MAN OF
CONVICTIONS

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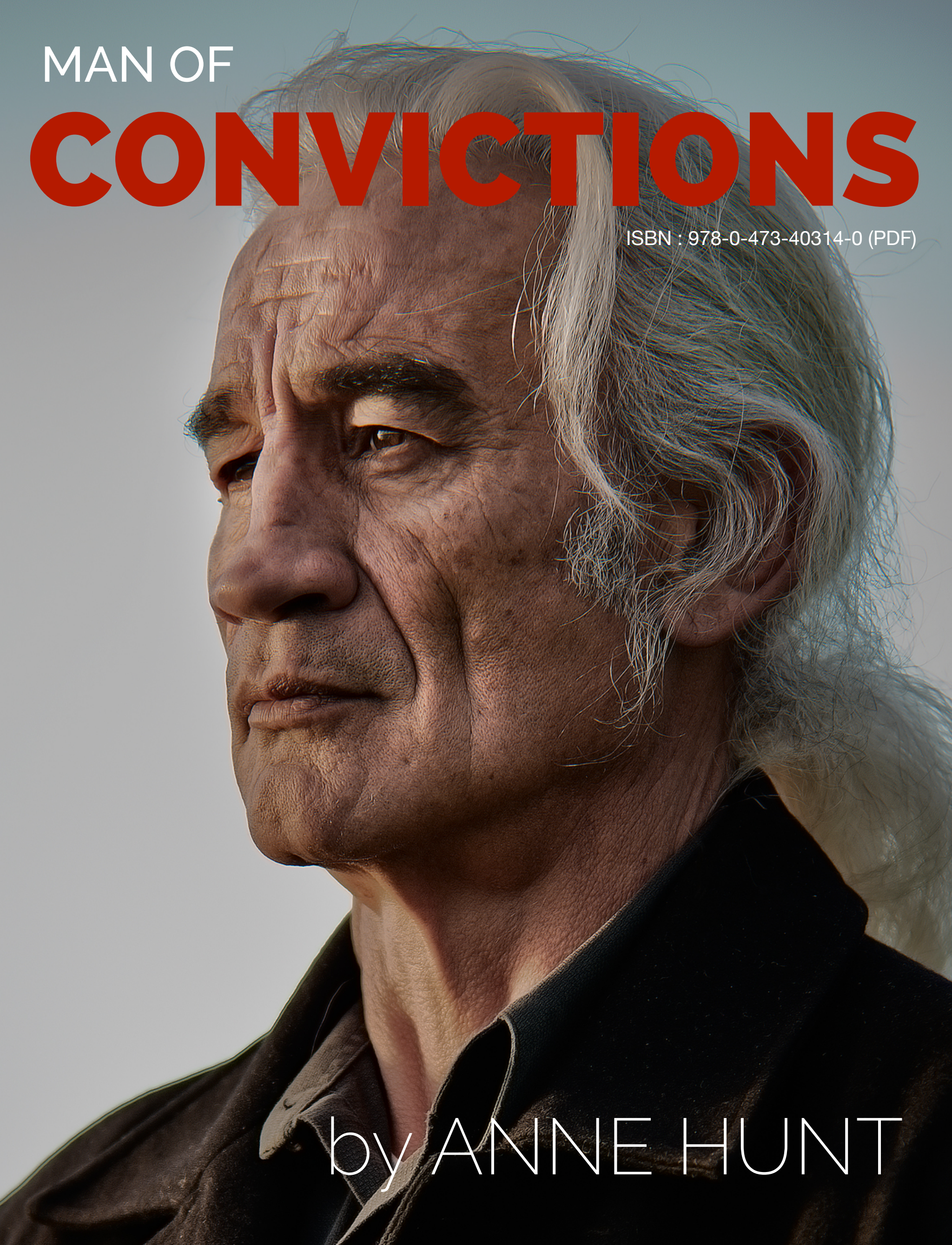

by ANNE HUNT

MAN OF CONVICTIONS

Taueki – a man, his tribe and their lake.

www.annehunt.co.nz

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Anne Hunt has written and published the following books :

The Foxton Murder

A murder conviction and acquittal on retrial

The Lost Years

New Zealand's largest institution for the intellectually-handicapped

Broken Silence

Sexual abuse case appealed to the Privy Council

disclaimer

"What may be written about is both innocence and guilt, or for that matter the 'unproven' cases in our courts. This may well be uncomfortable for one party or another, but it is part of the process of open justice and even wider considerations of freedom of expression."

Justice Sir Grant Hammond ; Anne Hunt v A CA 114/06 (2007) NZCA 332.

Much of the material for this book is sourced from court judgements, transcripts, affidavits and legal submissions that Philip Dean Taueki has lawfully made available to the author.

Important : The name of Philip Taueki's legal aid lawyer is not divulged in this book.

Video footage, photographs and audio tapes recording numerous incidents have been retained to establish the veracity of various incidents described in this book.

Reasonable steps have been taken to establish the accuracy of the spelling of names, the location of heritage sites and all other information contained in this book.

Considerable attention has been taken to establish the authenticity of the pre-Treaty account but this will always remain the stuff of legends and has been treated as such.

The author makes no apology for writing this book from the perspective of the Taueki family. Phil Taueki bears no grudge against those who fought valiantly for causes they thought to be just, including the warriors of Ngati Toa. Major Kemp also tried to redeem himself prior to his death in 1878.

Photographs in the evidential section of the website are the best reproductions possible, given that some are taken from CCTV footage and others are based on photocopied material.

Finally, the author asks readers to accept the spirit in which this book was written. Anybody who takes umbrage should place themselves in the shoes of Taueki, and realise that this is a story that deserves to be told. If there are to be further battles in the courtroom, the author has taken the precaution of relying on legal privilege by reproducing copious extracts from court judgements, transcripts and evidence produced in court.

acknowledgements

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Thanks to the National Library for granting permission to reproduce Mr Hoyte's landscape.

And finally thanks to those who helped with the production of this book and web-site.

dedication

To Taueki and other brave Mua-Upoko ancestors who stood their ground and fought; thereby preserving their ‘mana whenua’, customary rights for generations to come...

chapter time line

MAN OF CONVICTIONS by ANNE HUNT

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chapter time line

TAUEKI - a man his tribe and their lake.

CH 13 The bull charges	notes - October - December 2014
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..... The final words	comments Anne Hunt, quote by Phil Taueki

first words

Quote from Magna Carta :

'No free man shall be seized or imprisoned or stripped of his rights or possessions or outlawed or exiled or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.'

In the grounds of Parliament stands the statue of a thief.

Across the road, the Sheriff prepares a warrant for the arrest of a man caught sitting on a log on his own ancestral lands, feeding the chooks. The date of this warrant for his arrest was Friday, the seventeenth day of March, in the year 2017. And it was signed in the name of the Sheriff, a fine fellow by the name of John Earles.

On the meadows of Runnymede alongside the River Thames, that auspicious Monday the fifteenth day of June in the year 1215, another John affixed his Great Seal to a charter. And in this great charter known as Magna Carta, was written in medieval script: No freeman shall be taken or imprisoned or be disseised of his freehold.

Half a world away from this field of Runnymede, these words merit repetition in court. No person is safe when the Crown wields the power to strip citizens of their lands, their rights or their liberty.

This book is an account of a man of convictions. It is a timely reminder that the enemy of democracy is, as always, complacency.

Ch1

weapons of law

"The best plan would be to set aside a reserve and explain to the Maoris afterwards that their ancestral rights would not be interfered with."

James Cowan

In the land of Aotearoa now known as New Zealand, there lived an ariki by the name of Taueki, the renowned paramount chief of a significant iwi known as Mua-Upoko. Their ancestral lands cascaded from the ranges of the Tararuas to the shores of the Tasman sea, and nestled in the midst lay their most-prized taonga, Lake Horowhenua. This lake yielded eels, flounder, freshwater crayfish, mussels and whitebait. Native pigeons flourished in the surrounding trees.

Marauding tribes who envied their bounty were met with fierce resistance. The people of Mua-Upoko created artificial islands as refuges, where those too frail or too young to fight could shelter while their warriors slept close to an arsenal of weapons. Leading to these islands was a labyrinth of submerged pathways, and thus arose the myth that Mua-Upoko could walk on water. Dense forests were Mua-Upoko's fortress, a natural barrier through which no raiding party could haul their canoes. Who would dare swim into warfare, spears strapped to their backs?

But then came the 1820's when Ngati Toa ventured south on their heke, their great migration, having been ousted from their northern homeland. Their leader Te Rauparaha was warned not to mess with Mua-Upoko.

Tragically a highly-respected Mua-Upoko woman was murdered as she wandered alone on the banks of the Manawatu River. For such a cowardly act, there must be utu. There was nothing to suggest Taueki sanctioned the utu for this act. Yet it was assumed the culprit came from the Ngati Toa tribe.

To exact revenge, her next of kin invited Te Rauparaha to their pa overlooking Lake Papaitonga, with the promise of a waka, a canoe as a lure. For Te Rauparaha known to his friends as Raha, a waka would be a gift too highly valued to spurn.

“Raha, I have a presentiment that you will be murdered by Mua-Upoko”, pleaded his nephew, Te Rangihaeta.

Te Rauparaha scoffed at these fears. Accompanied by his closest family and friends, he was welcomed onto the marae, and after feasting, the guests retired for the night; Te Rauparaha bedding down with his host, Toheiri. During the night, he was aroused by suspicious sounds, and sensing an ambush, he wrenched aside the flimsy reeds of his raupo hut to make his escape. Hearing the screams of his sisters, his favoured son turned back to save them and was also bludgeoned to death.

Te Rauparaha meanwhile hurried back to Ohau, reputably naked. In anguish, he uttered his ominous oath: “I will slaughter Mua-Upoko from the rise of the sun to its setting.”

Labelled the Napoleon of the South, Te Rauparaha was ruthless in his vengeance. His warriors were equally ferocious. The primitive taiaha, patu, and huata weapons Mua-Upoko wielded offered pitiful resistance against the muskets Ngati Toa fired.

When captured, Toheiri was tortured, hung and devoured. Attacked on a nearby Lake Papaitonga, another leader Tanguru, swam ashore with his baby son Te Rangihiwinui straddled to his mother’s back. Tanguru fled, to spend the rest of his life in exile with his wife’s tribe up the Whanganui River. Others ventured south, where they were hunted down, slain, cooked and consumed.

But none fared worse than those on Lake Horowhenua. Slaughtered indiscriminately were possibly two hundred men, women and children; the waters thrashing with frenzy as bullets picked them off one by one; seagulls screeching in from the shore to peck on the rotting carcasses cast aside once Ngati Toa satisfied their lust for flesh. Echoing in the minds of survivors would be the shrieks, the agonised murmurings and finally the oppressive silence. Shattered limbs strewn on the ground. Splattered brains. Blood seeping into the soil. Crimson-stained waters lapping on the shore. Floating corpses. Lifeless babes in the shallows. And overwhelmingly, the putrid stench.

On Nainu-iti isle, near the northern tip of the lake, were stockaded Mua-Upoko prisoners; several killed each day to replenish food supplies. Others, herded like sheep, became fresh meat to feed their enemy on the march. Skulls became kai bowls. Arms severed while victims still lived became ornate cloak hooks. Before each arm was chopped off, it would be pinioned into position and the fingers curled up so that even in death, there would be eternal servitude. Bodies of the fortunate sank to the bottom of the lake, where their bones may yet rest under metres of sediment.

Arawhata & Patiki streams : Contributory streams to the lake.

Hokio Stream : The only outlet stream to the Tasman Sea, and was the site of the eel patuna.

Kupe : The meeting house constructed by Hunia in the 1860's.

Pipiriki : The fighting pa erected by Major Kemp.

Pa-o-Potangotango : The oldest settlement in the vicinity of Lake Horowhenua.

Ruamatangi : Where Te Whatanui settled upon his arrival in the Horowhenua.

Nainu-iti Island : One of several artificial islands constructed by Mua-Upoko.

Kawiu clearing : Where paramount chief Taueki took refuge after Te Rauparaha attacked Mua-Upoko.

It was a massacre, the near genocide of Mua-Upoko. At dusk, the plaintive cries of those on the isle would drift across the lake to the Kawiu clearing where Taueki and others lay concealed. He was unable to rescue any captives if his tribe was to survive. And survive these few did, preserving Mua-Upoko's mana over their ancestral lands in accordance with Maori tikanga and traditions.

Despite this bloodbath, Te Rauparaha failed in his quest to exterminate Mua-Upoko. Discovering Mua-Upoko's allies were rallying, Ngati Toa retreated to the off-shore island of Kapiti. Meanwhile the reinforcements Te Rauparaha had summoned, encountered a setback on their own migration south. Ngati Raukawa eventually arrived, Te Rauparaha warned their leader to be wary of Mua-Upoko.

"You meddled with them," Te Whatanui retorted. "I shall not. I shall live in peace."

And so they did.

However, the weapon of law would prove to be more potent than weapons of war. In 1840, the paramount chiefs of New Zealand signed a treaty with Her Majesty Queen Victoria of England who guaranteed full, exclusive and undisturbed possession of their lands, their estates, their fisheries in exchange for sovereignty. Signed by both parties, this Treaty of Waitangi became a binding contract, and New Zealand's founding document.

On Kapiti Island, Te Rauparaha added his signature to the document, perhaps in the forlorn hope he might be able to salvage his claim to lands abandoned upon his withdrawal to his island citadel. In the Rangitikei, Hunia signed on behalf of Ngati Apa. Up the Whanganui River, Tanguru's wife, Rere-o-Maki acquired distinction as one of only five female signatories. And in the Horowhenua, Taueki made his mark on this auspicious document.

Upon his death, Taueki was succeeded by his son, Ihaia Taueki.

By 1869, Te Whatanui and both his sons had died. His son's widow returned to her Ngati Apa people. Those remaining at his Ruamatangi homestead near the Hokio stream dwindled to less than a dozen or so.

During their lifetime, Taueki and Te Whatanui had each leased land to a settler by the name of Hector McDonald. Te Whatanui's grand-daughter demanded this rent be paid to her rather than her auntie as the legitimate heir. Old McDonald refused. And so she resorted to a campaign of petty harassment to drive Hector McDonald from his farm.

When that tactic failed, she insisted upon having the property surveyed. Rumours of this survey reached Ngati Apa chief Hunia who was keen to settle old scores with Ngati Toa and their kin in Ngati Raukawa. Hunia erected, overlooking Lake Horowhenua, a large meeting house known as Kupe.

Soon he was joined by an army comrade from Whanganui. But Tanguru's son was no longer a helpless infant. Te Rangihiwinui was now Major Kemp, a military hero who wore the Queen's sword. Nearby, Major Kemp built a fighting pa he named Pipiriki, where his well-trained troops could drill.

At first, the skirmishes were so minor, a Government official confidently reported that only a few Mua-Upoko sided with Major Kemp and Hunia. As the rest were backing Ngati Raukawa, he shrugged it off : "I don't think anything will come of it."

But this minor boundary dispute was escalating. More and more Ngati Raukawa were drifting into the Horowhenua to bolster support. In the ultimate of ironies, Tamihana, a son of Te Rauparaha challenged Major Kemp's use of Government firearms. He objected to the Government's indifference to the plight of those "...who have been patient through the troubles which had occurred in this Island, have steadfastly kept to their churches, their schools and have been faithful to the Queen and have upheld their laws."

And then the Native Land Court stepped in. By the 1870's, this court had been empowered to convert Maori land into English title. Ngati Raukawa claimed the whole of the Horowhenua by conquest. Major Kemp retaliated by claiming the whole of the Horowhenua through ahi kaa. Principles for determining right of claim were quite straightforward :

- Pre-1840 conquest had to be followed by continuous and extensive occupation to confer rights on the conquerors.
- The original occupants also retain their rights if they maintained ahi kaa – kept their fires burning on their own land.
- Of the conquerors, only those who lived on the land in question, rather than the whole tribe.

Te Rauparaha failed to meet this threshold because he had long ago withdrawn his people to Kapiti. Te Whatanui came in peace, not conquest. As for Major Kemp, his family fled. The only person with any mana to stride into that courtroom and testify he was entitled to lay claim to the Horowhenua was Taueki's son Ihaia Taueki, a child on the cusp of manhood during the Mua-Upoko massacre. But did he even know that a court was sitting in Foxton to determine the fate of his tribal grounds?

Ihaia Taueki had preserved his traditional lifestyle, unlike Te Whatanui who embraced Christian values and the colonial way of life. Colonising agent Edward Wakefield would report that Te Whatanui was perhaps one of the native chiefs who best appreciated the value of the white man's presence. "His houses and clothes were kept scrupulously clean; he and his family wore clean clothes and washed with soap in the stream every morning, the cooking was attended to with great care and the food was always served up on carefully scrubbed tin plates."

On the other hand Taueki was demonised. Thomas Buick, a political journalist and a supporter of the proposed railway, was particularly scathing, likening Te Whatanui to the "gentle Nazarene" but one who committed a fatal blunder. "For had he not saved Mua-Upoko from the ovens of Te Rauparaha, had he rooted them out as weeds of the field, had he not summoned them to come down from the trees upon the mountains, to come out and occupy places where men do dwell, had he not given them land to live upon – his generosity could never have been turned as a weapon against his descendants and his humanity made an excuse for disinheriting his tribe."

Propaganda is insidious, distorting history. But Major Kemp drew upon a weapon of his own. Reminding the judges of his heroic service to the Crown, Major Kemp appeared in court wearing full military regalia; his soldiers parading up and down outside the courthouse.

It was Major Kemp who prevailed. Into his name as sole trustee, was entrusted the whole of the Horowhenua Block. When Mua-Upoko discovered what had happened, they protested – and vigourously! Brushing them aside, the judges considered them: "Ungrateful!"

British law was supposed to prevent Major Kemp disposing of lands that had fallen into his hands. But this did not deter the resourceful Major Kemp. He gifted a small sliver of land to a private railway company, and trains were already chugging along these tracks before a court could even consider Major Kemp's proposal to subdivide this section. To pay off debts incurred by his mother's tribe, Major Kemp sold prime fertile land. Facing mounting debts of his own, Major Kemp sold off a site for the settlement of Levin. When Major Kemp was asked to account for the proceeds of this sale, he was unable to do so.

Hunia was equally furtive. When the trusteeship of Block 11 was split between the Major Kemp and Hunia following protracted legal proceedings, Hunia had no hesitation selling off a large plot of land to the government for a state farm to settle the unemployed. Not until surveyors turned up, did the Mua-Upoko owners realise they had been evicted from their own land. Hunia also pocketed the proceeds.

When their friendship disintegrated, Major Kemp and Hunia became embroiled in a bitter court battle. At stake was land on which Mua-Upoko still lived, cultivating the soil and fishing on the lake that remained the main source of their livelihood. The Court of Appeal judges considered it inconceivable that this block was a property that "the Natives agreed spontaneously, unanimously and cheerfully to hand over to Kemp and Hunia unconditionally. The absurdity of such a proposition will be apparent to any one in any way familiar with Maori feelings and methods."

