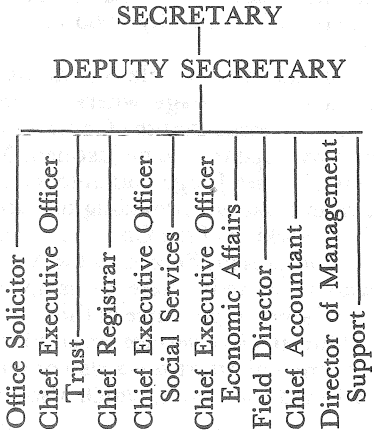
9. Although the 1967 Act did not implement this particular recommendation, the jurisdiction of the Court was decreased and its future use was left uncertain. The 1974 Act reversed some of the unpopular provisions of the previous Act, but it did not restore the jurisdiction or discretions taken away in 1967. The greater emphasis given in the department to community affairs had another consequence. Abler departmental officers appointed to the court section often did not remain long. Morale and the standard of administrative service inevitably declined.

10. A review of the department instigated by the then Minister, the Hon. D. McIntyre in 1977, began a restructuring of community services and a survey of departmental activities. The appointment of this Royal Commission and the changes in administration and organisation of the court section have been a part of the moves towards overall reorganisation.

11. The departmental annual report for the year ending 31 March 1979 gives at length the present objectives of the department:

> The main objectives of the Department for "Maori Affairs" are not those of a social welfare agency giving handouts to people as is often alleged. Instead it is an agency which combines the tasks of investing the taxpayer's money in land, buildings, and people. The task is to fully develop this powerful and creative resource for the common good of all New Zealanders. It is the development of this resource that justifies the continued existence of the department.[2]

12. In line with these objectives, the department is now structured thus:



This structure came into force only when a chief registrar of the Maori Land Court was appointed on 10 September 1979. The court and titles sections were previously under the control of the Assistant Maori Trustee.

13. The staff strengths of the main departmental groups at 31 March 1979 were:

General administration	414
Maori land court and titles ...	94
Maori trust office	74
Social services	231
Maori housing	149
Maori land development and settlement	79
	1041*

*Includes 8 supernumerary staff and 12 bursars.

Staff of the Maori Land Court work in the offices and registries of each of the seven Maori Land Court districts defined by Order in Council (*New Zealand Gazette* of 17 July 1969, p. 1309). See appendix 2. Court staff are, in general, located in the centres where there are district offices, except for the Auckland and Wellington districts which have no court registries.

14. The registrar is the principal officer of the Court for each district, and is responsible for the administrative work of the Court. Until the recent reorganisation of the court section, the district officer of the department also held the appointment of registrar. As the Court was only part of the responsibilities held by the district officer (who often had little or no experience in Court work), the duties were delegated to the deputy registrar who had under his direct control a title improvement section and a court section. Many of those appearing before us stressed the undesirability of one departmental officer holding the dual position of district officer and registrar because of the possibility of conflict of interest. We agree that the officer could have been placed in a difficult position on occasions when acting both as registrar and as district officer representing the Maori Trustee. However, as the Secretary reported in his second submission to us,[3] this situation has now been rectified.

15. From October 1978 the department carried out thorough management audit reviews of its district offices. Weaknesses in the court and titles sections were identified and changes have been made in both the district and head office organisation of the Court administration. The changes made to date are:

(a) *District organisation*

(i) Seven positions of registrar have been created and six were filled. At the one registry where there has been enough time to gauge the effect of the appointment of a separate registrar, a marked improvement in administrative support is evident.

(ii) The structure of the court and titles sections under the registrar is now under review by the State Services Commission and the chief registrar.

(b) *Head office reorganisation*

A chief registrar of the Maori Land Court took up office on 10 September 1979. He is presently concentrating on administrative inefficiencies, on streamlining Maori Land Court organisation, and staff training. Previously one officer carried the dual responsibility for Maori trust as well as court and titles administration.

(c) *Systems*

The department has invited the State Services Commission to help improve office systems.

(d) *Staff training*

A training conference for registrars was held in October 1979. A crash training programme is being developed.

16. As can be seen the structure of the organisation for providing the administrative support to the Maori Land Court is in a state of change. It appears to us that the Secretary is making commendable efforts to alter what was a most unsatisfactory situation. It is to be hoped that these efforts will achieve the improvements necessary for the department to fulfil its statutory obligations to the Court.

17. The staff of the Maori Land Court are public servants responsible to the Secretary for providing administrative support to the Court. In this they are no different from the staff of the Department of Justice who provide support services for the Supreme and Magistrates' Courts. Although a judge of the Maori Land Court is an independent officer of State and not a public servant answerable to the secretary of a department or to the State Services Commission, the nature of his duties is somewhat different from that of judges in other courts. Through historical evolution of the Maori Land Court, the judge has in the past concerned himself with administrative problems which normally could be considered as falling within the work of the department. The main judicial role in the other courts has little or no administrative character and is predominately concerned with contests between parties.

18. The Maori Affairs Act, as we shall later show, does not explicitly spell out the aims of the Maori Land Court as it does the aims of the Department of Maori Affairs. However, as far as the ownership and use of Maori land is concerned, some of the judges see their objectives as basically similar to those of the department. These judges use their jurisdiction to encourage Maori owners to retain and administer their land for their own use and benefit. They are active in initiating land use schemes for the benefit of the Maori owners.

19. While this is a laudable aim, it does raise important questions on the nature of the Maori Land Court and its relationship with its departmental servicing body. This we discuss further in chapter 12. It is sufficient to say now that if the judges of the Maori Land Court are involved in administrative activities which impinge on the work of sections of the department outside the court and titles sections, problems will arise. In these circumstances it would be difficult for the judges not to be regarded as members of the department. Day-to-day contact could jeopardise judicial independence. Moreover, it is unrealistic for the judges to expect to have administrative control over the departmental staff servicing the Court. Such staff are properly under the administrative control of the Secretary, except when assisting the judges to discharge their duties.

20. Difficult relationships between senior officers of the department and the judges have at times resulted in an almost complete breakdown in communication. As we shall later say, we consider that misunderstandings which have arisen in the past and have become enlarged with time are due, at least in part, to an intrusion by the Court into administrative areas. This has led the Court into problems of divided control,

departmental resentment, and to interference by departmental staff in judicial arrangements. Examples were given us by Chief Judge Gillanders Scott. Attempts at control by both the Court and the department in affairs of the other, and an absence of communication, could only result in mutual annoyance and frustration.

21. We welcome recent moves to improve many of the unsatisfactory aspects of the relations between the Court and the department.

REFERENCES

[1]Report of the Committee of Inquiry into Laws Affecting Maori Land and the Powers of the Maori Land Court, 1965, p. 112.
[2]Report of the Department of Maori Affairs and the Maori Land Board and the Maori Trust Office for the year ended 31 March 1979 (E. 13), p. 3.
[3]Department of Maori Affairs, Submission 77, p. 7.

Chapter 8. THE STRUCTURE AND OPERATION OF THE COURT TODAY

1. The Maori Land Court is constituted today by Part IV of the Maori Affairs Act 1953, and the Maori Appellate Court by Part V. The panel of judges consists of the Chief Judge and "such other judges . . . as may be required for the business of the Court". They are appointed by the warrant of the Governor-General and hold office during his pleasure. The Act also enables the appointment of temporary judges, who hold office only for such time as is specified in the warrant of appointment. Commissioners may be appointed with such of the powers, duties, and functions of a judge as are determined by Order in Council (see chapter 15). There are no commissioners at present. The Act also allows for the appointment of registrars, deputy registrars, and such other court officers as may be required. These are all officers of the department. Until recently, the district officer of a Maori Land Court district also held the office of registrar. This had undesirable consequences and the two positions have now been separated (see chapter 11).

2. The present Bench is made up of five permanent puisne judges, one of whom acts as deputy for the Chief Judge. The position of Chief Judge is currently unfilled. The resident judge at Whangarei, who had reached the age limit for retiring in March 1979, was reappointed on a temporary basis for 12 months and has been replaced by a new appointment to the Bench.

3. There are Maori Land Court registries in each of the districts delineated on the map in appendix 2. The towns where the registries are found are:

Tokerau	Whangarei
Waikato-Maniapoto	Hamilton
Waiariki	Rotorua
Tairawhiti	Gisborne
Ikaroa	Palmerston North
Aotea	Wanganui
South Island	Christchurch

4. There are resident judges in each of the Maori Land Court districts except for Aotea and the South Island. The placing of judges is a matter to be decided by the Chief Judge after consultation with the Minister and his department. The workload varies from place to place, and time to time. This calls for changes. It was suggested to us on several occasions that there was presently a special need for a resident judge in the South Island, and it does appear to us that there is a substantial amount of work there in promoting title improvement, and economic use of large areas. Much of this land is inadequately used by its owners or in some cases illegally squatted-on by neighbouring farmers. In Southland most of the present owners of the Crown grant lands acquired under the South Island Landless Natives Act 1906, now live outside Southland. Much determination and work is necessary to improve the situation of the owners, but this must fall mainly on owners themselves or on the

department, rather than on the Court. Nevertheless, the stationing of a judge there, at least for a period of time, may well be warranted.

5. All judges of the Maori Land Court may act as judges of the Appellate Court and any three or more may constitute that Court. The registrar, deputy registrar, and other officers of the Maori Land Court act in the same capacity in the Appellate Court. Court sittings are held in the main centres, in country towns, and occasionally on maraes. As the Court travels to the people, the judges spend a considerable part of their time on circuit. Appendix 5 lists the places in each district at which Court sittings were held in 1979. There are approximately 16 000 ha of Maori land in the Chatham Islands, but the Court has sat there only four times, first in 1907 and last in 1957. Although we were led to believe that this has caused difficulties, the people of the Chatham Islands did not avail themselves of an invitation to speak to us on their problems.

6. The current panel of Maori Land Court judges and places at which they hold sittings are:

Judge A. G. McHugh—appointed as from 29 M rch 1980 to replace Judge W. C. Nicholson on retirement. Judge Nicholson resided at Whangarei and took sittings at all venues in the Tokerau District.
Judge K. B. Cull—resident at Hamilton.
Takes all sittings in the Waikato-Maniapoto District.
Judge E. T. J. Durie—resident at Rotorua.
Takes some Waiariki District sittings and sittings at Taumarunui/Tokaanu.
Judge R. M. Russell—resident at Gisborne.
Takes the Tairawhiti sittings, as well as sittings at Hastings and Masterton in the Ikaroa District.
Judge M. C. Smith—resident at Palmerston North. Takes sittings at Palmerston North and Levin in the Ikaroa District, and Wanganui, Hawera, and New Plymouth in the Aotea District, and all South Island sittings. He is currently Deputy for the Chief Judge.

Chief Judge K. Gillanders Scott, who resided at Rotorua and took Court sittings at Rotorua and Wellington, resigned on 11 November 1979.

7. The procedures of the Court are governed by the Rules of Court, the Maori Land Court Rules 1958, and their amendments. The judges stated that amendments to the Rules were introduced without reference to them, and that their suggestions for a comprehensive revision were ignored by the department. This is a lamentable and ridiculous state of affairs which we discuss more fully in chapter 16.

8. Under section 3 Maori Purposes Act 1976 judges may issue instructions or suggestions ("practice notes") prescribing procedures not covered by the Rules whenever they consider these are necessary or expedient for the proper conduct of Court proceedings. We were told that this has led to differences in Court procedures from district to district and from judge to judge. There is no machinery covering practice notes yet established for New Zealand as a whole.

9. The annual schedule of the commencement of sittings of the Court in each district is published in the *New Zealand Gazette* before the beginning of the calendar year. Special sittings may be appointed as necessary, but these appointments may be given only by the Chief Judge. We believe that this power should not be restricted to the Chief Judge but extended to any judge (see chapter 16). Before each separate Court sitting, a notice or panui is issued giving a schedule of the cases to be heard. The closing date

for applications to be included in the panui is given in the list of Court sittings in the *New Zealand Gazette.* It is required by the Rules of Court that the panui be sent out by the department 14 days before the hearing. The distribution of the panui is governed by rule 21 (5):

> A copy of the notice shall be sent by post to each applicant to whom the notice relates and, in the discretion of the Registrar, or on the direction of the Judge, to any person appearing on the face of any such application, to be affected thereby.

While a panui may be only a list of cases to be heard some registries have been experimenting with a narrative form of panui in which the nature of the case is briefly outlined. A further discussion of the possible form and method of distribution of the panui is given in chapter 17.

10. We were often told that the volume of business of the court has declined in the last few years. To illustrate the point, the Secretary included in the second departmental submission a table, reproduced in appendix 6, which shows the decline in the number of orders made by the Court over the period 1971–79, and that there are now fewer applications on hand at the start of the year than there were in previous years. Judge Durie has pointed out the deficiencies of the departmental statistics as a measure of the volume of business transacted by the Court. There appears to be a lack of standardisation in the way the figures are compiled. Differences in the bases of compilation mean that statistically equal values do not necessarily provide an equal measure of work load.

11. Some of the factors which prohibit the departmental statistics being taken at their face value are:

(a) Some judges require a considerable amount of investigation by Court staff before an application is dealt with by the Court, while others require less for the same type of application.

(b) Making orders under section 438 (vesting in trustees) tends to be a much more complicated process than it was several years ago.

(c) In one district, only those orders made on circuit had been included in the returns. The large number which required reserved decisions, and were made back at the registry, were not counted.

(d) Registries have no common method of counting succession orders. If 15 blocks were involved in one succession application, the number of orders made is taken as either 1 or 15.

(e) A reduction in the number of applications or orders made might be caused by fewer people assigned to do the work. Examples were pointed out to us.

12. Chief Judge Gillanders Scott also held the view that the departmental statistics could not be used to quantify the volume of Court business. He said:

> In a Court such as the Maori Land Court, it is the nature of the jurisdiction, related to subject-matter, the remedy and the constructive nature of the relief granted, related both to the land and its beneficial owners, in the public as well as the private interest, which are the only valid denominators of assessment.[1]

13. Although we acknowledge the validity of the judges' criticisms, and agree that a precise evaluation of the volume of the business of the Court is impossible, we do not consider the statistics valueless. The downward trend in the number of orders made by the judges and in the number of days on which the Court sat, combined with the subjective statements

from some judges, departmental officers, and others, indicate what we believe to be a real decline in Court business. We consider that this trend will continue for reasons given in chapter 12.

14. There have been changes in the work patterns in some of the individual registries with decreases in the orders made at Rotorua and Palmerston North and increases at Wanganui and Gisborne. Judge Durie in his submission commented that the increase in the Aotea District was contributed to by the relative newness of the Taumarunui and Tokaanu Courts and the establishment of very substantial trusts for afforestation, farming, deer farming, residential subdivision, and tourism. Thus it would not be expected that the increase would continue. In the Gisborne District there have been large increases in the numbers for creation of section 438 trusts, in section 136 vestings, and in section 445 consolidation orders.

15. The percentage changes between two recent 5-year periods for each district are shown in table 8.1:

Table 8.1 AVERAGE NUMBER OF ORDERS (REGISTRAR AND COURT) MADE PER YEAR

(*Source*: Department of Maori Affairs)

	Whanga-rei	Hamil-ton	Rotorua	Gis-borne	Wanga-nui	Palm. North	Chch
1969–73 ...	2 354	4 015	6 981	3 405	4 057	1 926	1 653
1974–78 ...	2 261	3 792	5 433	4 763	4 959	1 531	1 621
Percentage Change ...	−4	−6	−22	+40	+22	−21	−2

Though the above figures do not show any significant difference in the total number of orders made in the two 5-year periods, it must be remembered that since 1977 there has been a large increase in the number of orders made by registrars. In 1977 registrars' orders were half as many as those made by the judges, while in 1979 there were more registrars' orders than judges' orders. There has thus been a significant decrease in the annual number of orders made by the judges.

REFERENCE

[1]K. Gillanders Scott, Submission 49, p. 53.

Chapter 9. HOW WELL HAS THE COURT PERFORMED ITS FUNCTIONS?

1. Before we can report on the changes needed to secure the just, humane, prompt, efficient, and economical disposal of the business of the Maori Land Court, it is necessary to consider critically how well the Court has performed its functions. Most of those who appeared before us wished the Maori Land Court to continue in its present form. Although there were suggestions for changes there was no overwhelming call for an end to the Court and for the transfer of its jurisdiction to another tribunal. The criticisms made of the Court were not so serious, nor its performance considered to be such that the main courts, for instance, could do its work better.

2. Basically, most Maori people have confidence and respect in the Court and its judges. However, it was recognised that there were grave deficiencies in the Court's administration and that there were uncertainties and differences of opinion on the role the Court should assume in Maori society today. These uncertainties and differences have had an effect on the way the Court was able to perform, and at times have reacted adversely on those who had business with it.

3. The question "How well has the Court performed its functions?" can be considered from the point of view of those who have business to prosecute through the Court; and also from the point of view of the judges whose ability to deal with the work of the Court depends on the services given by the Court staff and the department. Those who have business with the Court should be able to expect that their business is dealt with promptly, efficiently, and in a sympathetic manner. The judges should be able to expect that the staff and facilities are of a sufficiently high standard that their judicial functions can be discharged without the need to concern themselves with administrative details.

4. A relatively early demise of the Maori Land Court was expected after the Prichard Report was published and the Maori Affairs Amendment Act 1967 was enacted. The jurisdiction of the Court was diminished; its power to grant probate or letters of administration in Maori estates, and to exercise jurisdiction under the Family Protection Act were terminated.

5. The 1974 Maori Affairs Amendment Act reversed some of the 1967 legislation, and the number of judges was not reduced as the Prichard Report had recommended. Thereafter, the demise of the Court was not considered to be as immediate as before. However, the uncertainty about the Court's future continued to have an unfortunate effect on the court section of the department which appeared to assume a lesser importance in the departmental structure. Staff who showed promise were transferred or enticed elsewhere in the department, and some registries came to be manned by a high proportion of young and inexperienced officers. Some officers received rapid promotion in the court section to positions for which they lacked the necessary experience and expertise.

6. The effect of all this was to reduce the standard of departmental service given to the Court. The low ebb to which administrative services had fallen (at least in two registries) was fully documented by Judge Durie,[1] and showed a quite unacceptable state of affairs which, one hopes,

is now being remedied (see chapter 11). He gave details of the following inadequacies at the time of his submission:

(a) *Delays and errors in the processing of applications*—The Court staff in both Aotea and Waiariki registries no longer able to process applications promptly, efficiently, or correctly.

(i) applications are not checked and processed upon receipt but are left over, sometimes until just before the sittings, at others for so long that they become forgotten. Sometimes applications are put into the panui unchecked and unsearched with the intention of processing them before the actual sitting.

(ii) applications are sometimes not checked at all.

(iii) applications are too often not properly searched.

(iv) rule 17 (2) gives a reminder that some research is needed to ensure that full particulars are available at a hearing: often the judge must specifically direct such research and then often supervise work at each step.

(v) there is insufficient follow-up after hearings. Applications on which decisions are reserved are sometimes not referred back to the judge. Documents, memoranda, draft orders, and other matters for the judge's attention are often not referred. Directions go unactioned. Sometimes applications are left over for a year, or for several years even despite the earnest pleas of counsel.

(vi)there may be delays in recording decisions. The most usual reason is that certain directions (for further title particulars and the like) have not been actioned by Court staff.

(vii) too often judges are expected to accept a low standard of service, or take short-cuts, because of "staff ceilings"; or to take urgency because of previous inaction by the staff. They are asked to accept a standard of work that would be unacceptable to a district land registrar or in a Magistrate's Court.

(b) *Delays in issuing the panui*—In one registry the panui was not issued on time for at least 12 months. People attend to be heard on an application which has been omitted and is not before the Court.

(c) *Delays in the despatch of minutes*—The Court's minutes and decisions are typed and posted out to those concerned. Sometimes minutes have been despatched after the period for appeals has expired. In these cases there has to be an appeal to obtain a rehearing.

(d) *Errors in title records*—Proper title records are not kept and there are too many errors. While the "Memorial Schedule" is not a schedule of the style required by the Land Transfer Act, in many cases it is the only schedule to which a person may have recourse. In the Land Registry Office, memorials would be recorded under the hand of an assistant land registrar. In the Maori Land Court they are entered by insufficiently trained and junior staff. Sometimes wrong particulars appear on the wrong titles and in the wrong form.

7. Judge Durie's indictment of the servicing of the Courts with which he is concerned was illustrated by examples, and must be considered to be an accurate account. Chief Judge Gillanders Scott was also highly critical of the servicing of the Courts. His general views on the overall state of all registries are summed up in the following extract from his submission:

> As Chief Judge I sit from time to time in the seven Registries and have a reasonable knowledge of the Waikato-Maniapoto, Ikaroa, Aotea and South Island Registries: I have a more than passing fair knowledge of the Tokerau Registry: I am intimately acquainted with the Tairawhiti and Waiariki Registries. In addition each year I deal with roughly 45 applications under Section 452 (review of orders said to be erroneous by reason of mistake, error or omission in the presentation of the facts of the case to the Court, *or* on the law) as well as all appeals. Each Registry has its share, but the applications and appeals give an x-ray insight into the performances of the Registries. Accordingly, I accept and support that which Judge Durie has told you at pp. 140–182 of his submission. By and large, in material particular it holds good of the other Registries though Tairawhiti has had the benefit in unbroken succession of the present and two earlier Deputy Registrars of the old school; also the Bar in Gisborne is most active in Maori land matters.[2]

Chief Judge Gillanders Scott agreed with the points raised by Judge Durie but did not traverse in detail the same ground.

8. We were repeatedly told that each registry had become a separate unit and that the standard of service varied considerably over the country. Indeed, some of the judges, while critical especially of the lack of liaison with the head office of the department, stated that the service received from their registries was not nearly so poor as that received by Judge Durie. For instance, Judge Smith said:

> I have had wonderful service from deputy registrars and Court staff generally. I do not have much to do with Head Office. However, nothing has ever been done with any suggestions I might have made.[3]

Judge Russell said:

> Judge Durie has a problem I do not have. Conditions vary from district to district. I get excellent service from the staff in this district.[4]

9. Besides complaints from some of the judges, the poor administrative services were criticised by many other individuals and organisations. The New Zealand Law Society spoke of upsets to applicants and counsel caused by the Court's delays in making decisions, and put this down to the considerable time that judges are often called upon to spend on their own investigations because staff were not available for that purpose. Areas in which there were deficiences in the service given by the Court to litigants are dealt with in chapter 17. The summing up of the situation by the Hon. Mrs W. Tirikatene-Sullivan is apt:

> The desperate need, however, is for a much higher standard of service from the MLC [Maori Land Court] and for vastly improved efficiency. Clearly more trained staff and support facilities are necessary.[5]

10. The State Services Commission, which is ultimately responsible for the efficiency of the departmental administrative services, in commenting on a recent management audit of the department's activities, said:

> From the Department's internal review it appears that most of the problems in the Maori Land Court administration are localised. While in these circumstances it would seem to be unfair to criticise the whole administrative function undertaken by the Department for the Maori Land Courts, it is a fact that the servicing of the Courts in some areas was poor.[6]

11. The considerable changes over the past 20 years in the uses to which land may be put have introduced uncertainties about the function of the Court. Some judges see their primary role as initiating land-use schemes for the benefit of the Maori land owners, rather than hearing and determining the applications brought before them. Much rural Maori land was earlier regarded as something to be leased on long terms for conventional pastoral purposes. Maori reserved land in urban areas was also often leased for terms of 21 years, perpetually renewable with the rental based on the unimproved value. These leases of rural and urban lands were drawn long before the era of double-figure inflation, with the result that the rentals fall seriously below contemporary rates. More latterly Maori land has been making an increasing contribution to the country's welfare not only through general farming but also through its iron sands, forests, and ceramic clays. Large areas formerly regarded as of little use for pastoral purposes, have assumed a new significance. Moreover, small areas hitherto of marginal economic use for pastoral purposes are now used as cropping areas for the food processing industry, for the production of grapes, and for horticulture, or deer farming. The management of these lands calls for a new range of experience and knowledge to ensure that their utilisation is upon terms that are fair and reasonable to both the owners and to those who use them.

12. Many instances were quoted where judges have gone out of their way to advise owners about the best way to use their lands for modern enterprises. It is open to doubt whether this is a proper judicial function. We discuss this in chapter 12. It suffices to say here that the help given has been greatly appreciated by many, but on the other hand has been resented by some.

13. New developments in land utilisation have unquestionably introduced new complications into the work of the Court. To achieve the best use of multiply-owned land there must be consideration by the owners, negotiations with interested parties, evolution of patterns of administration, and a full searching investigation by the Court to ensure that the owners appreciate the implications, and that the final arrangement is in a form acceptable to the majority.

14. And, as well, the growth in value of the assets of Maori land and intricate ownership issues have inevitably introduced more complexity into proceedings of the Court. This has made the legal process seem slow-moving especially for those used to the freer style of earlier sittings. But ready answers cannot always be given to complex problems. Moreover, the criticisms of excessive legalism and time-wasting sometimes levelled at the Court are more often than not a result of the inadequate preparation and presentation of the particular application.

15. Recent legislation has tended to define in more detail the conditions in which the Court can do its work. This tendency has not been accompanied by greater freedom for Maori owners to deal with their lands without first obtaining the Court's consent. Thus we have the situation of a statutory reduction in the Court's discretion not being accompanied by a statutory increase in self-determination for the Maori owners. As a result, the sale of Maori land to Europeans has been made more difficult than it was formerly.