But any reprieve for Mua-Upoko would be short-lived. By now Major Kemp's lawyer Sir Walter Buller had offended Lands Minister Jock McKenzie, and these obstinate men also became locked into a feud of formidable magnitude. Jock McKenzie thundered that there had been disgraceful dealings in land sales, but none more so than that of the Horowhenua Block. He demanded a Royal Commission of Inquiry.

But first Parliament needed to pass a special Act of Parliament. And this enraged another politician, Francis Bell who considered this approach unprecedented. "Parliament has now interfered - without inquiring, without investigation, in the last days of the session –with the judgement of the highest court." Such a step had never been taken in any Parliament in any civilised country before, Francis Bell insisted.

But a Royal Commission of Inquiry, there would be. And once again, self-appointed leaders embellished their stories to lay claim to lands that were not theirs to claim. Compounding this confusion were belated arrivals, the Broughton siblings who were the children of the martyred Captain Charles Broughton. Dispatched to a marae at Patea, Captain Charles Broughton was shot in the back, and falling into the embers of a fire, he writhed in agony until somebody took pity on him and tossed him over the bank into the Patea River.

In recognition of Captain Charles Broughton's gallantry, Parliament passed a special Act of Parliament to make provision for his five half-caste children, one born posthumously; but only upon a proviso these toddlers were educated and raised by Europeans. After an unscrupulous trustee squandered their paternal inheritance, there was the prospect of a maternal inheritance if they could claim that their mother was Hereora Taueki, Ihaia Taueki's sister. John Broughton, the first to arrive, did not reach the Horowhenua until 1883. But with his European upbringing, he readily slipped into the role as a spokesperson for this tribe.

At the conclusion of this protracted Royal Commission of Inquiry, a report was produced condemning the 'extraordinary attitude' of the Native Land Court for failing to put in place measures to 'prevent a fraudulent holder of that title' depriving the owners of their land. Accusing Major Kemp of deceit, the Commissioners reported :

ΩΩΩ

Court Judgement ; Royal Commission of Inquiry

> He has therefore not only in fraud of his tribe sold the land upon terms which they did not authorise and were not privy to, but in addition he had not spent it in paying for the sub-divisional surveys... We can only arrive at the conclusion that Kemp has spent the money in a manner that he knows is unjustifiable and that he gives no explanation of his expenditure not because he cannot, but because he will not or dare not do so.

But they were no better. To cover the costs of this inquiry, the Commissioners confiscated 13,000 acres of native forestry lands held in trust by Ihaia Taueki for his tribe. By the close of that century, Mua-Upoko's vast ancestral estate had therefore shrivelled from 52,000 acres in the whole Horowhenua Block to little more than a lake and some sandy acres along the shoreline.

But even these pitiful few acres were not immune from temptation. Not content with the land they lived on, the colonial citizens of Levin coveted the lake as well. Already a sizeable boatshed with a viewing pavilion on the roof had been erected close to the waters, and an enterprising businessman was conducting voyages around the lake to view the artificial isles promoted as the scene of 'midnight orgies of cannibalism'. These tours took place despite this lake being privately-owned. A British certificate of title for the lake partition had been issued on 19 March 1899.

Unfazed by trifling legalities, these recent arrivals hosted a regatta on this lake in 1901. A special guest of honour was their local Member of Parliament, William Field who was also the president of the Wellington Rowing Association and a chairman of the national rowing organisation.

Two years later, a government department commissioned James Cowan, another keen rower, to prepare a report on Lake Horowhenua. Worried that the public might be "at any time liable to be denied the privilege even of access to the Levin people's boat shed", he pointed out that "for several years there has been much friction between the

residents and the Natives over the question of the right of access to the lake. As this sheet of water is likely to become a favourite place of resort for Wellington people and other visitors it was desirable that the present unsatisfactory state of affairs be terminated."

He added that the Ngatiapa Tribe of whom Wilson Hunia is the principal man, also lives on the shores of the lake. "I did not see Wilson Hunia but I was told he was sure to disagree with whatever Muaupoko did and that it is not much point arguing with the factions. The best plan", he suggested, "would be to set aside a reserve and explain to the Maoris afterwards that their ancestral rights would not be interfered with."

During August 1905, the tenacious local MP William Field asked when a public meeting would take place to "secure free public use" of Lake Horowhenua. James Carroll as Native Minister replied that "the concurrence of lake owners would be needed before the lake could be secured for public use". But local MP William Field reminded his colleagues this was an election issue.

Enter Richard John Seddon, a prime minister of portly stature and staunch advocate of God's own country. Known to all and sundry as King Dick, he agreed to meet with a delegation of Levin citizens down in the boatshed on the shores of Lake Horowhenua. Natives invited to this meeting were none other than Major Kemp's daughter Wiki and her lover, Hunia's son who incidentally had caused Major Kemp considerable consternation by eloping with his only child. At this meeting, a government official jotted down nine conditions, and this was the slip of paper Attorney-General Albert Pitt held aloft in Parliament to declare there was no doubt the Natives had acted handsomely and generously.

On the 30 October 1905, as Parliament was rising from the final session before elections, politicians rushed through the Horowhenua Lake Act. But there was indeed doubt. Within a year, MP Tame Parata was calling for the repeal of legislation that "acquired a valuable estate without the consent of the owners". James Carroll did not dispute this accusation.

Jane Luiton a researcher for the Waitangi Tribunal, verifies that William Field the local MP had warned Prime Minister Richard John Seddon during September 1905, that the lake was an election issue. William Field had arranged for the Levin Chamber of Commerce to meet with Prime Minister Richard John Seddon : "to form an agreement over access to this lake."

Mua-Upoko did not purchase Lake Horowhenua in pounds and pence, the currency was blood. Yet as an election bribe, this privately-owned lake had suddenly become 'a place of resort for his Majesty's subjects of both races'. Parliament then placed this 'pub-

lic recreation reserve' under the control of a Board appointed by the Governor. Only one third of these members were to be Maori, but not necessarily lake owners. Without costing the Crown a cent, Parliament had managed to acquire total control of ancestral lands that still belonged to the original owners. Meanwhile these owners were bewildered by the British certificate of title they assumed consolidated possession of their own property.

Within a decade, the domain board introduced foreign fish species, after deciding that fishing for trout by Pakeha would not interfere with the tribe's fishery rights. And because the surrounding farms were swampland, a drainage board agreed to lower the level of the lake; the board secretary explaining that the owners of this lake were not permitted to flood these farms. The owners' eel patunas were destroyed, their freshwater mussels perished in the millions and their flax that was a lucrative source of income was trampled into the dust by cattle when these farmers extended their boundaries down to the new shoreline.

Of course, Mua-Upoko protested, but to no avail. In 1893, Ihaia Taueki and 75 other Mua-Upoko signatories had already signed a petition to Parliament in a futile attempt to halt disposal of any part of the Horowhenua Block until disputes regarding the alleged trust were settled. Parliament ignored this petition. In 1903, thirty-two owners had petitioned Parliament to leave the lake alone. Parliament ignored this petition as well.

Over the next century or so, the lake's owners were thwarted in every attempt to get rid of this legislation. During 1930, a delegation met with the Minister of Internal Affairs. By now, a parliamentary committee conceded that the Mua-Upoko owners had never surrendered any of their property rights. A lawyer representing tribal leaders informed yet another Commission of Inquiry in 1934 that Mua-Upoko wanted this gradual whittling down of their rights to stop. "Whenever owners protested" he lamented, "they were arrested."

Following this latest Inquiry, the Commissioners came up with a 'compromise'. And this was their 'compromise': because the Levin Borough Council had made plans for the development of the lake, perhaps the owners would give the title for 83.5 chains of lake shore to the domain board. When put to Mua-Upoko, this 'compromise' was resoundingly rejected.

During May 1936, a deputation was granted an audience with Prime Minister Micky Savage. Once again, Mua-Upoko asked for all legislation affecting the lake to be repealed and for full ownership rights to be reinstated to Mua-Upoko. Yet again, their pleas fell on deaf ears.

It was not until 1956, fifty years later when the original trustees were deceased, that Parliament finally acknowledged that the bed of the lake and surrounding land not only belongs to Mua-Upoko, it had always belonged to Mua-Upoko. The Horowhenua Lake Act was repealed and replaced with section 18 of the Reserves and Other Lands Disposal Act 1956, commonly known as ROLD.

Sidney Holland was Prime Minister at the time, but once again, politicians had circumvented the legitimate owners. James Hurunui Tukapua, a grandson of Captain Charles Broughton, was a government employee who had set himself up as Mua-Upoko's chief. It was therefore Captain Charles Broughton's grandson who convened a meeting, chaired that meeting and then became one of fourteen trustees elected at that meeting. Charles Broughton's grandson then approached the Maori Land Court to ratify their appointment, and Parliament in turn vested Lake Horowhenua in these trustees appointed by the Maori Land Court in 1951. The title was officially transferred into their names in 1959, to hold in trust for the Maori owners, defined in a perfunctory manner by Parliament in ROLD.

Effectively, this replacement legislation changed nothing. The domain board, although now appointed by the Minister of Conservation was still in control of the lake. The public could continue to use the lake free of charge. As for the owners, they were not to interfere with the 'rights' of the public.

During the 1960's, members of the local rowing and sailing clubs erected clubrooms on this Maori Freehold Land, without permission from the owners to do so. As a retired club member explained, a couple of very nice Maori gentlemen had reassured them they could construct their buildings anywhere they liked. Not unsurprisingly, neither was from Mua-Upoko.

In 2003, the Sailing Club's licence to occupy the building expired. In 2007, the Rowing Club's licence to occupy the building had also lapsed. Even though the Reserves Act passed in 1977 prohibited further leases to these clubs, the lake domain board rolled over both licences in 2006.

Therein lies the crux of the problem that continues to plague this privately-owned property to this very day.

chapter 1 notes

Time frame : from historical times to 2007

weapons of law

Milieu

Although Her Majesty Queen Victoria of England guarantees Taueki undisturbed possession of his ancestral lands, a 'king' could not resist the temptation to seize control of Mua-Upoko's tribal lake.'

ROYALTY

Victoria, Her Majesty Queen of England : The Queen of the United Kingdom of Great Britain and Ireland, later to also become the Empress of India.

MAORI TRIBAL LEADERS

Taueki : Paramount Chief of Mua-Upoko who settled in the Horowhenua area as early as the 13th century. Taueki signed the Treaty of Waitangi at Hokio on 26 May 1840. He had two children, a son by the name of Ihaia and a daughter Hereora Taueki.

Hunia : Paramount Chief of Ngati Apa who settled in the region to the north of the Horowhenua. Hunia signed the Treaty of Waitangi at Rangitikei. He was succeeded by his sons, Warena and Wihana.

Major Kemp (1820's-1898) : Also known as Te Rangihiwinui, Taitoko and Te Keepa, Major Kemp was the son of Tanguru and Rere-o-Maki. After enlisting in the Native Contingent he was promoted to Major in 1868. Such was his prowess as a fighter and leader, he was awarded the Queen's sword in 1870, the NZ Cross in 1874 and the NZ War Medal in 1876.

He returned to Whanganui where he was raised, as a national hero and with a personal bodyguard of a hundred warriors. In 1865 he became a Native Land Court assessor and later a land purchase officer. In 1873 he became the sole trustee of the 52,000 acres of lands belonging to Mua-Upoko.

In 1882, he gifted nine miles of land through Horowhenua to the Wellington and Manawatu Railway Company, and sold off the land for Levin. He is buried in Whanganui and a statue was erected to his memory overlooking the Whanganui River. His daughter

Wiki married but is believed to have died without issue. His sword was bequeathed to his nephew.

Tanguru : Mua-Upoko leader who fled the Horowhenua in the 1820's to live with his wife's people up the Whanganui River. His wife Rere-o-Maki was one of only five women to sign the Treaty of Waitangi. Their son was Major Kemp.

Te Rauparaha : (Raha) Renowned leader of Ngati Toa who migrated south to the lower North Island in the 1820's Te Rauparaha signed the Treaty of Waitangi at Kapiti Island. In 1846 the NZ Governor placed him under arrest and held him on a brig moored off-shore for ten months. He returned to his people at Otaki where he died in 1848.

Te Whatanui (d1846) : Ngati Raukawa leader who migrated south to the Horowhenua in the late 1820's. After Te Rauparaha invited Te Whatanui to join him in his battles, Te Whatanui suffered a defeat in the Hawkes Bay and was delayed. Te Whatanui settled at Ruamatangi near Lake Horowhenua towards the outlet to the Hokio Stream. Ngati Raukawa's primary settlement was Otaki.

EARLY SETTLERS

Broughton, Charles William (1833-1865) : Interpreter for the British military forces who was killed near Patea on 1 October 1865

Buick, Thomas Lindsay (1865-1938) : Press gallery reporter who owned shares in several newspapers. He published Old Manawatu in 1903.

Buller, Sir Walter (1838-1906) : Kemp's lawyer who gained the freehold of Lake Papaitonga in 1899 as compensation for legal fees. He became entangled in a bitter dispute with Lands Minister Jock McKenzie who accused him of defrauding Mua-Upoko.

Cowan, James (1870-1940) : Prolific author, who joined the new Department of Tourism and Health to promote areas being developed for tourism.

McDonald, Hector : First white man to settle in the Horowhenua, he leased a coastal strip of 12,000 acres from Mua-Upoko and Ngati Raukawa for sheep farming. In 1856 he moved to Hokio where he set up a coach and accommodation service.

Wakefield, Edward Gibbon (1796-1862) : Director of the NZ Company and a key figure in the early colonisation of New Zealand.

POLITICIANS

Bell, Sir Francis (1851-1936) : First NZ-born Prime Minister. He officially became PM on 14 May 1925 due to the ill-health of the previous PM and after declining the party's offer to continue, resigned on 30 May 1925, after serving only sixteen days in office.

Carroll, Sir James (1857-1926) : First Maori to hold the cabinet post as Minister of Native Affairs.

Field, William Hugh (1861-1944) : Elected to Parliament in 1900 following a by-election in Otaki. He was captain of the Star Boating Club based in Wellington from 1891 until 1896 and was chairman of the managing committee for the NZ Amateur Rowing Association.

Holland, Sir Sidney (1893-1961) : Prime Minister from 1947 until 1957. He suffered a mild heart attack or stroke in October 1956 and resigned from office the following year due to health problems.

McKenzie, Sir Jock (1839-1901) : Lands Minister who had a major influence over Maori lands policies until he was forced to retire due to ill health.

Parata, Tame (1830's-1917) : Entered Parliament in 1885 as the Member for Southern Maori. "The land is the life-blood of the Maori", he said in 1904. "If a man, Sir, has no land, what does he live for?"

Pitt, Albert (1842-1906) : Appointed Attorney-General in 1903. In 1881, Lt-Colonel Pitt had led 900 volunteers to Parihaka to arrest Te Whiti-o-Rangomai and Tohu Kahahi who were held without trial for two years. Parihaka had been the centre of peaceful resistance after land had been confiscated from South Taranaki Maori who had fought against the Government. Maori from around New Zealand including the Horowhenua had joined this protest. Any Maori not arrested had been evicted and their village was destroyed. Pitt died in office only months after Seddon's death.

Savage, Micky (1872-1940) : First Prime Minister representing the Labour Party. Diagnosed with cancer in 1938, he died in office in 1940.

Seddon, Richard John : New Zealand's longest serving Prime Minister. Held office as Premier/Prime Minister from 1893 until 1906. He died in office following a massive heart attack while voyaging home from Australia.

MAORI WORDS

Ahi kaa : Keeping the home fires burning by continuous occupation and thereby maintaining customary rights.

Ariki : Paramount chief, a leader who shows concern for the integrity and prosperity of the people.

Ao-tea-roa : Means the Long White Cloud, the common Maori name for New Zealand. The original names were Te Ika a Maui, meaning the fish of Maui, for the North Island, and Te Wai Pounamu, the waters of greenstone, for the South Island. The Dutch name was Staten Landt, then later Nova Zeelandia, this eventually became New Zealand. Maori Land was another name used in early colonial times.

Heke : To migrate.

Huata : Long spear.

Iwi : Tribe, extended kinship group.

Kai : Food, meal.

Marae : The open area where formal greetings and discussions take place.

Pa : Village, often fortified.

Pakeha : Generally refers to immigrants.

Patu : Club.

Patuna : Weir.

Raupo : Native bulrush plant.

Taiaha : Fighting staff.

Taonga : A highly valued treasure.

Utu : Reciprocity, to respond, avenge.

Whenua : Land.

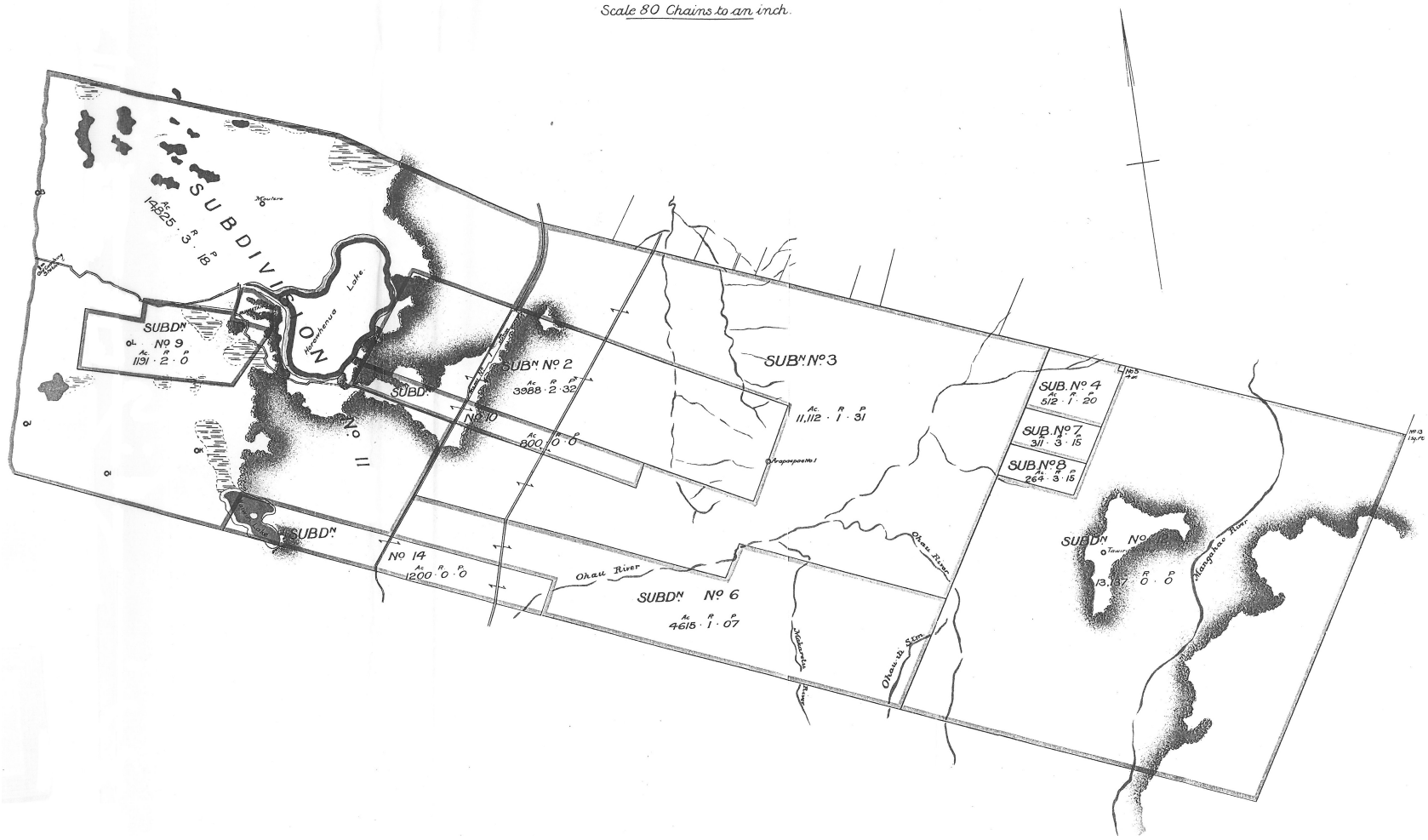
POINTS OF INTEREST

Committee of Inquiry : Established by Parliament in 1934 as an official inquiry under the jurisdiction of Judge John Harvey and Mr H Mackintosh who was the then Commissioner of Crown Lands. Mr C B Morison represented 400 Natives. Levin's Mayor Philip Goldsmith, Cr D P Todd who was also President of the Chamber of Commerce and representatives of the Wellington Acclimatisation Society were also present to speak.