16. The Court has generally done its work well, in spite of difficulties. The Maori people have been served by judges who have striven to administer the law in sympathy with Maori aspirations. But all the same, Maoris have often been forced to suffer frustrations, delays, and

inconvenience because of the inadequacies in the administrative services given to the Court. That Maoris have not had a legal system as efficient as they have a right to expect is in part due to the absence of adequate discussion before and after the passing of Maori land legislation. Such discussion should involve judges of the Court, representatives of the Maori people, the Department of Maori Affairs, and the legal profession. The isolation of each of the groups has created needless problems and misunderstandings.

REFERENCES

[1]E. T. J. Durie, Submission 11, pp. 139–150.
[2]K. Gillanders Scott, Submission 49, p. 157.
[3]M. C. Smith, Evidence p. 306.
[4]R. M. Russell, Evidence p. 235.
[5]Hon. Mrs W. Tirikatene-Sullivan, Submission 82, p. 8.
[6]State Services Commission, Submission 76, p. 2.

Chapter 10. THE INQUIRY

CLIMATE IN WHICH THE INQUIRY WAS SET

1. The setting up of our inquiry followed logically and inevitably that of the Royal Commission on the Courts which reported to His Excellency the Governor-General in August 1978. That Royal Commission made every effort to interest all sections of the community, including the Maori people, in the issues raised by its terms of reference.

2. To many Maoris, the word "Court" means the Maori Land Court, and the commission received a number of submissions about that Court. The report of the Royal Commission said in this regard:

> We were initially puzzled why that court [The Maori Land Court] was not mentioned in the courts described in the terms of reference but we came to the conclusion that this omission was deliberate and we were obliged to rule that the Maori Land Court did not fall within the terms of reference. However, from what has been said to us in evidence and submissions, and from what we have read, we are able to support the view expressed to us by the Minister of Maori Affairs that a need exists for some examination of the structure of the Maori Land Court. We respectfully agree that this should be the subject of a separate inquiry.[1]

The warrant for our inquiry signed by His Excellency on 7 August 1978 set us the task of answering for the Maori Land Courts many of the same questions as had been put to the Beattie Royal Commission for the other courts.

3. As has been described earlier in our report, Maoridom is at present in a state of rapid social change with a continuing migration of young people from country districts to the cities, and a resultant further weakening of tribal influence. However, counterbalancing this, there has been an increase of interest by Maoris in Maori language and custom, especially among some groups of young progressive activists who have taken land, and the redress of past real and imagined injustices over land dealings, as a rallying point. There is an impatience of the young with the more conservative approach of their tribal elders, and a distrust of Pakeha institutions as well as of some Maori ones.

4. The Maori Land Court has, because of its long association with the Maori people, adopted a number of practices different from those of European courts. It has acquired a Maori character. It is regarded by many as a Maori institution which must be retained. This is especially so of those who live in rural areas, many of whom are very knowledgeable in matters connected with their land interests. On the other hand, there are, we suspect, many urban Maoris, who, divorced from tribal influence, and knowing little about their land interests, are indifferent to the Court. Some of the more articulate regard the Court as irrelevant. They resent the idea of paternalism or the attitude of stewardship the Court often adopts towards Maori land and its management. They want full control of their own land; and moreover, they think that in the past the Court has been an instrument to enable the European to divest the Maori of his land. Kawharu has referred to the Court as "a veritable engine of destruction".

Some want a court under predominantly Maori control, others want it abolished or transformed so that its jurisdiction could include the attempted righting of land grievances of the past. There is a wide range of views.

5. In the same month as our inquiry was constituted, the Maori Affairs Bill 1978 was introduced and referred to the Select Committee on Maori Affairs. This was an unfortunate coincidence of events. There was confusion not only in the minds of the Maori people but also in those of some senior officers of the department on which was the more important and should be given priority of attention, the Bill or the Royal Commission. As findings of a Royal Commission can, one would hope, affect legislation there can be no question where the priority should lie. This was recognised by the then Minister for Maori Affairs who announced that consideration of the Bill would be delayed until after the appearance of our report.

6. However, the presence of such confusion did not augur well for the Royal Commission. We found, when soliciting submissions, that at first the Maori people, State departments, and the legal fraternity were unenthusiastic about participating. Judges of the Maori Land Court were the only group which welcomed the setting up of the Royal Commission, largely because of the deficiencies they saw in the administrative services the department provided to the Court. The initial lack of Maori response to our inquiry surprised us. Although we have pointed out what we consider to be some of the obvious reasons, we think there are many others, and speculation on these would be idle. As land holds a central place in Maori tribal culture, it would have been expected that an inquiry into the Maori Land Court would have been a matter of utmost concern to Maoridom. The vicissitudes of the Court in the past, and the talk of its possible demise more recently, have been discussed in chapter 2.

PROGRESS OF THE INQUIRY

7. The warrant appointing the Royal Commission was published in the *New Zealand Gazette*, No. 69, of 10 August 1978. Because of an error in the original drafting an amendment to the warrant was published in the *New Zealand Gazette*, No. 8, of 8 February 1979. Advertisements inviting submissions were placed in metropolitan and provincial newspapers towards the end of September 1978. There were further advertisements in the local papers as the Royal Commission was about to move to each of these centres for hearings: Kaikohe, Whangarei, Auckland, Hamilton, Opotiki, Rotorua, Taupo, Taumarunui, Gisborne, Hastings, Palmerston North, Wanganui, Hawera, Wellington, Christchurch, and Invercargill.

8. Individual letters inviting submissions were also sent to 87 individuals and to 97 organisations, including all the prominent Maori organisations. The results of these approaches were most disappointing, with many people and bodies whom we would have expected to be interested in our inquiry showing no interest. Indeed, many did not reply at all to our invitations.

9. Our first public hearing at Wellington on 27 November 1978, was limited to a roll call of those organisations and people who would be taking part and the opening remarks of the chairman, in which he said:

> The substantial purpose of this sitting today is to tell you of the view we take of the ambit or width of our inquiry, and of the procedures we shall adopt in discharging the responsibilities which His Excellency

has placed upon us. But before we do that, let me tell you something of the nature of the Royal Commission.

A Royal Commission is a body set up by Royal Warrant to inquire into those matters stated in the warrant, and to report the results of its enquiries, and, in some cases to make recommendations. It differs materially from an action in a Court of Justice. There are no parties in the legal sense of the word, and it may gather its information, and conduct its investigations, in the way it thinks most suitable. This Royal Commission has decided to conform as closely as it reasonably can to what has more or less become standard procedure in Royal Commissions, following the definition of procedures by the Royal Commission on the State Services in 1961, a Royal Commission over which I presided. Those procedures have been tested in the Courts, and they are now followed widely here, and in other countries. Those who wish to study a discussion of procedures in a Royal Commission can find one printed as an Appendix to the report of that Royal Commission.

What is to be recognised is that in each Royal Commission the precise procedures followed must be determined by the essential nature of the inquiry, those people it is likely to affect, and the terms of the warrant which establishes it. Some Royal Commissions can properly follow closely the established procedures of the Royal Courts, others must necessarily, if they are to achieve their objectives, be far more flexible and informal. In our view the present Royal Commission is one which demands a high degree of informality and ready accessibility and we shall, as far as we can, while maintaining adequate control, endeavour to avoid technicalities and achieve a relaxed informality. The extent to which we can do that will depend largely on the extent to which those taking part will understand the reasons for that informality and will not abuse it.

We think it necessary that we should not confine ourselves to evidence given on oath at formal sessions. It is our intention to conduct widely informal meetings and discussions with organisations and individuals. There is always the problem of keeping a record of views expressed on such occasions, as stenographers will not always be present. We shall try to maintain some record of what is said, but cannot promise that it will be complete.

Furthermore, even at some formal sessions, for example those held outside the main centres, shorthand stenographers may not be available, and we shall have to be satisfied with a shortened but, I hope, still adequate record.

Though we will aim at informality, we emphasise that we are controlled by our terms of reference. We have no inherent jurisdiction; we can only do, and hear evidence on, what is stated in our warrant to be our task. We are not permitted to be a place to which Maori or Pakeha can take their complaints and dissatisfactions of every conceivable nature. For example, we will not be concerned with the law governing Maori land, its ownership, its transmission, its movement, except to the extent that that law affects directly the matters specifically stated in our order of reference. It is of high importance that this limitation of our activites be recognised at the outset. We would not wish people to be disappointed if later we are

forced to tell them that what they are bringing to us is outside our jurisdiction.

We recognise that all this is somewhat general, and perhaps not as helpful to you as you would wish; but it is impossible for us, at this stage, to be more precise, for instance to list the matters which fairly can be said to bear on questions we are directed to inquire into. That can only be decided from time to time as we hear the submissions or evidence. Let us be clear about this: a Royal Commission has no jurisdiction whatsoever to go outside the limits of its warrant; no matter what considerations might be said to exist in favour of that course. Nevertheless in conformity with our approach to this inquiry we shall take as broad a view of the terms of our warrant as is reasonably permissible. We repeat, no Royal Commission is entitled to disregard the directions of its warrant and, as it were, redraft the warrant in a way it may consider it could have been drawn. Therefore, do not expect us to investigate matters which are plainly outside the parameters of the document which defines our task. Only His Excellency the Governor-General, on the advice of his Government, can authorise that.

10. Hearings continued until 28 September 1979. The Royal Commission visited each of the Maori Land Court districts and held sittings on a number of maraes as well as in cities and towns. Although encouragement was given for people to put their submissions in writing, there was opportunity at each sitting for unscheduled oral submissions to be made. A number of people elected to make confidential submissions heard only by the Royal Commissioners. A list of dates and places of sittings is given in appendix 7.

11. Although every effort was made to get those intending to make submissions to send them well in advance of presentation, most ignored the closing date of 2 February 1979 which had allowed them 4 months for preparation. Until well after the middle of 1979 we did not know whether or not a number of key organisations would be making submissions at all. Publicity in the press, on radio, and television was given to the chairman's expression of the Royal Commission's disappointment at the poor response to the invitations to participate in this inquiry. In the event, a large number of submissions was given to us within a few weeks of our final sitting date.

12. The progress of the Royal Commission was further impeded when illness, and an unexpected strike of airline pilots, caused the cancellation of some hearings out of Wellington. Taking of evidence thus continued much later in the year than had been originally planned.

13. Attendance at the public hearings held in the cities and provincial towns was generally small. However, the elders of the maraes visited had made considerable efforts to ensure a good gathering of local people, and although many of the matters raised at these meetings were strictly outside our terms of reference, the marae hearings were invaluable. From the submissions and the informal discussions the Royal Commission was able to get a good idea of the views of Maori people in the smaller centres and country districts on matters covered by the warrant.

14. On the other hand those living in the urban areas of Auckland and Wellington showed little interest in our inquiry. We heard from some Maori studies departments of the universities, and from one well-known radical organisation, but were disappointed that many well-known figures in the forefront of Maori critical opinion chose not to make submissions.

15. After each submission those present were invited to ask questions but very few availed themselves of the opportunity. The cross-examination was mainly by members of the Royal Commission. We were surprised that the Department of Maori Affairs chose to take an almost negligible part in this, and indeed except when delivering submissions, played a mainly passive role.

16. Eighty-four written and 56 oral submissions were presented at public hearings, 8 were merely registered and made available to people concerned, and 8 confidential submissions were heard in private. Either a verbatim record of the evidence (submissions and cross-examination) or a summary of the proceedings and cross-examination was made available to the main organisations taking part in the inquiry. The district Maori councils were also sent copies of all material from the public hearings in the interests of as wide dissemination as possible.

17. Submissions were received from all State departments whose work impinged in any way on that of the Court, and also from the State Services Commission as the body with the statutory responsibility for efficiency in the public service. The first submission from the Department of Maori Affairs was a cursory, disappointing document. We had expected to receive a comprehensive background paper on the administration of the Court, the relations between the Court and the department, and departmental views on the Court's future. Very little help in these matters was to be found in the submission presented. In contrast to the first, the second departmental submission was a constructive document which dealt with some of the basic issues which had emerged during our inquiry.

18. Because of the deficiencies in the department's first submission, Judge Durie and Chief Judge Gillanders Scott prepared massive representations covering in great detail the administrative services provided to the Court by the department. We commend these judges for the high standard and helpfulness of the material they presented; and moreover, pay tribute to the thoughtful submissions presented by each of the members of the Maori Land Court Bench. The differing philosophies expressed in these accounts were found to be most valuable in helping us arrive at our conclusions.

19. Some of the judges criticised severely the quality of the administrative services provided by the department, and gave a long list of deficiencies and of what was seen as departmental infringements of judicial functions. The Secretary implemented improvements in the administration of the Court after the presentation of the first departmental submission (see chapter 11). It is too early yet to see whether the changes made, which were in line with submissions presented to us by a number of people, will produce their expected results.

20. The New Zealand Maori Council, one of the most important voices of Maori opinion in New Zealand, did not make representations until near the end of the inquiry. We recognise the demands made on the time of members of the Maori Council, and the confusion brought about by the dissemination by the Government of the Maori Affairs Bill simultaneously with our inquiry. Consideration of the Bill took up a lot of the Maori Council's time. However, we regret that the council was not able to produce its submission much earlier so that it could have received the wide discussion it merited. Submissions were also received from district Maori councils, the Maori Women's Welfare League, the Churches, and from incorporations and trusts, and many other Maori organisations, the New Zealand Law Society, individual lawyers, and from private citizens.

21. While we are sure that the views of the main Maori organisations, the departments of State, the judiciary, the legal profession, and the rural and more conservative Maori people have been made known to us, we heard little from the city dwellers, the young radicals, and Maori members of the professions. This has produced some imbalance in the views put before us. This we have said earlier.

REFERENCE

[1]Report of the Royal Commission on the Courts, 1978, p. xvi.

Chapter 11. CHANGES IN ADMINISTRATION OF THE COURT DURING THE INQUIRY

1. As we mentioned in chapter 7, a plan to review the activities of the Department of Maori Affairs was announced by the then Minister, the Hon. D. McIntyre in 1977. This was done because the State Services Commission had become aware of some inefficiencies within the department, and a review under the leadership of the present Secretary, Mr I. P. Puketapu (then an Assistant-Commissioner of the State Services Commission), started with the Community Services Division. Soon after Mr Puketapu's appointment as Secretary for Maori Affairs in late 1977 it was announced that the efficiency review would embrace all departmental activities. It was at this time that our Royal Commission was announced.

2. The Secretary's first submission did not indicate to us that there were any serious administrative deficiencies in the servicing of the Court. He said:

> In respect of administration support to the Court the departmental staff are in general efficient and practical. Few complaints are received except in respect of the titles registry.[1]

This was not borne out by the submissions of Judge Durie and Chief Judge Gillanders Scott which documented a state of administrative inefficiency and muddle which appeared to be the result of inadequate and insufficiently trained staff, and tenuous links with head office. It was later pointed out by two other judges that they did not experience the same difficulties in their registries. That inefficiencies occurred at all was, however, a matter for concern. The general burden of the criticism expressed by Chief Judge Gillanders Scott and Judge Durie was supported by very many witnesses throughout our hearings.

3. In October 1978 the department began a management audit review of all sections of its 10 district offices, and was thus able to identify those areas where it considered the administrative servicing of the Court was satisfactory, and those where it was not. Through the courtesy of the Secretary, we were given in September 1979 a copy of the confidential report of the departmental investigation team. A number of weaknesses in the then existing administration which had been pointed out to us in various submissions were mentioned in the management audit report.

4. As the State Services Commission said in its submission:

> The review identified problems in the Maori Land Courts administration particularly at the Rotorua, Wanganui, and Christchurch registries where there were serious delays and backlogs of work. The problems in these registries included inadequate managerial control, insufficient staff training and career development, and outdated systems and procedures. Apart from some areas requiring minor "tidying up", the other registries were reported to be providing a good service to the Maori land owners and the judges.[2]

5. While we were still receiving and hearing submissions, the Secretary made changes in the organisation of the Court administration which were in line with the opinions we had already formed on the basis of evidence

given us. Whether the changes implemented were or were not a result of the Royal Commission's activities is unimportant. We are delighted that positive steps have been taken in an attempt to remedy a generally unsatisfactory situation. The following four broad changes have already been implemented.

6. *The separation of the position of registrar from that of district officer.* The desirability of having the office of registrar in the Maori Land Court held by an officer other than the district officer was often urged on us. The factors favouring such a separation relate to (a) conflict of interest and duty; and (b) training and experience. The district officer of the department is, like all departmental officers, subject to the direction of the Secretary. By separating the two offices, any question of lack of independence of the registrar in performing his Court duties should be obviated. The State Services Commission recognised that the inter-relationship of the Department of Maori Affairs and the Maori Land Court was unusual, a point we make several times in this report. It considered that separation would ensure independence but if it did not some formal statutory expression of independence could be necessary.

The district officer is also required to act, from time to time, as delegate of the Maori Land Board (section 10 of the Maori Affairs Act 1953 as amended by section 10 of the Maori Affairs Amendment Act 1974). In addition, he is required to act as the delegate of the Maori Trustee (section 9 of the Maori Trustee Act 1953). There is scope in this multiplicity of duties for a conflict of interest, and the fact that in the past it does not appear to have obtruded into the work of the Court is probably either a tribute to the calibre of departmental officers or because many district officers have devoted little time to Court matters, which were left to the deputy registrar. However, no officer should be put in the position where a conflict of interests is likely to occur. Of recent years most district officers have had little or no experience in Court matters, so that they were registrars in name only. The deputy registrar carried out the duties of the registrar.

We consider that the separation of the two offices is in the best interests of the Court, giving a better career structure for staff, removing previous undesirable factors, and affording the possibility of increased efficiency in service to the judges.

7 *Appointment of a chief registrar in head office.* Before this appointment, the assistant Maori Trustee had the responsibility in head office for supervision of district Court staff. The chain of communication from the judges and Court staff appeared to us to be ill-defined, and was variously through the Secretary, Deputy Secretary, or assistant Maori Trustee. The new chief registrar has been appointed at senior level in head office to oversee the whole management and operation of the Court's administrative work. Of special importance are his liaison duties with the judges on any matters of concern. As we have said before, the almost complete absence of communication between the judges and the head office of the department has caused many misunderstandings. We understand that the chief registrar is collaborating with the State Services Commission in a systems inspection of the registries, and a review of gradings at a junior level to improve stability in staffing.

8. *Training conference for all registrars and deputy registrars.* A conference on the management of registries and the better servicing of the judiciary was held in Hamilton in early October 1979. We trust that this will only be the first of a regular series of such meetings..

9. *Reorganisation of the registries in Wanganui and Christchurch.* Because of deficiencies in organisation at Wanganui and Christchurch, a complete restructuring was recommended and is being implemented.

10. Besides the above measures already put into effect, we understand that serious consideration is being given to reorganising the Ikaroa Registry in Palmerston North. There are proposals to establish a registry in either Napier or Hastings covering the area to the east of the main ranges. Discussions on the scheme have been held with the Maori people.

11. Most of the matters outlined above deal with administrative detail and, as we have said earlier, are not properly the concern of a Royal Commission. The Hon. Mrs W. Tirikatene-Sullivan in her submissions questioned the need for a Royal Commission because it was the administrative efficiency of the services to the Court that needed to be improved. Others had similar ideas. However, there are matters of principle involved which depend in part on the quality of services the department can provide. We shall discuss these in chapter 12 when dealing with the future of the Maori Land Court.

12. We commend the Secretary for his determination to improve an unsatisfactory situation; but if the measures already adopted and those planned do not bring about the expected smooth functioning of the services to the Court, a more radical cure will be needed.

REFERENCES

[1]Department of Maori Affairs, Submission 1, p. 12.
[2]State Services Commission, Submission 76, pp. 1–2.

PART III

Chapter 12. THE FUTURE OF THE COURT

Item 1 of our warrant reads:

> Whether or not any part of the jurisdiction of either of the Maori Courts could be better exercised by some other court or tribunal, and whether or not the subject-matter of any part of that jurisdiction could be better dealt with otherwise than by a judicial body.

1. Logically, the first question is whether the Maori Land Court should continue as a separate Court, or whether it should be disbanded and as much of its present jurisdiction as may be needed in the future, distributed between the courts of the central judicial system and some of the administrative agencies of the State.

2. This question is inseparable from the wider issue, presently debated by Maoris and Europeans of whether institutions set up specifically to help Maoris should be continued, or disbanded because they can be seen as the products of paternalism: whether, for example, Maori seats in Parliament, the Department of Maori Affairs, the Maori Land Courts, can still be justified in the Maori, and in the national, interest. It is quite fallacious to believe that Maoridom has only one opinion on this very important question. It is plain to us that opinions differ strongly between different groups. Confidence in and the desire to retain such institutions appears strongest in "official" Maori circles, including the New Zealand Maori Council, the tribal councils, and the marae elders. Among some Maori teachers, students, and young professional people, there is obvious opposition to their continuance, with many favouring the abolition of all institutions which might suggest a subservient position for Maoris in the larger society. They express a strong desire for their people to assume the same positions and responsibilities as the European members of the community, and no longer be regarded as receiving favoured treatment. They seek the ability to direct their own future unfettered by restrictions on their resources.

Should The Maori Land Court Remain?

3. This diversity of opinion, to which we have also referred in chapter 1, naturally affected the submissions made about the future of the Court. The New Zealand Maori Council, Maori committees, and elders on the maraes in most instances strongly supported the retention of the Court, and suggested various extensions in jurisdiction. The judges and the department also supported the Court's separate existence, stressing the dissimilarity of its jurisdiction with those of other courts, and claiming that this special jurisdiction calls for a particular type of court with a background and sympathy for Maori tradition and practice which only long association with Maori organisations and people can develop. The law societies were opposed to any major change. Others, expressing mainly personal views, would do away with the Court altogether taking

the stand that it was a relic of earlier attitudes. In their view all the jurisdiction of the Court should be transferred to the Supreme and Magistrate's Courts. Others favoured a restructured, but still separate court. Ms Pauline Kingi, presenting a submission prepared for the National Council of Churches in New Zealand (Maori Section), made a case for some of the Court's functions being assigned to a reconstituted Waitangi Tribunal, but leaving the Court in existence with judges appointed differently.[1] Mr I. D. Bell, a university research assistant in Maori affairs with long experience as an officer of the Court, would give the registrars in each district power to discharge all the duties at present vested in the judges at first instance, and would substitute for the Maori Appellate Court a committee consisting of a legally qualified chairman, a Maori appointee, and a registrar. There would be no appeal from this committee's decision.[2] The Hon. Matiu Rata, a former Minister of Maori Affairs and until recently chairman of the New Zealand Labour Party Maori Policy and Advisory Council, considered that the present organisation of the Court did not meet modern needs. As soon as the Court's record system of titles was brought up to date and transferred to the land transfer system, he would substitute a runanga whenua in each judicial district, presided over by three persons, of whom one only should be a judge, the other two being lay-persons appointed following a consultation with the Maori people and organisations of the district concerned.[3] The Hon. Mrs W. Tirikatene-Sullivan did not share these views. She wanted the Court to be strengthened administratively and to remain.[4] Professor I. H. Kawharu, a distinguished scholar and authority on the Maori Land Court, favoured the Maori Land Court being made a separate division of the district courts proposed by the Beattie Royal Commission (of which commission the professor was a member), and then administered by the Department of Justice. He argued for completely separating the judicial function of the Court from the executive functions and activities of the department. He believed that only by placing the administration of the Court within the Department of Justice as part of the district court system could adequate judicial independence be achieved.[5] There was a large number of other proposals which we do not think it necessary to enumerate. The point we emphasise here is that there is considerable diversity of opinion within Maoridom. We have no doubt that this diversity will be increasingly apparent as the Maori people become a larger and more affluent section of the community.

4. The general issue of whether and when specialist institutions should be abolished is essentially a political question to be decided by Parliament. It does seem most likely, however, that the Department of Maori Affairs will continue for many years yet, for there is evidence that the Government has assigned it a wider social role, and evidence of increased vitality within it. Making this assumption we must then ask ourselves how best in the years ahead can the just, humane, prompt, efficient, and economic disposal of the business now attaching to the Maori Land Court be achieved, and for how long can the Court's existence be justified.

5. We have shown (chapter 2) that the Maori Land Court is well named, for it has always been basically concerned with Maori land, and issues arising from it. Without these issues, a special Court would not have been warranted. Though from time to time the Court has had jurisdiction in other fields and some people would have such jurisdictions

returned to it and extended, the Court's essential justification can only be found in the special issues of Maori land ownership.

6. We have explained at some length the Court's evolution of a system of recording and identifying the ownership of Maori land and of identifying Maori descent. This evolved in response to the special difficulties of ascertaining Maori ownership and defining boundaries, and of the need to partition multiply-owned land. 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. How this should be done we shall discuss later (chapter 19).

7. We should direct attention to the Prichard Report of December 1965 when the whole situation of Maori land records was described in clear, critical language, and the Government advised that it should ensure that all Maori land was brought within the land transfer system. Although from time to time some efforts have been made to do this, it is regrettable that 15 years have elapsed since the publication of the Prichard Report without any significant improvement being made (chapter 6). The time has now come when the Government, if it really wishes to get to grips with the problem, must assign the necessary resources of money and trained personnel to enable it to be dealt with as a matter of high priority. If it does not, the size of the problem will grow as the Maori population grows, and the ultimate cost to the nation will be enormous.