Native Land Court : Court set up under Native Lands Act 1865 to convert traditional communal landholdings into individual titles to facilitate purchase of Maori Land.

Royal Commission of Inquiry : Established by the Horowhenua Block Act 1896 to 'inquire into the circumstances connected with the sales of dispositions by the Natives of any or the whole of the blocks contained in the Horowhenua Block, comprising original about fifty thousand acres, and as to the purchase-money paid for the same; and as to what trusts (if any) the same respectively were subject to…'

The Horowhenua Block 11 : One of 14 blocks in the Horowhenua Block. The Horowhenua Block extended from the Tararua ranges to the Tasman Sea. The coastal area from Lake Horowhenua to the sea is Block 11, although there is a smaller block within this area allocated to Ngati Raukawa.



Map showing Horowhenua Block, drawn by Major Kemp.

Waitangi Tribunal : Set up under the Treaty of Waitangi Act 1975, the Waitangi Tribunal is a permanent commission of inquiry to make recommendations on claims brought by Maori to address the Crown's actions and inactions that breach the promises made in the Treaty of Waitangi. Dr. Terry Hearn, Jane Luiton, Dr Paul Hamer and Lou Chase were researchers for the Mua-Upoko claim.

Wellington and Manawatu Railway Company : Private Railway Company to construct and operate a private railway line between Thorndon in Wellington and Longburn near Palmerston North between 1881 and 1908. Construction was completed in 1886 and the first train ran on this line on 3 November that year.

Ch2

drawing a line in the sand

"As a kaitiaki of Mua-Upoko, I cannot abrogate or absolve myself of the duty I have to protect the taonga of Mua-Upoko."

Phil Taueki

The day Phil Taueki stood on the balcony of the southern domain building overlooking the waters of his beloved Lake Horowhenua, was the day he decided the time had come to draw a line in the sand. As Phil would one day declare in court: "As a kaitiaki of Mua-Upoko, I cannot abrogate or absolve myself of the duty I have to protect the taonga of Mua-Upoko; of which the most treasured possession is Lake Horowhenua. It is my duty to ensure that the activities of the public do not breach Mua-Upoko tikanga or threaten the environmental well-being of our lake."

Phil Taueki is kaitiaki by birthright. He does not need anybody to endorse that status. It is in his blood, his DNA. For he is Taueki's great-great grandson. Qualified as an accountant at Victoria University in the capital city of New Zealand, he obtained lucrative employment overseas; for some time living in the prestigious neighbourhood of WC1 London where members of the Royal Family reside. There was no reason for Phil to return to his homeland when he was living a prosperous lifestyle, with firm friendships and travelling the world at his leisure.

But one day his Mum wrote him a letter. Rarely had she ever asked anything of her son. Come home, she wrote. The tribe needs you. And so he sacrificed his privileged lifestyle and settled in a humble abode on the shores of the lake, with few possessions and only his dogs for company, Cleo and Zeus.

On Sunday 14 September 2008, that momentous day when Phil stood on that balcony overlooking the lake, I had never met him. I had heard of his reputation as the Mad Maori who lived down by the lake, but who in the Horowhenua had not heard of him?

Obviously we had little in common. The year he returned from England was 2004 was the same year I was elected onto the Horowhenua District Council. On my father's side, I

am descended from a long line of Scandinavian hereditary mayors. But after the Schleswig-Holstein Wars, my ancestors chose not to live under the new regime, voyaging across the world to settle on the banks of the Manawatu River, north of the Horowhenua. It had been a treacherous journey, across the seas, along the coast, up the river and finally trudging through virgin forest to an inland clearing, later to be known as Palmerston North. My grandfather, an importer of fine china, and his brother both served on the local borough council. Both campaigned to obtain a railway link between their fledgling settlement and New Zealand's new capital city, Wellington.

Due to this railway, my family prospered. The Taueki family did not. My family fled. His did not. I was a district councillor. Phil was unemployable due to his media portrayal. We did have one thing in common though. Both our mothers were English. It was inevitable, nevertheless, that one day our paths would cross.

Sunday 14 September 2008. It had started out as a typical day for Philip Dean Taueki; down to the dairy to get the Sunday paper and then planning to watch a crucial league match on the telly in the afternoon. Phil was fit and active, playing sport competitively until his knee injuries forced his early retirement from contact sport.

As he was driving down to the dairy this day, he observed a dozen or more people milling around some yachts clustered near the double-storied clubrooms. Parked up was a trailer with a motorised boat on board ready to launch on the lake. It was obvious that the local sailing club was getting ready to host another regatta.

This scene was wrong on several counts. To access to the lake, club members must obey the by-laws approved by the Minister of Conservation. Due to the cultural sensitivity of this lake, motorised boating was banned. Any gathering required a permit. And due to bio-security regulations, boats must be washed down before entering the water.

So Phil parked his car and approached the organisers to warn them they could not launch their motorised boat on the lake. They ignored him. He asked them to leave. They told him to leave. A scuffle developed, and the police were called.

As soon as the constable arrived, he had a quick chat to the yachties and then came over to arrest Phil, handcuffing him and taking him down to the police station in his police vehicle to process him. With Phil locked up in the police cells for several hours, the sailing club went ahead with their regatta, confident there would be no further disruption. Despite his injuries and knee surgery a fortnight beforehand, Phil was eventually released to walk home afterwards, disappointed he had missed his match on telly.

He was charged with three counts of assault. Despite his own injuries, nobody else was arrested. Phil shrugs it off – it happens to Maori all the time, he says. Even though his legal aid lawyer failed to turn up, Judge Ross let his first trial proceed.

Phil's conviction was overturned on appeal and he was preparing for retrial when I first ventured down to the lake in 2010 to see if I could convince this 'Mad Maori' to change his attitude. Out of the blue, he asked me if I would like to accompany him to a meeting with his lawyer. Out of curiosity I agreed.

I vividly recall Phil's legal aid lawyer reassuring him he would not need to appear in court again until the new year. The very next day, Phil received a phone call advising that his jury trial would be starting on Monday, but not to worry, it would be adjourned to another date. Phil had already paid an exorbitant fee to attend a conference in Wellington on post-Treaty settlement entities, with the Prime Minister a keynote speaker. Rather than miss this conference, it was agreed that Phil could go down to this conference in the morning when the lawyers would be dealing with some procedural issues. He would still have to time to get back to court by 2.15pm if this trial went ahead.

I was to be the go-between. By lunch-time, I had heard nothing. When Phil phoned me during the lunch-break, I told him I had not heard from anybody but would drive to Palmerston North to find out what was going on. When I arrived, the main courtroom was locked. After pacing up and down for a while, I came across a journalist who advised me there was now a warrant for Phil's arrest. Phil was located by the police, arrested and remanded in custody.

In the meantime, his Mum had been rushed off to hospital in a critical condition. After many anxious moments, we finally managed to arrange Phil's release, but on an electronic bracelet to reside at Bryan Ten Have's lifestyle home on the outskirts of Levin. Bryan Ten Have, as chairman of the local ratepayers association, would become a loyal friend to both of us. He was the most generous of hosts, and his home would become, on many an occasion, our sanctuary. With his electronic bracelet, Phil was confined to Bryan Ten Have's property at all times, except to attend court and visit his Mum three times a week, although under my supervision at all times. If we deviated from the direct route, he could be arrested for a bail breach. Family celebrations for Christmas, he missed; it would be his Mum's last.

It was only when Phil's electronic bracelet was being strapped to his ankle, that his supervisor discovered there was to be a court appearance the next day. Phil knew nothing about it. I drove Phil to the court, and as we were waiting for his name to be called, his lawyer rushed in, flustered. From the dock, Phil sacked him. Judge Atkins quickly figuring out what was going on, quietly but firmly informed this lawyer there had been a part-

ing of the ways. His lawyer still refused to leave. Due to the stringent conditions of Phil's electronic monitoring, arrangements were made for me to uplift Phil's file from this lawyer's office.

When I started reading through Phil's file, again out of curiosity, I suddenly realised the reason his former lawyer had been so reluctant to abandon this case. Not only had he failed to prepare for trial, this lawyer had also managed to cover up his own shortcomings by informing Judge Atkins that Phil was not planning on turning up for trial that day. That was obviously not the situation at all. In future, Phil would no longer trust legal aid. From that day on, Phil became a self-represented litigant. And I became his assistant and address for service to prevent any further messages from the court going astray. It would become my responsibility to make sure that Phil turned up for court, whenever and wherever he was summonsed.

The first submission I drafted for Phil to sign was obviously an application to vary his EM bail conditions. We were thrilled when Phil managed to get rid of that dreaded electronic bracelet. But in many ways, night curfew was not much better. At least with the electronic bracelet, police visits were restricted to a malfunction. But with night curfew, the police ventured out to Bryan Ten Have's place at least once a night, knocking loudly on the door to wake the whole household up, and forcing Phil out of bed to present himself at the door.

If Phil did not like it, he could always go back to jail, was their standard response. So Bryan Ten Have started meticulously recording the timing of each visit, and every exchange that took place. Whenever Bryan Ten Have closed the gate at night, the police objected. Or his dog Sam bounded out to lick the boots of a police officer, poor old Sam was threatened with the dog pound for his exuberant welcome. We documented every visit in another submission and sent it off to Judge Atkins. In his measured tones, he described this level of surveillance to be most unusual.

The next reality check was discovering that the police take advantage of lax lawyers. So we demanded full disclosure; the mandatory release of evidence held on file. The prosecution protested. But once again Judge Atkins came to our rescue. Calmly he pointed out to the prosecution that the court had been assured weeks ago that this case was ready to proceed to trial. How could there be any inconvenience handing over evidence that should have been handed over long ago?

When we received a tiny tape, to listen to it we had to track down a compatible tape recorder. Then we heard the tape, and discovered that the prosecutor had sent the wrong tape. So it was back to the prosecution to get the right tape. Nevertheless getting the wrong tape would later prove to be a blessing in disguise.

As Phil's charges started coming thick and fast over the next few years, I had made it my business to sit Phil down and record everything that happened while it was fresh in his mind. Invariably I would feel relieved that his recollection mirrored the evidence disclosed.

Phil's charges would be heard by judge alone, Judge Atkins. The prosecution's case would be based on evidence from four members of the same family plus a visitor who admitted under cross-examination he had not washed his boat down before launching.

Steve Winter was appointed amicus curiae, a friend of the court whose role was to provide neutral legal advice. He would also take over the cross-examination of prosecution witnesses. But it would be Phil who would still bear the brunt of defending these charges as a self-represented litigant.

"On the surface, this may appear to be a simple assault case", Phil told Judge Atkins.

The Crown asserted that Phil was engaged in 'land claims' in respect of the lake. But Phil went on the counter attack. "There was not a shred of doubt that the bed of the lake and surrounding land belonged to Mua-Upoko in legal title."

Furthermore, there were two legal constraints affecting public access. The first was section 17 of the Reserves Act 1977, and the second was section 18 of the Reserves and Other Lands Disposal Act of 1956, which is generally known as ROLD. Both required sailing club members to obey the by-laws that had been approved by the Minister of Conservation. Phil explained these were not council by-laws, but statutory by-laws to be enforced by the police.

"When others had turned a blind eye to this abuse of by-laws", he told Judge Atkins, "I have drawn a line in the sand and said, enough is enough."

As race officer, Tony Brown argued that these by-laws were irrelevant. And his son David Brown added it was fair to say that he wasn't going to tolerate anybody challenging "his or his family's right to use the lake". And when club commodore David Feek was asked if he'd change his attitude now that he knew about these by-laws, his response was an emphatic: "No!"

On oath, David Brown, his father, his mother and his stepfather all denied that David had sworn at Phil that day. But Phil had a secret witness. This was the tape recording of David Brown's call to the police, one the prosecution had omitted to disclose. And yes, David Brown had told Phil he was trespassing. And yes, he had called Phil 'a fucking wanker'. And yes, he called Phil a 'black bastard'.

The police officer in charge of each case is always the last to give evidence for the prosecution, and he is the only prosecution witness allowed to remain in the courtroom throughout the entire hearing. He had therefore heard David Brown volunteer, not once but twice, that his father had jumped on Phil from behind. In the witness stand, this constable conceded he had not investigated this matter properly. But Steve Winter did not have the opportunity to question him further as he had already been excused to leave early to attend a family member's wedding.

Although he is not obliged to take the stand, Phil always has no hesitation doing so. He had been king hit from behind, he testified, and when he went to get his keys to drive away, he couldn't find them. Phil said the blow had been so hard that he felt dizzy, and the force had knocked his tight-fitting beanie off. The keys went flying out of his hand and landed some distance away. Somebody found them and kindly returned them to him. In his defence, Phil argued self-defence and also a s56 defence; one that allows an owner to use reasonable force to remove a person from his own property provided he does not strike or injure that person.

As with most judge alone trials, it would be a reserved decision.

Unfortunately for that particular trial we did not have the in-depth knowledge of the lake that we have now acquired. The Crown's prosecutor had treated it as a simple assault case, and produced not a single map as evidence. As this lawyer told Judge Atkins, it was a Treaty claim. But Phil was able to refute their opening argument, by producing evidence to confirm it was, and always had been, private property.

Maori Land Court records suggest the Crown had leased 32 perches from 1st June 1961 for £1 with a perpetual right of renewal. We were never certain which area of ground was covered by this lease but presumed it must be the site where the sailing club built their clubrooms. It seemed inconceivable to imagine this lease would be for any other purpose. Not until sometime later did we unearth the background to this so-called 'lease'. The domain board had indeed applied to the Maori Affairs Board in 1961 to acquire a lease to erect a boatshed and clubhouse on the bed of the lake. The bed of the lake was of course part of the lake title. On 24 April 1961, arrangements were made to convene a meeting of owners to consider this offer. But there was also to be a search of the records. On 3 May 1961, this proposal was withdrawn. No meeting with the owners ever took place. But within a month, the Crown had somehow managed to obtain a perpetual lease.

The following month, the domain board issued a licence for the club to erect a pavilion on 32 perches of Maori freehold land. According to a senior government official, this fee of one pound per annum was supposedly never paid "due to the generosity of the own-

ers". Perhaps there is a more plausible explanation. Perhaps the lake's owners never knew anything about a lease negotiated in their name.

When sailing club members were considering where to site their new clubrooms, they simply approached a couple of nice chaps they considered to be kaumatua, tribal elders who were most obliging. Both were from other tribes and were not owners.

On the first day of the year 2009, Phil had filed an application with the Maori Land Court to determine ownership of this pavilion the sailing club built on what was undoubtedly Maori freehold land. But this was not the first time he had raised similar concerns. During 2005 he had written to the Conservation Minister, questioning the legality of the leases, particularly the one for the sailing club that had expired in 2003. As he pointed out, this building is on land not owned by the lake domain board but by the owners of this Maori reservation.

In 2006, he had written to the domain board seeking proof of their right to lease this property to a third party. "If nothing was forthcoming", he warned, "the owners would evict the squatters." The lake domain board's response was to ignore his letter, and instead roll over this lease on a month-by-month basis in defiance of the Reserves Act 1977.

During May 2009, fourteen police officers stormed this pavilion to evict the 'squatters' who occupied this building. Rural Area Commander Mark Harrison reported that twelve trespass notices had been issued and more would be served. It was the lake's owners, the police had evicted.

"It's just for the building", he said. "We're not saying that they can't go on the land because we acknowledge they have some access rights."

A month later, there was a large article in the local newspaper declaring that "yachts will once again race on Lake Horowhenua as sailing club members take a stand and reclaim their rights". Their rights?

On 23 July 2009, the very morning Phil's trespass charge was due to be heard, the police quietly dropped this charge, on legal advice.

But Phil was already up on other charges. The sailing club held their annual general meeting on 16 June 2009, again without the necessary permit. These are not by-laws set up by the owners. They are official domain board by-laws, approved by the Minister of Conservation. When Phil confronted a packed hall of club members, he was thrown to the ground and kicked repeatedly in the stomach. As soon as the police arrived, Phil was arrested, handcuffed and escorted to the police car to be taken down to the police

station for processing. Allegations appeared in the media that he had threatened a ten-year old child with a block of wood that had a nail in it.

In 2009, Phil had still trusted his legal aid lawyer. He was facing multiple charges. The only witnesses would be members of the sailing club. His lawyer convinced him he was wasting his time trying to defend these charges and therefore, it would be much easier, just to plead guilty. This was the best deal he could get argued his lawyer, and if he didn't agree to it, he would end up in jail. Not until he started receiving regular criminal history sheets did Phil realise his mistake. Consequently on his record now stands five counts of assault manually and one charge of possessing an offensive weapon.