8. Our strong opinions about the state of Maori land titles were not always shared by Maoridom. Indeed, we found a surprising lack of concern in "official" Maori circles about ensuring proper and reliable records of Maori land and Maori ownership within the land transfer system. This lack of concern seemed to us often to be prompted by a suspicion on the part of those Maoris who formulate policy that improvement in titles would lead to easier and more rapid alienation of Maori land. This apprehension is not sound. Improvements in the recording of land and its ownership should not affect in any deleterious way the supervision by the Maori Land Court, or any other Court, of alienation or use of Maori land, should a continuation of controls be considered desirable. But they would, on the other hand, enable Maori owners to have a much more efficient and just enjoyment of their rights to their lands.

9. We recognise, however, that with the best will in the world, it will take some years to fully merge Maori land records with the land transfer system. Until it is done, we are satisfied that it is wholly impracticable to do away with the Maori Land Court. The Court's complex activities, involving both its judicial and administrative functions relating to Maori land and descent require that it continues without major alteration until

Maori land ownership is adequately recorded in the land transfer registries.

10. This conclusion has been forced upon us by our experiences during this inquiry and our acquired knowledge of the constant and detailed inter-involvement of judges, registrars, and other staff of the Department of Maori Affairs, in compiling and maintaining records of Maori land and its ownership. We do not believe, having regard to the unfortunate state in which these records seem to be, that the complex work necessary to bring them to a condition when they could be transferred to the land transfer system, could be done by any other court or administrative body. Were it not for this belief, we would accept Professor Kawharu's argument that the time has come when the Maori Land Court, if it is to operate as a court with traditional judicial functions and independence, should be extracted from its administrative dependence on the Department of Maori Affairs, and made part of the central judicial system administered by the Department of Justice. Indeed, we seriously doubt whether there will then be any real need for a separate Maori Land Court if that be done.

11. We acknowledge, however, that this is somewhat contrary to the opinions and wishes of most of the Maori people with whom we came in contact. Notwithstanding their numerous complaints concerning the Court's inefficiency, they seemed to us to have a deep love and respect for it, its judges, and its staffs. They wished it retained as "our Court", and made clear that its abolition would inflict a deep emotional blow. Moreover, they wish it to continue to be serviced by the Department of Maori Affairs. It is impossible to be dogmatic about the extent of that opinion, and its durability. Though it is the clear view of the tribal groups with whom we came into contact, it is not necessarily the viewpoint of the younger generation of urban Maoris with whom we unfortunately had too little communication. One thing we can say is that the earlier tradition of the Court being needed *in loco parentis* has less attraction than it had previously. We respectfully adopt what was said by Mr Justice Mahon in the Ngatihine Case:

> . . . I should think it no longer safe to rely upon the historical view that members of the Maori race are incapable of managing their own affairs without supervision. As I see it, there has been a shift in legislative policy directed towards liberating the Maori race from juridical control of their transactions in relation to Maori land and for that reason, as already stated, I should think it unsatisfactory to place too much reliance today upon those judicial opinions expressed many years ago, which stressed the parental role of the Maori Land Courts in relation to matters within their jurisdiction.

The Hon. Mrs W. Tirikatene-Sullivan expressed a like view in saying: "The underlying philosophy of the Courts must be that Maoris are capable of managing their own land affairs . . .".[6]

12. Though we think the time not opportune to bring the Maori Land Court within the central judicial system, we do not say that the Court should continue indefinitely. We would hope that the need for its separate existence will disappear in little more than a decade. But that depends upon the resources which the Government is prepared to make available for surveys and for the ascertainment of contemporary ownership. We have no doubt that once title matters are rectified, with contemporary ownership identified and land transfer titles available, the work of the Court in respect of Maori land will contract markedly. This contraction

will be speeded by the growth of trusts and incorporations which, as we have observed, are increasingly seen by Maoris as a means of achieving something akin to the tribal occupation of land as it was before European colonisation. Once the titles are in order, it is hard to see that a separate court will be needed to do the remaining judicial work which could then perhaps be adequately handled within the central court structure, albeit by judges having special qualifications in Maori land law. The Court's administrative work relating to land could be performed by the department assisted by such bodies as the Maori Land Board, and the Maori Land Advisory Committees.

13. The continued existence of the Court is of course a political question involving issues outside our purview. But we must point out that our view of the expiring justification for the Court's existence is shared by most, if not all, of those with the greatest knowledge and experience of the Court, including the former Chief Judges Prichard and Gillanders Scott, at least most of the puisne judges whom we saw, registrars, and the present Secretary, Mr Puketapu, who gave this as his personal opinion, making it clear that it was not necessarily official departmental policy.

14. The Prichard Report, as we read it, saw an even earlier demise than we do, and regarded the function for which the Court was originally established to have been discharged, and recommended that its remaining duties should be taken over as soon as reasonably possible by other tribunals and agencies. It recommended a reduction in the number of judges as a preliminary step in the Court's extinction. We have explained that Maoridom today does not favour the general philosophy of the report even though its authors were men of great experience and undoubted integrity.

Should The Court's Jurisdiction Be Enlarged?

15. Doubtless the Court's life could be prolonged by extending its jurisdiction beyond its present compass. Some would like to see this. Many Maori organisations and witnesses said that the jurisdiction taken away from the Court (namely, in wills and administration, in family protection matters, and in adoptions) should be restored. The supporting arguments were often based on emotion, and gave insufficient weight to the change in the definition of "Maori" in the 1974 Act. Though it may have been possible to return the former jurisdiction to the Court if "Maori" was still defined as it was in earlier legislation ("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"), it is wholly impractical to do so when the current definition is "a person of the Maori race of New Zealand; and includes any descendant of such a person". That would give the Maori Land Court jurisdiction in those particular areas over people who are of predominantly European descent, some of whom would have had little or no association with Maori life or with Maori land, and might wish to live as Europeans free from tribal associations. We put this question objectively to witnesses from time to time, but nearly always the question seemed to be resented by Maori witnesses, and the answer given was that a person, no matter how small his proportion of Maori blood, should be entitled to declare himself a Maori if he wished to. We do not dissent from that. But when one comes to consider whether a particular will, estate, adoption, or right under the Family Protection Act falls within the jurisdiction of one court or another, the answer cannot turn upon

individual subjective choice. The point was rarely faced by witnesses. The demarcation of lines of jurisdiction must be clear and precise, otherwise legal chaos eventuates. Furthermore, the evidence we heard established no clear need for the reassignment of these jurisdictions; no solid evidence of injustice or inconvenience. None of the judges of the Court pressed for it. We therefore see no sufficient case for change, even if the jurisdiction in these matters were restricted to people of half-blood or more. Be that as it may, we would certainly be firmly against any restoration while the definition of Maori remains as it is at present.

16. There were other submissions for extended jurisdictions. They came in different forms. One is to be found in the submissions of one of the judges who suggested that if the Maori Land Court, though remaining separate, were brought under the administration of the Department of Justice (we shall discuss the suggestion later), Maori Land Court judges could sit from time to time in the Magistrate's Court administering the criminal law. Some critics have suggested that this idea was possibly prompted by a wish to provide increased work for the judges, and thereby lengthen the life of the Court. We do not favour the administration of anything in the nature of criminal jurisdiction by Maori Land Court judges. Those judges are chosen for their special attributes and knowledge, and are not necessarily equipped to deal with the criminal law. Moreover, we fear that this use of Maori Land Court judges could bring those judges into some conflict with sections of the Maori people and lessen the mutual respect now prevailing. Some of the judges conceded this possibility. If, as is often argued, it is desirable that the courts, and especially the Magistrate's Court, be more sympathetic or understanding of Maori ethos and difficulties, we would prefer to see more appointments to the central courts of suitable judicial officers of Maori descent. We have no doubt that the numbers of appropriately qualified Maori lawyers will increase, and that such appointments will follow. As far as we know there is at present only one magistrate of Maori descent. We met a number of Maori lawyers who would be suitable appointees.

17. The New Zealand Maori Council recommended that:

> Maori Land Court Judges should have the additional status of Magistrates and should preside over Family Courts. The Court will accept cases referred from the judicial system as well as from Maori Community Officers, Honorary Community Officers and Maori Wardens with the approval of the Police. Where cases that normally come under the jurisdiction of the Family Court, Juvenile Court, Civil Offences and Adoption Court where applicable be determined by the Maori Land Court and if necessary as the case progresses, for the Judge so concerned or a Judge of the Maori Land Court in his extra capacity as Magistrate to rule on each case accordingly.
> The main emphasis of the Court would be upon the issuing of probation orders, and counselling in cases of juvenile delinquency, alcoholism, marital discord, debt involvement and budgeting.[7]

18. This submission, intended as we understand it to enable the Maori Land Court judges to help solve Maori social problems, many of which problems are by no means peculiar to Maoris, raises a question worthy of greater discussion and consideration than it has received in the course of our hearings. Unfortunately, the submission from the Maori Council was not presented until almost at the end of our hearings. As a result we could not raise it with other groups whose submissions had already been heard.

19. There are of course obvious difficulties in the way of enacting social machinery with something akin to punitive powers for specific minorities, when there are many different minorities within a community. As we have said, we would prefer to see magistrates of Maori descent appointed, instead of conferring some such further jurisdiction on the judges of the Maori Land Court. However, there may be a case for enabling limited classes of litigation arising out of, for example, matrimonial discord, alcoholism, debt involvement to be remitted from the Magistrate's Court to the Maori Land Court for disposal, or, as we would prefer, for a report or advice back. There may also be a case for greater use and extension of the disciplinary powers and penalties provided for Maori committees established under the Maori Welfare Act 1962. We understand that the possibility of special Maori community courts to deal with certain classes of Maori offenders is presently under discussion in the Department of Justice at the request of the Minister of Justice. But as these matters have not been discussed before us in proper depth, we are not prepared to reach conclusions other than to agree that the subjects are worthy of investigation.

The Waitangi Tribunal

20. We have referred earlier to the submission presented by Ms Kingi for the National Council of Churches (Maori Section) which advanced an interesting case for the reconstitution and greater use of the Waitangi Tribunal established by the Treaty of Waitangi Act 1975. It urged that the tribunal be reconstituted to a format of a chairman elected by the Maori people, one person appointed by the Human Rights Commission, and another appointed by the main Maori organisations because of his knowledge of Maori land matters and law. Its function would be to inquire into the class of claim which is covered by section 6 of the Treaty of Waitangi Act 1975, and to have, not merely power to recommend as the present body has, but also the final say about the type of action to be taken. It would also have power to take appropriate steps to amend, cancel, or vary any order of the Maori Land Court where the tribunal was satisfied that there had been a mistake, error, or omission, and then to act retrospectively to such an extent as it thought necessary to give Maori claimants a fairer decision. The prime intention of Ms Kingi's submission, as we read it, is to insert the Waitangi Tribunal into the judicial system by (a) giving it an overriding jurisdiction over the Maori Land Court; and (b) enabling it to act as a tribunal in claims of injustice to Maoris arising from legislation or acts committed by the Crown under legislation.

21. Although it may be desirable for the Government to increase the powers and operations of the Waitangi Tribunal in social or administrative matters, or as an advisory body, we are strongly opposed to it being given judicial functions, whether overriding or not, in determining rights between individuals of either Maori or European race, or both. A court of law made up of people trained in the law and subject to the constitutional and hierarchical checks present within a developed judicial system, is in our opinion vital. The type of tribunal suggested by Ms Kingi would, we think, be totally unacceptable to New Zealanders, whatever their race. The problems of Maori land, its ownership, development, and use in a modern developed society, are most complex and give rise to conflicts of interest between parties. They call for much more than the type of tribunal suggested.

22. Ms Kingi when arguing in the same submission for greater protection from the Supreme Court for litigants in the Maori Land Court, drew attention to the privative provisions of section 64 of the Maori Affairs Act 1953 which declare that no decision of the Maori Courts shall be removed by certiorari or otherwise into the Supreme Court, and no order of those Courts shall be invalid because of any error, irregularity, or defect in form, or in practice or procedure.

23. Notwithstanding this section, the Supreme Court has power to review decisions of the Maori Courts either by way of certiorari or by motion under the Judicature Amendment Act 1972. The extent of this power, however, is admittedly subject to debate, as we have already noted in chapter 2. Some observations of McCarthy J. in *Hereaka* v. *Prichard* [1967] N.Z.L.R. 18 C.A., have been read as implying that the Supreme Court can only review and set aside a decision of the Maori Land Court or the Appellate Court when that Court has gone beyond its jurisdiction. Thus it could not do so in the case of a failure of the Court to observe the principles of natural justice when acting within its jurisdiction. We do not read McCarthy J's words in that light. We read them rather as emphasising the power of the Supreme Court to review when there has been an excess of jurisdiction, but not as necessarily excluding other occasions. However, it does appear desirable that the question should be put beyond doubt. We believe strongly that the jurisdiction of the Supreme Court to review should be just as extensive in the case of the Maori Land Courts as it is over other courts of lower jurisdiction. If this needs an amendment to section 64, we favour that course. We agree with the submissions of Mr F. L. Phillips, a solicitor who has practised widely in the Maori Land Court, that the fact that the Maori Land Court is one of wide and often absolute power makes it more obvious that the Supreme Court needs power to ensure that the Maori Land Court acts within its jurisdiction and also in accordance with the principles of natural justice.

Appeals From Maori Appellate Court

24. In more than one submission made to us it was urged that there should be a more extended appeal structure from the Maori Appellate Court. An appeal to the Court of Appeal and then to the Judicial Committee of Her Majesty's Privy Council was advocated; or one to the Supreme Court, then to the Court of Appeal of New Zealand, and finally to the Privy Council in London. At present there is no appeal to the Supreme Court or the Court of Appeal; but an appeal does lie direct from the Maori Appellate Court to the Privy Council if that Council agrees.

25. An unusual and additional provision is to be found in section 452 which provides a convenient method of correcting mistakes. Anyone who alleges an adverse effect from a Court order which was erroneous in fact or law by reason of mistake, error, or omission on the part of the Court or in the presentation of the evidence to the Court, may make application to the Chief Judge. If the Chief Judge is satisfied that there has been such a mistake, error, or omission, he may cancel or amend the order or make such other order as in his opinion is needed. Such an order may act retrospectively to such an extent as the Chief Judge thinks necessary, but it cannot take away any rights or interests already acquired for value and in good faith since the original order was made. Any order so made by the Chief Judge is subject to appeal to the Appellate Court.

26. This power to correct errors which become apparent, sometimes many years after the original order, has proved a valuable piece of

machinery, though one which needs to be exercised with discretion and care. The existence of an appeal to the Appellate Court is a safeguard against its being used too lightly. Although section 452 was commented on by a number of witnesses who appeared before us, there was no substantial criticism of its existence, and we are of the opinion that it should remain.

27. As well as these corrective powers, there is the power to state a case for the opinion of the Supreme Court on a question of law; and also the power of the Supreme Court to review judgments of the Maori Land Court and the Appellate Court. These we have already discussed. Assuming that the power of review covers not only errors of jurisdiction but also breaches of natural justice, we see no case for creating an additional appeal channel from the Maori Appellate Court to the Supreme Court and through it to the Court of Appeal and then on to the Privy Council. If, however, the Supreme Court's power of review is limited purely to errors of jurisdiction, then we believe that there is a strong case to allow an appeal from the Appellate Court to the Court of Appeal. We do not in any circumstances favour an appeal to the Supreme Court and then to the Court of Appeal. We have urged earlier (paragraph 23) that the extent of the Supreme Court's power of review should be made clear by statute. The consolidation of the Maori Affairs Act at present before a committee of the House makes a suitable opportunity to do this.

28. We are not generally in favour of multiplying rights of appeal, for these can overcomplicate and clog the judicial system. They are not to be encouraged if there are sufficient procedures for challenging the rulings of the Court at first instance. If and when the Maori Land Court is integrated with the main judicial system, then consideration would need to be given to the creation of a right of appeal to the Supreme Court and on to the Court of Appeal, and the contemporaneous abolition of the Maori Appellate Court. That would seem to us to be a proper step to take then. In the meantime we do not favour the replacement of the Appellate Court, as some witnesses advocated, by a body with substantial non-legal participation.

Transfer Of The Court Administration To The Department of Justice

29. Having concluded that the Court should remain at least in the meantime, we deal now with the next main question (already touched on) which is whether it should continue to be serviced by the Department of Maori Affairs, or whether its administration should be transferred to the Department of Justice to form part of the central system, as Professor Kawharu and a number of others have advocated.

30. It would, of course, be quite simple to place the Court under the administrative control of the Department of Justice, and yet retain it as a separate Court with very much the same structure and staff as it has at present. In view of the often inadequate and inefficient servicing given by the Department of Maori Affairs (certainly over recent years), we thought at one stage that the only solution was to recommend this change if the Court were to continue. We have no doubt that in many ways it could be advantageous. The Department of Justice could undoubtedly administer the Court as a separate division, added to those it already has—the Administrative Division, the Tribunals Division, and soon, perhaps, a Family Division, as well as the Supreme and Magistrate's Courts. It is

true, too, that the Department of Justice, being a very much larger department, would offer opportunities for promotion and training much more attractive than those of the Department of Maori Affairs. It has, moreover, large support services in the form of research officers, libraries, etc.

31. The State Services Commission and the Department of Maori Affairs both oppose the transfer, and on consideration, we too have come to the conclusion that the time is against it. Apart altogether from the affront which would be given to the Maori people (though some informed Maori witnesses favoured it), there is a unique and indefinable connection between the department and the Maori Land Court, the product of long association. This could not possibly be transferred. The Department of Maori Affairs grew up in servicing the Court (indeed, that was its original purpose), and the interweaving since then of the department's activities and the functions of the Court in the ascertainment and recording of Maori land ownership would make the separation traumatic and unworkable at this stage. We think that until the problems of titles are overcome, and all Maori land recorded in the land transfer registries with contemporary ownership adequately ascertained, the Court is best serviced by the Department of Maori Affairs, provided that this service is made and kept efficient.

32. This qualification of efficiency is pivotal, and must be emphasised. At one stage we were doubtful whether the department had the spirit and ability to sufficiently improve its servicing to justify leaving the Court under its jurisdiction. But since this Royal Commission was set up, and we have no doubt in some measure because of it, the department has shown a strong and sustained effort to deal with a situation which had existed for some years (see chapter 11). It may be as some critics contended that the changes made are more cosmetic than real, and fall short of what is necessary, but the department should be given a fair chance. Should it fail within a reasonably short time to measure up to its obligations of adequately servicing the Court, we consider that there is no alternative but to transfer the administration of the Court to the Department of Justice, for the situation of more recent years cannot be allowed to continue without major correction.

A Separate Department Of Its Own

33. It was urged upon us by some of the judges that the Maori Land Court could, and perhaps should, be set up as a separate department with its own staff and administration, and with its departmental head responsible direct to the Minister of Maori Affairs. We find it impossible to accept that such a small organisation would be administratively viable. It would be highly unattractive to possible employees, and would prove to be an orphan within the State structure. The Court needs the administrative support of a substantial department, and its home must be within either the Department of Maori Affairs or the Department of Justice. As we have said, the former is preferable at this time.

The Role Of The Court In The Future

34. In the early days of the Court, when it was almost exclusively concerned with the ownership of Maori land, the judges were occupied largely in adjudicating between the claims of contesting parties. Today, only a relatively small part of the judges' time is taken up by this kind of work. The Court's functions are now mixed; judicial, social, and

administrative. Such complexity of function makes it difficult for the judges to perceive the fundamental nature and purpose of the Court.

35. The Court is not given any special legislative guidance on the aims or the philosophies which are to direct it. Section 4 of the Maori Affairs Amendment Act 1974 says that in the exercise of its function, the department shall always to the extent possible have regard to, among other matters, the retention of Maori land in the hands of its owners, and its use or administration by them or for their benefit. Some witnesses saw this provision as in some way pointing to a governing philosophy for the Court. But it does not necessarily follow that, because a particular directive is given to the Department of Maori Affairs, such a directive must also apply to the Court in the exercise of its judicial function.

36. Some judges see the Court as still an essentially judicial institution, and that as such it should restrict itself to receiving applications as provided for in the legislation, hearing submissions and evidence thereon, and then deciding without any subjective approach whether an order should be made. Others see the Court as existing mainly to fulfil a definite social purpose. Judge Durie stated the core of that purpose as "to assist the retention of Maori Land in Maori ownership by facilitating its better use and management". He sketched the duties of the Court thus:

> To provide a means whereby owners might know of what is happening to their lands, and a forum in which they might discuss it;
> To determine or settle disputes within the body of owners, simply and efficiently;
> To protect minority interests against an oppressive majority, and to protect the majority against a vociferous minority;
> To ensure fair play when Crown or non-owners seek to treat with Maori lands in multiple ownership;
> To see practical results, and promote better use and management of lands;
> To protect individuals and groups in the administration of their assets by Incorporations, Trusts and the Department, and to afford protection to Incorporations, Trusts and the Department in the administration of those assets;
> To keep proper records so that there might be some certainty in Maori land affairs.[8]

37. Chief Judge Gillanders Scott was a strong advocate for this overriding social and therapeutic approach, even if it could be criticised as implying a substantial element of paternalism. He saw a necessary link, independent of any statutory prescription, between the Court's role and that of the department in preserving Maori ownership by making better use of Maori land. He conceded that this role had led the Court to involve itself in steps which might be thought to be basically more administrative than judicial, such as helping Maori owners (by advice, encouragement, and sometimes promotion outside the precincts of the Court) to improve the use of their lands. He would not accept that the Court should confine itself to the "hear and determine" approach. He said:

> If it is the Department's intention, not as yet perfected, that the Judge should play merely a "hear and determine" role as currently, by and large, is the function of a Judge in the Supreme Court or a Stipendiary Magistrate in the Magistrate's Court, then let it be; *but* if it is, then it is my respectful view that the Department is out of touch with the thinking of Maoridom which I believe has already opted at

> grass roots level for the retention of the Maori Land Court system as understood by it, even if the functions at present performed (an illustration, by the "Development Section" be undertaken fully by the Lands and Survey Department which is already and has been for years past the "Works agency" of the Maori Land Board and its predecessor in many "Development schemes" in the North Island) by other sections of the Department were serviced in the future by other Departments of State.[9]

He further said:

> I think the Maori today is quite capable with a measure of guidance and assistance to enter into the flow of commerce in New Zealand and that the Court should merely be a means to that end. In other words, the function of the Court should be to facilitate dealings (a) with succession in early stages, and (b) also in the early stages, utilisation and alienation of land and ultimately facilitating the use, management, and alienation of land.[10]

38. The Chief Judge would also have had some direct administrative control over the Court's staff including the titles section. But at the same time, he, and those who shared his views, claimed the independence and freedom from departmental control which is constitutionally accepted for a judge of the Supreme Court or a magistrate.

39. The conception of the Court's function which we have just described was not without its critics, Maori and European. True, many Maoris (especially those from country areas) expect this kind of help from the Court and are grateful for it. But others, more urban and sophisticated, see it as offensively paternalistic and unjustifiably interfering. Undoubtedly too, this concept has led to estrangement, friction, and lack of co-operation between the department and the Court, with the Court being convinced that the department does not understand and value its independent status and role, and the department being equally convinced that the Court has trespassed on its province by stepping beyond the judicial into the administrative role. We have already referred to this unfortunate estrangement. We wish to avoid criticism of individuals here, but we think it important to note such matters because we see great difficulties and dangers in any court attempting to play a substantial administrative role and at the same time claiming complete judicial independence.

40. The Maori Land Court should be a *court of justice* with traditional judicial standing and independence. But if it is to be that, it must strive to be predominantly a judicial and less of an administrative body. Once a court involves itself substantially in administrative action, especially in areas which are traditionally the fields of State administration, it places in jeopardy its claim to independence and sows the seeds of conflict between itself and the machinery of State. Furthermore, it runs a real and substantial risk of being not only interfering, but of being partisan in its rulings, not consciously but by allowing itself to become a promoter of its own opinions about the use of land to the exclusion of those of the litigants before it. More than one legal practitioner of experience in the Maori Courts claimed that this has already happened. One said:

> I have found in the past that the natural and proper concern of some Judges of the Maori Land Court to achieve some utilization of Maori lands which they have concluded is in the best interest of the owners, has led them to ignore the fundamental right of those owners to have

> some voice in the disposal of their property . . . Judges sometimes seem to become advocates for a cause they have espoused.[11]

41. If better administrative services for Maori land, including advice on its best use, are called for they should be supplied by the established departmental services of the State and not required of a court. This, we believe, is fundamental. We do not see the Court's role as that of a planner and administrator of land use. The Department of Maori Affairs has, by virtue of Part II of the Maori Affairs Amendment Act 1967, substantial powers to investigate and promote the better use of Maori land and its administration. It has the facilities to provide planning and advisory supports. However, we were often told that these powers had not been sufficiently used; and more than one judge made the point that if the department had taken greater advantage of this legislation it would have been unnecessary for the Court to involve itself to the extent which it had in promotion of Maori land use and the other activities which had brought it into conflict with the department. The evidence seemed to us to justify this statement. The department should be required to fulfil its proper role under Part II and not to place the Court in the position of having to act for it.

42. The Court should aim at objectivity within the terms of the relevant legislation, not only in fact but in appearance. It is not for a Court to take sides and to favour a particular ethnic group except to the extent that the legislation directs it to. But objectivity does not mean that the Maori Land Court should become unduly formal and forfeit the warm relationship which generally exists between its judges and litigants, or that it should cease to be a Court of social purpose with sympathy for and knowledge of Maori needs and aspirations. It should not, however, undermine the highest ideals of a judge—fairness and impartiality. We believe, therefore, that the sooner the Court can be freed of all inessential administrative work the better. Once again, we quote the Hon. Mrs W. Tirikatene-Sullivan: "The Maori people must be able to approach the Court, clear in the knowledge that the Court is essentially a Court of law and a Court of justice".[12]

43. Unfortunately, we do not see the complete removal of all administrative actions relating to Maori land as being possible immediately, for, as has been said earlier, the Court has been involved in maintaining records of Maori land, of its ownership, of Maori family histories, and in the development and better use of land, for too long and too deeply for any immediate withdrawal. But once the matters of title and record are attended to as we have urged, then the Court should confine itself to its strictly judicial function. Professor Kawharu saw the need for this separation, and, because of that, advocated the complete incorporation of the Court in the main court system. We agree that that step would ensure the Court's independence and better status for its judges. But as we have already said; we think that practical considerations should delay this step.

44. It could be objected that our concept of a court with a minimum of administrative functions is a departure from the Court's historical role. We accept that. We do not overlook that in its earlier years the Court was the main instrument for carrying out policies of Government about Maori land, and that it had extensive administrative functions. The department existed then chiefly to service the Court. But the situation of those earlier years no longer pertains. The Department of Maori Affairs is now a large, sophisticated department with strong divisions constructed to cope with

many aspects of Maori life including land use and development, social problems, and trustee duties, as well as servicing the Court. Indeed, the Court Division is no longer among the larger divisions of the department. These others are equipped with services designed to deal with many of the problems which previously came to the Court. So today there is no longer need for confusion between administrative and judicial functions relating to Maori land. It is time to separate them.

REFERENCES

[1]National Council of Churches in New Zealand (Maori Section), Submission 60, pp. 8–10.
[2]I. D. Bell, Submission 6, pp. 4–5.
[3]Hon. M. Rata, Submission 79.
[4]Hon. Mrs W. Tirikatene-Sullivan, Submission 82.
[5]I. H. Kawharu, Submission 50.
[6]*supra*[4], p. 3.
[7]New Zealand Maori Council, Submission 69, p. 18.
[8]E. T. J. Durie, Submission 11, p. 72.
[9]K. Gillanders Scott, Submission 49, p. 227.
[10]K. Gillanders Scott, Evidence p. 430.
[11]F. L. Phillips, Submission 83, pp. 1, 3.
[12]*supra*[4], p. 9.

Chapter 13. APPOINTMENT OF JUDGES

Item 2 of our warrant reads:

> The qualification for, the methods of appointment of, and the promotion of judges of the Maori Courts.

1. The provisions for the appointment of judges of the Maori Land Court as inserted in the 1953 Act by section 43 (1) of the Maori Affairs Amendment Act 1974 require that no person other than a barrister or solicitor of the Supreme Court of at least 7 years standing shall be eligible. Judges are appointed by the Governor-General on the recommendation of the Government, and hold office during his pleasure. The Minister of Maori Affairs makes his selection from nominations which he may receive in a number of ways. On occasions the department has been asked for nominations and sometimes the Minister has sources of his own. It has been known for lawyers to submit their own names, and for judges to submit names. We understand that in recent times Maori opinion has been sought on the nominations made. The Solicitor-General has also been consulted.

2. The word "promotion" is inappropriate in connection with judges of the Maori Land Court. The only sense in which it might be used is in connection with appointment to the position of Chief Judge. Chief Judges have for many years usually been appointed from the ranks of the puisne judges, although there is no requirement for this course.

3. Perhaps because of the administrative separation of the Maori Land Court from the general hierarchy of the courts, some people consider that it holds an unimportant place in the judicial structure of New Zealand. This is reflected in the salaries paid to judges of the Maori Land Court. In the early years of this century judges of the Court were paid more than magistrates. Since 1959 the Chief Judge has been on the same salary as that of a magistrate, and the puisne judges on a lower salary. As can be seen from table 13.1 the difference between the salary of a magistrate and that of a puisne judge of the Maori Land Court has increased sharply in recent years.

Table 13.1 DIFFERENCE BETWEEN SALARY OF A MAGISTRATE AND PUISNE JUDGE

Year	Difference
	$
1960	400
1965	400
1970	532
1975	944
1978	3,000

4. There was a general plea from those appearing before us for an increase in the status of the judges of the Maori Land Court. As a result of the recommendations of the Royal Commission on the Courts, stipendiary magistrates are to become District Court judges. The Maori Land Court is a special type of District Court and we consider that the work done by

its judges justifies their equal status with the new District Court judges. It calls for professional ability of high order and often applies to assets and contracts involving very large monetary value.

5. We have no doubt that the majority of individuals and organisations we heard from hold the present panel of judges in high regard. As would be expected there were some critical comments, but on the other hand we have heard expressions of respect and affection about each of the judges.

6. Accusations are sometimes made that the Court has become too legalistic. It is said that if it could become a "people's court", as it was in the early days of the Court, a legally qualified judge would not then be needed. Presumably a "people's court" is taken to mean an informal tribunal where the proceedings are conducted in non-technical language, and the judicial officer has considerable discretion to interpret and apply the law. While superficially this may be an attractive notion, we believe that its implementation would result in complete uncertainty in litigants' rights and their enforcement. The statutes governing dealings in the Maori Land Court are complicated, unnecessarily so we believe (we deal with this point elsewhere in our report). Some technical legal language is inescapable, but it is the duty of a court to ensure that those appearing before it understand what is going on. From what we heard there is generally a conscious effort made by the judges to reduce formality to a level consistent with the maintenance of the dignity and standing of the Court, and to ensure that proceedings are understood.

7. There have been criticisms that the law and its administration are contrary to Maori customs and values. We agree with Judge Russell:

> If people are frustrated by the law then it is the law that they should seek to change, not the Judge's administration of the law. . . . If there are provisions in the present law that are contrary to present Maori customs and values it is not for the Judge to disregard the law but for people to try to have the law changed.[1]

8. We do not agree with the suggestions made to us that administrative officers of the court section, the registrars for instance, could take the place of legally qualified judges. A judge of the Maori Land Court has to interpret not only the Maori Affairs Act but a wide range of other Acts as well. To exercise his judicial functions, a thorough training in the law is necessary; but it is not, of course, a sole qualification. The dealings of the Maori people with their land, especially in the formation of trusts and incorporations and in the restrictions brought about by the Town and Country Planning Act, require a much higher level of legal training in a judge than was the case 30–40 years ago. The last judge without formal legal qualifications was appointed in 1933. He and others like him were appointed because of their empathy with the Maori people and their practical experience in Maori land matters. The work they had to do did not involve many of the legal complications attending the large-scale enterprises run by many Maori tribal groups today.

9. Besides thoroughly knowing the statutes dealing directly with the jurisdiction of the Court, a judge is called upon to have the same broad general knowledge of statutory law as does a competent lawyer. While this legal knowledge comprises the basic technical expertise needed in a judge, unless he has a sympathy with Maori aspirations, some knowledge of Maori lore and custom, and is acceptable to Maoris, he will not be an effective judge of the Maori Land Court. It is sometimes said that besides all these qualities a judge should be technically expert in some aspects of

land development. We do not agree with this. Though he should possess a broad appreciation of these matters, expert advice can always be called on when necessary, and sound legal training and experience should enable a judge to assess the testimony of the expert witness.

10. Barristers or solicitors with the above qualities and qualifications suitable for appointment to the position of judge of the Maori Land Court usually these days come from the ranks of the relatively small number of legal practitioners who engage in Maori Land Court work. These are to be found more in provincial towns than in the main centres. This state of affairs may however change with the growth in the number of large co-operative Maori business ventures, and the extension of legal aid to Maori litigants. An increase in the number of lawyers involved in Maori Land Court matters is to be expected.

11. There is at present only one Maori on the Bench. The desirability of more was often mentioned to us. But we agree with the remarks of Judge Durie on this point:

> I submit that "successful Maori candidates" would sit more comfortably if they had passed the scrutiny of an independent body, and were appointed for their qualifications and ability, rather than for any other reason. It is also important, in my submission, that a standard be maintained, and be not bent to the dictates of expedience or policy.[2]

During our hearings we met many able Maori solicitors, and have no doubt that the Maori Land Court will see the appointment of more Maori judges.

12. On the whole most of those appearing before us saw no reason for major changes in the method of appointing judges. It was suggested that the requirement of 7 years standing as a barrister or solicitor of the Supreme Court should be changed to 7 years practice. This has been recognised by the Beattie Royal Commission which recommended[3] a similar requirement for appointment as a magistrate to match the Judicature Act 1908 section 6 governing the appointment of Supreme Court judges. We recommend that the same change should apply to the qualifications needed for appointment to the Bench of the Maori Land Court, for it emphasises the necessity of practical legal experience and not just academic qualifications.

13. Although the present machinery for the appointment of judges works well enough, it is timely to consider alternatives, especially in the light of the Appointments Committee of the Judicial Commission proposed by the Beattie Royal Commission.[4] We see merit in this kind of independent appointment body as long as there is the safeguard of retaining a Maori presence in the selection. This could be done by the addition of the Secretary for Maori Affairs and the Chairman of the New Zealand Maori Council to the committee, and the forwarding of any recommendation to the Minister of Maori Affairs. The Minister will have his own avenues of consultation with Maori opinion. These are better left unformalised.

14. Although we can see the advantage in a Chief Judge having had experience as a puisne judge of the Maori Land Court before being appointed to the senior position, we do not favour any alteration to the law making this obligatory. There may be circumstances where an appointment from outside the existing Bench is preferable, and we think

flexibility should be retained to allow for this. The aim should always be to obtain the best man in all the prevailing circumstances.

REFERENCES

[1]R. M. Russell, Submission 24, p. 49.
[2]E. T. J. Durie, Submission 11, p. 101.
[3]Report of the Royal Commission on the Courts 1978, p. 199.
[4]*ibid*, p. 196.

Chapter 14. REGISTRARS PERFORMING JUDICIAL FUNCTIONS

Item 3 of our warrant reads:

> Whether and to what extent it is proper or desirable and practicable that registrars of the Maori Courts perform judicial functions, and whether the appointment of appropriately qualified officers of the Maori Land Court to exercise subordinate judicial functions would be desirable, practicable, or convenient.

1. The first submission of the Department of Maori Affairs says this:

> Registrars of the Court have statutory powers under the following sections of the Maori Affairs Act 1953 and its amendments—
>
> Section 451/53 —taxation of costs
>
> Section 406/53 —to requisition surveys
>
> Section 81/1967 and Section 81A —vesting Maori land of a deceased Maori in an administrator and subsequently in the persons entitled.
>
> Section 34 (3)/53 —signing orders of the Court with authority in writing to the judge by whom the order made.
>
> The powers conferred by sections 81 and 81A above are essentially conveyancing operations not requiring judicial discretion. It would be reasonable to extend the authority of registrars or other designated officers of the Court to make orders under other similar statutory provisions. Section 213/1953 [vesting orders of interests in land] is one possibility.[1]

2. It would seem from some submissions, in particular that of Mr I. D. Bell, that the work actually done by registrars (formerly deputy registrars) can be quite extensive. The work plainly varies from district to district. Mr Bell said, for example: "Where there was previous evidence in the Court minute books, I as deputy registrar, used to make hundreds of succession orders which the presiding judge later confirmed by simply initialling the bottom of each folio. . . . Where a block had been vested in the Maori Trustee or some other trustee to subdivide and sell it, I with the Court's consent made the partition orders required to bring the Court records up to date. Once again the judge simply initialled each folio".[2] Moreover, deputy registrars were given authority in writing to sign certain orders of the Court to save the work of the judges, and to deal with situations which arose when the judge was away from the office for any length of time. From other evidence, it seemed that in other districts the duties entrusted to registrars were less embracing.

3. This item of the order of reference speaks of registrars or "appropriately qualified officers". In the department's submission, and in those of others, "designated officers" were suggested as possibly exercising some part of the Court's jurisdiction. Doubtless the expressions were intended to be synonymous. We are aware that, as well as registrars,

certain other departmental officers, in particular, recording officers and title improvement officers, already carry out certain routine functions for the Court. Possibly these functions could be enlarged, but there has been no case advanced for such officers taking over any important part of the Court's activities. Generally, the submissions we heard concerned themselves entirely with the position of registrar, and did not mention other officers. We shall similarly confine our remarks. The possibility of commissioners doing some of the Court's work will be discussed in chapter 15, where we shall say that we do not favour any further appointments of commissioners.

4. Doubtless the use of registrars to relieve the workload of the judges, especially in matters of lower importance, has considerable attraction, and a case can clearly be made for extending their activities. This has been done with registrars of the Supreme and Magistrates' Courts. It cannot be denied that there could also be some extension for the Maori Land Court without encroaching on the judges' proper sphere and without depriving litigants of their rights to have judicial decisions made by judicial officers. The question here, as always, is the extent of desirable change.

5. The submissions on these matters covered a wide spectrum. At the one end were those of Mr Bell and the Centre for Maori Studies and Research, University of Waikato, which contended that most, if not all, of the judicial functions now performed by the judges could be given to registrars. At the other end, there were such submissions as those of the New Zealand Maori Council, the Whakatohea people, and other tribal organisations, which opposed the granting of any further jurisdiction to registrars, and indeed sought that such work presently being done by them should be relinquished. The Rotorua County Council and the National Council of Churches also opposed any advancement of the registrars' powers. In between, there were a large number of submissions (for example, those of several of the judges) which accepted that further powers to do work presently done by the judges could be given to the registrars provided that no exercise of judicial discretion was involved, and provided that these additional duties are given to sufficiently trained and experienced officers.

6. There were many arguments mustered against any substantial transfer of jurisdiction from judges to registrars. We shall deal with the more important. The most often heard criticised the holding of the positions of district officer and registrar by the one person. This was usual when our Royal Commission was set up. In most cases, the district officer/registrar had no experience of court work, and, what was more important, was often in a position of conflict of interests between the rights or needs of litigants and the activities of some section of the department under his control. But argument based on conflict of interest or lack of experience in court work, no longer applies in view of the rearrangement of the Court structure which has separated the appointments of district officer and registrar. Registrars appointed pursuant to this restructuring are accountable for their work as officers of the Court to the chief registrar, and, of course, through him to the Secretary for Maori Affairs. It should be accepted that if these officers exercise judicial functions containing any element of discretion, they must be left free from departmental control or regulation when exercising that discretion.

7. The next argument was that even the registrars now appointed are insufficiently trained and experienced to do other than purely routine

judicial work. None has a legal qualification, but neither, as a general rule, have registrars of the Supreme or Magistrates' Courts. A legal qualification is a great advantage, but we do not view it as essential. The essential things are experience in court work, sound judgment, and an ability to put aside personal relationships. Our experience of the senior officers of the court section leads us to believe that there are a number who have the necessary qualifications to play a larger part than they are at present. There are, we concede, dangers in appointing unqualified people. We were told that there are especially possibilities of registrars identifying themselves with certain specific persons, families, or tribal groups, and allowing themselves to be unduly influenced by them. But this can be guarded against by careful selection of those officers who receive the powers of registrar.

8. A weighty point was made by a number of the judges who saw any major extension of the registrar's jurisdiction as a departure from the Court's traditional practice of working as much as possible in open court in the presence of the people of the area to which the work relates. This practice has persisted for a long time and is strongly supported by the judges. Not only does it give substantial protection against deliberately misleading evidence (for example about descent) and against innocent misrepresentation; but it also helps greatly in developing a close relationship between the Court and its litigants. It is not unusual for those present at the Court, although having no financial or blood interest in the matter being heard, to take part in the general discussions and to challenge or correct some of the evidence already given. On many occasions the Court has been saved from error by such interventions.

9. Finally, there can be no doubt that the Maori people have over the years acquired great confidence in the judges whom they delight to criticise but hold in deep affection. They do not show the same confidence in registrars or other departmental officers. This was reflected in the fact that the bulk of the evidence we received from Maori groups leaned against any extension of registrars' jurisdiction.

10. Nevertheless, as we have already indicated, we think there is room for some extension. Most of the judges, and in particular Chief Judge Gillanders Scott and Judges Durie and Russell, have detailed many steps in different legal processes which could be now done by registrars to the advantage and relief of judges. These suggestions do not always coincide. There is obviously room for differences of opinion about any particular steps.

11. It is sometimes urged that the division of work between that which could be undertaken by registrars and that which could not, should be founded on the difference between judicial and administrative functions, the latter being suitable for assignment to registrars, but the former not. But there are great difficulties associated with defining these two categories. The currently fashionable description holds that administrative acts entail the formulation or direction of general policy in relation to particular situations or cases including the making or execution of individual discretionary decisions; whereas judicial acts involve the determination of questions of law and fact, or the exercise of limited discretionary power, in relation to claims and controversies susceptible to resolution by reference to particular existing legal powers or standards.[3] But precise selections of these categories are unattainable; and in any event of little use for the purpose under discussion here. In practice, it is usually found that one class of function tends to shade off into the other.

Classification varies according to the context and the purpose for which classification is attempted.

12. We believe that a far more pragmatic test should be applied. What work could and should be done by registrars in the judicial field (by which we mean other than the clerical and recording work of the Court) can only be determined satisfactorily by examining the various steps of the different processes which come before the Court. A selection of these steps should be made having regard to the qualifications of available registrars, the effect which the transfer of this work would have on litigants' rights to an adequate judicial hearing, and that which the change would have on the standing of the Court in the community. This must be a pragmatic exercise, not one based on imprecise, theoretical definitions. The work of selection could be best performed by the type of committee which we shall propose in chapter 16, as a Rules Committee whose overall duty will be to prescribe the procedures which the Court must follow.

13. All sophisticated courts prescribe their procedures by rules which are given statutory authority. The Maori Land Court has such rules made by Order in Council under section 25 of the 1953 Act, but it has no standing machinery to consider and recommend necessary changes in those rules from time to time. We shall be proposing such a committee to be made up of people of sufficient practical experience of the Court to be able to say whether a particular task can and should be done by registrars. In the Supreme Court, this function is discharged by the Rules Committee for that Court, established by the Judicature Amendment Act (No. 2) 1968. One of that committee's powers is to make rules conferring on registrars, and deputy registrars (subject to such limitations and restrictions as may be specified in the rules) such of the jurisdiction and powers of a judge as may be specified in the rules, and to make such other rules as may be necessary to enable proper exercise of that jurisdiction by the registrars concerned. Such jurisdiction may be conferred on specified registrars or on registrars from any specified districts. This enables the Rules Committee of the Supreme Court to choose the jurisdiction of registrars according to the considerations which we have already stated. We think that this is a power which should be vested in a like committee acting under the provisions of the Maori Affairs Act as suitably amended. We do not consider that the selection of tasks now appropriate to be transferred can be made by a Royal Commission only one of whose members has practical experience of the day-to-day operation of the Maori Land Court. The helpful submissions of the different judges specifying particular areas which should be examined for suitability for transfer should greatly help any committee entrusted with the work of making a selection. Such a selection need not be permanent. It should be capable of being enlarged or reduced from time to time. It should be greatly affected by the degree to which training is made available for registrars, especially in such fields as the effects on Maori land of town and country planning legislation, to name just one of the many influences which our increasingly complex society brings to bear.

14. In summary then, we take the view that what further work can be undertaken by registrars must be selected on a pragmatic basis. We agree with and commend the submission of Mr Joe Williams, of the Ngati Paoa Tribe, who resides in the Hokianga district, is a member of a number of local authorities, and a man of considerable experience in Maori affairs.

He said:

> The question of whether it is proper, desirable or practicable for properly trained Registrars to perform functions in my opinion would depend on the type of functions expected of them, degree of competence required, and probably many other factors. In the main judicial functions should be the prerogative of the judges. Where the workload is such that the efficiency of the Court can be improved by the delegation of certain duties to the registrars then some provision could be made whereby the Judges should have the power to delegate authority to the registrars.[4]

The only improvement we would make to that quotation, is that we believe that the extent of transfer of authority from judge to registrar could generally be made better, and result in more uniform practice, by a Rules Committee than by any individual judge.

REFERENCES

[1]Department of Maori Affairs, Submission 1, p. 8.
[2]I. D. Bell, Submission 6, pp. 4–5.
[3]*1 Halsbury's Laws of England*, 4 Ed. p. 7.
[4]J. Williams, Submission 37, p. 5.

Chapter 15. COMMISSIONERS

Item 4 of our warrant reads:

> Whether and to what extent it is proper or desirable and practicable that commissioners be appointed pursuant to and in accordance with the present statutory provisions relating thereto, or on some other basis to exercise any part of the jurisdiction of the Maori Courts.

1. Section 18 of the Maori Affairs Act 1953 provides for the appointment of commissioners of the Court who are given some or all of the powers and functions of a puisne judge. The scope of the jurisdiction in each particular case is specified by Order in Council.

2. Although it is implicit that a commissioner may have judicial powers, even if on a restricted basis, there is no explicit requirement that he have legal qualifications. The only requirement for appointment is "fitness" for the office. The office may be held, with the approval of the State Services Commission, concurrently with any other office in the State Services. The statute attempts to guarantee the independence of a commissioner appointed from the State Services by giving him freedom from the control of the Secretary for Maori Affairs when exercising his functions as commissioner (1953 Act s. 18 (3)). That the attempt may not always have been successful is shown by a memorandum of 28 February 1958, sent to the judges by the then Secretary where it is stated:

> For the Titles Improvement work the Commissioners are in effect to act as Divisional Controlling Officers in two districts *subject to the District Office in each.*[1]

3. There are at present no commissioners. The last ceased to hold office in 1979 several months after his retirement as Deputy Secretary of the department. Since 1958 all commissioners have been qualified solicitors with lengthy experience in the legal or court sections of the Department of Maori Affairs. Each has held office concurrently with a position in the State Services. In the past some commissioners have been appointed as judges and have served there with distinction.

4. Commissioners have, at various times, been concerned with determining titles to land, with title improvement and consolidation exercises, and with hearing and determining applications for succession. They should not be confused with assessors who in the early days of the Court were Maoris of mana who sat as advisors with the judge. The commissioner is an independent judicial officer; the assessor was a lay-person.

5. The Judicature Amendment Act 1968 establishing the Administrative Division of the Supreme Court provides for lay members as assessors sitting as members of the Court in appropriate circumstances. For example, an assessor may be needed in certain proceedings under the Land Valuation Proceedings Act 1948. There is no provision in the Maori Affairs Act for such a member of the Court although the Court does call on expert advice of a specialist nature when it is needed. We heard no substantial requests for such an officer.

6. Most of those appearing before us did not favour the appointment of commissioners, or indeed the retention in the Act of the provisions for their appointment. The services of commissioners in the past were recognised, but the office was not thought to be relevant today. Most of those who wanted the provision retained wanted the requirement of legal qualifications to be made obligatory. Some saw no need at present for commissioners but thought that an appointment on a short-term basis might be necessary at some future date for a special assignment.

7. We think it highly desirable that no person should exercise a judicial (as opposed to an administrative) function unless he is qualified in law and has had practical experience in legal practice. We therefore find the present requirements for appointment of commissioners unsatisfactory.

8. We see no merit in retaining in the legislation provisions for the appointment of even a legally qualified commissioner. If special projects requiring the exercise of judicial functions arise in the future they should be dealt with either by the existing judiciary or by the appointment of temporary judges. There is power to appoint such temporary judges. Administrative work that might be considered to need a commissioner could be done by departmental officers. We therefore recommend that section 18 of the Maori Affairs Act 1953 be repealed.

REFERENCE

[1]K. Gillanders Scott, Submission 49, p. 143.

Chapter 16. PRACTICE AND PROCEDURES

Items 5 and 6 of our warrant read:

> 5. The administrative procedures and the organisation and the management of the Maori Courts, including the places appointed and the frequency and times of sittings for the despatch of business and the arrangement of the business thereof, and the provision of adequate and appropriate staff for servicing those Courts.
> 6. Whether and to what extent any part of the business of the Maori Courts could be dealt with more properly or conveniently *ex parte* or otherwise than at a duly appointed and formal sitting of the Court, or without the necessity of notice to other parties.

1. The practice and procedures of the Court were criticised extensively in submissions, particularly by the judges. The general tenor of the criticism was that the procedures were overcomplex, and in particular, the Rules of the Court made by Order in Council in 1958, pursuant to section 25 of the Maori Affairs Act 1953, needed major simplification, especially their provisions for over 300 different forms for filing in Court, including a variety of different initiating documents. Moreover, it seems that these rules are applied differently by different judges. Practice notes issued by judges pursuant to section 25A for the guidance of parties and their advisers, usually in respect of matters not covered by the rules, vary from judge to judge. All this produces uncertainty, delay, and confusion, and especially affects litigants prosecuting their own cases.

2. In chapter 14 we noted that all sophisticated courts have their procedures prescribed by statutory rules, and, as we have already said above, those rules exist in the Maori Land Court. But all such rules need constant attention to accommodate them to changes in prevailing circumstances and needs. Many, but not all, courts have standing committees for that purpose. For example, the Judicature Amendment Act (No. 2) 1968 establishes a Rules Committee for the Supreme Court. It consists of the Chief Justice and two other judges of the Supreme Court, the Attorney-General, the Solicitor-General, the Secretary for Justice, and two nominees of the New Zealand Law Society. This committee meets regularly to consider changes. More recently it has been involved in a complete review of the Supreme Court Rules aimed at gaining greatest simplicity. It has in mind directing one common form for all initiating documents to the Court whatever relief is sought. These proposed rules are almost ready for adoption by Order in Council.