I asked him what happened that day in September 2009, and this is what Phil told me. He had decided to enter the hall and tell the organisers that they could not have any gathering of people without a permit. As he tried to make his way to the front of the venue where Tony Brown was getting ready to chair the meeting, members moved in to block Phil's way, resulting in a bit of pushing and shoving. On the balcony he picked up a block of wood to defend himself and then threw it away when he realised it had a nail in it. He also picked up a chair to defend himself. Phil was thrown to the floor and kicked in the stomach repeatedly.

Eighty hours community service and a fine of $170 seemed a small price to pay to avoid telling his story to a judge who would be unlikely to believe him.

When we demanded the tapes pertaining to the 2008 charges, the prosecution inadvertently disclosed the wrong tapes, revealing Phil was thrown to the ground and beaten during the sailing club's meeting in September 2009.

Emergency call ; recording

"We've got four of our guys on top of him"

"Don't hit him, don't hit him," another voice could be heard in the background.

There was a second call to the police during this incident, this one from a woman. To upgrade the priority of her call, she accused Phil of carrying a knife. Didn't he walk past the kitchen where they were making sandwiches? By pleading guilty, Phil never got to hear these emergency call recordings. Furthermore, one witness had provided a formal statement confirming Phil picked up a chair, "for his defence". Not the offensive weapon, the police alleged. In hindsight, Phil's legal aid lawyer should have demanded full disclosure before convincing Phil to plead guilty to these charges.

During sentencing, Judge Barber admonished Phil for depriving sailing club members of an enjoyable recreation.

On 29 August 2009, Phil was once again arrested; this time charged with unlawful entry. He was handcuffed, shoved into a fence and then strapped into the back of a police car in an awkward and painful position, causing further injury to his shoulder. This charge was quietly dropped when the police discovered he was only fixing a broken window.

Meanwhile in 2003, sailing club members had dumped tonnes of rock and gravel to construct a causeway 70 metres out into the midst of the lake ; wide and compact enough for their vehicles and boat trailers. When challenged about this, the domain board chair shrugged it off as being consistent with the recreational use of the area.

“It was not unduly impacting on other users or landscape or conservation values”, he told an owner who complained.

Hoyte, John Barr Clark, 1835-1913 : Lake Horowhenua. Ref: C-052-007. Alexander Turnbull Library

chapter 2 notes

Time frame : August 2008 - August 2009

drawing a line in the sand

milieu

As Phil Taueki stands on a balcony overlooking the lake, he decides he can no longer tolerate the behaviour of those who abuse the privilege of access to a lake that is privately-owned.

PEOPLE OF INTEREST

Atkins, Les : District Court Judge 1997- 2015. Also worked for the NZ Law Commission. Appointed a Companion of the Queens Service Order in 2016. Passed away in 2016.

Brown, David : Horowhenua Sailing Club Member.

Brown, Tony : Horowhenua Sailing Club Race Officer.

Feek, David : Horowhenua Sailing Club Commodore.

Harrison, Mark : Police Inspector who was Rural Area Commander for the Central Police Region. Awarded NZ Order of Merit in 2013. Manawatu Standard Person of the Year in 2011. Involved in emergency response to the 2010 Pike River Mining Disaster and the February 2011 Christchurch Earthquake.

Ross, Gregory : District Court Judge who retired in 2016 after 24 years.

Ten Have, Bryan : Chairman of the Horowhenua Residents and Ratepayers Association who provided a bail address for Phil Taueki at his lifestyle block on the outskirts of Levin.

Winter, Steve : Lawyer at WinterWoods with twenty years of experience.

DOGS OF INTEREST

Cleo and Zeus : Cleo is a German Shepherd/blue healer cross who suffered from epilepsy, partial blindness and deafness was brought home from overseas. Zeus, a mixed Rhodesian ridge back/Great Dane was a stray found wandering at Hokio Beach.

MAORI WORDS

Kaitiaki : Guardian or person with a duty of care.

Kaumatua : An elderly person of status.

Tikanga : Correct procedure or custom.

LEGAL TERMS

Amicus curiae : Friend of the court, generally a lawyer who does not represent either party at trial but assists the court by raising points of law.

District Court : A general court with 178 judges to handle the majority of criminal cases.

EM bail : Electronic monitoring of a defendant who must wear an ankle 'bracelet' and live at an approved address while awaiting trial. The defendant cannot leave this address without approval, except to travel to court by a direct route.

Legal aid : Government funding to pay for legal help for people who cannot afford a lawyer.

Maori Land Court : Operates under Te Ture Whenua Maori Act 1993 to provide jurisdiction over Maori land in a manner that promotes the retention of this land and to facilitate occupation, development and use.

Self-represented or lay litigant : Person who represents himself in court, rather than engage a lawyer.

POINTS OF INTEREST

Horowhenua District Council : Territorial authority formed in 1989 to provide roading, water, wastewater and many other services for Levin, other townships and the rural area of the Horowhenua.

Horowhenua Lake Domain Board : Board appointed by the Minister of Conservation to administer Lake Horowhenua.

Maori Affairs Board : Operated under Maori Affairs Act 1953 to assist with the administration of Maori Land until restructuring occurred in 1989.

Notice of dislaimer : At no stage is the identity of Phil Taueki's legal aid lawyer disclosed in this book.

Ch3
objecting “vociferously”

“The event had not been organised lawfully. There was no permit for the assembly or event. And there was no permit for the motorised craft on the lake. Each permit should have been obtained. To make matters worse, the organiser of the event was a constable.”

Justice Kos

While the police were actively supporting the sailing club’s determination to remain in the domain buildings, no such similar discretion was applied to Phil as an owner. By 2011, eight years had elapsed since the sailing club’s lease expired but the police still treated them as ‘tenants’ while the owners were ‘squatters.’

Phil’s accommodation was a converted garage on the far side of the domain boundary. In other words, it was part of the lake title that was not within the domain area. It was the site of Pa o Potangotango where Phil’s ancestors lived long before any white man beached his boat on the shores of a country later to be known as New Zealand.

Nearby, Mua-Upoko’s paramount chiefs had rested upon death before being ferried across the lake by their most trusted warriors for burial in a secret site. There were those who believed that if the remains of any great chief could be found and exhumed, his brains would be devoured by his enemy to consume his mana.

Known as the Nursery, this shed no longer served its purpose and was therefore an ideal site for the lake trust to offer Phil as a base for him to protect the lake from those who abused the privilege of public access. His new home was furnished with little more than a bed, a desk, a stove and a fridge. He would pay for his own power and water, but there seemed to be no need to negotiate a more formal arrangement for an owner to occupy his own place. Phil shifted into the building in 2004, and it was here anybody who wanted to know more about the lake would seek him out.

Mua-Upoko had always been plagued by inter-generational hostility. Leadership was no longer based on traditional values. Elections determined by majority vote undermined

the traditional leadership of Mua-Upoko, and the incoming trustees made it their mission to oust Phil from his lakeside home.

Shortly before 1am on Saturday 18 June 2011, four police officers banged on the door of Phil's home, rousing him from a deep slumber to arrest him for wilful trespass. Vehemently Phil protested that this was his land and that any trespass notice was invalid, but to no avail. He was not permitted to collect any of his belongings nor arrange for the welfare of his elderly dogs before he was arrested, handcuffed and taken down to the Levin police station for processing. The only concession came from a police officer who offered to drive his car down to the police station so he would not be stranded outside with nowhere to go on that bitterly cold night. Eventually, he was released on a police bail bond banning him from going anywhere near the lake or environs. He was not permitted to return home, not even to pick up his toothbrush. He arrived on my doorstep, with nothing but the clothes on his back, during the very early hours of the morning.

His first court appearance on this trespass charge would be in the Levin District Court at 8.30am on Thursday 23 June 2011. When he finally managed to appear before a judge, he tried to point out that neither the trespass notice nor the bail bond was lawful, but Judge Clapham refused to address any of these issues. Instead he adjourned Phil's case until the conclusion of that sitting, and in the meantime Phil was prohibited from leaving the court precincts. When he appeared before this judge again later that day, Phil was told in no uncertain terms that if he was not prepared to accept these bail conditions, he would be remanded in custody.

Phil therefore risked arrest, even if he turned up at a judicial conference of the Waitangi Tribunal taking place at a marae overlooking the lake. So Phil appealed. Unfortunately, his appeal of the bail conditions could not be heard before his trial in the District Court on 11 August 2011.

For this trial, Phil planned to make an opening statement that this may appear to be a simple case of somebody refusing to leave a property after being warned to do so. "But the onus is upon the police to prove that the person who issued the trespass notice had the authority to do so."

He never got a chance to make that statement. While Dr Jon Procter as the prosecution's first witness was still under cross-examination, Judge Dawson adjourned the trial to hold a discussion in-chambers. Returning to the courtroom, Judge Dawson dismissed this charge. As he put it: "The trespass notice served on Mr Taueki was issued without the clear unequivocal authority of the Horowhenua 11 Lake Reservation Trust and is therefore invalid. As the trespass notice is invalid, the charge of trespass is dismissed."

That is precisely what Phil had told the police eight weeks beforehand, but the police refused to listen. Nevertheless for eight weeks, Phil was denied his right to go anywhere near his home or the lake. The irony was that Phil was an owner, but Dr Jon Procter, the chair of the lake trust was not.

Phil had already applied to the Maori Land Court to remove Dr Jon Procter from the lake trust, but his trial had provided him with further evidence that the chair was acting unilaterally. When Phil described what had happened in court only a few days beforehand, the Maori Land Court Judge contradicted him. That was not what happened, Phil was informed. When we received a written copy of Judge Dawson's judgement only a few days later, it proved Phil was right and this judge was wrong.

A further Maori Land Court hearing took place on the 16 February 2012. By the time the morning's session was over, Dr Jon Procter had reason to be anxious. Outside the courtroom we watched him pacing around and around in circles, then suddenly he made a beeline inside. Normally Bryan Ten Have and I keep Phil under close surveillance at all times, but this time he had slipped from our sight. I raced up the stairs while Bryan Ten Have took the lift. Phil was sitting in the waiting room talking to somebody, but Dr Jon Procter had obviously said something highly offensive to Phil as he walked past. Phil jumped up to confront Dr Jon Procter, and I rushed over to pull Phil back. Dr Jon Procter raced out of the waiting room and when he returned, he was accompanied by a police officer who sat beside him for the remainder of this hearing.

At 4pm that day, Phil was arrested for assault, handcuffed and taken down to the police station where he was detained in a prison cell until 4pm the next day. Making a statement to the police at 11.15am that day, Bryan Ten Have said he did not see Phil hit Dr Jon Procter. Constable Whiti Timu Timu replied : "Well that doesn't matter because Phil had already admitted punching him in the head."

But when we received her police notes, it was obvious that she had not interviewed Phil until 12 noon that day, and even then, all she had managed to extract out of him was a hearsay confession that he had tweaked Dr Jon Procter's nose. But even this concession would be enough for a conviction.

At trial, Constable Whiti Timu Timu denied she had opposed bail. By now I would sit beside Phil as his McKenzie Friend and therefore I was able to rummage through his documents to find an official bail opposition form. Phil read out a police number, and asked if that was hers. She admitted it was. And then Phil read her own words back to her. She could no longer deny she had opposed bail.

As an author, I knew what a voire dire was, and had primed Phil to request one. A voire dire is a trial within a trial to investigate the admissibility of evidence. We planned to challenge the admissibility of a hearsay confession obtained under compulsion. Constable Whiti Timu Timu had denied on oath that she had opposed bail. We had proof that she had.

As the Maori liaison officer, Constable Whiti Timu Timu would have known how important it was for Phil to attend another Waitangi Tribunal judicial conference the next week and then a two-day Maori Land Court hearing into matters Phil had raised four years beforehand. Of course he would admit to anything so that he could walk out that door. Obtained under duress, Phil's hearsay confession was rendered inadmissible.

Now reliant on the court CCTV footage, the Judge viewed it many a time before finally dismissing that charge. No conviction meant no sentencing hearing. We were jubilant!

We had also been jubilant the day Dr Jon Procter's trespass charge had been thrown out of court, thus allowing Phil to return to his home at the lake, another humiliating defeat for Dr Jon Procter. As we drove through the domain gate to the lake, Dr Jon Procter's father, Noel Procter had parked nearby. His menacing glare disturbed me.

It was not the first time, this family had accused Phil of a crime only to have it thrown out. During May 2006, Noel Procter had been loitering around Phil's place and refused to leave when asked to do so. He had tried to convince the police that he was using a broken shovel handle as a walking stick for balance following brain surgery four months beforehand. When Phil tried to grab the stick off him, an indicator light on Noel Procter's vehicle was damaged.

On the 13th September 2011 only a month after his son's assault complaint was thrown out, Noel Procter parked his Horizons work vehicle in an ideal spot to spy on Phil. Irked by this surveillance, Phil went outside and approached Noel Procter. Noel Procter says his driver's window was wound down about five inches. Phil put his hand inside and started waving it around so that Noel Procter wound his window up, forcing Phil to remove his hand to avoid it becoming trapped.

"I then put the vehicle in reverse and began to drive away", Noel Procter told the police. "As I reversed, the defendant struck the driver's side wing mirror with his hand and the back of it broke off. As I drove away, I saw the defendant holding his hand so he must have hurt it when he struck the vehicle."

After Noel Procter had disappeared, Phil picked the plastic cover of the wing mirror off his driveway and popped it into his filing cabinet.

The next day on the 14th September 2011, there was a ceremony at nearby Lake Papaitonga, attended by fifty or sixty people including the Minister of Conservation, the local Member of Parliament, Mayor Brendan Duffy and others. As a councillor, I had received an official invitation and asked Phil to accompany me for my own protection. As a pest control officer for Horizons, Noel Procter was also present.

“Following the ceremony, the defendant walked straight towards me”, Noel Procter complained to the police. “He walked past a few steps and then turned back to me and said in an angry tone, ‘Procter come down to the fucking lake’.”

Phil then asked: “Is that your boss standing next to you?”

Said Noel Procter in court : “It is my firm belief that the defendant was meaning that he wanted me to return to Lake Horowhenua Domain so that he could assault me.”

Phil did not discover he would be facing charges over both incidents until 11 October 2011, two days after the passing of his much-loved Mum. While the family were preparing for her tangi, her funeral the next day, Constable Simon Carter approached Phil and said he wanted to speak to him about the intentional damage to Noel Procter’s vehicle on 13 September 2011. In his notes, he recorded: “Philip says Procter tried to run him over.”

So the day before his Mum’s tangi, Phil was arrested, handcuffed and taken down to the police station for processing. There was only one thought in Phil’s mind. He was anxious the police might keep him in custody preventing him attending his Mum’s tangi the following day.

It was not until these charges came to trial in the Levin District Court on 29 March 2012 that we realised not even Noel Procter’s boss, Alistair Beveridge would be giving evidence to corroborate his version of events. But we had been advised that witnesses should not be called if they did not witness anything. This ‘altercation’ was supposed to have happened after the ceremony when Phil and I were returning to my car.

I took the stand to testify that I had kept Phil under surveillance at all times because I suspected Noel Procter would pull a stunt like this after watching him lurking behind the tent where the Department of Conservation insisted Phil sit due to his status as tangata whenua. I was sitting only a metre or so away in the official tent at right angles to Phil’s tent. After the official speeches, we lined up to hongi, the ceremonial touching of noses, and as soon as I reached Phil, I whispered to him that I wanted to leave straightaway because I did not feel comfortable. Walking back to my car, we engaged in conversation

with the former Mayor Malcolm Guy, and not far behind us was a local businessman. None of us saw or heard any exchange with Noel Procter.

As for the wilful damage charge, Noel Procter testified that the work vehicle he drove had been purchased new, and there had never been any damage to this vehicle until that day. Phil summoned as a witness, a panel beater who had been in the business for forty years. He examined the wing mirror cover Phil showed him, observing first a number indicating that this was likely to be a replacement part sold by an auto-wrecker. He then pointed out a defect, suggesting it had been wrongly installed and therefore it would not have taken much to dislodge it. The cover was not otherwise damaged, he testified, and could have been popped back on exactly as before. Nevertheless, the judge considered Noel Procter to be credible and convicted Phil on both counts.

The very same day Phil was arrested for wilful damage after being hit by Noel Procter's reversing vehicle, he was also accused of dangerous driving. A dangerous driving conviction carries an automatic driving suspension of six months, so this was a charge to be taken very seriously indeed.

During the previous week, the local newspaper had featured a front page article on Peter Franklin, their chief reporter and Dave Key, the local breakfast DJ rowing on the lake to promote a regatta organised by a local police officer. Sensing it was unlikely this organiser had bothered to obtain a permit to stage this event, Phil contacted a number of people who had a responsibility to enforce the domain board's by-laws. As usual, nobody showed the slightest interest in Phil's concerns.

On the Sunday of this regatta, which of course was the day before his Mum's tangi, Phil left home early in the morning to collect family members arriving from overseas. On his return, he couldn't help noticing people trailering in motorised boats, marking out a course on the lake and setting up gazebos a short distance from the urupa where he would have the solemn duty of digging his Mum's grave before interment. Inside his house, Phil could still hear people laughing, because they had encroached on the other side of the domain boundary to pitch their tents.

Unable to tolerate their noise any longer, Phil drove over to Peter Franklin who was standing on the edge of the lake ; his camera slung around his neck. The organiser, Senior Constable Mike Tate came over to Phil and assured him he had obtained a permit. He also disputed Phil's assertion it was his land.

Phil's day went from bad to worse. When he tried to reverse his car, it became stuck in the boggy ground. Nobody came forward to help, and so he was forced to push it out on his own while everybody crowded around jeering at him. Then the police arrived. In

front of everybody, they arrested him, handcuffed him and left him standing around while conducting a futile search of his home and car for cannabis before taking him down the police station for processing.

When Phil returned to the lake at 4pm, the event was still in progress. He locked up his house and spent the night with his sister who was already inundated with guests for the tangi the next day.

Once again, Phil was forced to defend his behaviour in court. Having laid a complaint of dangerous driving, Peter Franklin claimed Phil had driven directly towards him. “His car slid to a stop”, he testified. But there were no skids marks. Nor had Peter Franklin taken any evasive action. But as Phil stated, if he had travelled at the speed Peter Franklin alleged, his car would have slid into the lake. Much to our relief, this charge was dismissed.

As for the other charge, disorderly behaviour, Judge Smith was not prepared to entertain any evidence about the legality of this regatta. At great expense, we had compiled an exhibit book with colour photographs. For instance, we had photographed the sign at the entrance of the park stating that all boats must be thoroughly washed down before entering the water. But the judge picked up our exhibit book, and holding it aloft, flicked through the pages as his words “irrelevant, irrelevant, irrelevant” reverberated around the courtroom.

Although the domain board was reluctant to divulge whether Senior Constable Mike Tate had applied for a permit, eventually the board chair was forced to concede there was no permit. As Phil suspected, Senior Constable Mike Tate had lied. But Judge Smith was adamant he would not accept any of the evidence Phil planned to produce. Transcripts are useful to record comments judges make.

“Mr Taueki,” he said, “let’s assume just for the sake of argument that the senior constable and the surf club have breached every law in the country, it’s irrelevant to the charges you face.”

Phil persisted: “It will become relevant.”

Judge Smith thundered : “The fact of the matter is that even if Senior Constable Tate is a mass murderer, it is irrelevant to the charges you face.”

Judge Smith was wrong. Phil appealed. In the Wellington High Court, Justice Kos agreed Phil had a point. “The event had not been organised lawfully”, he commented. “There was no permit for the assembly or event. And there was no permit for the motor-

ised craft on the lake. Each permit should have been obtained. To make matters worse, the organiser of the event was a constable."

Phil was entitled to express his objections, and to express them "vociferously". As for Phil's language, although Justice Kos suggested that in some respects it was ill-chosen, "worse is heard out of the mouths of schoolgirls in shopping malls on Friday evenings than was heard from Mr Taueki. And with less cause." After viewing a videotape of the first phase of this incident, Justice Kos described Phil's behaviour as ill-mannered. "But that does not make it disorderly. His behaviour was not threatening, in the sense that any of those he spoke to appeared to back away or appeared to be fearful. Mr Tate pressed forward during the conversation. Mr Taueki tends to back away."

Then he added that "Mr Tate said in evidence he thought he might be hit. That is not my perception of the interaction caught on video. For most of the time, Mr Tate is standing there arguing with Mr Taueki, with his hands in his pockets."

There was only one small disappointment with this judgement. Judge Smith had refused to let Phil cross-examine a prosecution witness, Nathan Murray, and we had planned to produce prior inconsistent statements to challenge the veracity of this witness. Justice Kos therefore had no reason to doubt his credibility. Although he upheld Phil's conviction, he reduced his fine.

We were now dealing with such an avalanche of charges that Bryan Ten Have remained on stand-by to rush down and record any incident that might result in charges being laid. Without these videotapes, Phil would not have any antidote to the lies witnesses told.

chapter 3 notes

Time frame : June - October 2011

objecting “vociferously”

milieu

In the middle of the night, Phil Taueki was woken by the police banging on his door to evict him from his home on his own land.

PEOPLE OF INTEREST

Beveridge, Alistair : Horizons Regional Council Environmental Management Officer who left to become a director for the Catalyst Group, an environmental consent consultancy.

Carter, Simon : Constable at the Levin Police Station.

Clapham, John : District Court Judge who became an acting district court judge upon his retirement in October 2008.

Dawson, Nevin : District Court Judge appointed in 2003. Prior to his appointment he was Vice President of the NZ Law Society.

Franklin, Peter : Chief Reporter for Horowhenua Chronicle.

Guy, Malcolm : Horowhenua Mayor from 1989 to 1996. Horizons Regional Councillor from 1996-2007. Final Chairperson of Horowhenua County Council. Former Lake Domain Board member. Nathan Guy’s father, Minister for Primary Industries.

Key, Dave : Breakfast Host of More FM Radio Station.

Kos, Stephen : Justice of the High Court who would be appointed to the Court of Appeal in 2015 and President of the Court of Appeal in 2016.

Murray, Nathan : Horowhenua District Councillor from 2007 to 2013. Lake Domain Board member.

Procter, Jonathon : Chairman of the Lake trustees. Lake Domain Board member. He holds a doctorate in volcanology and is an associate professor at Massey University.

Procter, Noel : Horizons Pest Control Officer who is also the father of Jonathon.

Smith, David : District Court Judge sworn in during January 2012.

Tate, Mike : Senior Constable, who is also the Chairperson of the Levin-Waiterere Surf Club.

Timu Timu, Whiti : Police Constable and Horowhenua's Maori Liaison Officer.

MAORI WORDS

Hongi : To press noses in greeting.

Kupapa : Originally a Maori such as Major Kemp who fought for the British in the New Zealand Wars of the 19th century, but in a more modern sense, a kupapa is any Maori who acts against the interests of a tribe.

Mana : Prestige, authority, charisma. Mana is inherited at birth. The more senior the descent, the greater the mana.

Marae : The open area in where formal greetings and discussions take place.

Tangata whenua : The people of the land.

Tangi : Rites for the dead, funeral.

Urupa : Burial ground.

LEGAL TERMS

High Court : The highest court able to hear cases in the first instance but the High Court also handles appeals from other courts such as the District Court and Environment Court.

McKenzie Friend : Support person to assist a person who does not have a lawyer.

Voire dire : Trial within a trial to investigate admissibility of evidence.

POINTS OF INTEREST

CCTV : Closed circuit television system primarily for surveillance and security purposes. The Levin Crime Prevention Camera Trust has installed a dozen cameras around Levin's central business area.

Horizons : Also known as the Manawatu-Wanganui Regional Council, this regional authority is responsible for managing natural resources for the region, including Horowhenua. It is also the regulatory authority for water-use consents.

Horowhenua 11 Lake Reservation Trust : Trustees who administer the Horowhenua 11 Lake on behalf of the beneficial owners. This trust also goes by the name of Horowhenua Lake Trust. Neither is registered as an incorporated society or trust.

History of the Horowhenua 11 Lake Reservation Trustees : S18(2) of the Reserves and Other Lands Disposal Act 1956 declares that Horowhenua 11 (Lake) is "hereby declared to be and to have always been owned by the Maori owners, and the said lake, dewatered area and strip of land are hereby vested in the trustees appointed by Order of the Maori Land Court dated the eighth day of August nineteen hundred and fifty-one, in trust for the said Maori owners".

Dated 8 August 1951, an extract from the Wellington Minute Book of the Maori Land Court records the minutes of the application to appoint new trustees for the Part Horowhenua 11 (Horowhenua Lake). This Trust was created by a Partition Order made at Levin on the 19th October 1898, for the purpose of creating fishing rights over the waters of the Horowhenua Lake for members of the Muaupoko tribe who might then or thereafter own any part of Horowhenua No. 11. Fourteen persons were named as Trustees and all are now deceased.

At this court hearing, James Hurunui (Tukapua), sworn, testified that on the 19 March 1951, he convened a meeting of the beneficial owners at which the Horowhenua Lake was the sole subject of discussion. From 45 to 50 people attended. He was the Chairman of the meeting. He called for nominations of 14 persons as new trustees. This was done. Each nomination was in favour of a successor of each original trustees. He said he was directed to inform the Court that these nominees were properly elected. A list of nominees was read out in Court and this was confirmed by the (unspecified) persons present who had attended the meeting.

On the twelfth day of October 1959, a certificate of title was issued under the Land Transfer Act that "the persons named in the schedule hereunder written are seised of an estate in fee simple in trust appurtenant to and subject to Section 18 Reserves and Other Lands Disposal Act 1956 for all members of the Muaupoko Tribe who might at the 19th October 1898 or thereafter own any part of the Horowhenua XI Block and who are hereinafter referred to as "the Maori owners".

Tame Taueki was one of fourteen trustees appointed by the Maori Land Court in 1951. Tame Taueki's name also appeared on the certificate of title issued on the twelfth day of October 1959. Tame Taueki died on the 11th day of December 1953. According to s74 of the Land Transfer Act 1952, issuing a certificate in the name of a person who has previously died does not void the certificate of title.

However, it does raise questions about the representation of the Taueki family during crucial periods in the history of Lake Horowhenua, namely the enactment of ROLD, vesting the lake in these trustees and issuing a certificate of title in these names.

It also raises questions about the legal ownership of Lake Horowhenua, if Parliament has vested this property in trustees appointed in 1951, who are now all deceased.

Ch4
miscarriage of justice

"The concern of this court is with the interests of justice. The issue is whether the process of presentation of the case to the court has been sufficiently robust that there is no risk that it may cause the course of justice to miscarry."

Justice McKenzie

In Phil's effort to stop the unlawful regatta Senior Constable Mike Tate had organised, Phil had contacted Horowhenua's Mayor Brendan Duffy who was also the most influential member of the Horowhenua's domain board. Mayor Brendan Duffy in his statement to the police referring to Phil : "He and his family believe they are the owners and guardians of Lake Horowhenua. However the Horowhenua District Council deals with the Muaupoko Tribal Authority in relation to the lake. Whenever any activity occurs at the lake, Taueki and his family/supporters try to stop it. There were also previous incidents where Philip Taueki and his family and friends took over the Yacht Club and had to be removed."

Therein lies the crux of the problem. This tribal authority, generally known as the MTA, was not the owner of the lake; it had no direct role in the operation of the lake, and was certainly not the organisation a council should approach in relation to the lake. Mayor Brendan Duffy should have known better. He was born in Levin, raised on a farm near the lake, elected onto the council in 1995 and mayor in 2004.

"Maori owners" is defined in the preamble to ROLD (the Reserves and Other Lands Disposal act). Whilst it might not be the ideal definition, it stipulates that they must own land in Block 11 and they must be Mua-Upoko. Phil is the only owner whose status has been officially recognised by the Supreme Court, New Zealand's highest court.

In the few days leading up to this regatta, Phil had phoned Mayor Brendan Duffy several times. As an early riser who was spending his days with his dying mother, Phil's initial calls were between 7am and 8.30am. Mayor Brendan Duffy's wife Sheryl Duffy picked up the first couple of calls but refused to pass a message on to her husband before hanging up. The third call Mayor Brendan Duffy answered, and afterwards Mayor Brendan

Duffy grabbed a pen to jot down what he could recall. He would later testify that he did not consider this call to be a personal threat. The next morning, Phil phoned Mayor Brendan Duffy at 5.40am to tell him that the paddling people had not got permission to hold this event and he would put a stop to it. And on the Friday, there were three calls between 4.50am and 6am; the first caller hanging up before he could answer it.

During the second call, Phil raised various issues such as the lack of wash-down facilities for boats and lack of toilets in the building that the rowing club was continuing to occupy. Unless these issues were sorted out, Phil intended to go around to Mayor Brendan Duffy's house. Asked "when?" Phil replied "at 8am on Sunday, the day of the regatta." Mayor Brendan Duffy reports he calmly terminated the call and phoned the police. The third call had also been cut off when Phil started complaining about the rubbish being dumped at the lake.

That was the morning, Phil's Mum passed away. Each day that week he had kept a vigil at her bedside, and each evening he returned to his home worried sick he would receive the bad news. At the time his sleep had been disrupted by cars hooning around the lake, as the council no longer locked the gates at night. In hindsight, Phil concedes that the timing of his calls might not have been appropriate. But that was the least of his worries at the time.

The day before his Mum's tangi, the police had arrested Phil on two counts of criminal harassment; the penalty being two year's imprisonment. These charges related to Phil's phone calls to Mayor Brendan Duffy's home. But it was the bail conditions that were particularly troublesome. He was prohibited from associating with Mayor Brendan Duffy or Mayoress. Concerned about the implications of these conditions, he sought clarification. Phil was contesting the general elections as a platform to campaign on the lake issues. He didn't want any public meetings disrupted by the arrival of the police to arrest him, if Mayor Brendan Duffy happened to be in the audience.

His application for a bail variation was finally heard by Judge Lynch on 10 November 2011. Phil argued that these conditions were so draconian that he would be forced to leave if he spotted Mayor Brendan Duffy anywhere near, for instance, the Christmas parade. Judge Lynch agreed, and even the amendment sought by the police would curtail a citizen's freedoms under the Bill of Rights Act 1990. So Phil offered to notify the police 24 hours before attending any meeting the public had a right to attend.

The next day, he turned up for a private function at the Foxton RSA to commemorate Armistice Day. At the time, I was Vice-President of this returned servicemen's association and Phil was a member. Phil was sitting down quietly talking to his elderly aunt when a police officer arrived and asked him to wait outside while more reinforcements turned

up. He protested that his bail conditions had been altered. When I explained the new conditions, the police refused to listen. It was then that I spotted Mayor Brendan Duffy hovering around in the restaurant area. Despite being a member of the committee, I had no idea he would be there.

By now, three or four police cars had pulled up outside, and guests at the function were all watching though the windows. Wearing his best suit, Phil was handcuffed and led over to one of the police cars waiting with the back door open. Meanwhile a female police officer came over to tell me that Phil was worried he could not find his car keys. I went over to the police car, where he was squirming in the back seat, trying to reach into the pockets of his suit. I was also threatened with arrest. And when a journalist came outside with a camera, she was also ordered to stay well away. And without Phil's car keys, I could not retrieve Phil's new bail conditions from the glove box. Once again, Phil spent a sunny afternoon in the bleak and cold police cells.

It was not until May 2012 the following year, these criminal harassment charges were heard. Both charges were dismissed. For these charges, we had engaged Steven Price as Phil's lawyer. In court, Steven Price had argued that political speech is critically important, and that it can be colourful, hyperbolic and even disrespectful. And Phil did have a point, he said. "The regatta had been held without a permit, and as Mayor Brendan Duffy was a prominent member of the domain board, it was his responsibility to put a stop to it."

On 19 August 2012, members of a Wellington rowing club arrived for a regatta hosted by the Horowhenua rowing club. When Phil challenged the legality of this event, the rowers summoned the police who tried to find some excuse to arrest him. They tried breach of bail, but I was able to point out there no bail conditions they could exploit. When a constable tried to trespass him, I provided proof that Phil was standing on his own land. They eventually left, for once without Phil handcuffed in the back of their car. While the rowers were on site, Phil took a number of photographs on his mobile to be presented to the Maori Land Court for evidential purposes. There were still no wash-down facilities at the lake.

On 21 August 2012, Swazi owner Davey Hughes and a friend took their canoes down to the lake. The next day, Senior Constable Mike Tate went down to the lake to go kayaking with his friend John Taylor. While Senior Constable Mike Tate was still out on the lake, John Taylor returned and was putting his kayak back on the roof-rack when Phil turned up to take some more photographs on his mobile. John Taylor would testify that he was quite shocked by Phil's language and couldn't believe the way he was behaving towards

a member of the public using 'public facilities'. When Senior Constable Mike Tate returned to shore, he immediately got onto his police radio to summon his colleagues.

After taking his photographs, Phil had returned home and was tucking into a meal of roast chicken, a welcome treat, when Constable Lionel Currie knocked on the door. When Constable Lionel Currie claimed that a member of the public had accused him of assault, Phil replied that it was all fabricated. In his police notes, Constable Lionel Currie recorded his own next question: "What gives you the right to approach people and tell them we can't be on the lake?" I noted the word 'we'. Constable Lionel Currie immediately seized Phil's cell phone with all his evidential photographs, arrested him and took him down to the police station in handcuffs for processing.

Phil doesn't have many pleasures so his roast chicken left on the plate, was now inedible, spoiling a rare indulgence.

Six days later, Phil would be arrested at 7am for a breach of his new bail conditions and held in custody overnight. In total, Phil would be facing an additional four charges: two counts of insulting language, one of threatening behaviour and finally assault due to the allegations John Taylor had made.

The first charge was problematic. The person Phil was supposed to have insulted had never made any complaint to the police, and as he would be out of the country on the day of the trial, Phil received an e-mail notifying him that this charge had been withdrawn. In court, the police pressed ahead with this charge anyway. Phil asked Senior Constable Mike Tate when this charge had been reinstated. Senior Constable Mike Tate replied that it has never been withdrawn so it did not need to be reinstated. Nevertheless, Phil quickly rallied and managed to get both charges of insulting language dismissed.

John Taylor had accused Phil of threatening to 'have him' when he won in the Maori Land Court and pushing the car door against him. Constable Lionel Currie hadn't even bothered to check the car door for fingerprints. Nevertheless Judge Ross convicted Phil on both the assault and threatening charges before fining him $350.

Meanwhile Phil's mobile phone confiscated by Constable Lionel Currie had been handed over to Senior Constable Mike Tate who was the officer in charge of this case. During the trial, Phil asked Senior Constable Mike Tate whether he was appearing as the officer-in charge or as the complainant. Senior Constable Mike Tate replied: "Both." Judge Ross noted Phil's concern about multiple roles but commented that it could not be taken any further.

On appeal, Justice McKenzie viewed the matter more seriously. “The concern of this Court is with the interests of justice”, he wrote in his judgement. “The issue is whether the process of presentation of the case to the Court has been sufficiently robust that there is no risk that it may cause the course of justice to miscarry.”

He then went on to report several unsatisfactory features of this case. For instance, the police had not taken statements from any of the people involved in the initial incident on 21 August 2012 : neither the people the police claimed had been insulted nor Taueki himself. Although these charges had been dismissed, Justice McKenzie considered there was a substantial risk that the process of justice had miscarried in respect of the entire prosecution. He therefore concluded that the convictions on the 22 August charges could not be allowed to stand and quashed them both.

But there was one last point that Justice McKenzie wanted to address. John Taylor had tried to claim that Phil was threatening to inflict violence on him at some future date. But Justice McKenzie pointed out that one element of the offence that the prosecution must prove is the making of a threat to injure. A factual finding was required. “Mr Taueki’s contention is that these words did not convey a threat to injure, rather they indicated an intention to have the issues resolved by legal processes through the courts.” If this conviction had not already been quashed, he would have allowed the appeal on that ground.

It was a resounding victory for Phil, and the number of charges thrown out were starting to mount up.

At 7am on Monday 12 December 2011, the Horowhenua District Council and others had gathered for ‘a symbolic ceremony’ to lay a stone for Te Takere, Levin’s new culture and community centre. This was to be a solemn ceremony in accordance with Mua-Upoko tikanga. The day beforehand, the stone collector had to be airlifted out of the Tararua Ranges, not a good omen. As a councillor, I was obliged to attend and as soon as I arrived a couple of my colleagues became quite abusive. After tolerating this culturally offensive ceremony for fifteen minutes, finally Phil interjected. The police were called, Phil was escorted away in handcuffs and taken down to the police station to be charged with threatening behaviour.

It was to be yet another charge withdrawn before trial. As Steven Price pointed out, the naming of the facility, the collection of the stone and the ceremony itself conducted by a local tribal authority had caused offence, and Phil was not the only one to feel affronted by this ceremony. He sought to have his say, as is his right under Mua-Upoko tikanga, but had been rebuffed.

There would be a further protest when Te Takere was officially opened by Mayor Brendan Duffy on 29 September 2012. This time, the local council had caused even more offence by announcing that a six-foot waka found near Lake Horowhenua would be suspended as a focal point above the café in Te Takere. Waka should never be placed near food. Furthermore, Te Papa as New Zealand's national museum would be loaning 200 items of Mua-Upoko taonga to be displayed in this facility. There had been no consultation with Mua-Upoko before these arrangements were announced on the front page of the local newspaper. These artefacts had been scooped off the bed of the lake by the Black brothers in the 1930's when the level of the lake had been lowered to pacify farmers who did not want their neighbouring swampland flooded.