3. The Maori Land Court has no such committee. Attempts over the years by the judges to have the rules kept up to date have proved abortive. They would seem to have been affected by the unsatisfactory relations which existed between the judges and the department in past years (see chapter 7). Chief Judge Gillanders Scott said that for 5 years the combined judges had sought clarification and the facilitating of the prompt despatch of the business of the Court. Their last combined effort was in 1976 when a large list of suggestions for amendments to the rules

was put forward to the department by the judges to be embodied in amendments. These, we were told, were ignored by the department. No steps were taken to have them implemented. But on the other hand, some few changes were made without their being first submitted to the judges for comment. Such a situation, if it was accurately presented to us, was ridiculous.

4. The need for better machinery controlling the practice and procedures of the Court is thus plainly obvious. What is needed is a committee established by statute which can meet regularly, or if that is unnecessary, can be called into operation by the Chief Judge when circumstances demand. It should be modelled on the Supreme Court provision to which we have referred. Its membership could be made up of the Chief Judge, one other judge, the Secretary for Maori Affairs or his deputy, a nominee of the New Zealand Law Society, and a nominee of the New Zealand Maori Council. The first task of that committee would be to essay an overall review similar to that undertaken by the Rules Committee of the Supreme Court, seeking especially simplification and reduction in the number of forms used in the Court. This review would need to be much wider than that envisaged by this item of our warrant.

5. The unsatisfactory procedural situation produced by the rules has been worsened by the fact that the statutory provision relating to practice notes, to which we have referred, has been interpreted by the judges as justifying each making his own practice notes to apply when he is sitting. This is plainly undesirable; not only because it results in different practices for different areas, but also because it means that, in those areas where more than one judge sits, the practice can vary from day to day. Practice notes should be drawn up by a small committee of judges and issued by the Chief Judge to apply everywhere and on all occasions. Only by this procedure will uniformity be attained. If this calls for some amendment to the statutory provision, that amendment should be made.

Ex Parte and in Chambers

6. The two areas relating to practice and procedures specifically mentioned in item 6 are (a) the hearing of applications *ex parte* (which involves their being disposed of without some obligatory form of notification to other parties); and (b) the hearing of applications otherwise than at duly appointed and formal sittings of the Court. Lawyers call this last procedure a "hearing in chambers", though in actual practice a courtroom rather than the judge's chambers is often used. It enables the Court to deal quickly and efficiently especially in matters where only the applicant is involved or when the matter is urgent or of such a private nature that a public hearing is undesirable. Numerous examples were given of applications which the Court could dispose of *ex parte* and/or in chambers.

7. Here again we experienced the dichotomy which pervaded so much of the evidence given us; on the one hand the desire for increased efficiency; on the other hand the wish to retain traditional forms and practices. Many witnesses saw as urgently necessary a wide expansion of the hearing of matters *ex parte* and in chambers by judge or registrar. But more often we were met by witnesses of an opposing opinion who urged us to favour the traditional practice of this Court of disposing of business, however private it may seem to be to other ethnic groups, in public hearings—runanga whenua.

8. It cannot be doubted that it would be possible to dispose of an increased amount of work *ex parte*, and on occasions other than those appointed for regular hearings, without seriously departing from the traditional character of the Court's past procedures. We definitely favour this, and we have no doubt that it would lead to increased efficiency. It could be done by requiring every application to the Court to be accompanied by a request for directions from the Court as to whether service was needed, and if so, in what form; and as to whether the application could be taken in chambers. Alternatively, the rules could state positively under their various rule numbers, the applications which could be dealt with *ex parte*. They could also state what applications could be dealt with in chambers either on or outside normal Court days. However, it emerges most clearly from the submissions, especially from those of the judges, that there is no uniform opinion about which particular applications should be dealt with *ex parte*, and the extent to which applications could be dealt with in chambers. Some witnesses would extend the selection widely. Others, for example, Judge Durie, would move slowly, pointing out that a conflicting interest may not be apparent until an application has been notified in the panui and then brought on for hearing.

9. This lack of uniformity demonstrates the desirability of the selection being made by such a body as a rules committee. We do not overlook that item 6 of our warrant asks us to describe the extent of desirable change. But with great respect we can only do this in a general way. It is not for a Royal Commission to make a detailed selection; a Royal Commission is not suited to that task, nor have the majority of members of this Royal Commission sufficient practical experience of the procedures of the Court. We agree with Judge Durie that some caution is necessary, and we recommend that the rules committee we have suggested draw rules defining what detailed changes are desirable.

10. Section 29 (3) of the 1953 Act provides for special sittings to be held at such times and places as may be appointed by the Chief Judge. These are in addition to the normally appointed sittings of the Court which have been gazetted pursuant to rule 10 (2). Rule 12, on the other hand, seems to imply that this power is not confined to the Chief Judge, but may be exercised by any judge. We see no reason why it should be so confined. Any judge should be entitled to authorise special sittings if the circumstances require it. This is normal in other courts.

Chapter 17. RELATIONS OF THE COURT WITH LITIGANTS

Item 7 of our warrant reads:

> The relationship between the Maori Land Courts and their staff with persons who attend the Courts (whether as applicants, parties, witnesses, or otherwise), and whether and to what extent changes in the facilities and administrative procedures of the Court are necessary or desirable to improve that relationship and better meet the convenience of such persons.

1. The events which culminate in an appearance in the Maori Land Court can be, for anyone unused to the system, a bewildering and sometimes a frustrating experience. A litigant's land interests are subject to legislation of great complexity. It may be difficult for him to find a lawyer to explain the problems to him and to advise the course to be taken. Relatively few legal firms do Maori Land Court work. Help may perhaps be sought at the public counter of the Department of Maori Affairs. Here communication difficulties may arise with a departmental officer who, we were told, may have had little experience in court and titles matters. Information about titles to land must be sought by writing to, or by visiting, the Court registry of the district where the land is situated. There is no certainty that the Court records will be complete and up-to-date or that the records of the district land registrar will not also have to be consulted. In most cases the Court registry and the Land Registry Office are in different towns.

2. A first appearance in the Court itself can be unnerving because of the unfamiliar procedures, and the conduct of the proceedings in language different from that of everyday speech. It is not unknown for a litigant to fail to understand the judge's ruling at the end of the case. A litigant can suffer bewilderment at each point in the succession of actions he must take, unless he has been adequately prepared beforehand. We heard conflicting views on the service given by the judges and the Court staff to those attending the Court. Some praised highly the help that had been given them, while others pointed out deficiencies and obstacles they had personally met. On balance it appears to us that there are areas where a little planning and effort could make things much easier for those attending the Court. This is not to denigrate the efforts of many judges and Court staff who have over the years served the Maori people well. Frequent tributes were made to the help they had given. There are, however, some deficiencies in facilities provided and in the procedures that must be gone through. These we deal with below.

Information For The Public

3. There is a great need for information to be readily available to people on how to go about transacting business in the Maori Land Court. There appears to be a complete lack of publicity material similar to that provided by the Department of Justice and the New Zealand Law Society

to help prospective litigants in the central courts. Information pamphlets should be produced by the department on all the common types of application to the Court that an ordinary citizen is likely to take. There should be simply and carefully worded material on how to search Court records, or how the department can be contacted for help in these matters. Pamphlets should be held not only at the Court office but in all district and sub-offices of the department and at post offices. The widest possible dissemination should be given to this material.

4. The spoken word should be used as well as the written word. Seminars on the Court and on Maori land law should be held on local maraes within each Court district. The registrar could, as part of his duties, arrange and conduct such meetings.

5. The advantages to the department itself of a vigorous publicity campaign would be considerable. Besides enabling those attending at the Court office to better state their problems or make their requests for information more precisely, ownership lists and the state of Maori land titles could also be improved.

6. A large number of Maoris are not aware that they have some claim to land; and of those that do, some do not know how to make a claim or what steps should be taken to improve the title position. The ownership lists held by the Court are in many cases out of date. The situation will get worse until Maoris are encouraged to help remedy it.

7. There is also a need to provide better information for the legal profession as well as for the general public. Important decisions of the Maori Appellate Court and the Maori Land Court are occasionally commented on in the *New Zealand Law Journal*, but are not generally published. Judge Durie suggested compilation and publication of past Appellate Court decisions and the important decisions of individual judges. We understand that that is already under way, and trust that publication will not be long delayed.

Attendance At the Registry

8. There are seven Maori Land Court registries where the Maori Land Court records for each district are held. So, if a Maori land owner has shares in a block of land in the Tokerau (Northland) Maori Land Court District, he must either write to the registrar at Whangarei or visit the Whangarei office to get information. Many of those that visit the Court office have travelled considerable distances. They should expect to be attended by experienced officers who can give them accurate and correct information.

9. It is frustrating for inquirers at the counter (who may have difficulty explaining what they want) to be attended by a staff member who, through lack of experience, fails to understand the question asked and fails to provide the necessary (and in some cases supplies the wrong) information. This can have serious consequences, especially if an incorrect or incomplete application is made to the Court. Such an application may have to be stood down from one Court sitting until the next thereby causing further expense and frustration to the applicant.

10. In the past a departmental officer, known as the land inquiry officer, attended the counter to assist the public with their inquiries. In all except one district, this position no longer exists, and in order to improve the service to the public it should be filled or re-established. This would greatly help both the Court and the applicants by minimising delays and errors in applications. Besides attending to inquiries, this officer should

check applications to ensure that they are ready to proceed at the Court sitting for which they are filed.

11. We recognise that the registries operate under difficulties caused by the departmental staff training system of moving basic grade staff from section to section every 6 to 12 months. Though this idea has many merits, sufficient training cannot be given in 6 months to deal with public inquiries on land matters. A succession of such officers through a registry does not make for an efficient service.

12. Solicitors, agents, surveyors, and other professional people often visit the Court office to make searches. They normally establish a business relationship with a particular staff member which is lost when he is moved or promoted. However, if there was an attractive career structure within the Maori Land Court, officers would not so often seek promotion outside that section, and the quality of staff and the service provided would improve.

13. On several occasions it was suggested to us that there should be officers attached to the Court staff ("whakapapa officers") who could assist in bringing up to date the genealogical records of those with land interests. Their work would be important in tracing succession to land. Such an officer would be unlikely to be useful in these matters outside the particular restricted tribal area of which he had detailed knowledge, and there is obviously not enought scope for full-time employment. We are not convinced of the need for the Court to provide this type of service which really should come from Maoridom itself. On a limited scale, it is already being carried out by title improvement officers of the department.

14. However, we do think that it is unfortunate that the files of names of those with land interests (the "nominal index" started many years ago) were allowed by the department to lapse for a time, and are now in many cases incomplete. The index was a useful tool, and is nowadays an obvious field for the application of computer methods.

15. There is considerable room for court forms to be simplified. The present system of some 300 forms can only confuse those wishing to prosecute business in the Court. Some forms require witnessing, and the class of witness required is not always readily available in country districts. The simplification can easily be made through a change in the Court Rules, which we have said elsewhere are badly in need of revision. We discuss this in detail in chapter 16.

Court Offices

16. During the course of the hearings we visited all the Maori Land Court registries to make ourselves familiar with the work of servicing the Court. In one district only did we find the conditions for the staff cramped and inadequate. However, we heard much criticism of the arrangements at the public counter and the area surrounding the counter. Discussions held between the public and the Court staff should be private. In some districts the counter area serves as a public walkway to other sections of the department. Present conditions often tend to be embarrassing to the public and distracting to the interviewing officers. Interview rooms reasonably furnished should be a necessary part of every Court office. Although there should be facilities for those who wish to consult records, the security of such material must always be safeguarded. We were told of instances where records had been stolen; it was thought, by people given access to search. An adequate surveillance system to prevent loss should be introduced in those registries without one.

17. The siting of the public inquiry counter in the departmental building has not always been planned with the convenience of the public in mind. In Rotorua, for instance, the counter is on the first floor without direct lift access. This causes unnecessary difficulties for the elderly, and for women with small children.

Panui

18. Fourteen days before a Court sitting a notice ("panui") is issued from the office of the Court advising the time and place of the Court sitting and listing the applications that will be heard. Under rule 21 (2) of the Maori Land Court Rules 1958 ". . . the notice shall be published not less than fourteen days before the commencement of that sitting . . .". Instances where the panui was published up to one day after the commencement of the Court sitting were brought to our attention. In fairness to the Court, applicants, and interested parties, the registrar must ensure that the panui is issued as the law requires.

19. Some of the applications that appear in the panui are not ready to proceed. Applicants appear in the Court to prosecute their application only to find that the application has to be stood down until the next quarterly sitting of the Court. This is frustrating for the parties and embarrassing to the Court.

20. Some Court offices issue panui in a narrative form instead of a bald list of applications to be heard. Because of the great interest shown by Maori people in land matters, the narrative panui, which outlines briefly the matters to be heard, is a useful and informative document.

21. In the panui some applications, normally of a contentious nature, are given a special Court fixture. The applicants in all other matters are requested to arrange a fixture by writing to the registrar beforehand. In most cases applicants do not do that but attend the Court opening when dates and times for their hearings are then arranged. Practices vary somewhat in different districts. Many people may be affected by one application, and, because of the manner of arranging fixtures, it is not unusual for some interested party to attend the Court only to find that the application has already been heard or has been postponed.

22. Suggestions were made that all applicants be allotted times for the hearing of their applications. This would improve the situation to a certain extent by spreading the daily work of the Court. But the difficulty in estimating the length of time needed to complete an application makes it impossible to schedule fixtures precisely. At present most people attend at the opening of the Court, and much of the Court's business is dealt with on the opening day. This helps to minimise the waiting time for those attending. However, much more could be done to improve the allocation of time for Court fixtures. We commend to the Court officers the fixture system used in the general courts. An applicant should be advised that he has to make an appointment for a Court hearing.

23. Most people travel to attend the Court. Some come from the South Island or from Auckland or Wellington to Court sittings in the central North Island. Because of lost wages and travel expenses involved in a Court appearance, every effort should be made by the Court to minimise the time spent at the hearing by fixing appointments and conducting the business expeditiously. The Maori Affairs Act should be drawn with this in mind.

24. According to Judge Durie, the most usual complaint about the Court concerned the time it takes to complete an application. He saw the complaints as usually being justified and said:

> Some delay is inevitable of course, but the dilatory despatch of the business of the Court is of such serious proportions, and is the cause of so much frustration that in too many cases, only the most patient or the most resolute are not dissuaded from abandoning their proposals.[1]

He considered that the delays were primarily due to staff shortages, lack of training, and inadequate supervision of the Court staff. From the examples quoted we agree that these factors contribute. But there are others, chief amongst which are the complexities of the procedures themselves.

25. Delays are also caused by inadequately prepared or dilatory counsel. A more serious cause of delay, again according to Judge Durie, arises through inattention or inaction within the Maori Trust Office. The actions of the Maori Trustee do not come within our terms of reference. We merely record the learned judge's assertion without comment.

Appearance At The Court

26. The clerk of the Court and, in some districts, the divisional offficer (titles) are present at Court sittings and should be able to help applicants by discussing each application and the procedure to be used in prosecuting it. These officers should remember that what appears to be a routine application to them is often a matter of great importance to the applicant who may be overawed by the unfamiliar surroundings and procedures of the Court. A heavy responsibility rests on the shoulders of the clerk of the Court who has not only to ensure the smooth running of the Court itself, but to attend to a constant procession of inquiring people coming into the Court during a sitting. Judge Cull pointed out the difficulty of retaining as clerk an officer with some knowledge of the Maori language, because of greater career opportunities in other branches of the department.

27. Suggestions were also made that the Court staff should appear on behalf of applicants to prosecute their applications. This is not part of their duties, and would be undesirable as tending to partisanship.

28. Many times it was submitted that licensed interpreters should always be available for Court sittings. Applicants and witnesses can be unaware of their rights to have an interpreter present and should be asked whether they need one. In former days the clerk of the Court was either a licensed interpreter or was bilingual; but this is less common now, although the clerk of the Court is still officially listed as clerk and interpreter. There are practical difficulties in having a licensed interpreter available as a member of the Court staff. The salary at present offered is unlikely to attract a suitable person who must be fluent in the particular Maori dialect of the Court district. An interpreter from one district may not be fully understood in another. There are, however, people within the department, or known to the department, who could help in these matters when necessary. If an interpreter will comfort and help make the proceedings clear to those attending the Court, his presence should be encouraged.

29. We were often told by witnesses that the language used by the Court was excessively formal and that there was too much needless legal jargon.

On the other hand, we heard that the Court was often at pains to explain in simple terms to applicants or witnesses what was required. Precision in thought and in expression on the matters before the Court is essential not least because of the increasing value of the land in question. Thus, some formal language is necessary so that exact meaning can be given to the matters under discussion. However, there is a difference between formal technical language necessary for precision, and the formal legalistic jargon which only obscures meaning by separating the user from his audience.

30. The proceedings in the Maori Land Court are far less formal than those in the Supreme Court or the Magistrate's Court. There were complaints from some that formality was increasing and that the so-called "people's court" atmosphere of former times was not so often found these days. The degree of formality in the Court depends on the personality of the presiding judge, and on his conception of the best manner in which to exercise his judicial functions. This will necessarily differ in individuals, and cannot be altered by rule or regulation. Excessive legalism or undue formality can be obviated only by a careful selection of judges. Those who have an understanding of and sympathy with Maori people, and the necessary personal qualities to attract the respect of those appearing before them, will have no problems in keeping formality of proceedings to the minimum consistent with the dignity of the Court.

31. Court minutes are taken in longhand by the judge and later typed in the Court office. This is an archaic procedure which places an unnecessary strain on the presiding judge. The Beattie Royal Commission fully surveyed recording devices suitable for use in courtrooms. We recommend that the department study that report with a view to replacing the present inefficient methods by a modern system.

Courtrooms

32. In its travels around the country the Royal Commission held hearings in a number of the Maori Land Courthouses, and also in other premises used by the Court from time to time. While most of those we saw were adequate, we did not visit some of the smaller centres where we were told the premises used were unsatisfactory in the facilities provided for the judge, Court staff, and those attending. One witness described to us the conditions in which the Court sat as: "They sit in conditions that I would be intolerant of but not only sit for 1 day but up to 4½ days".

33. We were told that the Maori Land Courthouses compared by and large unfavourably with those of the main courts. The Auckland courtroom, for instance, houses a billiard table and is a thoroughfare to the tearoom servicing the building. There are no toilet facilities for the public and no room in which a solicitor may confer with his client. Some other courtrooms are little better. More thought should be given to the selection of places in which the Court sits. They should be such as to uphold the dignity of the Court and provide adequate facilities and conditions for applicants. Whatever accommodation is used for a Court sitting, a retiring room is a necessary prerequisite for the judge.

34. On occasions the Court holds sittings on a marae. These sittings are welcomed especially when matters of a contentious nature affecting a hapu or tribe are to be dealt with. However, most applications can be more conveniently dealt with in the courtroom, and Court sittings on a marae should be limited to special cases only.

Court Sittings

35. Sometimes the judge sits on a Saturday or on an evening. Normally anyone attending the Maori Land Court finds it necessary to take at least a half-day off work, or even longer if travelling is involved. Because of this, some are reluctant to attend and have been especially affected. In the past the Court has shown a good deal of consideration and patience in sitting at irregular hours for the convenience of applicants. Those judges who have adopted the practice of sitting in the evening and on a Saturday are to be commended. It would, however, be unfair to the judges to expect any major extension of the practice.

36. On no occasion were we told of applicants to the Court being given insufficient opportunities to transact their business. We therefore conclude that the number of sitting days provided has been adequate for the dispatch of Court business. The number needed will vary from place to place and time to time, and be left to the Chief Judge to decide.

REFERENCE

[1] E. T. J. Durie, Submission 11, p. 207.

Chapter 18. REPRESENTATION BY COUNSEL

Item 8 of our warrant reads:

> The desirability or otherwise of parties being represented by counsel in every case or in any class of cases before either of the Maori Courts.

1. Anyone appearing before the Court may be represented by counsel, by an agent, or by any other person with the leave of the Court (section 58 Maori Affairs Act 1953). This leave is given on such terms as the judge may direct and may be withdrawn at any time. In practice applications for representation by counsel are invariably approved. The desirability of representation cannot be decided without referring to the type of case being considered. There are many matters where counsel are not needed. It must be left to the parties themselves to decide whether counsel are necessary with, as happens now, the judge suggesting representation when he considers that such a course is in the interests of the litigant.

2. Whether legal practitioners should be able to appear as of right is another question. As the New Zealand Law Society points out, appearance as of right is "a fundamental tenet of justice".[1] The principle is certainly accepted in other major courts in New Zealand.

3. The present situation in the Maori Land Court is a legacy from the early days of the Court when the inquisitorial role of the judge was of paramount importance. The Native Land Act 1873 included a code for the inquisitorial investigation by the Court into title to land. This code was very different from the usual adversary situation in civil and criminal cases in the other courts. The examination of title was to be carried out by the presiding judge without the intervention of counsel or agents as long as the claimants to title were able to select one of their number to act as spokesman on their behalf. The Act forbade the intervention of counsel in the examination of witnesses by the judge, and in the investigation of title by the judge.

4. The 1878 Native Land Amendment Act gave the judge a discretion to allow counsel or an agent to appear and conduct a case. This discretion still holds, and is contained in section 58 of the 1953 Act. While accepting that in the Maori Land Court as it works today, leave for representation by counsel is always given when sought and that some who oppose representation as of right see it as opening the way to representation in cases where it is not justified, we consider that the time has come to bring the Maori Land Court into line with the other courts. The best safeguard against unnecessary employment of counsel would be a publicity campaign by the department on how to prosecute business in the Court, and the occasions on which legal representation is desirable.

5. While we consider that a legal practitioner should be able to appear in the Maori Land Court as of right, we do not think that the same privilege should be given agents or other representatives. These should still require the leave of the Court before appearing.

6. It might be asked why there should be preferential treatment for legal practitioners, and apparent discrimination against others. There is a fundamental difference in the two cases. A judge of the Maori Land Court

is entitled to have appearing before him representatives who are bound by their profession to act in a responsible manner. Any deviation from professional standards can be subjected to the discipline of a professional body established with statutory powers. The judge must be able to rely on the standards a legal practitioner accepts when he gives undertakings to the Court, and on the statements he makes to it. While in no way detracting from the valuable help given to clients by individual Maori agents over the years, they are not bound by the same established professional code as the legal profession. We consider that the judge should retain the power to say whether an agent or any other representative seeking to act on behalf of a litigant is or is not acceptable to the Court.

7. It is clear to us that, while more Maori litigants would like to have the help of a legal practitioner in preparing and presenting cases, many are deterred by the expenses involved. Maori people generally seem uninformed about the availability of legal aid. Legal aid for appearances before the Maori Land Court can be obtained from two sources: The Maori Land Court Special Aid Fund, and the Legal Aid Fund.

The Maori Land Court Special Aid Fund

8. This fund was set up by section 50 Maori Affairs Amendment Act 1974. The Court has the power to make orders on the fund to pay legal costs and out-of-pocket expenses when the Court rules that further evidence is needed or that notice of the application before it should be given to some person or class of persons. The expenses of securing that evidence, or of the party giving notice, may in the circumstances be met. The further evidence could be requested by the Court itself, or by any of the parties before it. The Special Aid Fund cannot be relied on in advance to provide financial aid in appearances before the Maori Land Court. A litigant has no way of knowing before starting litigation whether he will receive aid from the fund.

9. Though there is no statutory requirement at present for a litigant to refund all or part of the money expended on his behalf from the special fund, such refunds have been collected in the past.[2] The Maori Affairs Bill 1978 does however include new provisions (clause 83, (5)–(7)) giving the Court power to make orders to recover as much of the amount paid out as it thinks fit.

10. The fund which receives an annual grant from the Consolidation Fund, is managed by the Maori Trustee. The grant has ranged from $1,000 to $5,000 and at the end of each financial year unused money is carried forward to the following year. Of the $17,000 received since 1 April 1975, $10,426 was still unspent as at 1 April 1979. Most of the grants so far have been in the Waiariki District.

The Legal Aid Fund

11. Proceedings in the Maori Land Court and the Maori Appellate Court can qualify for legal aid if it can be shown that the applicant would suffer substantial hardship if aid were not granted, and that the case is one requiring legal representation. The fund is administered by the Legal Aid Board set up under the Legal Aid Act 1969. District legal aid committees have been established in the various districts of the law society. Applications for aid must be made to the district legal aid committee which decides whether the applicant is entitled to aid and how much, if any, of his legal expenses he should be called on to pay personally.

12. Maori litigants in the Maori Land Courts have the same rights to legal aid as any New Zealand citizen has in the other courts, but few of those appearing before us knew of its availability. The present secretary of the Legal Aid Board reported that in his 5 years in office only the "odd inquiry" had been received from Maoris. There is an urgent need for wide publicity among the Maori people about the Legal Aid Fund. However, it is by no means certain that legal aid would be forthcoming in some of the cases for which it might be sought. Although the fund is nominally available for Maori litigants, its provisions were not designed for giving help in many of the types of case in the Maori Land Court in which such litigants might be involved. Indeed, many witnesses complained that the legal aid scheme as presently drawn could not be of great help to Maori litigants. In particular, Maori owners with undivided interests in multiply-owned land, find it difficult to get legal aid because of the value of their interests. Yet often their interests cannot be sold and are not income producing.

13. We recommend that the provisions of the legal aid scheme be reviewed in the light of the needs of the Maori Land Court to ensure that Maori litigants be not disadvantaged in comparison with litigants in other courts. It seems to us desirable that legal aid committees should fix scales of allowances which legal practitioners acting for litigants in the Maori Land Court can recover from the scheme. We believe that a special scale built upon the circumstances surrounding this work is needed to make legal aid more available to Maori litigants.