Meanwhile on 29 September 2012 a 'fun-packed' Mardi Gras had been organised to celebrate Te Takere's opening that would commence with a powhiri; one again organised by the local tribal authority. Phil and others sat up late at night preparing their placards for the protest. At this protest the next morning, Phil was warned that if he yelled at the official party he would be arrested. While we were assembling to walk onto the platform, a council colleague gestured belligerently towards me, ordering me to leave. Also in the official party was Brenton Tukapua, chairman of the MTA. While waiting for the ceremony to start, Brenton Tukapua lunged towards one of the other protesters and had to be restrained by his companions.

Phil was dealing with a tall police officer standing inches in front of him. Phil explains he is there to protest peacefully and asks Police Sergeant Sarn Paroli to "get out of my face". Police Sergeant Sarn Paroli tells him to calm down or he will be arrested. Phil then hands his placard to another of the protesters and moving behind the placards, takes up a position fifty to eighty feet away from the stage, shielded from the official party by a crowd of onlookers.

Police Sergeant Marty Bull later testified in court that "perhaps Mr Tukapua would become angry again".

During this incident Police Sergeant Marty Bull looks back and nods towards Police Sergeant Sarn Paroli. They both move in on Phil, handcuffing him. These two tall police officers frogmarched Phil through the crowd in the carpark, then along the footpath to the police station, where he was charged with disorderly behaviour likely to cause violence.

When I left the stage after the formalities were over, I immediately searched for Phil. He was where I feared he would be, down at the police station being processed. Once again, I was pacing up and down hoping that he would be released rather than remanded in custody. And if he was remanded in custody, who would care for his large, elderly dogs?

Phil knew there was a CCTV camera that would capture what happened that morning, and was confident it would prove there were no grounds to arrest him on this latest charge. But when he asked for this CCTV footage, Police Sergeant Sarn Paroli reported that it had been downloaded in the wrong format and was not retrievable. Despite the large crowd, the police took no witness statements that day and relied on the testimony of two police officers, Constable Lionel Currie and Police Sergeant Marty Bull. Fortunately Bryan Ten Have had captured everything on video.

Brenton Tukapua refused to have anything to do with this case, and several months later they took a statement from another MTA member within the tribe. In court, Phil posed a valid question to this MTA member : "Why on earth would he be making gestures and trying to get a reaction when he's standing in a place where you've admitted you couldn't even see him or hear him?"

Police Sergeant Marty Bull testified : "I actually recall him slapping his chest (the witness gestures with an open palmed hand against each of his chest sides). He slapped his chest and that's when we arrested him."

Constable Lionel Currie was also asked to describe this gesture. The transcripts record: "He raises his arms, pushed his arms out in front of him and indicated with his fingers of both hands in a motion directing towards himself."

Police Sergeant Sarn Paroli did not testify. He was travelling around the country fundraising for some worthy cause.

In an exchange with the officer-in-charge of this case, Phil questioned the professionalism of this police investigation.

Q&A
Transcripts ; District Court

Phil Taueki
Nobody made any statements to the police on the day?

Police Sergeant Marty Bull
No.

Phil Taueki
Didn't bother to take any?

Police Sergeant Marty Bull
Not for this sort of charge, no we wouldn't. It's not standard procedure.

Phil Taueki
So what you're saying is this charge doesn't deserve due process?

Police Sergeant Marty Bull
For this sort of charge, and again Mr Taueki, I've been policing for 20 years, for this sort of charge where police officers have witnessed the incident, then it is not general practice to go around taking statements from a number of different people.

Phil Taueki
Even though the defendant may spend three months in jail?

Police Sergeant Marty Bull
... again Mr Taueki, the charge itself in comparison to a lot of others is very minor and...

Phil Taueki
An incident of this type which has been witnessed by police officers, then it is not general practice to go around taking statements off hundreds of people who had also seen this incident. So the only evidence taken that day are the police notes?

Police Sergeant Marty Bull
That's correct.

Phil had drip fed a series of photographs to the prosecution witnesses so that he could cross-examine them on certain points. It was not until Bryan Ten Have appeared as the final witness for the defence that his twenty minute video tape was finally shown to the court. After reserving his decision, Judge Ross settled upon a conviction.

Phil appealed. We engaged Steven Price to handle this appeal. Steven Price would explain that Mr Taueki and the other protestors were there to make a significant cultural and political point. "The new cultural centre would house taonga that was precious to them, including a sacred waka. Yet they – the direct descendants of the region's paramount chief – had not been consulted about it. Nor had they been invited to participate in the official powhiri at the opening ceremony."

Steven Price had provided the High Court with a comprehensive submission that covered every aspect of the trial and eventual judgement. For instance, he pointed out that Constable Lionel Currie's evidence was problematic because the DVD clearly showed

that Phil was holding a sign at the time, thereby making a two-handed gesture impossible.

Justice Kos also watched Bryan Ten Have's videotape. "The recording is not of high quality", he admitted. "But then nor were significant sections of the oral evidence reliable when tested against what is seen in the record. Whatever the deficiencies of the recording, it still demonstrates the frailty of unaided human memory." He added that "Constable Currie's evidence is particularly confused as to sequence."

Not satisfied that Phil's conduct crossed the threshold for unlawful public expression, he granted the appeal. It was another victory for Phil. For Judge Ross, three out of his three convictions had now been quashed on appeal.

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chapter 4 notes

Time frame : October 2011 – September 2012

miscarriage of justice

milieu

Phil Taueki phones Mayor Brendan Duffy and tries stopping an unlawful event organised by a police officer, and protests at an offensive ceremony organised by the local tribal authority.

PEOPLE OF INTEREST

Black brothers : Following the lowering of the level of Lake Horowhenua in 1926, the Black brothers scoured the bed of the lake in 1932, retrieving numerous weapons and other artefacts near the artificial island pa of Wai-kiekie and adjacent island pa of Roha-a-te-kawau.

Bull, Marty : Police Sergeant.

Currie, Lionel : Constable.

Duffy, Brendan : Horowhenua's Mayor from 2004 until 2016.

Duffy, Sheryl : Horowhenua's Mayoress from 2004 until 2016.

Hughes, Davey : Owner of Swazi Apparel, a company that specialises in manufacturing durable outdoor clothing.

Lynch, Gerard : District Court Judge appointed in 2008.

McKenzie, Alan : High Court Justice appointed in 2004. Upon his retirement in 2015, he was awarded a Companion of the Order of New Zealand.

Paroli, Sarn : Police Sergeant.

Price, Steven : Barrister who lectures in media law at Victoria University of Wellington. Granted a Fulbright scholarship to study for a Masters of Journalist at the University at Berkley.

Tate, Mike : Police Senior Constable who chairs the Levin-Waiterere Surf Club.

Taylor, John : Friend of Mike Tate who went kayaking with him on Lake Horowhenua.

Tukapua, Brenton : Charles Broughton's descendant, who chairs the Muaupoko Tribal Authority.

MAORI WORDS

Powhiri : Welcome ceremony on a marae.

Tangi : Funeral.

Taonga : A highly valued treasure including culturally.

Tikanga : Correct procedure or custom.

Waka : Canoe.

LEGAL TERMS

Supreme Court : Highest court in New Zealand and court of last resort that in 2004 replaced the Privy Council based in London. The criteria for leave to appeal is that the proposed appeal must be a matter of general or public importance, and a significant issue relating to the Treaty of Waitangi is considered a matter of general or public importance.

POINTS OF INTEREST

Armistice Day : Commemoration of the signing of an armistice between the Germany and Allied Forces at the 11th hour on the 11th day of the 11th month of 1918.

Muaupoko Tribal Authority : Tribal authority that was established in 1997 as an incorporated society.

RSA : Royal NZ Returned and Services' Association established by Anzacs returning from WW1 to provide support for servicemen and their families.

Te Papa : New Zealand's national museum and art gallery located overlooking the Wellington Harbour. Opened in 1998, it houses a large collection of Maori artefacts and features interactive, visitor-focused museum experiences.

Te Takere : Te Takeretango o Kua-hau-po is Horowhenua's cultural and community centre that houses a library, cultural displays and a youth space

Ch5
threats to kill

"This working bee simply reinforced community ownership and partnership of our lake for the recreational enjoyment of everyone who lives here."

Horowhenua Mayor Brendan Duffy

Following Phil's arrest at the Te Takere opening, the police had given him the usual choice: jail or bail away from the lake. This time he was bailed to my place, reluctantly I agreed. My conscience would never allow me to commit Phil to prison. Once again, Bryan Ten Have and I packed up Phil's possessions, his files and his computer equipment to transport them over to my place. Phil's bail conditions rarely let him return to his place at the lake even to collect his belongings, and he is therefore totally reliant on us to figure out what he will need over the next few days, weeks or even months. This constant disruption was so frustrating for him, and he was usually disgruntled for the next few days.

It was always hard for Phil to get a good nights sleep, bedding down in my guest-room after all the upheaval of his arrest, then bail negotiations and shifting.

That night at 2.40 am, I was awoken by a phone call from somebody wanting to speak to Phil. Obviously I was puzzled, how could anybody have found out where Phil was so quickly, but his voice was familiar and he seemed friendly enough. The phone call suddenly turned nasty when I refused to wake Phil.

"I'm going to fucking kill the cunt" he said so I quickly jotted that comment down. He then went on to say that his whole family wanted Phil dead.

Twenty minutes later, there was a second call. When I asked him to repeat himself, the caller obliged. "I'm going to kill you."

This caller was not drunk. He was deadly serious. I dialled 111 and was advised to call in at a police station in the morning. As a precaution, I e-mailed a message to Police Inspector Mark Harrison. He had been Foxton's police sergeant when the police launched

Operation Damon to confront the Nomad gang in the wake of Dr Teppett's murder. As the local journalist, I had received death threats, but these latest ones were far more sinister.

The Foxton, Foxton Beach and Levin police stations are not usually open on a Sunday, and I was already pre-occupied with Phil's sudden invasion of my space. It was not until mid-morning that I received a visit from a police officer. Initially he was reluctant to do anything but mention this incident in his police notes. I suggested it would be very embarrassing if his local councillor was harmed and he had done nothing about these calls. A fortnight later, he phoned to report that these phone calls had been traced to a Levin landline but the police would not be taking my complaint any further.

Meanwhile the motive for these death threats became apparent when I finally got around to checking my answerphone messages. Michael Fryer Jr, chairman of Horowhenua's Youth Council had left a message upset that somebody had punched a hole in his canoe. I phoned his mobile number and agreed to meet him down at the lake. When I arrived, a woman ordered me to leave because I was not welcome.

The next morning, the Dominion Post newspaper reported that somebody had broken into a domain building and punched holes into 28 of the thirty boats stored inside. Mayor Brendan Duffy and several other councillors had gone down to the lake to view the damage for themselves. The local media commented: "What greeted them was a group of people whose heat turned to anger and then resolve, as club members gathered to support each other and defiantly launch the two undamaged boats, which members rowed proudly on the lake."

According to this report, locals were frustrated at the lack of action taken by the Horowhenua District Council over the behaviour of a small group regarding Lake Horowhenua. As somebody who described herself as a longstanding resident declared: "the land surrounding the Lake Horowhenua was given for the freedom of all." Refusing to be named for fear of reprisals, she said the town has got to get together and fix this. "I've been to see the mayor", she said. "I've banged on his desk asking for action. I am of the opinion he needs to ascertain if any councillor had prior knowledge to the issues which had recently emerged and if so, she should be dismissed from council." This anonymous resident was obviously pointing her finger at me.

The next day, headlines appeared on the front page of yet another newspaper: "Activists suspected of puncturing rowing boats". Mayor Brendan Duffy reported that the club believed the vandalism to be the work of one or two local activists as part of an ongoing dispute over the use of the Maori-owned lake and surrounding land. Police Senior Sergeant Willie Roy stated that the police had received a good response from the public

but they were still keen to hear from anybody else with information. “I think most people would agree the vandalism at the rowing club is inexcusable. Disgusting and cowardly.”

Within a week, the Horowhenua District Council was offering a $5,000 reward for the successful prosecution of the person responsible for the damage to the Horowhenua rowing club’s base. “After the discovery of wanton vandalism, councillors have stood up and urged the community to unite, standing as one in condemning this act and any future attempts to break the community’s spirit”, became the thrust of council’s press release. Cr Garry Good added that there were people out there who knew who the perpetrators were and they should do the decent thing and come forward to help prevent any further desecration of community and personal assets.

Very soon, the council had whipped up enough outrage to catapult this into the national spotlight. On TV 3 News, Mayor Brendan Duffy was suggesting that simmering tensions over a Maori land claim could be behind the vandalism that left a trail of destruction at the rowing club. Their film crew spoke to the man many blamed for the vandalism. Phil denied any connection to it.

On the 16th October 2012, the TV One’s Close Up team interviewed one of the young rowers, Michael Fryer Jr, who had no qualms about appearing on national television to blame Phil for the vandalism.

“Phil is my uncle”, he claimed. “Your nieces and nephews are crying.”

“Front up and know what you have done”, he said. “Man up and apologise.”

Phil was understandably upset by this programme. For a start, Phil was not Michael’s uncle. Second, the police have never been in touch with Phil about this vandalism. And finally, Phil’s bail conditions at the time prevented him from being anywhere near the lake on the night of the break-in. And he had an iron-tight alibi as the protestors were working through the night creating placards for the next day’s protest.

But the Close Up programme would have some serious repercussions. Phil watched this programme while living at the home of his sister Vivienne Taueki. The early-morning death threats and hostility fuelled by media coverage meant it was no longer safe for Phil to remain at my place. However it is never easy for a person on bail to shift from one place to another. He applied for a transfer of his bail address to a safer location where there was a long driveway, guard dogs and a brother-in-law who was fit and well-respected.

It was only a day or so before this programme screened that he managed to make this transfer. The next morning, Michael’s father, aslo known as Michael Fryer phoned Vivi-

enne Taueki's home, saying he wanted to come out and see Phil because he believed Phil had threatened his parents the previous evening. As far as Michael Fryer Snr was concerned Phil had crossed the line. Michael Fryer Snr insisted on driving to Vivienne Taueki's home, even though Vivienne Taueki had told him he would not be welcome. Michael Fryer Snr phoned again demanding to speak to Phil and this time Phil told him in no uncertain terms that he did not want to talk to him or his son.

Shortly after at 8am, a van came speeding up their long driveway. "Just as I was about to hop into the shower, I heard yelling outside", says Phil in his sworn affidavit. "I quickly went to look outside and I could see my sister and her husband arguing with two men who had parked their van in front of my gate and next to my car.

"I came through my gate to see Viv and Simon trying to get rid of these blokes when I realised it must be Fryer." (referring to : Michael Fryer Snr)

Phil said : "Fryer was standing behind the other bloke, making gestures that he was going to kill me. Fryer continued taunting and threatening to kill me."

Phil adds : "He made shooting gestures three or four times." By this Phil meant, Michael Fryer Snr was pointing two fingers towards him and then blowing on them like a smoking gun.

Phil asked : "Are you threatening to shoot me?"

Vivienne Taueki raced inside to call the police, and her emergency call confirms she reported that somebody had just punched her brother. As Phil tried to coerce the intruders into leaving, a couple of windows in the van belonging to Michael Fryer Snr had been smashed. By the time these intruders left, Phil was suffering from facial lacerations, while Vivienne Taueki's face was bruised and swollen.

Meanwhile Mandy Fryer, the wife of Michael Fryer Snr, had also dialled 111. As an emergency call, her entire call was recorded on tape. Her primary concern seemed to be the prospect of her husband facing serious criminal charges if Phil was hurt due to her husband's state of mind and actions. She did not appear to be worried about Phil's safety : "...off the record the police in Levin will probably think yeah", she said with a laugh.

When Phil turned up for court that morning, his face was bloodied and he was constantly wiping away the blood with a tissue. But he was anxious that he would be arrested again because he had just seen the Fryer van outside the police station. His hunch was right. Phil was arrested and charged with wilful damage.

When Phil returned from court to his bail address at Vivienne Taueki's home at around 12.15 PM, the police had still not responded to her emergency call. Phil suggested that Vivienne could go down to the police station and make a formal complaint about the assault on her. This attack had been witnessed by her children, including a five-year old waiting to go to school. It was not until 3.45pm that the police finally arrived, mainly to collect glass fragments from the shattered van window and photograph the crime scene.

Phil also laid a formal complaint. Michael Fryer Snr was not arrested until several weeks later, and then only with the assault on Vivienne Taueki. Despite Phil's facial lacerations, Michael Fryer Snr's only other charge related to his threatening gestures. Arrangements were made for mediation. Due to Phil's bail conditions for the charge of wilful damage, a senior police officer warned Phil he would be arrested if he participated. Phil heard nothing more from the police, not until he discovered quite by chance that Michael Fryer Snr had already appeared in court and been treated very leniently due to this mediation.

Meanwhile, Phil was still facing his own charge of wilful damage. Over the next eight months, Phil would be required to attend court at regular intervals, only to be remanded for a further appearance until finally this case was scheduled to go to trial during June 2013. By this stage, we had received disclosure from the police confirming that the phone call threatening the parents of Michael Fryer Snr had been traced to an Auckland number. Therefore, the catalyst for his rage was completely unfounded.

By June 2013, we were well-prepared for trial, and looking forward to it. As far as we were concerned, this was a home invasion. Phil had been home that morning minding his own business. When somebody phoned the parents of Michael Fryer Snr the previous night, Michael Fryer Snr immediately assumed the caller was Phil. Rather than make a complaint to the police so that the call would be traced, Michael Fryer Snr raced around to collect an accomplice to go around and confront Phil. The owners of the property ordered them to leave. They refused to do so. When Phil emerged, Michael Fryer Snr started threatening him. For his defence, Phil knew he was entitled to use reasonable force to remove Michael Fryer Snr from the property provided he did not strike or injure the intruder. Phil's sister was hit, so it was certainly a hostile situation.

To establish the volatile state of mind of Michael Fryer Snr that morning, we decided to play the emergency call from his wife. To play this tape, first we had to serve a summons on her to appear as a witness. Easier said than done. As soon as Phil approached his wife at her place of work, it was obvious she was upset. Security was called and Phil was trespassed from this government agency for the next two years but at least the fuss meant there could be no doubt whatsoever she was obliged to appear in court as Phil's

witness. Obviously she would be a hostile witness, but all we needed was confirmation that she phoned 111 that morning, because the tape recording and transcripts revealed everything else the court needed to know. The police also knew the content of that call.

Only days before this trial was due to start, it was suddenly abandoned. "The subsequent police investigation established sufficient evidence to charge you with wilful damage. Recently the victims in this matter and the members of your family who were present during the incident, advised Police that they have dealt with the matter restoratively through mediation."

As a result, the charge was withdrawn and Phil was issued with a formal warning. No way, had Phil as a victim advised the police he had dealt with this matter restoratively through mediation. The police had threatened him with arrest if he attended, due to his own bail conditions. This mediation had occurred at least six months beforehand. So why suddenly drop this charge at this eleventh hour? Phil was disappointed. We knew what was at stake, and so did the police. The police had no option but to back down and withdraw this charge. It would have been interesting to watch the reaction of a judge forced to sit there and listen to this entire phone call, as we had many a time.

By this stage it was clear to Phil and me, we were not dealing with an impartial police force.

More evidence would accumulate with alarming rapidity. Vandalism to the rowing club boats had given the Horowhenua District Council an incentive to upgrade both buildings down on the domain. The council not only offered a $5,000 reward for "the apprehension of the perpetrators," but also launched a mayoral fund, allocating $50,000 of council funds to repair both buildings. There was also to be a working bee co-ordinated by senior staff that would take place during the final weekend of October 2012. Council's clear message was that: "We have had enough of this type of behaviour at Lake Horowhenua – let's take a stand in the name of community pride."

As a councillor, I was well aware that this property did not belong to council and there had been no consultation with the owners or for that matter, the domain board. However, it was a tense meeting because my colleagues wanted me ousted from the council chambers, and probably ousted from council altogether, if the truth be told.

Only a few days before this working bee, Phil's bail conditions had been relaxed to allow him to return to his home at the lake. I notified Police Senior Sergeant Willie Roy. He replied with a written warning that if Phil returned to his lake address, this would be a breach of his bail. "Unless you have already changed the bail conditions, and I'm told you have not, then can I suggest you take steps to do so before moving back to the lake

in breach of current conditions." We had great pleasure forwarding the new bail conditions to him to show he was not privy to the latest bail arrangements.

The next morning, Phil discovered a trench had been dug for drainage from the northern building across the domain boundary and into the lake. There was another mound of earth closer to the southern building that he also wanted to inspect and photograph. Both activities were in breach of the domain by-laws, if nothing else. Mayor Brendan Duffy and his Chief Executive David Ward were already on site preparing for the community working bee. When Phil yelled at them to ask what they thought they were doing, Mayor Brendan Duffy ordered Phil to leave. In his formal statement to the police, Mayor Brendan Duffy confirms this. The question is, what authority grants Mayor Brendan Duffy the prerogative to order an owner off his property?

Once Phil had taken the photographs he wanted, we headed back to his place, followed by Mayor Brendan Duffy and Chief Executive David Ward who were holding out their cell phones to record our departure. Halfway there, somebody came over and shoved Phil in the chest, and then another volunteer jumped down from the bouncy castle he was erecting and raced over to us from thirty metres away. In his own formal statement to the police, this volunteer said: "It appeared to me that he was going to assault Mayor Brendan Duffy so I went over with the intention of defusing the situation… He was so close that I thought he was about to hit me so I pushed him back with both hands to his chest. He stumbled backwards."

By the time we reached Phil's place, Fryer's van was parked up his driveway. Michael Fryer Snr was gloating that he had not been arrested for assaulting Phil and his sister three weeks beforehand. As he was not subject to any bail constraints, there was nothing to stop him harassing Phil. But if Phil responded, he would be arrested. The family's taunts proved unnecessary. The police were already on their way, and as soon as they arrived, Phil was arrested, handcuffed and escorted down to the police station for processing.

Once again the charge was to be disorderly behaviour inciting violence; the assault on Phil evidence of inciting violence. Before Phil was taken away, he asked Police Sergeant Jeff Lyver to seize the footage recorded by Mayor Brendan Duffy and Chief Executive David Ward on their cell-phones, as we were told that the police had viewed it. As soon as we could, we made a formal request for this evidence under disclosure. It did not surprise us to receive an e-mail from Police Sergeant Jeff Lyver advising that neither Mayor Brendan Duffy nor chief executive had managed to record it. We knew this footage proved the attack on Phil was unprovoked.

While pacing up and down at the police station waiting for Phil to be released, I prevailed upon a police officer to record a formal statement as I was a witness to this incident. In this signed statement, I described the attack on Phil in full detail while it was still fresh in my mind. Under discovery, Phil is supposed to receive a copy of all statements made to the police about a particular incident. Even though I was a witness and even though Phil was facing a criminal charge, the police never got back in touch with me. It proved my point. The police are selective about the witnesses they call. Anybody whose evidence discounts their 'summary of facts' could be side-lined.

But in the meantime, Police Senior Sergeant Willie Roy got what he wanted. Phil was not to be released from custody until he agreed to new bail conditions barring him from entering the domain area except to drive through to his accommodation. Meanwhile Phil laid a formal complaint against the two men who had assaulted him. He never heard back from the police about this complaint, even though one of his assailants had already admitted pushing him so hard Phil stumbled backwards.

Nevertheless Phil's formal complaint became his own record of this incident. Referring to the volunteer standing on a trailer parked about twenty metres away, Phil reports: "Next thing he jumped off the trailer and ran towards us, yelling that he, unlike the others was going to physically attack me. I handed Anne my camera and took up a defensive stance. He ran right up to me and threw a couple of punches. One of which hit me in the chest area. I tried to punch him but missed, then I went to grab him and push him away. He retreated to his trailer yelling further insults. Then Marakopa who was standing next to Duffy, pushed me on towards my home."

In his own statement, Phil complained that Mayor Brendan Duffy had not consulted with the owners before organising this working bee. "Trees and native bush on Maori-owned land at the Lake has already been cut down and our land had been dug up in some places. Duffy approached us and told us we were not welcome."

As far as Mayor Brendan Duffy was concerned, this working bee "simply reinforced community ownership and partnership of our lake for the recreational enjoyment of everyone who lives here."

It was not until 18 months later, on 24 March 2014 that Phil's disorderly behaviour charge was quietly dropped by the police. Phil's arrest had nevertheless achieved its purpose. This community working bee had gone ahead, and for the first time in several years, the yachts were back on the lake.

chapter 5 notes

Time frame : September - October 2012

threats to kill

milieu

Mayor Brendon Duffy uses simmering tensions over a 'Maori land claim' to organise a community working bee on private property.

PEOPLE OF INTEREST

Duffy, Brendan : Horowhenua's Mayor from 2004 until 2016.

Fryer, Michael : Chairman of the Horowhenua District Council's Youth Council. He is also a member of the Horowhenua Rowing Club.

Good, Garry : Horowhenua District Councillor elected in 2004.

Lyver, Jeff : Police Sergeant.

Matakatea, Marakopa : Lake trustee and member of the domain board.

Teppett, Howard : Foxton's elderly doctor who was killed after intruders entered his Foxton home in 1993. Police operation Damon was set up to deal with the Nomad gang problem.

Ward, David : Horowhenua District Council Chief Executive from 2007 - 2013.

Willie Roy : Senior Police Sergeant who is Horowhenua's commanding police officer.

POINTS OF INTEREST

Close Up : Current Affairs programme that screened Mondays to Fridays on TV One following One News.

Dominion Post : Morning newspaper based in Wellington, with a large circulation throughout the lower half of the North Island and upper region of the South Island.

Ch6

crossing the boundary

"In the absence of a removal of the buildings prior to the expiry of their leases, the buildings are fixtures and consequently are the property of the owners of the land."

Judge Layne Harvey

On 23th March 2012, Phil had been arrested for being unlawfully in the northern domain building, the one the rowers used. The irony of course is that Phil is an owner of this building. The day beforehand, the Maori Land Court had finally considered the application he had filed on 1 January 2009 to determine the ownership of buildings that the rowing and sailing clubs had built on land that did not belong to them.

The rowing club's lease had expired in 2007 while the sailing club's lease lapsed in 2003. In 2006 the domain board had rolled over these leases on a month-by-month basis in defiance of the Reserves Act passed in 1977.

For this hearing before Judge Layne Harvey, two days were allocated. Phil testified: "Half the problem is that the board had said they had the right to roll over the lease, and in good faith they had accepted that until they dug deeper and discovered that they had no right to issue leases on Maori-owned land."

James Hardy, the DOC lawyer representing this domain board said he would not oppose an order confirming that Maori owned the buildings on their own land. That was not an unusual concession. As fixtures, buildings always belong to the owner of the land.

Judge Harvey had queried what would happen if the owners wanted to use their own buildings. "If you think of it though, it's a curious proposition, isn't it? Here you are, Mr and Mrs Owner of the land and the building. Here's your lease that you have to pay me money for it."

Phil had decided to test the waters by applying to use the buildings for the Taueki whanau's celebrations of Waitangi Day. Not unsurprisingly, the board declined his application on the grounds that 'neither building was suitable for use.'

During his testimony, Phil had mentioned that the building occupied by the rowing club did not have toilets. Judge Harvey asked Mayor Brendan Duffy whether these buildings had toilets and was told that was correct.

Q&A
Transcripts ; Maori Land Court

Judge Harvey
All of them?

Mayor Brendon Duffy
Correct.

Judge Harvey
So one of them is right and someone is wrong.

Phil decided he had to confirm if there were toilets in the rowing club building before he could finalise his submission. Phil met up with Bryan Ten Have who borrowed his wife's camera, and both men entered the building through a panel that had been dislodged a long time ago. On inspection they confirmed there were no toilets to be found. As they were leaving the building, a rower spotted them and summoned the police.

By the time the police arrived Phil had already left to chair a meeting but Bryan Ten Have was arrested, bundled in a police car and taken down to the police station. Unfortunately, Bryan Ten Have still had the camera on him, and so the police started trawling through the photographs until they found one of Phil.

"Is that Taueki?"

As Bryan Ten Have admits, there wasn't much point denying it.

"Yeah", he reluctantly replied.

"Don't worry about this guy", Police Senior Sergeant Willie Roy bellowed. "Go get Taueki."

Meanwhile Vivienne Taueki had gone down to the lake to explain to the police that the day beforehand the Maori Land Court confirmed this building belonged to the Maori owners. As soon as this rower heard this, he threatened to burn the building down. Present to hear this threat was a trustee and two police officers. Vivienne Taueki laid a formal complaint with the police. Police Senior Sergeant Willie Roy dismissed it. He not

only dismissed this complaint, he instructed his staff to increase surveillance of these buildings in case somebody else took advantage of this "off the cuff" comment, which "I suggest is the more likely scenario". In other words, if this building that belonged to his tribe was set alight, the prime suspect would naturally be Phil Taueki.

In the meantime, the word was now out that the police were planning to arrest Phil for being unlawfully in his own building. He managed to stay out of sight until the day he was due to appear in court on a charge laid after the ceremonial laying of the stone at Te Takere. Steven Price would be coming up to represent Phil on this charge and so we arranged a rendezvous for them to meet before turning up at court at 8.30am to meet Phil's bail conditions. Steven Price's submissions worked their magic. Both charges, the charge laid after the dawn ceremony at Te Takere and the charge of being unlawfully in his own building were quietly withdrawn.

On 20 November 2012, there was more good news for Phil. The Maori Land Court rejected the domain board's application to let the clubs remain in the building. In December, Jason Roxburgh as the board's chairman gave Judge Harvey a reassurance that he had verbally advised both clubs of the need to vacate these buildings after the board agreed these clubs no longer had any right to occupy them.

On 17 December 2012, Judge Harvey finally released his written judgement. "In the absence of a removal of the buildings prior to the expiry of their leases, the buildings are fixtures and consequently are the property of the owners of the land."

When David Brown who was now the commodore of the sailing club heard this announcement in court, he warned Judge Harvey that the club would uplift and remove the two-storied building. "Given my determination as to ownership", Judge Harvey calmly replied, "it is likely that any such action would be met with an application for an injunction to prevent that happening."

But even before this Maori Land Court decision was released, the Court of Appeal had issued its own judgement on 21 September 2012, stating that: "It now appears to be accepted that the domain board does not have the authority to effectively attempt to roll over the terms of the lease on a month-by-month basis".

Despite this ruling from the Court of Appeal, the Horowhenua District Council went ahead with their working bee on 27 October 2012, only a month later, as if these buildings were a community asset.

When the domain board next met on 4 February 2013, I felt confident that members would take on board the decisions of both the Court of Appeal and the Maori Land

Court. As I arrived, Police Inspector Mark Harrison and Police Senior Sergeant Willie Roy emerged from the morning tea room and joined those of us sitting in the public gallery for this meeting. With very little discussion, Mayor Brendan Duffy and other members of the domain board resolved unanimously to let the sailing and rowing clubs continue storing their gear in the buildings at the domain. Furthermore, the chairman was authorised to write to the relevant clubs asking them to submit applications for further occupation.

Phil's lawyer immediately filed an urgent application for an injunction, which I served on all parties, including the rowing club's lawyer during the afternoon of 11 February 2013. Serving these papers on the rowing club, I sensed their response would be hostile. And I was worried about Phil's safety, living alone nearby. Some would suggest he shift elsewhere, but why should he vacate his ancestral lands for the sake of a club that had no lease to be there?

These rowers routinely launched their boats from a little beach on the other side of the domain boundary where they have no right of access. This area was of special cultural significance for Mua-Upoko, it is where their tribal leaders rested before being ferried across the lake for burial. With bushes nearby, it was not unusual for Phil to look out his window and see women squatting in the bushes; then be disgusted by the faeces and toilet paper left behind. As a club official, Jo Mason confirmed in court this is where rowers "urinated" - as if there was nothing wrong with this offensive behaviour on such a culturally-sensitive site.

At 6.30pm on this particular evening, Phil noticed the rowing club members crossing the domain boundary again, and as usual, they gleefully goaded him but this time with even more gusto because members had also been present for the recent domain board meeting.

Following mediation arranged by the Human Rights Commission the previous year, Phil had been advised to take photographs and phone the police. This he did. Unfortunately, he could not get through to the police. So he asked me to try, and I encountered the same problem. During mediation, Police Inspector Mark Harrison had assured us that protocols would be put in place to generate police response. I e-mailed Police Senior Sergeant Willie Roy to ask what he was going to do about the rowers crossing the domain boundary that evening. He e-mailed me back: "Nothing."

After several attempts to get through to the police, at 6.46pm I dialled 111, knowing full well that everything I said would be recorded. If anything tragic happened, it would now be on record that we had both been the subject of death threats and that the police had

not bothered to respond to a previous incident when Phil had been attacked by a rowing club associate. I was truly worried about Phil's safety.

By 7.17pm, the police were still back at the police station checking Phil's latest bail conditions when one of the rowers summoned the police. At 7.30pm the police arrived at the lake, and within a few minutes, Phil was arrested, handcuffed and in the back of a police car on his way to the police station for processing. He protested that the rowers were trespassing on his own land and they had no right to be in the building. "They ignored me and marched me around to the front of the building and shoved me into the police car." He asked if arrangements could be made to lock up his house and car, but the police ignored those pleas as well.

In his sworn affidavit, Phil adds that on the way to the police station, one of the police officers asked him: "Why are you assaulting our friends?" Phil was taken aback by this comment: first by the reference to an assault but also by the admission that the rowers were friends of the police. He had been careful to remain on the other side of the domain boundary and well away from the rowers. He had not gone close enough to assault anybody.

Following his arrest Phil was kept in custody overnight and the only person he was permitted to phone was the lawyer handling his application for an injunction. By then it was late at night, and his lawyer lived an hour or so away. Not until 2pm the next day was Phil released to return home. Parked outside his bedroom window, his car had been trashed beyond repair. Every panel was dented, every window and light was smashed, every tyre deflated. This car was Phil's pride and joy.

Notified of Phil's latest arrest, I headed over to Levin and went down to the lake to check on his dogs. By 9am I had let the police know his vehicle had been vandalised. I waited around and waited around. Eventually a police officer arrived, took a photograph or two and then informed me they would never be able to find out who did it. He never took a statement from me, nor was Phil ever asked to make a statement even though he laid a formal complaint to the police next day.

If Phil had been home that night, undoubtedly he would have heard the sound of smashing glass or padlocked chain pounding the panels. Heavy bolt cutters were necessary to cut through this heavy chain at the entrance to Phil's place. Phil demanded that the police check security cameras installed in the northern building at the time of the working bee. Security lights blaze all night. Anybody entering Phil's property would have been caught on the cameras facing north, south, east and west. The police were just not interested.

Keen to find out what had gone wrong with the protocols set in place by Inspector Mark Harrison, I asked Phil what had happened that evening after the rowers arrived. Phil explained he took a series of photographs of the rowers launching their boats. While waiting for the police to arrive Phil looked through his car for something to protect himself, finding a child's plastic baseball bat that was left in the car boot from the Waitangi Day games. When the police failed to arrive Phil drove home. As the rowers returned, Phil walked over to the lake to warn them to stay off his land. James Watson jumped out of his boat and waded towards Phil. To deter James Watson from coming any closer Phil tossed some stones into the water. At the last minute, James Watson veered away.

It was not until I asked Phil to repeat what happened that night, that we realised the camera he had placed on the front seat of his car was missing, and so was the child's baseball bat he had thrown back into the boot. The only people who knew Phil was in custody that night were the police, the rowers and Phil's lawyer who lived some distance away.

When Phil received disclosure, I scrutinised the time line of events. While I was on the phone to the police, there had been a communication from Police Senior Sergeant Willie Roy, who stated that the courts had given the rowing club the right to launch their boats from an area north of the domain boundary. That I knew to be a blatant lie.

However the most disturbing feature of this disclosure was a comment in police notes alongside the time 19.15 "assault and poss OW," (possession of an offensive weapon). I checked and double checked and triple checked. Nowhere in the transcripts of the emergency call from the rower could I find any mention of an "assault and poss OW". A number of questions crossed my mind. Was this whole incident a set up? And were the police in on it? Phil's camera was missing. And so was the child's baseball bat. The camera contained Phil's evidential photographs. The child's baseball was the alleged weapon. If the police retrieved this alleged weapon from the scene, why was there no reference to it?

The following Sunday afternoon, Phil was waiting for his lawyer Tom Bennion to come up for a discussion on the injunction to evict the rowers from the domain building. His car was still sitting outside, waiting to be hauled onto a trailer and towed away. In the gravel, smashed glass still surrounded it. For the past week, Phil had been without transport.

Phil is like a chameleon. He can be charming, quite the most charming person you could ever meet. But aroused to anger by people who refuse to listen to him, the venom that spews from his mouth is certainly vitriolic. Phil claims he is self-disciplined. And to a

certain extent, I would have to agree with him, even though I detest these belligerent tirades.

When the rowers turned up that afternoon, they pranced past him, knowing that the slightest utterance from Phil would be sufficient to summon the police and have him locked up again. And so they triumphantly marched across the domain boundary. Seething with resentment, Phil could not resist one short outburst, from some distance away yelling at them to get off his land. The police arrived soon after. By now, two lawyers were sitting in his room. Before the police could arrest him, Phil absconded out the toilet window. This gave the police an excuse to arrest him for escaping from custody.

When a breach of bail hearing took place later that month, Phil was able to show Judge Atkins a letter signed by Helen Hansen, the rowing club's secretary. In this letter, Helen Hansen said that a lake trustee had shown her where the survey peg was, and had given an assurance that in future all boats would be launched south of the boundary, within the domain. This letter was dated 26 August 2012. Despite this letter, Phil was able to produce his diary confirming that in the previous 21 days alone, this club had crossed the domain boundary a total of ten times.