14. In the past only a comparatively few lawyers have been actively engaged in Maori Land Court work. The escalation in the value of land, the exciting possibilities of diversification in land use, and the growing tendency for Maori owners to use lands previously considered uneconomic, could lead to a marked change in this situation and to greater involvement by the legal profession.

REFERENCES

[1]New Zealand Law Society, Submission 29, p. 10.
[2]Communication, Department of Maori Affairs.

Chapter 19. ASSOCIATED MATTERS RELEVANT TO OUR INQUIRY

Item 9 of our warrant reads:

> Any associated matters that may be thought by you to be relevant to the general objects of the inquiry.

INTRODUCTION

1. There are many aspects of the ownership of Maori land, its administration, and best use for the cultural and economic benefit of its owners, which are clearly outside our terms of reference (see chapter 1). When people were given the chance of speaking to us many of these were inevitably raised. Some are assuming a growing importance in Maoridom, and we were not surprised that many of those making submissions interpreted our warrant in a highly flexible fashion. It would of course be possible to make an arbitary ruling as to what is and what is not permissible for us to consider. However, there are a number of topics in a grey area which we feel bound to discuss in this section because of their importance to the Maori people and their reaction on the Maori Land Court.

2. In chapters 5 and 6 we have already discussed the effects on the administration and on the economic use of Maori land caused by: (a) the multiplication at an ever increasing rate of the number of those who have interests in much Maori land; and (b) the costly and inefficient dual system of recording the ownership of land. Because of them, the owners of Maori land often have to overcome formidable obstacles before it can be used to the best advantage. Besides multiple ownership, fragmentation, and the poor title system, there are many other factors which hinder Maoris using their land effectively. Mr T. R. Nikora of the Department of Lands and Survey listed the following as matters of concern:

(a) Lack of mapping of Maori lands
(b) A poor title record system
(c) Unsurveyed titles
(d) Irrational boundaries or partitions or no access
(e) Non-effective use or unproductive land
(f) Unpaid rates
(g) Multiple ownership and fragmentation
(h) Lack of administration or lack of powers
(i) Lack of finance.[1]

As Mr Nikora pointed out, these are not necessarily independent of each other. The non-effective use of land for instance may be due to uneconomic units or to lack of finance which may itself be due to an absence of survey, and thus no certificate of title.

3. We refer now to suggestions made to us on how to alleviate problems caused by these associated matters. In some cases we simply describe the material presented but make no recommendations. We do this either because the matters, although important, are well outside our terms of reference, or because the problems are basically technical, and need a

much more thorough study by appropriate experts than they have so far received. We also discuss briefly some other matters brought to our attention.

TENURE AND LAND USE MAPPING OF MAORI LAND

4. A Maori legal practitioner told us that the concept of the sacredness of Maori land applied in his opinion only to very small areas. Certainly the immediate surroundings of maraes and urupas are of that character, but a good deal of Maori land may not be. Of this, much is under-used, and planning is necessary to achieve full use. Before there can be an overall plan for land use in a district, one needs to know where the Maori land is situated. As Mr Nikora suggested, it should be possible for the chief surveyor to produce land tenure maps from title records. These would immediately show up the uneconomic partition made in former times, and also those lands under multiple ownership. Thus areas likely to need attention would be readily identified.

5. Mr M. R. Love proposed a categorisation of all Maori land further to the compiling of tenure maps.[2] He suggested that from a study of the Court records the land should be classified under various headings such as: (a) economic; (b) will always be totally uneconomic but should remain papatipu; (c) turangawaewae blocks; (d) those which can be made economic.

6. The Hon. Mrs W. Tirikatene-Sullivan also favoured all Maori land being the subject of a detailed classification particularly noting its economic potential. In her view the following questions should be asked:

(a) In simple terms, what can the land most efficiently produce for its Maori owners—both present day and future owners?
(b) Who are the owners?
Are they alive or dead?
Have entitled sucessors taken the necessary steps to bring the list of owners up to date?
Who are the potential successors?
(c) If Maori land is totally incapable of economic productivity should it remain Papatipu, Marae, Urupa etc.?[3]

She suggested that retired court officers of long experience could be contracted to do the work.

7. Any land-use survey such as those suggested would need careful planning by officers from the Departments of Maori Affairs and Lands and Survey. It is pleasing to see that already such departmental co-operation with the owners has resulted in the start of a study of the Ruatoki blocks. Mr I. F. Stirling, Surveyor-General said:

> The objective of the Ruatoki survey is to determine practical options for use and development of the blocks in terms of the economic, social and cultural needs of the owners. In undertaking the study an inventory will be required of existing land use, physical characteristics and existing administration aspects. Investigation into suitable systems of organisation, administration and land tenure to achieve improved land use will be required. Consultation with administrators and experts in related fields will be undertaken and finally endorsement and support of the Maori owners themselves, local authorities and Government. It should be stressed that in all

studies and investigations for improved land use and tenure of Maori land the owners wishes should not be overlooked.[4]

8. The insufficient effort that has so far gone into such surveys is only one of the factors which hinders the full development of multiply-owned Maori land, partitioned sometimes into quite uneconomic blocks, often unsurveyed and held under a system of records inferior to that pertaining to general land. We believe that tenure maps and land-use surveys are important, though these may be only some of a number of matters needing attention. We recommend their adoption.

IMPROVING TITLE RECORDS

9. The disadvantages of the present dual system of recording the titles to Maori land have long been apparent (see chapter 12). The desirability of having all such land registered in the Land Registry Office has been strongly recommended for at least 20 years. The advantages of the move and the penalties resulting from continuing the present muddle are so obvious that it is difficult to understand why nothing has been done. The longer action is deferred on the transfer of all titles to Maori land to the Land Registry Office, the worse the overall state of the records will become, and the more expensive in time and money the work will eventually be. Again and again the need for a single system of land registration was urged by those appearing before us.

10. Some gave details of possible methods to overcome the admitted problems that will arise in bringing this about. What was lacking however, was an in-depth investigation of the schemes suggested, and of their possible implications for the various State agencies that would be involved. There seemed little attempt to view the problem in a wider context than that of a single department, but the Department of Justice, the Department of Lands and Survey, and the State Services Commission, all have a part to play, as well as the Department of Maori Affairs. The problem requires a combined use of their skills and facilities. It is basically a technical one for experts, which we are not.

11. We strongly recommend the appointment without delay of a working party of representatives of the agencies concerned to make recommendations to the Government on: (a) a plan to transfer all unregistered partition orders, roadway orders, and leases from the records of the Maori Land Court to the Land Registry Office; and (b) an estimate of the cost in manpower and money needed to effect such a transfer and how the cost is to be met.

12. We cannot urge too strongly the importance of the immediate implementation of some scheme to bring the title records for Maori land under the same administrative system as that for general land. This would overcome many of the disadvantages to Maoris in their attempts to deal as they would wish with their land, disadvantages which are a direct consequence of a second-best system of land registration.

13. But planning is not enough. What we propose will need willingness on the part of the Government to supply resources and, what appears to have been lacking in the past, the resolution to see that the work is done as a matter of priority and not pushed aside in favour of anything which might be advocated more strongly for political purposes. Doubtless the bringing of all Maori land records into the land transfer registers will prove costly, but not as costly as permitting the situation to deteriorate further, with the country continuing to suffer from inadequate use of

Maori land, and from the consequential social problems. New Zealand as a whole must benefit from more efficient management and consequent greater productivity of Maori land. The Maori owners in particular have a desperate need of this.

14. The implications for the Court itself of such a radical change are bound to be dramatic. The removal of all records of title to the Land Registry Office would greatly reduce its work. It is debatable whether there would be a need then for the Court in its present form, or, indeed, whether the Court would have fulfilled its purpose and should cease to exist (see chapter 12). At this stage we do not recommend further than that urgency be given to the setting up of a working party. As we have said, the problem is a technical one for experts, and it is not our place to suggest how the goal may be achieved.

15. We have at a late stage in the preparation of our report been informed that the Hon. David Thomson, Minister of State Services, announced on 12 October 1979 that he had appointed an inter-departmental committee to make a feasibility study on the setting up of an office of land record. The aim of the study is to examine "the feasibility and economy of incorporating, within one departmental unit, the major organisations of Government involved in the creation of land tenure units, and the generation and recording of primary, physical, legal, and economic data relating to land".[5]

16. It may be that the same committee, which when set up comprised representatives of the State Services Commission, Lands and Survey, Justice, and Valuation Departments, could also deal with the problems of incorporating the title records of Maori land into the land transfer system. We raised this possibility with the Minister who informed us that the Secretary for Maori Affairs had been invited to join the committee and the Minister said:

> The advantages and disadvantages of incorporating the Maori titles into the land transfer system, and the extent that this is possible, will be examined in detail in the course of the study.[6]

This seems to us to be a golden opportunity to deal with a problem which is crying out for attention. However, if the committee does not fully face the issues or simply shelves them, there will be no alternative for the Government but to appoint a working party. The present totally unsatisfactory state of Maori land titles must be bettered. We deal with submissions made about technical aspects of this problem in the next section.

One System Of Registration

17. Some further difficulties attending the incorporation of Maori land titles into the land transfer system need mention. They come from different directions. The making of a partition order, and other orders such as freehold orders and some vesting orders (though the problem most usually arises in the case of partition orders), confers ownership when the order is made, even though it is not subsequently completed by signing and sealing for the want of a plan (*Rawiri Te Peke* v. *Stockman* [1917] G.L.R. 550). A minute of the order in the records of the Court is sufficient to create a legal interest. This has resulted in past partitioning of much Maori land without surveys being first made. However satisfactory that may be, or has been in some instances, a sealed order is usually necessary for registration in the land transfer register to enable incorporation of the

land into that system. But section 34 (9) of the Maori Affairs Act 1953 says that no such order shall be signed and sealed unless it has thereon a plan which satisfies the requirement of the Land Transfer Act. So, in order to secure registration in the land transfer system, a sealed order with an appropriate plan is necessary. This does not always mean a fully surveyed plan, but it usually does. There is another difficulty. Many district land registrars will not for practical reasons accept orders of the Court for registration if the number of owners is greater than 10.

18. Because of these circumstances most judges today make a practice of refusing to partition Maori land if it is not surveyed to the standard required for the Land Transfer Act. Chief Judge Gillanders Scott said:

> In partition—my rule is "if it is worth partitioning it is worth surveying, if it is not worth surveying it is not worth partitioning".[7]

19. The Department of Lands and Survey confirmed the need to ensure that no new orders of any class should be made for land which is not suitably defined for registration under the land transfer system.[8] To deal with existing partition orders, the department suggested that a period of 10 years be fixed by statute in which to have a partitioned area defined by survey, and failure to comply would result in the partition order becoming void necessitating a fresh application. The department realises the drastic nature of this suggestion but still thinks the action necessary. The Auckland District Law Society saw the completion of surveys for all Maori land as the only practicable way by which the land transfer system could be used for such land.

20. An officer of the department suggested one procedure possible in the case of partition orders not completed by survey. This was:

(a) The title improvement section of the department under the direction of a working party such as we have recommended would prepare a partition order accompanied (if it were not possible to attach a plan) by the definition of the land contained in the Court minutes relating to the partition. This would then be registered in the provisional register in the Land Registry Office.

(b) The Court could issue a consolidated order in respect of any succession and vesting orders made since the date of the partition order.

(c) An order declaring that the status of the land was Maori land would be noted on the title.

The above procedures envisage that section 34 (9) would be amended. Consideration should also be given to legislation to enable the Court to cancel partition orders made conditionally on the completion of survey within a certain time, and to reimpose a uniform time limit after entry in the provisional register.

21. The records of the Maori Land Court in many cases list deceased people as owners of blocks of land. It would be the job of the title improvement section to institute inquiries for successors and encourage them to apply to the Court for succession. It will often then appear to the title improvement section that some blocks need the establishment of some system of proper control and management on behalf of the owners. It would then be a matter for the section to make appropriate recommendations. As Judge Russell pointed out:

> Expecting the owners of land held in multiple ownership to administer their land and make it productive when it is not vested in

> a trustee or trustees or in a Maori incorporation is like expecting the shareholders of a large public company to control the company without a board of directors.[9]

22. Another way of getting around the requirement for compulsory survey before registration was suggested by Mr K. Morrill of the Department of Maori Affairs.[10] The district land registrar would be given the same powers as he had under the Land Transfer (Compulsory Registration of Titles) Act 1924 (now Part XII of the Land Transfer Act 1962), to bring under the Land Transfer Act privately-owned land not previously subject to that Act. The titles would issue in the names of the existing legal owners and, as in the case of the 1924 Act, it would not be necessary to register the intervening orders of title made by the Maori Land Court. In cases of defective surveys the titles would be issued subject to limitations as to parcels.

23. But Mr M. J. Miller, District Land Registrar, Napier, whose submission can be considered to reflect the policy of the Lands and Deeds Registry, was opposed to the issue of titles subject to limitations as to parcels. He said:

> I do not think that this is the satisfactory format, for in the case of compulsory registration of titles the District Land Registrar had all the Deeds in his own office under the Deeds Registration Act 1908 and thereafter even after a limited Title had issued the chain of title could be searched. If a similar format were now to be used here a public blank in the chain of title would arise. I think that this would be undesirable in a public record of registration. Under the 1924 Act the defects in title that usually arose were those that were no longer within anyones power to correct and consequently the common law remedies of lapse of time were used to correct these defects. I do not think that the same situation prevails in respect of Orders of the Maori Land Court.[11]

Mr Miller pointed out that interim registration under the Land Transfer Act had always been available in the provisional register. This could be used to make a start in converting Maori Land Court orders to certificates of title.

24. Section 50 of the Land Transfer Act 1952 provides for provisional registration thus:

> Until register duly constituted, land to be provisionally registered—Until a folium of the register has been duly constituted for any land under this Act, all dealings, memorials, and entries affecting the land shall be provisionally registered as hereinafter provided, that is to say—
>
> (a) For the purpose of provisional registration, and for the recording of all dealings and entries, a Certificate under the hand of the Commissioner of Crown Lands to the effect that the purchase money has been paid, or the order of the Maori Land Court declaring that the lands be held in freehold tenure, shall take the place of a Crown Grant.

25. In the Maori Affairs Act 1953 there is already provision for the registration in the provisional register of the Land Registry Office of Court orders in the case of freehold orders (section 165), partition orders (section 178), and certificate of registration of mortgages (section 461). The purpose of provisional registration was described by the late Mr E. C. Adams:

> The purpose of provisional registration under the Land Transfer Act is to permit of dealings with land sold by the Crown under the Land Acts, or with Maori land, the title to which has been investigated by the Maori Land Court, until such time as a certificate of title in lieu of grant has been issued—or, in other words, until such time as the land has in due course been put on to the Land Transfer Register, sometimes called the permanent register to distinguish it from the provisional register.[12]

26. But section 34 (9) of the Maori Affairs Act 1953 as at present drawn prohibits the signing and sealing of freehold, partition, and certain vesting orders of unsurveyed land. If this section were repealed, Mr Miller considered that it would be possible for Court orders of unsurveyed land constituting the root of title to be provisionally registered. The provisional register need not constitute a folium of the register until such time as the land has been surveyed and the list of owners reduced to a manageable number (for example, 10). It would still be necessary however to endorse a diagram of the land on the Court order. The diagram would be unsupported by survey, but could be supplied by the chief surveyor. To keep control of the provisional register the suggestion was that no land should be capable of alienation by way of transfer until surveyed.

27. Once Maori freehold land is embodied in the provisional register, most of the indefeasibility provisions in the Land Transfer Act apply to it, and any instrument such as a mortgage or lease could be registered against it. It would not be guaranteed as to survey but this should not pose any problem as it would then be protected from attack by adverse possession (see section 21 of Land Transfer Amendment Act 1962).

28. As a safeguard to the land transfer system, Mr Miller considered it essential that Maori Land Court orders should not take effect until such time as they were registered in the Land Registry Office. He pointed out that such restrictions already exist for vesting orders made by the Supreme Court. Section 99 of the Land Transfer Act 1952 provides:

> Memorandum of vesting order to be entered on register—Whenever any order is made by any Court of competent jurisdiction vesting any estate or interest under this Act in any person, the Registrar, upon being served with a duplicate of the Order, shall enter a memorandum thereof in the register and on the outstanding instrument of title and until such an entry is made the said order shall have no affect in vesting or transferring the said estate or interest.

29. One of the difficulties of embodying unsurveyed partition orders in the provisional register is the existence in many blocks of vast numbers of orders which are useful only in showing a chain of title. It was suggested by Mr Miller, and by many others, that to start off the newly constituted register of Maori land with a clean slate, a consolidation order under section 445 of the Maori Affairs Act 1953 be obtained and registered on the application of the registrar of the Court. Mr Miller considered that the district land registrar should also be given a right of approach to the Court for the purpose of making application for such consolidation orders to ensure the completeness of the land transfer register.

30. We have dealt here at some length with Mr Miller's suggestions as they were the most comprehensive and thorough analysis of the problem put to us, and were endorsed by the Registrar-General of Lands. We would expect that the working party which we have recommended would very carefully consider them. In summing up, Mr Miller said:

> Land Transfer offices are geared to provide information about land ownership, the systems that have evolved over the last 100 years are very efficient and there seems no good reason why they should not be used in respect of Maori land. Every day Land Transfer offices provide literally thousands of searches of general land [and] this expertise and efficiency could be utilised in respect of Maori land. . . .
>
> If the above procedure were to be accepted it would mean in time that the Maori Land Court would no longer hold any records of land ownership. This would mean that when the Court was required to make further Orders it would only need a search of the Land Transfer Title which in essence would have the same guarantees as that relating to General land.[13]

Recording Multiple-ownership Lists

31. We were given various solutions to the problem of recording multiple-ownership lists of Maori freehold land in the land transfer register. The Surveyor-General suggested that the entry on the certificate of title be "Maori Owners" when the number of owners was greater than the allowable Land Registry Office limit. The Court would be responsible for holding an up-to-date ownership list. A variation on this method was given by the Auckland District Law Society, one of whose suggestions was that as the updated lists of owners were compiled by the Court they be supplied to the district land registrar. The society's alternative suggestion was that the Maori Trustee should go on the certificate of title as bare trustee for the owners. The Maori Trustee would have the legal estate but the equitable interests of the owners would be dealt with by the Court. The Maori Trustee would be merely the bare nominee for the legal owners.

32. Mr K. Morrill of the Department of Maori Affairs suggested that when blocks of Maori land had an ownership list in excess of some fixed number (100, for example), the owners should be required to form an incorporation or appoint section 438 trustees to administer the block. The incorporation or the trustees would then:

(a) Become the legal owners of the land and be recorded as such in the Land Transfer Office;
(b) Be responsible for maintaining an up-to-date list of owners or shareholders;
(c) Have power to alienate to best advantage;
(d) Distribute rent from leases or revenue from other trust operations;
(e) Take over from the Maori Trustee his rights and responsibilities of policing the covenants of leases and collecting of rents under existing leases signed by the Maori Trustee as agent of the owners.[14]

33. Some witnesses suggested that ownership lists would have to be brought up to date before there was a transfer to the provisional register. While this would be desirable, the effort in compiling a list of owners alive today would be a mammoth task (see chapter 6). It would appear to be undesirable to hold up the transfer for the compilation of a current ownership list. In the next section we deal with the use of the computer to ease the technical problems of maintaining lists of owners.

COMPUTERISATION OF MAORI LAND COURT RECORDS

34. It was a matter of some surprise to us that the department had not yet applied electronic data processing to the work of the Maori Land Court, where its usefulness in storing data about land and land ownership would be obvious. In his second submission the Secretary said:

> . . . I am examining the possibility of electronic data systems with each individual owner [of Maori land] positively identified by reference number so that information can be accurately recorded and quickly recovered. It is apparent that staff savings could be made if such a system is introduced but the present Government requirements to justify such systems are stringent and it may prove too costly at this time.[15]

We saw mini-computers in the offices of the Mangatu Incorporation at Gisborne and of the Morikaunui and Atihau-Whanganui Incorporations at Wanganui, where, besides their use in accounting, they keep updated lists of shareholders. The incorporations found these computers of great help. Once lists of owners are compiled in the Court registries and recorded on magnetic tape, the process of updating would be a relatively simple matter, and computer print-outs could be readily provided whenever required.

35. In principle there appears no reason why lists of those with land interests, of whakapapa records, and of all other data pertaining to land and its use should not be electronically recorded in some central registry with interrogation facilities in the district offices. The Hon. Mrs W. Tirikatene-Sullivan suggested that Court decisions should also be held on magnetic tape.

36. If properly used, computer methods can help promote the safety of the records of the Maori Land Court most of which exist only in their original form. An example was quoted to us of how the work of the Court was dislocated by the loss of records. In 1966 vandals removed from the Whangarei office of the department a large part of the card index of names of those with interests in Maori land and details of those interests. The file had been compiled with great labour and much of the stolen part was not recovered. It is still incomplete. An extra back-up copy of such data on magnetic tape held in safe storage would provide a safeguard against loss of irreplaceable records. We understand that some use has been made of microfilm for this purpose.

37. The advantages of quick and accurate data retrieval facilities for the Court and for those who have business with it need no stressing. We recommend that a feasibility study of such a system be done by the department, and the Computer Services Division of the State Services Commission.

SURVEYING OF MAORI LAND

38. In 1971 the land utilisation and survey section of the Department of Maori Affairs was integrated into the Department of Lands and Survey. At the time the survey staff in the Department of Maori Affairs were located in Whangarei, Rotorua, and Gisborne, with the greatest strength being in Rotorua. The amalgamation took place for reasons of economy and efficiency. Some witnesses considered that the Department of Maori Affairs should once again have its own survey section. We are not convinced by these arguments, but agree with the Surveyor-General that

the communication between the Department of Lands and Survey and the Department of Maori Affairs could be improved. He said:

> Notwithstanding various circulars it does seem that the Courts and staff could make better use of the technical expertise and services available in the Lands and Survey Department. It appears to be a matter of communication and training in that it is not understood what services are available, while the existing circulars mainly cover survey services and not draughting work or other expertise. On the other hand Lands and Survey staff do not know what sort of problems arise. What is required is a review of all the services that are available and a programme of training and consultation arranged so that Court and Maori Affairs Officers know what can be provided and so that Chief Surveyors are better aware of the problems.[16]

39. Thus, although there has been co-operation between the departments about the implementation of the scheme for the survey of past unsurveyed partitions, there is need for a much closer association (see chapter 5).

40. When the Court considers a survey of Maori land is necessary to enable it to make an effective order relating to unsurveyed land it may requisition the required survey from the chief surveyor who will then arrange a survey by a professional surveyor once he is satisfied that the cost has been paid in advance or sufficiently secured (section 406). A recent practice has grown up whereby when a partition order is sought for unsurveyed land, the applicant for partition nominates his own surveyor and obtains his consent to be appointed to carry out a survey in terms of section 406 (4). The registrar of the Court then asks the chief surveyor to issue the necessary survey authority, and the matter of payment is between the surveyor and the partitioner as in any private subdivision of land.

41. In earlier times a mortgage, charge, or lien against the land was registered in favour of the Crown when owners were unable to meet the costs of survey of Maori land. After successive partitions of a block considerable charges often accrued, and alienation by way of sale or lease was thereby inhibited. All such survey charges owing were discharged by section 56 (1) of the Maori Affairs Amendment Act 1974. The present arrangements for providing for payment of the cost of survey of Maori land are detailed in section 411A of the Act which was inserted by section 140 of the Maori Affairs Amendment Act 1967. By these provisions, the registrar may instruct the Maori Trustee to reserve from the moneys held by him on behalf of the owners, the cost of the survey or an appropriate part thereof. If at the time of service of the survey notice the registrar does not hold sufficient money, he shall reserve any future moneys paid to him on behalf of the owners until the requisite amount is paid.

42. Until 1967 partitions were not required to comply with local government subdivision requirements. Thus we have in past partitions narrow strips where all owners were given access to waterways and public roads, while some partitions had no access at all. Even if all unsurveyed partitions could be completed by survey, many would fail to comply with contemporary land-planning standards.

43. The problem of uneconomic and irrational partitions is one which would require the attention of the working party we recommend should be set up to plan the removal of land ownership records to the Land Registry Office. It would appear that amalgamation of such partitions under the

provisions of section 435 of the Act, and repartitioning, is the rational solution. However, obtaining the consent of the owners, without which no scheme can be implemented, may prove to be a long drawn-out process.

44. As Judge Russell pointed out the easiest approach to the problem is to do nothing leaving things for a future generation to deal with.[17] This has been the procedure for many years. He considered that Part II of the 1967 amendment Act could be used to start positive action. These provisions were intended to promote the effective and profitable use, and the efficient administration of Maori land in the interests of the owners. The judge outlined a plan for calling a general meeting of the people in the district before consulting the owners of land in individual titles. There would need to be decisions on meeting the costs of survey, possibly from the income from the land. The question of amalgamation and possible trustee control could also be considered. There are a number of options.

45. In the past the Government has found it difficult to collect survey charges and has been forced to write many off. It should consider whether machinery could be set up to investigate in advance whether owners should be required to pay, and, if this is impracticable, for the State to bear the cost subject to suitable guarantees that the land be put into production. As we mentioned in chapter 6, the Government has already assumed some financial responsibility for the survey of Maori land partitioned before 1 April 1968.

THE SUPERVISION OF LEASES OF MAORI LAND

46. Nearly one-half of the 277 000 ha of Maori land subject to lease is leased pursuant to the provisions of Part XXIII of the Maori Affairs Act 1953. In brief, the registrar summons a meeting of owners of the land upon application of the prospective lessee, which application sets out details of the rental offered, terms of lease, and any special conditions, for example, compensation for improvements. If the proposal is accepted and confirmed by the Court (with or without any modification of the terms) the Maori Trustee executes the lease as statutory agent for the owners and collects the rent. The Maori Trustee's charges for collection of rent and distribution are paid by the lessee.

47. Some of those appearing before us assumed that the Maori Trustee was duty-bound to supervise such leases and ensure that the lessees comply with the provisions contained in them. This is a misunderstanding of the role of the Maori Trustee set out in sections 323 and 325A of the Act, which limits his role to that of being the agency whereby the lease is signed and the rent collected and distributed. It is true that section 239 *permits* the Maori Trustee to enforce, by Court proceedings if necessary, the terms of the lease against the lessee. We point out that this is a permissive power but not an obligation.

48. The Court has no jurisdiction to be involved in the supervision of leases of land. This is clearly an administrative matter. Where the Court has been made aware of deficiencies, it has been able on occasions by use of its power to appoint trustees under section 438 to supervise the use and management of the land.

49. Judge Durie's submission reflected the criticism of a number of parties when he said:

> The Maori Trustee does not give annual or regular reports on the farming of land and sometimes there are considerable rental arrears without the owners being advised. Contrary to what I think is a

popular expectation neither the Maori Trustee nor the Court will call a meeting at the expiry of the lease to review how the land has been cared for during the past term, and to consider how it might best be utilised in the future.

The Court's role can be seen as minimal too. It must either confirm or refuse to confirm upon one or other of the limited grounds set out in the statute, and, save for the consent of the prospective lessee, it matters not that the proposed lease might prevent the owners from joining later in some major scheme that is pending of which the owners may not have been aware.[18]

50. The Secretary appointed a committee to review the operations of the Maori Trustee in May 1979. It recommended the following with regard to leases:

Recommendation 21. The Maori Trustee must recognise the importance of policing leases and provide adequate staff, both office and field to do this. District Field Officers should also be aware of their responsibilities to give proper priority to inspections where the work is done by their staffs.

Recommendation 22. The frequency of inspection of leases administered by the Maori Trustee be three-yearly except where there are reasons for more frequent inspections.

Recommendation 24. The Maori Trustee to give formal notice to the Registrar of the Court no earlier than 12 months and no later than 6 months before the expiry of every lease and request the Registrar to call a meeting of owners to consider the future utilisation of land. Accompanying this notice the Maori Trustee should give an account of his lease administration and recommend terms for any trust which the Court may see fit to establish as a result of the meeting. The Maori Trustee should be represented at the meeting.[19]

51. The Mete-Kingi Report of 1978 on the farming of Maori leasehold land recognised the leases granted under Part XXIII of the Maori Affairs Act as the class causing most concern. While the report dealt more with the fixing of fair rentals and the terms and conditions of the leases than with their supervision, it did have the following recommendation regarding the role of the Maori Trustee:

Recommendation 18. That the Maori Trustee play an active role in advising owners of Maori land of the optional land uses to which the land is suited so that they can make an informed decision on how they wish the land to be used.

That where requested by the owners, the Maori Trustee negotiate leases on the best terms and conditions to ensure continued land improvement for the long term benefit of the owners.[20]

Implementation of the above recommendations would meet the more serious complaints made to us about the supervision of leases by the Maori Trustee.

QUALIFICATIONS OF COURT STAFF

52. We were told several times during the course of our inquiry that for many years the Court section of the department has been surpassed in importance by other sections, and that career prospects in the department were now brighter elsewhere than in the Court section. Many of the more

able officers thus kept clear of Court work or escaped from it as soon as possible. The academic or professional qualifications of the present Court staff gives some support to this contention.

53. The possession of such qualifications is not a prerequisite for appointment and neither it should be; nor is it a guide to the standard of performance of departmental duties. However, the absence of educational qualifications at higher than secondary school level in the present appointees to the registrar and deputy registrar positions does show an undesirably low level of formal academic training. Approximately three percent of all officers of the department in the executive/clerical occupational class (and this includes Court staff) possess some educational qualification at post-secondary school level. There are no members of the Court staff in this total, which in itself we consider to be undesirably low.

54. We hasten to add, however, that we met able and efficient Court officers who through natural ability and on-the-job training have become competent and effective workers. Nevertheless, we wish to confirm the desirability of giving the more able young officers the opportunity to gain educational qualifications. This must raise the level of performance of the Court support staff and contribute to the restoration of morale which we feel is not particularly high.

55. Even if the Court in its present form were to cease to exist within the working life of those given the opportunity of gaining professional qualifications their training would continue to be an asset to the department and to the State Services. It appears highly probable that the State will be concerned for a long time to come in some form or other with providing advice and assistance on the utilisation and administration of Maori land. The level of competence of future senior officers of the department depends on making opportunities for the recruitment, training, and retention of able young people. The opportunity to gain professional qualifications is one necessary part of the process. The raising of the level cannot be done overnight, but must be the result of a long-term programme. However, unless a start is made, the prospect of ultimate improvement in staff competence, and therefore of service to the Court and to those who have business with it, is not encouraging.

STAFF TRAINING

56. Although advanced professional training may be important only for a relatively small number of Court staff, a continuing system of vocational training is desirable for all grades. We were given no indication that the department had a sustained training programme, and concluded that any training in the recent past has been only spasmodic. Chief Judge Gillanders Scott said that in his experience staff training had been "woefully neglected over the years". Judge Durie said "it seems to me that there is no comprehensive training scheme, and that all is piecemeal"; and further:

> The most important area of training to my mind is the training of individual officers for their particular tasks; so that they know what to do, how to do it, what is expected of them, and above all, the importance of their role and the social purpose that they fulfill. This applies as much to junior staff completing searches and memorial schedules, as to senior staff in the title improvement section involved with meetings of owners and the establishment of trusts. The

majority of staff that I have spoken to, were appointed on a "sink or swim" basis, or to fill a gap.[21]

57. We agree with Chief Judge Gillanders Scott that:

> . . . lack of experience/training has been and continues to be a major deficiency in the Maori Courts, and as a consequence it is a real obstacle to the adequate performance by all officers of their functions. I am sure that given the opportunities these same officers will readily face the challenge.[22]

58. The present reorganisation taking place in the court section of the department with the appointment of a chief registrar, and a registrar in each court district, gives an opportunity for a review of staff training. We understand that a short indoctrination course for new registrars was held in October 1979. While this is an admirable start, it has little long-term value unless it is part of a planned and integrated training scheme.

59. The Beattie Report noted the intention of the Secretary for Justice to introduce such a scheme for staff in the general courts:

> The Secretary for Justice has advised us that his department is studying the development of formal courses in relevant legal subjects which future court officers who wish to secure promotion to senior positions will be required to complete. The implementation of these courses would obviously be desirable, even from the point of view of training registrars to carry out their present judicial functions.[23]

60. We strongly recommend that the Department of Maori Affairs draws up a comprehensive training scheme for all court officers, and considers introducing some departmental qualification of the type envisaged by the Department of Justice as a prerequisite to appointment to the positions of registrar and deputy registrar.

61. In framing any course for the training of registrars and deputy registrars, consideration should be given to drawing on the services of other State agencies. There is considerable merit in the suggestions of Chief Judge Gillanders Scott that:

> . . . each Registrar and Deputy Registrar (and as time permits of it—likely prospects for accelerated promotion) should be seconded, and as soon as conveniently possible for:
>
> (i) say, 3 months services in a Supreme Court/Magistrates Court Registry (NOT just a Magistrates Court); and
>
> (ii) say, 3 months service in a Land Transfer Office; and
>
> (iii) say, at least one months service in each:
>
> (a) a Chief Surveyor's Office *or* a District Surveyor's Office; *and*
>
> (b) general purpose division of the Lands and Survey Department; and
>
> (iv) say, one month in an office of the Registrar of Companies/Incorporated Societies; and
>
> (v) attend a course of "Maori Studies" at one of the Universities offering it as a subject; and
>
> (vi) take a course in general "Legal Studies".[22]

62. We fully realise the difficulties that would be introduced into the court section by taking key officers out of the work force for extended periods. In the present climate of Government restrictions on appointment to the State Services, and a "sinking lid" policy which effectively reduces numbers each year, the present work of the Court

would inevitably suffer. However, if the standard of service provided by the Court to the Maori people is to be improved (and we believe that this is necessary), then adequate training must be given to departmental officers. Establishing and filling registrar positions can of itself only bring about a limited improvement unless the incumbents are adequately trained. If an improvement in the efficiency of operation of the Court is seriously considered to be needed, then the Government will have to make available the relatively small resources in manpower required to implement the necessary training programme.

REPORTING OF COURT DECISIONS

63. A plea raised in several submissions from members of the legal profession, surveyors, land valuers, and others interested or involved in the operation of the Maori Land Court was that the more important decisions should in future be made readily available on a continuing basis in published reports, as are the decisions not only of the main courts, but also of a large number of other tribunals (for example, the Land Valuation Court). No system of regular reporting of Maori Land Court decisions at present exists, and there can be no doubt that there should be. Approaches could be made to the New Zealand Council of Law Reporting to see whether these decisions could be incorporated into the New Zealand Law Reports. Alternatively, Messrs Butterworth of New Zealand Ltd., might be willing to include them in that company's reports of administrative tribunals, *New Zealand Administrative Reports* or in the *Magistrates' Court Decisions.*

MAORI LAND AND THE TOWN AND COUNTRY PLANNING ACT

64. Various submissions dealt with difficulties caused to owners of interests in Maori land by the Town and Country Planning Act 1977 and its predecessor, the 1953 Act. The New Zealand Maori Council said:

> The Maori Council is concerned that important areas of jurisdiction formerly exercised by the Maori Land Court before the passage of the Maori Affairs Act 1953 should have been removed, without providing a satisfactory alternative. The . . . overriding power conferred upon the Town and Country Planning Act to limit Maori housing on papakainga areas are cases in point.[25]

This view was supported by the Kakanui Maori Committee,[26] Mr H. K. Hingston,[27] and the Te Arawa Maori Trust Board.[28]

65. At a seminar on land use sponsored by the Land Use Advisory Council held in Dunedin in January 1980, Dr Evelyn Stokes of the University of Waikato also referred to difficulties. She said:

> The Maori preference is very often to live in a rural marae community and commute to work in an urban area or elsewhere. In many cases the restriction on residential development by rural zones in local district schemes is perceived as a restriction on Maori community development. Many Maori people are deterred by the apparently complex procedures of the Town and Country Planning Act, which are operated by Pakeha bureaucrats. And many feel that county councils which are dominated by Pakeha farmers have little sympathy with Maori aspirations. There is scope for a good deal

more dialogue between county councillors and their Maori constituents in many New Zealand counties.[29]

The Ministry of Works and Development drew our attention to the need for legislative clarification about the relationship between section 439 of the Act (Maori reservations for communal purposes) and the Town and Country Planning Act 1977. It was pointed out by the ministry in a letter to the Royal Commission that the result of the statutory conflict could; ". . . result in all parties being disadvantaged. While an individual can thwart community objectives expressed through the district scheme for a particular area of land, the community can similarly thwart the fulfilment of the intentions behind a Maori reservation. In any statutory clarification it is obviously desirable that there be greater co-ordination between procedures under the Town and Country Planning Act for determining the use of land and those procedures involved in creating Maori Reservations under the Maori Affairs Act 1953."

Obligations of Local Authorities in Relation to Maori Land

66. The Maori Land Court has always possessed a wide jurisdiction enabling: partition of land between co-owners; vesting house sites in Maoris; and creating reserves. These powers were formerly not subject to the overriding control of the appropriate local authority.

67. Nowadays, when a local authority proposes or reviews a district scheme, it must provide for the general development of its area and its relationship to any neighbouring area. Maori land is not excluded from its responsibilities. Indeed, the second schedule of the Town and Country Planning Act details specific matters to be dealt with under district schemes including "provision for Maori and ancillary uses, urupas, reserves, pa, and other traditional Maori and cultural uses". Under section 3, matters of national importance are covered and include the "relationship of the Maori people and their culture and traditions with their ancestral land" (sub-section (1) (g)).

68. The submissions of the registrar and senior staff of the Tokerau registry point to conflicts or anomalies which can arise between the various sub-sections of section 3. They said:

> Anomalies contained in Section 3 of the Act which lists those matters of national importance, are of considerable concern in Tokerau where the majority of Maori land is situated in coastal areas. We understand the same situation exists in other Maori Land Court districts where significant Maori land holdings are situated on riverbanks and the shores of lakes. Therefore, in any proposal for development or settlement of Maori coastal, riverbank, or lakeshore land, consideration of three matters of national importance come into conflict, namely:
>
> (c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:
>
> (e) The prevention of sporadic subdivision and urban development in rural areas: and
>
> (g) The relationship of the Maori people and their culture and traditions with their ancestral land.
>
> Considerable expertise is required to balance such considerations and unless the Maori applicant has recourse to such experience, the

> Tribunal being bound by laws of evidence, must decide accordingly.[30]

Notice to Owners

69. We did not observe any general quarrel with the broad objectives of town and country planning, though admittedly many Maoris resent any restriction on their right to build on their traditional lands. The practical implementation of the provisions of the Act, however, do give rise to substantial difficulties especially in the case of multiply-owned Maori land. For example:

(a) Regulations made under the Act require that notices of schemes are to be available for inspection at the offices of local authorities and elsewhere. But the majority of Maori owners live away from their lands, and have done so for possibly a generation. In these circumstances they are unlikely to be made aware of proposed or decided changes or controls.

(b) A council must give notice to each person whose name appears in the "occupiers column" of the valuation roll about where the scheme may be inspected and about rights of objection and appeal (section 44 (2)). However, the rating rolls of local authorities do not show the names of owners of Maori land in multiple ownership but merely "Maoris".

(c) If the land is leased the owners not being the occupiers are not entitled to receive notice of the existence of the district scheme.

70. The Town and Country Planning Regulations 1978 provide that copies of a proposed district scheme or amendments be forwarded to the appropriate district Maori land council. Notice is also required to be given to the appropriate Maori Land Court registry (Maori Affairs Amendment Act 1974, section 71). These provisions are inadequate by themselves. The Management Audit Report 1979 of the Department of Maori Affairs disclosed that in one district notices given to the registrar had not been followed up and the power of the Court to act lapsed before it could exercise its jurisdiction of bringing the proposals to the attention of the owners. These difficulties were referred to in evidence by Mrs Lucy Palmer:

> There is provision in the Maori Affairs Act and of course provision in the Town Planning Regulations that copies of district schemes or changes must be served on the Maori Council. They are served but they stop there. This is where the system is falling down, it does not get back to the people who are concerned. In the present exercise we are undertaking in the Court in respect of the regional scheme, we are hoping to organise a seminar for local body officers and councillors to acquaint them with the problems of the Maori people in respect of planning, which we believe might create some response.[31]

71. We commend the involvement of the court section of the Tokerau District in the seminar on Northland regional planning which was sponsored by local authorities so that people concerned could be made aware of the problems of planning in relation to Maori land. This class of activity should be more widely adopted.

72. Dissatisfaction was expressed with the manner in which local authorities designated land for reserves or for public purposes. In many instances the owners of land in multiple ownership were not only unaware of the existence of general zoning but also of the designation of specific pieces of land. It is of course fundamental that a person whose legal rights

are likely to be affected is entitled to have appropriate notice given to him. The effect of zoning or of the designation of land can have the gravest consequences for owners. For example, the report of the Commission of Inquiry into Maori Reserved Land cited the case of the Wellington South Intermediate School, one of the New Zealand Company Tenths, which was designated "school". The designation of the surrounding area was residential C (high density housing). The Wellington district valuer estimated that as a result of such designation, the school land was valued at one-third of the value it would have had as residential C. The Maori lessors are thus deriving a reduced rent.[32]

Other Matters

73. Conscious of the wide powers previously enjoyed by the Maori Land Court in the absence of the limitations of a district scheme or the provisions of the Local Government Act, Maori owners have stressed their desire that the zoning of Maori land should be reserved to the Court. We doubt whether this is appropriate today. It is logical that town and country planning procedures should apply to all land whether owned by Maoris or not. However, we believe that there is a need for the rights of Maori owners to be more adequately protected. Thus the Town and Country Planning Act and its procedures should be reviewed to ensure as far as is practicable that local authorities give individual notice to owners of land in multiple ownership as well as to the occupiers. It does not seem to us that a notice published in a newspaper is adequate.

74. The time limit on the right to object could be extended in the case of land in multiple ownership to enable the employment of Part IX of the Maori Affairs Amendment Act 1974 to secure the appointment of representatives for the owners of such land. Consideration could also be given to whether the department rather than the Court should appoint that representation.

75. In her submissions, the Hon. Mrs W. Tirikatene-Sullivan pointed to the difficulties under which she considered planning considerations placed many Maori people. She said:

> Local Bodies, in my experience—as Member for Southern Maori—and opinion, are among the most conservatively unaware of Maori aspirations, in regard to Marae and Kaumatua housing. Furthermore, in my personal experience in Southern Maori, I have learnt to expect that, when a Local Body requires land for a rubbish tip—all things being equal—Maori land will be taken before any others.[33]

We did not have the benefit of the views of local bodies on these contentions.

Review of Legislation

76. The provisions of the Town and Country Planning Act are not within the scope of our inquiry, nevertheless, we have thought it desirable to record the comments made to us regarding them and to suggest that they receive consideration in the review of the Act which the Minister of Justice said in December 1979 will take place in 1980.

REFERENCES

[1]T. R. Nikora, Submission 57, p. 2.
[2]M. R. Love, Submission 81.
[3]Hon. Mrs W. Tirikatene-Sullivan, Submission 82, p. 4.
[4]I. F. Stirling, Submission 31, pp. 10–11.
[5]Press Statement, Office of Minister of State Services, 12 October 1979.
[6]Letter from Minister of State Services, 12 January 1980.
[7]K. Gillanders Scott, Submission 49, p. 176.
[8]Department of Lands and Survey, Submission 14, p. 12.
[9]R. M. Russell, Submission 24, p. 114.
[10]K. Morrill, Submission 4.
[11]M. J. Miller, Submission 46, p. 7.
[12]E. C. Adams, *Land Transfer Act,* Second Edition, 1959, p. 82.
[13]*supra* [11], p. 12.
[14]*supra* [10], p. 3.
[15]Department of Maori Affairs, Submission 77, p. 9.
[16]*supra* [4], p. 6.
[17]*supra* [9], p. 108.
[18]E. T. J. Durie, Submission 11, pp. 35–36.
[19]The Role of the Maori Trustee. Report of the Committee Appointed to Review the Operations of the Maori Trustee, 1979.
[20]Farming of Maori Freehold Land. Report of the Committee Appointed to Investigate Problems, 1978, p. 27.
[21]*supra* [18], pp. 164–5.
[22]*supra* [7], p. 116.
[23]Report of Royal Commission on the Courts, 1978, p. 245.
[24]*supra* [7], p. 114.
[25]New Zealand Maori Council, Submission 69, p. 2.
[26]Kakanui Maori Committee, Submission 68.
[27]H. K. Hingston, Submission 65, p. 4.
[28]Te Arawa Maori Trust Board, Submission 61, p. 2.
[29]Evelyn Stokes, *Maori Land Options and a Case Study of Tauranga,* background paper Seminars on Land Use, Dunedin 1980, p. 10.
[30]Registrar and Senior Staff, Tokerau Registry, Maori Land Court, Submission 55, p. 6.
[31]Mrs Lucy Palmer, Evidence p. 384.
[32]Report of Commission of Inquiry into Maori Reserved Land 1975, p. 73.
[33]*supra* [3], p. 5.

Chapter 20. RECOMMENDATIONS

The following is a list of recommendations made in the course of our report. They are grouped under the relevant items of our warrant and the references are to chapter and paragraph.

THE FUTURE OF THE COURT

Item 1 of our warrant reads:

> **Whether or not any part of the jurisdiction of either of the Maori Courts could be better exercised by some other Court or Tribunal, and whether or not the subject-matter of any part of that jurisdiction could be better dealt with otherwise than by a judicial body:**

(1) The Maori Land Court and the Maori Appellate Court should continue to operate without major changes in format and jurisdiction until the existence and ownership of Maori land are adequately recorded in the land transfer register. At that stage their judicial functions should be absorbed by the main courts and their administrative functions relating to land undertaken by the Department of Maori Affairs supplemented by such bodies as the Maori Land Board and the Maori Land Advisory Committees (Ch. 12, par. 3–12; Ch. 19, par. 14).

(2) The Maori Land Court should not be made a separate department of State with its own staff and administration (Ch. 12, par. 33).

(3) The administrative services to the Court should continue to be provided by the Department of Maori Affairs *if* the present administrative deficiencies can be soon remedied (Ch. 12, par. 30–32).

(4) If corrective measures introduced by the Secretary for Maori Affairs do not substantially improve the administrative services provided by the Department of Maori Affairs to the Court within a reasonable time, then those services should be supplied through the main judicial administration of the Department of Justice (Ch. 12, par. 32).

(5) There should be as far as possible a separation of the administrative and judicial functions relating to Maori land. This would minimise the necessity for judges to be involved in other than judicial matters. The Court should aim at being a Court of law and not an administrative body. This change is only possible if the Department of Maori Affairs improves the efficiency of its operations in land use and development and in its Maori trustee duties (Ch. 12, par. 34–44).

(6) The jurisdiction once possessed by the Court in matters of wills and probate, family protection, and adoption definitely should not be returned while the definition of "Maori" remains that given by the Maori Affairs Amendment Act 1974. Even if the definition is changed, it is doubtful whether the return of this jurisdiction will be warranted (Ch. 12, par. 15).

(7) Judges of the Maori Land Court should not be asked to sit in the Magistrate's Court administering criminal law or be given any jurisdiction in criminal matters in the Maori Land Court (Ch. 12, par. 17–19).

(8) The possibility of the Maori Land Court becoming involved in limited areas of the work of the proposed Maori Community Courts should be investigated (Ch. 12, par. 19).

(9) Neither the Waitangi Tribunal nor any other non-judicial body should have jurisdiction to review the decisions of the Maori Land Court (Ch. 12, par. 20–21).

(10) The rights of appeal from decisions of the Maori Land Court should remain unchanged. Should that Court be merged in the main judicial system appeals should be to either the Supreme Court or Court of Appeal, preferably the latter, and appeals direct to the Privy Council abolished (Ch. 12, par. 24–28).

(11) The jurisdiction of the Supreme Court to review on both grounds of want of jurisdiction and breach of natural justice should be as extensive over the Maori Land Court as it is over other courts of lower jurisdiction, and the doubt whether it is as extensive should be removed by legislation (Ch. 12, par. 23).

APPOINTMENT OF JUDGES

Item 2 of our warrant reads:

> **The qualifications for, the methods of appointment of, and the promotion of, Judges of the Maori Courts:**

(12) Appointments to the Bench of the Maori Land Court should continue to be made from those with legal qualifications (Ch. 13, par. 8).

(13) The requirement for appointment as a judge of 7 years standing as a barrister or solicitor of the Supreme Court should be changed to 7 years practice (Ch. 13, par. 12).

(14) There should be no changes in the provisions relating to the appointment of Chief Judge (Ch. 13, par. 14).

(15) Appointments to the Bench of the Maori Land Court should be made by the Minister of Maori Affairs on the recommendation of a central appointments committee of the kind recommended by the Beattie Royal Commission. In making their recommendations the appointments committee should be augmented by the addition of the Secretary for Maori Affairs and the Chairman of the New Zealand Maori Council (Ch. 13, par. 13).

(16) Puisne judges of the Maori Land Court should have a similar status and terms of employment (including salary) to those of District Court judges (Ch. 13, par. 4).

REGISTRARS PERFORMING JUDICIAL FUNCTIONS

Item 3 of our warrant reads:

> **Whether and to what extent it is proper or desirable and practicable that registrars of the Maori Courts perform judicial functions, and whether the appointment of appropriately qualified officers of the Maori Land Court to exercise subordinate judicial functions would be desirable, practicable, or convenient.**

(17) Where the judicial workload is such that an improvement in the Court's efficiency can be made by the delegation of some duties, this should be done by giving some extension to the powers of registrars (Ch. 14, par. 14).

(18) The extra duties that could be assumed by registrars should be determined on a pragmatic basis, as it is not possible to divide precisely the Court's functions into administrative and judicial; one class shades off into the other (Ch. 14, par. 11–12).

(19) The increase in functions which can from time to time be allocated to registrars or deputy registrars should be determined by the Rules Committee (recommendation 23) and all delegations should be kept continually under review (Ch. 14, par. 13–14).

(20) When exercising any judicial functions registrars should be free from departmental direction or control (Ch. 14, par. 6).

COMMISSIONERS

Item 4 of our warrant reads:

> **Whether and to what extent it is proper or desirable and practicable that commissioners be appointed pursuant to and in accordance with the present statutory provisions relating thereto, or on some other basis, to exercise any part of the jurisdiction of the Maori Courts:**

(21) No further commissioners of the Court should be appointed (Ch. 15, par. 8).

(22) The provisions in the Act relating to the appointment of commissioners (section 18, Maori Affairs Act 1953) should be repealed (Ch. 15, par. 8).

ADMINISTRATIVE PROCEDURES AND ORGANISATION OF THE MAORI LAND COURT

Item 5 of our warrant reads:

> **The administrative procedures and the organisation and the management of the Maori Courts, including the places appointed and the frequency and times of sittings for the dispatch of business and the arrangement of the business thereof, and the provision of adequate and appropriate staff for servicing those Courts:**

(23) As a matter of urgency a Rules Committee for the Maori Land Court should be set up on the pattern of the Rules Committee of the Supreme Court established by the Judicature Amendment Act (No. 2) 1968. It is suggested that its membership comprise, the Chief Judge, one other judge, the Secretary for Maori Affairs or his nominee, a nominee of the New Zealand Law Society, and the chairman of the New Zealand Maori Council or his nominee (Ch. 16, par. 4).

(24) The Rules Committee should without delay carry out a revision of the Rules of Court with the aim of reviewing and simplifying the present over-complex procedures (Ch. 16, par. 1–4).

(25) As part of the review in recommendation 24, the set of over 300 different forms at present used in the Court should be drastically reduced. One common form for all initiating documents should be considered (Ch. 16, par. 2–4).

(26) In order to ensure uniformity in Court practices, practice notes for the guidance of applicants to the Court and their advisers on matters not covered by the rules should be drawn up by a committee of judges and issued by the Chief Judge to apply everywhere and on all occasions (Ch. 16, par. 5).

(27) The power to order special sittings of the Court which at present is the prerogative of the Chief Judge should be extended to all puisne judges as is the normal practice in other courts (Ch. 16, par. 10).

COURT BUSINESS CONDUCTED *EX PARTE* AND IN CHAMBERS

Item 6 of our warrant reads:

> **Whether and to what extent any part of the business of the Maori Courts could be dealt with more properly or conveniently *ex parte*, or otherwise than at a duly appointed and formal sitting of the Court, or without the necessity of notice to other parties:**

(28) The particular applications or matters which can be dealt with *ex parte* or in chambers should be decided and laid down by the Rules Committee. We consider that caution is necessary in the extension of these practices. There was no uniformity of opinion, judicial or otherwise, in the views expressed to us and we do not think that a Royal Commission is an appropriate body to advise on the particular type of application or matter suitable for hearing at other than a formal Court sitting. The task is better performed by a Rules Committee (Ch. 16, par. 8–9).

RELATIONS OF THE COURT WITH LITIGANTS

Item 7 of our warrant reads:

> **The relationship between the Maori Courts and their staff with persons who attend the Courts (whether as applicants, parties, witnesses, or otherwise), and whether and to what extent changes in the facilities and administrative procedures of the Courts are necessary or desirable to improve that relationship and better meet the convenience of such persons:**

(29) There should be a continuation of the steps already taken by the Secretary of Maori Affairs to remedy the administrative deficiencies of the Court which have frequently resulted in a poor service to those who have business with, and reduced the efficiency of, the Court (Ch. 11, par. 5–12).

(30) The department should produce pamphlets for the public on the work of the Court and the ways in which the more common types of applications should be prosecuted (Ch. 17, par. 3).

(31) The department should hold meetings, preferably on maraes, at which its officers should instruct on the work of the Court and Maori land law (Ch. 17, par. 4).

(32) There should be free discussion both before and after the introduction into Parliament of Maori land legislation between representatives of the department, the judges, and the legal profession. The lack of such discussion in the past has caused needless problems and misunderstandings among those concerned with the Court's activities (Ch. 9, par. 16).

(33) The Court should make every effort to extend the practice of fixing appointments for hearings in order to minimise the time spent at the Court by those concerned in matters coming to the Court (Ch. 17, par. 21–22).

(34) The department should ensure that the Court staff adhere to the rules regarding the publication of the panui in ample time before a Court sitting (Ch. 17, par. 18).

(35) The narrative form of panui should be used as far as possible (Ch. 17, par. 20).

(36) Whakapapa officers as advocated to us, are not warranted (Ch. 17, par. 13).

(37) There should be an upgrading of facilities at the public counters of Court offices to ensure adequate space and privacy for discussions between Court staff and the public (Ch. 17, par. 16).

(38) A land inquiry officer should be appointed in each Maori Land Court district to improve the service to the public (Ch. 17, par. 10).

(39) The present practice of holding Court sittings on a marae on special occasions only should continue. It should not become a regular procedure (Ch. 17, par. 34).

(40) The department should study the report of the Beattie Royal Commission regarding the use of recording devices in courtrooms with a view to replacing the present archaic system whereby judges write court minutes of evidence in longhand (Ch. 17, par. 31).

(41) A significant extension of the practice of weekend and evening Court sittings would place an undesirable burden on the Courts (Ch. 17, par. 35).

(42) Important past decisions of the Maori Land Court and the Appellate Court should be compiled and published for the information of the legal profession and the general public (Ch. 17, par. 7).

(43) There should be a training programme for all grades of Court officers. The vocational training for Court staff appears to have been spasmodic and insufficient (Ch. 19, par. 59–60).

(44) The department should continue to give encouragement by way of study awards for its most able young officers to gain professional qualifications (Ch. 19, par. 52–55).

(45) Special attention should be given to the training of registrars and deputy registrars; this would involve support from other State and legal agencies. Consideration should also be given to the introduction of some departmental qualification for appointment as registrar or deputy registrar (Ch. 19, par. 60–61).

REPRESENTATION BY COUNSEL

Item 8 of our warrant reads:

> **The desirability or otherwise of parties being represented by counsel in every case or in any class of cases before either of the Maori Courts:**

(46) Legal practitioners should be entitled to appear in Court on behalf of parties as of right and not as at present only by leave of the Court. This would require the amendment of section 58, Maori Affairs Act 1953 (Ch. 18, par. 1–5).

(47) The leave of the Court should still be required for the appearance in Court on behalf of parties by Maori agents or other representatives (Ch. 18, par. 6).

(48) There should be wider publicity among the Maori people about the Legal Aid Fund and the Maori Land Court Special Aid Fund (Ch. 18, par. 12).

(49) Consideration should be given to the review of the legal aid scheme in the light of the special needs of the Maori Land Court (Ch. 18, par. 13).

(50) The legal aid committees should fix scales of allowances which lawyers acting for litigants in the Maori Land Court can recover from the fund (Ch. 18, par. 13).

OTHER ASSOCIATED MATTERS

Item 9 of our warrant reads:

Any associated matters that may be thought by you to be relevant to the general objects of the inquiry:

(51) Because of the great complexity of the Maori Affairs Act 1953 and its numerous amendments consideration should be given to the production of a more understandable legislative statement of the law governing Maori affairs by way of complete revision and not just a consolidation exercise as in the Maori Affairs Bill 1978 (Ch. 1, par. 13).

(52) Because the system of recording details, including the ownership, of Maori land within the records of the Maori Land Court has led to large areas not being registered in the Land Registry Office, urgent consideration should be given to the provision of resources to enable all Maori land to be quickly brought under the land transfer system and the registration there of all court orders affecting that land (Ch. 6, par. 1–6; Ch. 12, par. 7).

(53) The feasibility study about a national office of land record initiated by the Minister of State Services could provide the Government with a plan showing how best the ownership records of Maori land can be transferred to the proposed central office of land record (or the Land Registry Office). If this information cannot be provided by the study then a special working party composed of representatives of the appropriate State agencies should be set up without delay to provide the information (Ch. 19, par. 11–13).

(54) The registrars of the Maori Land Court should have a statutory exemption from the payment of registration fees to the Land Registry Office to enable them to overcome one of the impediments which prohibit them at present from registering many Court orders (Ch. 6, par. 5).

(55) The effort put into land tenure and land use surveys should be increased as one important means of planning the optimum utilisation of Maori land (Ch. 19, par. 4–8).

(56) A feasibility study of the use of electronic data processing in the work of the Court should be undertaken by the department and the State Services Commission (Ch. 19, par. 36–37).

(57) Important decisions of the Court should be made available in future on a continuing basis in published reports (Ch. 19, par. 63).

(58) The difficulties caused to owners of interests in Maori land by the Town and Country Planning Act 1977 and our comments thereon should be brought to the attention of those charged with the review of the Act due to take place in 1980 (Ch. 19, par. 64–75).

(59) The survey section possessed by the Department of Maori Affairs prior to 1971 and then transferred to the Department of Lands and Survey should remain where it is. There is, however, a need for an increase in co-operation between the Court and the Department of Lands and Survey (Ch. 19, par. 38).

Appendix 1

APPROXIMATE AREA AND TENURE OF MAORI LAND AS AT 31 MARCH 1977

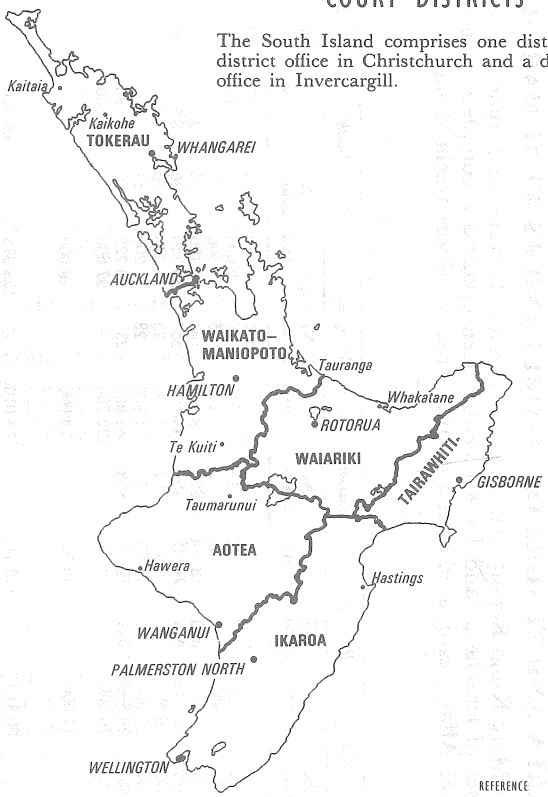
The table below is taken from the Mete-Kingi Report. All areas are given in hectares and some are only very approximate. Although the figures for most classes of leasehold land have recently been updated a complete revision of the table is not available. The Department of Maori Affairs estimated that the total area of Maori freehold land at 31 March 1979 was 1 224 104 ha.

District	*Whangarei*		*Hamilton*		*Rotorua*		*Gisborne*		*Wanganui*		*Palm. North*		*Christchurch*		*Total*	
Rural Leasehold Land	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*	*No. Leases*	*Area*
Reserved lands									370	20 075	3	175	120	2 650	493	22 900
Vested lands	16	1 115	2	40	2	65	14	550	9	2 600	5	290	1	40	49	4 700
Pt. XXV/53	15	340	77	2 950	2	25	2	240	15	500	2	115	6	330	119	4 500
Pt. XIX/53	29	1 150	137	5 900	285	18 600	221	9 700	184	9 100	93	3 600	3	450	952	48 500
Pt. XXIII/53	24	1 200	187	13 200	414	24 500	498	44 400	557	30 750	226	8 700	37	3 250	1 943	126 000
Pt. XXIV/53	149	9 400	122	6 600	119	9 300	72	5 100	73	6 500	10	1 000	4	1 100	549	39 000
S.438/53	195	6 100	12	1 000	219	19 600	51	1 900	23	1 200	43	1 300	16	300	562	31 400
Total leases	428	19 305	537	29 690	1 041	72 090	868	61 890	1 231	70 725	382	15 180	187	8 120	4 667	277 000
Incorporations		23 600		16 500		53 900		122 700		97 600		8 300		8 400		331 000
Pt. XXIV Development Blocks		14 000		17 000		30 000		28 000		19 000		..		..		108 000
Other Maori land (unoccupied, occupied without tenure or freehold) ...		78 695		60 410		139 410		43 010		153 975		69 720		53 780		599 000
Total		135 600		123 600		295 400		255 600		341 900		93 200		70 300		1 315 000

Appendix 2

MAORI LAND COURT DISTRICTS

The South Island comprises one district with a district office in Christchurch and a district sub-office in Invercargill.



L&S 255

Drawn by the Department of Lands & Survey

1st Edition 1973

Appendix 3

FRAGMENTATION

The examples given below illustrate extreme cases of fragmentation where all the successors to a deceased estate have succeeded to interests of small value. The examples were taken from recent vesting orders of the Court and the names of the blocks and the addresses of successors (which were not always known) have been omitted. Some of the successors are themselves deceased.

Example 1

Value	Successors	Share
$0.51	1. Piungatai Warahi	1/11
	2. Parekaahu Warahi	1/11
	3. Uamairangi Warahi (Ben Wallace)	1/11
	4. Hohua Warahi	1/11
	5. Hoera Warahi	1/11
	6. Tuhaha Warahi	1/11
	7. Ruakawa Warahi	1/11
	8. Riki Richard te Paa	1/22
	9. Winiata te Paa	1/22
	10. Turere Julia Beamsley (Warahi)	1/33
	11. Ngati Gabriell Allan (Warahi)	1/33
	12. Leslie Whakataha (Charlie Warahi)	1/33
	13. Beverley Paretahi te Paa (te Kaha)	1/77
	14. Billie Kahukura (te Paa) Chamberlain	1/77
	15. Ngawini Wynne te Paa (Grey)	1/77
	16. Nancy Huia te Paa (Robertson)	1/77
	17. Atiria Tilda te Paa (Mrs Ford Williams)	1/77
	18. Te Kotahitanga Barbara te Paa (Te Haara)	1/77
	19. Mark Chadwick te Paa (Charlie)	1/77
	20. Tukaiora Wallace	1/77
	21. Manawanui Wallace	1/77
	22. Weherua Wallace	1/77
	23. Te Poa Wallace	1/77
	24. Frank Leo Wallace	1/77
	25. Kahui Wallace (Brougham)	1/77
	26. Maraea Cherina Wallace	1/77

Example 2

Value	Successors	Share
$0.15	1. Hineata Rahui (Mrs H. Baker)	1/6
	2. Hinemoa Rahui (Mrs J. Rameka)	1/6
	3. Pahi Rahui	1/6
	4. Hikihiki Tokoahu (Mrs J. Tupara)	1/48
	5. Pikitekaha Tokoahu	1/48
	6. Puawai or Omiraka Tokoahu	1/48
	7. Waru-o-Noema Tokoahu	1/48
	8. Katipa Tokoahu (Mrs Hazel)	1/48
	9. Haromi Tokoahu (Mrs Hanara)	1/48
	10. Tokoahu Tokoahu Jnr.	1/48
	11. Mare Tokoahu (Mrs Wineti)	1/48
	12. Te Kaumarua Tohe	1/6

13. Peehi Kahurangi (Mrs T. Wall)	1/30
14. Mamae Kahurangi (Mrs Nuku)	1/30
15. Materoa Kahurangi(Mrs Meta)	1/30
16. Hingaia Kahurangi (Mrs Hapeta)	1/30
17. Parahi Kahurangi (Mrs G. Hallet)	1/30

Appendix 4

HISTORY OF THE DEPARTMENT OF MAORI AFFAIRS

(Updated from the Rata White Paper 1973)

1833	Appointment of British Resident (James Busby) to protect Maoris	Appointed on representations of various chiefs in 1831 seeking protection of the Crown.
1841	Protectorate Department established	A Chief Protector and four subprotectors appointed. The department apparently also undertook land purchase operations.
1846	Native Secretary appointed in place of Protector	Dissension and criticism of the Protectorate Department by both Maoris and Europeans. Office of Protector abolished by Governor Grey.
1846	Native Land Purchase Department established	Object of the department was to purchase Maori land for Crown and to give effect to right of pre-emption.
1856	Amalgamation of Native Secretary's Office and Native Land Purchase Department	The amalgamation of the two departments brought about the merging of political and commercial functions. Establishment of Commissioner of Maori Reserves.
1865	Office of Land Purchase Commissioner abolished	Replaced by system of land purchase by agents on a commission basis.
1865	Maori Land Court established	The Native Land Act 1865. Purpose of the Court was to establish and define rights of Maoris to customary land, to create a title cognisable under European law, to facilitate dealings, and to remedy the invidious position of the Crown as arbitrator in land disputes.
1868	Title of Under-Secretary for Native Affairs first used	George Sisson Cooper appointed first Under-Secretary.
1873	Native Department and Defence Department combined	Amalgamation ceased in 1878.
1877	Native Land Purchase Department re-established as separate office.	Purchase by agents on commission found to be unsatisfactory and discontinued.
1878	Native Department separated from Defence	
1882	Maori Reserves	Maori reserves transferred to Public Trustee for administration.

1885	Native Land Purchase Department amalgamated with Native Department	
1893	Merger of Native Department and Justice Department	The merger continued until 1906 when the departments separated. Both departments again amalgamated in 1916 but finally separated in 1921.
1900	Maori land councils created	Council set up to stop large-scale alienations and individual dealings in Maori lands which were having detrimental effect on the well-being of the Maori people.
1905	Maori land boards established	The boards were really reconstituted Maori land councils and had similar aims and objects to the councils.
1906	Native Department separated from Justice Department	
1916	Native Department amalgamated with Justice	War measure.
1920	Maori Trustee Act	Severed Maori Trust section from Public Trust Office.
1921	Native Department severed from Justice	Various Maori reserves and other property were formerly administered by the Public Trust Office. The Maori Trust Office came into existence as a result of a report by special commission set up in 1921 to inquire into administration of the Public Trust Office. Commission recommended that Maori Reserves, estates, and accumulated funds therefrom be separated from other public trust matters and administered by separate body. Provision made to give the Maori Trust Office more workable lending power to enable it to finance Maoris in farming and other ventures.
1934	Maori Trust Office amalgamated with department	Result of inquiry by commission.
1952	Maori land boards abolished and functions assumed by Maori Trustee	For simplification of administration.
1953	Maori Affairs Act	A consolidation.
1953	Maori Trustee Act	A consolidation which included the establishment of the New Zealand Maori Council.

1962	Maori Welfare Act	
1967	Maori Affairs Amendment Act	A change both in direction and purpose.
1968	Maori and Island Affairs Department Act	Amalgamated Department of Maori Affairs and Island Territories.
1974	Maori Affairs Amendment Act	Maori Affairs and Island Territories Departments separated. Board of Maori Affairs abolished. Maori Land Board constituted. Maori Land Advisory Committees established.
1975	The Treaty of Waitangi Act	Waitangi Tribunal constituted.

Appendix 5

PLACES WHERE THE MAORI LAND COURT SAT IN 1979

Tokerau Maori Land Court District

Auckland
Dargaville
Kaeo
Kaikohe
Kaitaia
Kawakawa
Rawene
Whangarei

Waikato-Maniapoto Maori Land Court District

Hamilton
Tauranga
Thames
Te Kuiti

Waiariki Maori Land Court District

Opotiki
Rotorua
Taupo
Whakatane

Tairawhiti Maori Land Court District

Gisborne
Ruatoria
Wairoa

Aotea Maori Land Court District

Hawera
New Plymouth
Taumarunui
Tokaanu
Wanganui

Ikaroa Maori Land Court District

Hastings
Levin
Masterton
Palmerston North
Wellington

South Island Maori Land Court District

Christchurch
Dunedin
Invercargill
Picton

Appendix 6

STATISTICS OF COURT BUSINESS

(*Source*: Department of Maori Affairs, Submission 77)

	1971	1972	1973	1974	1975	1976	1977	1978	1979
Court sittings for which Panui was issued	80	75	77	75	74	92	91	89	92
Days Court sat							779	771	678
Applications on hand, start of year	3 760	4 787	5 314	6 309	7 598	7 383	6 219	3 305	2 516
Applications received							7 292	5 600	5 593
Applications adjourned from other districts	9 469	9 884	10 429	10 152	9 142	8 490	411	360	363
Applications dismissed	849	1 191	737	663	926	1 144	842	610	580
Applications for which orders made section 135/53 (successions)	3 135	3 170	3 877	2 838	3 182	2 961	2 588	2 185	1 104
Others	3 832	4 462	4 335	4 920	4 632	4 996	4 839	3 852	3 767
Adjourned to other districts	608	526	485	442	617	553	369	373	377
Applications current at end of year	4 787	5 314	6 309	7 598	7 383	6 219	3 305	2 516	2 644
Orders made by Court, section 136/53 and 78A/67 successions	9 507	8 784	8 551	8 322	8 305	9 138	6 235	6 603	5 053
Section 213/53 vestings and section 213A/53	2 462	3 607	3 991	4 028	4 365	3 778	4 471	1 205	1 118
Other	6 857	7 486	7 139	6 867	5 993	5 694	4 382	3 649	3 794
Maori Trustee Conversion, sections 150A, 151, 152	1 605	914	1 367	848	510	670	584	363	324
Registrar Certificates of Values 78 (4)/67	793	1 774	2 226	1 012	1 028	1 770	2 146	2 360	1 659
Transmission and transfers 81, 81A, 83/67	803	4 290	4 344	4 461	4 628	4 841	4 772	8 681	9 429

Appendix 7

PUBLIC HEARINGS OF THE ROYAL COMMISSION

Auckland (Orakei Marae)	29, 30 August 1979
Christchurch	12 June 1979
Gisborne	22, 23 May 1979
(Poho-o-Rawiri Marae 23 May 1979)	
Hamilton	25, 26 June 1979
(Turangawaewae Marae)	
Hastings	25 July 1979
(Omahu Marae 25 July 1979)	
Hawera	12 July 1979
Invercargill	13 June 1979
Kaikohe	16 May 1979
Opotiki	23 August 1979
(Omarumutu Marae)	
Palmerston North	23, 24 July 1979
Rotorua	20, 21, 22, 24 August 1979
Taumarunui	27 July 1979
(Ngapuwaiwaha Marae)	
Taupo	28 June 1979
Wanganui	10, 11 July 1979
(Putiki Marae 11 July 1979)	
Wellington	27 October 1978
	27 November 1978
	19 February 1979
	20, 21, 22 March 1979
	27 April 1979
	26, 27, 28 September 1979
Whangarei	15 May 1979

Appendix 8

ORGANISATIONS AND PERSONS MAKING SUBMISSIONS TO THE ROYAL COMMISSION

Organisations

Organisation	Submission Number	Presented By
Aotea District Maori Council	48	Te R. K. Bailey
Auckland District Law Society	16	J. Gooch
Auckland District Maori Council	70	P. Rickys
Bishopric of Aotearoa	26	Bishop Bennett A. Te U. Wihapi
Catholic Archdiocese of Wellington	59	Monseigneur Doogan A. Arnold
Justice, Department of	30	J. F. Robertson M. P. Smith
Kakanui Maori Committee	68	Mrs L. H. Rata
Lands and Survey, Department of	14	B. Young B. Briffault G. McMillan I. G. Porter
Maori Affairs, Department of	1, 77	I. P. Puketapu B. Robinson A. B. Atkinson G. D. Fouhy H. P. Martin N. P. K. Puriri J. G. Bentinck-Stokes E. Hyslop
Maori Women's Welfare League	32	Mrs V. S. Pou Mrs H. Wilson
Matakite O Aotearoa	20	T. Smith
Morikaunui and Atihau Whanganui Incorporation	47	A. G. Horseley
National Council of Churches in New Zealand (Maori Section)	60	Ms P. Kingi
New Zealand Institute of Surveyors	73	M. E. Clapham K. E. Wynne B. L. Purdie
New Zealand Insurance Co. Ltd., Rotorua Branch	66	E. Armitage
New Zealand Law Society	29	R. A. Houston F. L. Phillips R. T. Feist A. G. McHugh J. G. Stevens
New Zealand Maori Council	69	G. Latimer J. Bennett
Ngaitahu Maori Trust Board	78	S. G. O'Regan
Ngati Whakaue Tribal Lands Incorporation	58	R. T. Charters
Northland Federation of Maori Trusts and Incorporations	75	
Omahu Maori Committee	52	B. Kamau
Opape No. 11 Block Incorporated	64	W. N. Nikora

Paraninihi-Ki-Waitotara Incorporation	44	P. Charleton
Registrar and Staff of the Tokerau Maori Land Court	55	S. H. Peters L. Palmer
Rotorua County Council	22	P. K. Callaghan
State Services Commission	76	Dr R. M. Williams D. E. Topp S. D. Wilson
Surveyor-General, Department of Lands and Survey	31	I. F. Stirling E. A. Astwood
Tairawhiti District Maori Council	40	A. J. Ferris
Te Arawa Maori Trust Board	61	H. Rogers
Trustees of Te Tii (Waitangi) B3 Block	35	T. N. Cross
Tuhoe Waikaremoana Maori Trust Board	67	R. N. Rangi T. B. Nikora
Tuwharetoa Maori Trust Board	28	R. T. Feist
Valuation Department	12	M. R. Mander D. R. B. Dodson
Waikato University Centre for Maori Studies	21	R. Te K. Mahuta Dr E. Stokes I. D. Bell
Whakatohea People	63	T. Te W. Amoamo
Works and Development, Ministry of	15, 27	D. G. Henderson L. C. McClintock G. F. Grant G. K. Glynn

Persons

(*Oral Submissions)

	Submission Number
*Adlam, A. L. R.	
*Adlam, Mrs A.	
*Ahie, J.	
*Alexander, A.	
Anderson, J. P.	
Amohia, H.	17, 51
August, Mrs N.	54
*Barrett, P.	
Bell, I. D.	6
Birch, B.	9
Bloomer, P. H. E.	2, 53
Briffault, B.	
Burgess, Mrs M.	38
Charters, R. T.	
*Chick, A. H.	
*Cope II, R.	
Cormack, S.	8
*Cotterell, R.	
Cull, Judge K. B.	41
Devcich, J.	
*Duff, Mrs K.	

INDEX

References are to chapter and paragraph. The following abbreviations are used: f "and also in the next paragraph"; ff "and in the following paragraphs"; MLC "Maori Land Court". Appendices are listed in the table of contents, but are not indexed.

BY AUTHORITY:
P. D. HASSELBERG, GOVERNMENT PRINTER, WELLINGTON, NEW ZEALAND—1980
44272E—80PT