Jo Parker had already testified that the rowers had launched their boats north of the boundary on the evening Phil had been arrested. Judge Atkins, with his usual intuition, had figured out what was going on. Directing his comments at several rowers still sitting in the public gallery, Judge Atkins admonished them for their attitude that night and warned them not to cross the domain boundary in the future.

A journalist in the courtroom reported that Judge Atkins then made arrangements for Police Inspector Mark Harrison to be invited to an in-Chambers hearing to discuss protocols that could be put in place to prevent a recurrence. The date of this hearing was 4 March 2013, 4pm. Once again protocols were put in place, and this time Phil was also assigned a police liaison officer, Police Sergeant Marty Bull. Not that the police took any notice of these protocols.

On 20 July 2013, Phil summoned the police because the rowers had once again crossed the domain boundary. This time there were twenty rowers. And this time, Phil was hit over the back of his head, thrown to the ground and his face was pummelled into the rocks. He says he had to exert all his strength to prevent them tossing him into the lake. By the time the police turned up, Phil's silvery hair was streaked with blood. So was his face. So were his hands and knees.

Bryan Ten Have arrived in time to videotape a police officer reading Phil his rights. And when I arrived, I could see Phil was certainly not in a fit state to answer any questions. So

I told this police officer in no uncertain terms to terminate this interview at once, and we would lay a formal complaint once Phil recovered. I then marched over to speak to Police Sergeant Marty Bull to check whether Phil would need to identify the rowers responsible for this vicious attack while they were still milling around. He replied that those responsible had already admitted it. I demanded to know why they had not been arrested, and taken away in handcuffs. He replied there would need to be a full investigation first. That was a first. There had never been an investigation before Phil was arrested.

Over the next day or so, I helped Phil draft his account and then accompanied him to deliver his complaint in the form of a sworn affidavit to the police station. By now, I would never let Phil go anywhere near the police station unless somebody was present to witness everything that happened. As we were leaving, Phil turned to ask the police officer on duty whether they would investigate this complaint. “Probably not”, Senior Constable Dereck Turvey replied.

chapter 6 notes

Time frame : March 2012 - July 2013

crossing the boundary

milieu

The rowing club crosses the boundary to launch their canoes.

PEOPLE OF INTEREST

Atkins, Les : District Court Judge.

Brown, David : Horizons hydrologist.

Bull, Marty : Police Sergeant.

Duffy, Brendan : Horowhenua's Mayor from 2004 - 2016.

Hansen, Helen : Rowing Club secretary.

Hardy, James : Lawyer who represents the Director-General of Conservation.

Harrison, Mark : Inspector Rural Area Commander.

Harvey, Layne : Maori Land Court Judge appointed in 2002.

Mason, Jo : Rowing club member.

Parker, Jo : Rowing club member.

Price Steven : Lawyer and lecturer at Victoria University.

Roxburgh, Jason : Chairman of the Lake Horowhenua Domain Board.

Roy, Willie : Senior Police Sergeant who is Horowhenua's commanding police officer.

Taueki, Vivienne : Sister of Philip Taueki and partner of Simon.

Turvey, Dereck : Senior Constable on watch-house (receptionist) duty.

Watson, James : Rowing club member.

LEGAL TERMS

Poss OW : Possession of an offensive weapon, any weapon made or altered for use to cause bodily harm.

POINTS OF INTEREST

Human Rights Commission : The Human Rights Commission was set up in 1977 to promote and protect the human rights of all people in NZ, and operates under the Human Rights Act 1993.

Waitangi Day : Public holiday on 6 February to mark the signing of the Treaty of Waitangi in 1840. The first commemoration was in 1934, and it became a public holiday in 1974.

Ch7

the meaningless title

"Those strong words 'at all times' and 'free and unrestricted' first appeared in the 1905 Act. They are rights reserved to the Maori owners because of the special history of the area. They may be unique."

Lord Cooke of Thorndon

Due to the vandalism of his car, Phil had been left without transport. But worse was to follow. I should have sensed something was up, because my colleagues on council were being pleasant to me which was most unusual. While I was at a council meeting on 26 March 2013, the new lake trust chairman visited Phil and ordered him to get out of his home which was to be demolished the next day. Phil was currently under bail conditions requiring him to live at this address.

The next morning, several men turned up, accompanied by six or seven police officers including Police Inspector Mark Harrison. When the chairman reached up to disconnect Phil's power, Phil automatically put up his hand to stop him. Immediately the police pounced. Phil was arrested, handcuffed and taken down to the police station to be charged with assault.

When I arrived, all Phil's personal belongings had been shoved into the centre of the room, and they were busy demolishing the walls of his home with crowbars and mallets. The police were standing around outside, watching. A few friends rallied around to gather up his possessions, but when an elderly Maori warden was hurt by one of the demolition crew, I went outside and ordered the police to halt this demolition until we could salvage Phil's property without risking further injury.

I also asked Police Inspector Mark Harrison if he had any paperwork or proof that these workmen had obtained the necessary permit to go ahead with this destruction. He replied that they were there only to keep the peace. As a councillor, I have a fair idea of the law. Under the Building Act 2004, any person who carries out the demolition of a building without a building consent commits an offence; the penalty being a fine not exceeding $200,000. As the police didn't seem interested in checking this out, I sent an e-

mail to the regulatory manager to check whether these workmen had applied for the consent necessary to carry out this work.

Meanwhile the police agreed to release Phil from custody, but only upon condition he stay well away from his home during this demolition. So I parked my car some distance away, and left the radio on to keep him entertained while the rest of us gathered up what we could. As we had no time or boxes to pack anything, I would grab bundles of clothing and carry them some distance back to the car, dropping items along the way, and then return for another load. It was hard work in the heat of the day, but the police had retreated to the shade where colleagues were keeping them replenished with takeaways and cool drinks.

My car now crammed with Phil's possessions, we drove back to my place at Foxton Beach. There was of course, no room for Cleo and Zeus. Neither of us could sleep that night; Phil in particular fretting about his loyal companions abandoned overnight. Before sunrise on Easter Friday, we returned to the lake expecting to see his home razed to the ground. Although damaged the building was still standing. Cleo and Zeus were so traumatised that as soon as we pulled up, they leapt into my car, trembling with fear and shedding hair everywhere.

Before long, the rowers turned up, preparing to head out on the lake again, even more buoyant than usual. Phil was gone, and they were still there, using a building on his land and also his lake as if it belonged to them. Phil then watched as a visitor to the district backed his boat trailer up to the lake, and launched his motorised boat unwashed. Phil was adamant he must move back into the battered building. After a series of fraught phone calls, he managed to convince the power company to reinstate his power disconnected without his authority. He moved back home.

On Easter Saturday, a small group of owners had gathered around to support Phil when the police and the trust chairman turned up again. This time Phil was warned he would be arrested if he tried to prevent his power junction box being smashed, and therefore he was forced to stand back and watch while the trust chairman damaged it to such an extent, that the power company would be obliged to declare it unsafe and authorise a further disconnection. The trust chairman then went out to disconnect Phil's water supply, but another owner intervened. So at least Phil still had water.

It was a cold, bitter night. He had no heating and only a candle for light. He could not cook any food nor could he pop into town for takeaways because his car had been trashed. Unable to recharge his batteries on his mobile, he could not summon help if anybody returned to 'waste' him as somebody had threatened. All his curtains had been wrenched down, and every time a car pulled up, the headlights would shine eerily

through his windows. I had already made a commitment to help out at the Night Glow for the hot air balloon festival that night, but as soon as it was over, I went down to Phil's place. When I pulled up, I could see he had no idea whether it was friend or foe visiting.

On the Tuesday morning, his lawyer filed an urgent application for an injunction to halt further demolition of the building. It was not until 2nd April 2013 – six days later – that the trust chairman applied to the Horowhenua District Council to decommission the buildings and disconnect the water. The council waived all fees and granted the consent. Rather than chastise the offenders, council regularised their wrong-doing.

Shortly after this incident the trustees unseated Eugene Henare as trust chairman. Prior to this, Phil received a heartfelt apology from Eugene Henare which was accepted in the spirit with which it was given. He knew where the blame lay.

In our submission to the Maori Land Court we identified all the laws that had been broken that weekend, and documented damage to Phil's personal property such as his laptop wrecked when a jar of water was spilled over it. Not only is it an offence to commence demolition without a building consent, it is also a crime to divert electricity without claim of right and to restrict a water supply in a manner that creates unsanitary conditions.

Phil also complained to the Ministry of Business, Innovation and Employment about the way the Horowhenua District Council as a building consent authority handled this matter. Initially the Ministry expressed concern, but ultimately decided to take no action. The Tenancy Tribunal was equally dismissive.

However, in the Maori Land Court, Judge Doogan issued an interim injunction, granting Phil a reprieve to get some legal issues sorted out. At this stage, the Maori Land Court were still operating on an assumption that the lake trust was an 'ahu whenua' trust created under the Te Ture Whenua Maori Act 1993, which enables a trust to act as if it is an absolute owner. It was not until 29 September 2014 that Judge Harvey corrected this anomaly by amending the court record. Unfortunately most courts fail to grasp this significant distinction between an 'ahu whenua' and a trust established by statute.

The trust's lawyer conceded that the decision to remove the buildings may have been made in error, but that error was not so great as to be a breach of trust that required the removal of the trustees. As the trust's legal representative, Shannon Johnston warned that the trust would be serving an eviction notice giving Phil 90 days to leave the building. "You may remove me from my building, but you'll never remove me from my lake", Phil vowed,

If Easter 2103 was traumatic for Phil, Christmas 2013 dealt another blow. Even though the penalty had been only 60 hours of community service, he had appealed a couple of assault convictions following the original incident involving the sailing club during 2008. His motivation had been a comment made by Judge Atkins that the sailing club members were in peaceable possession of the place where this incident had occurred. This statement disturbed Phil because there had never been any dispute about the ownership of this site. It was Maori freehold land, and always had been.

Anybody in peaceable possession of a property has the right to use reasonable force to remove intruders, provided they do not strike that person or cause bodily harm. Tony Brown had neither been struck nor harmed. His son's injuries were an abrasion and a nick to his ear. Judge Atkins acknowledged these injuries were unintentional. The abrasion occurred when David Brown was squirming to get away from Phil's hold, whereas the nick probably happened as Phil's keys went flying out of his hand when Tony Brown jumped on him from behind. Already unsteady on his feet due to knee surgery over the past fortnight, Phil fell forward. Phil not only suffered concussion but the back of his neck was swollen from the impact.

In the Court of Appeal, Phil had managed to gain a concession that the domain board had no power to roll over the club's licence on a month-by-month basis. Even Crown Law accepted this lease was "invalidly-granted". But we were intrigued to discover that peaceable possession has never been defined in NZ legislation. Courts relied on a Canadian case by the name of Born with a Tooth.

Phil of course is a direct Treaty descendent, and therefore he believed that the Crown and the courts had a duty to interpret the law in a manner consistent with this Treaty. As a lay litigant, he posed this compelling request: define 'peaceable possession' in a manner that recognised the unique circumstances in New Zealand due to the existence of the Treaty of Waitangi. "Possession acquiesced by all" does not comply with the Crown's Treaty obligations when dealing with ancestral land owned in fee simple by Treaty descendants.

Lawyers warned us that less than one in ten applicants are granted leave to appeal, and as a lay litigant, Phil had no chance of getting our appeal heard. But when the Supreme Court agreed to hear our appeal, this outcome reverberated around the legal fraternity all the way to Hong Kong where Dr Gerard McCoy QC, a Canterbury University professor, was based on secondment. He tracked Phil down and offered to return to NZ at his own expense to represent Phil pro bono, free of charge because these were the very issues he specialised in.

When he came over for a preliminary briefing, his first question related to the status of the land. “Maori freehold,” I replied. He seemed somewhat astounded to receive that response. And by then we knew there was no perpetual lease to muddy the waters.

At the Court of Appeal hearing, Crown Law had argued the rights of the owners were the same as those of the public.

A Court of Appeal Judge then asked the question : “... your argument is that those people listed as owners, the only significance it has is names on a piece of paper?”

Crown Law replies : “Yes.. the public and the owners have the same sorts of rights.”

Phil felt, this was the crux of the case.

In the expansive foyer of the Court of Appeal building, there is a simple sculpture centre stage. Two hands representing the Treaty of Waitangi donated by Lord Cooke of Thorndon, New Zealand’s most pre-eminent jurist. In our submissions we often quoted Lord Cooke who said of Lake Horowhenua and its legislation :

ΩΩΩ

Judgement ; Supreme Court

“Those strong words ‘at all times’ and ‘free and unrestricted’ first appeared in the 1905 Act. They are rights reserved to the Maori owners because of the special history of the area. They may be unique.”

In his submission to the Supreme Court, Dr Gerard McCoy QC underlined the final four words. “They may be unique.”

Dr Gerard McCoy QC explained that the courts had erred in overlooking the crucial significance of this legislation, and not only subordinated but eliminated the fundamental connection of the beneficial owners to their land. This legislation, he said, recognised and reaffirms ancestral rights of Mua-Upoko “in a deeply-etched way, beyond the consequences that can be achieved by declaratory legislation.”

But as far as Crown Law was concerned, the owners forfeited all ownership rights when legislation was passed in 1905, transferring control into the hands of a domain board appointed by the government.

Afterwards, Dr Gerard McCoy QC provided us with a debriefing, quietly confident that all five Supreme Court judges would agree with him. His bundle of case law was both com-

prehensive and international in content. Other constitutional lawyers also expressed their confidence that we would win this appeal.

The hearing had taken place on 11 March 2013. Not long afterwards, Justice Chambers passed away, leaving only four to deliberate. By December, we were beginning to think we would have to wait until the new year for an decision. But at the back of my mind was a tiny inkling that it might well be dumped upon us just before Christmas, when academics, lawyers and the media were winding down for the summer holidays.

Sure enough, eight days before Christmas and without fanfare, the judgement arrived. Our appeal was dismissed. Where was the reference to the Treaty of Waitangi, even though it had been the basis of our appeal? The Supreme Court did however acknowledge that Mr Taueki was a beneficial owner. Furthermore his view that Lake Horowhenua is of 'tremendous cultural and historical significance for his people' was not disputed. The Supreme Court also conceded that the sailing club did not have any legal right to occupy the land or buildings at the lake, which was an important breakthrough for us.

But the judges noted that the sailing club was actively occupying the area for its own purpose, and therefore they were satisfied that Mr Taueki was not in possession of the land where the incident took place.

The ramifications of this decision, I considered to be immense, but there was nothing we could do about it, because New Zealand no longer has access to the Privy Council in London. Therein lies the precedent this Supreme Court has set.

Little did I know then that judges are political appointees. There is no transparency about the process. A longstanding attorney-general can stack the bench. Since his appointment in 2008, Honourable Chris Finlayson has been the incumbent, although a list Member of Parliament who does not hold an electorate seat. By my calculations, in that time all bar one of the six Supreme Court judges, all ten Court of Appeal judges and 75% of the High Court judges have been appointed in a process without any statutory constraints or regulations.

It was timely to reflect on two incidents that had occurred north of the domain boundary over the year of 2013 ; a year culminating in the release of the Supreme Court decision.

One minor consolation was the Supreme Court ruling that acknowledged Phil was legally in possession of the area north of the domain boundary where the rowers were launching their boats.

Nevertheless, the very next day Police Area Commander Pat Handcock sent Phil a letter about Phil's complaint, that he had been assaulted on 20 July 2013 that year. Police Inspector Pat Handcock wrote : "The facts are that you remonstrated with members of the rowing club over what you perceived as a trespass into Muaupoko land. Whether a trespass occurred or not is immaterial."

Police Inspector Pat Handcock wrote in his letter, there was evidence that two of the rowers had tackled Phil to the ground and held him on the ground for a period of time. "It is clear that the rowers believed that an assault was imminent and the defence of self-defence in all likelihood would succeed".

This raises some serious concerns regarding police protocol.

> By November 2012 : Following mediation arranged by the Human Rights Commission, protocols had been put in place for the police to follow whenever rowing club members crossed the domain boundary.
>
> 11 February 2013 : James Watson waded towards Phil Taueki who was standing on his land where the rowers had no right of access, and Phil gets arrested.
>
> 4th March 2013 : Judge Atkins met with Police Inspector Mark Harrison to reassert the protocol regarding the domain boundary.
>
> 20 July 2013 : Twenty or so rowing club members crossed the domain boundary. Phil was hit over the back of his head, hard enough to draw blood. He was held on the ground for some time. No arrests were made that day; and despite Phil's formal complaint, he was told no arrests will be made.
>
> 17 December 2013 : The Supreme Court issued a judgement that Phil is entitled to use reasonable force to remove intruders from this particular area.
>
> 18 December 2013 : Police inspector Pat Handcock wrote Phil a letter stating that it is immaterial whether the rowers trespassed or not.

Police Commissioner Mike Bush has conceded in a televised interview, the police force have been influenced by unconscious bias in their relations with Maori.

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chapter 7 notes

Time frame : March - December 2013

the meaningless title

Milieu

After Crown Law argues that a property title is nothing but a name on a piece of paper, the Supreme Court reaches a decision that stuns Phil Taueki.

PEOPLE OF INTEREST

Chambers, Robert : Supreme Court Justice appointed in 2012 and who unexpectedly died in his sleep on 21 May 2013. He was awarded a Knight Companion of the NZ Order of Merit in the Queen's Birthday honours posthumously.

Cooke, Robin : Baron Cooke of Thorndon is generally considered to be one of the country's most pre-eminent judges. He became a British Law Lord, a member of the Judicial Committee of the Privy Council and was the only NZ Judge to sit in the House of Lords. He died in 2006 at the age of eighty.

Doogan, Michael : Maori Land Court judge appointed in 2013.

Finlayson, Chris : Attorney General from 2008.

Handcock, Pat : Police Inspector who is Area Commander for the Manawatu area including Horowhenua. After 43 years in the police force, including secondment to East Timor, he was awarded the NZ Order of Merit in 2016.

Harrison, Mark : Rural Police Commander.

Harvey, Layne : Maori Land Court judge.

Johnston, Shannon : Partner in the Fitzherbert Rowe legal firm based in Palmerston North.

McCoy, Gerard : Dr Gerard McCoy QC is a Professor of Law at the City University of Hong Kong and is also on a retainer to act for the Hong Kong government in constitutional law litigation.

LEGAL TERMS

Court of Appeal : New Zealand's second highest court that hears appeals from other jurisdictions.

Fee simple : An absolute tenure in land.

Freehold land : Land that is owned without any encumbrances.

Pro bono : Free of charge.

Supreme Court : New Zealand's highest court that was established in 2004. Note: The High Court was originally known as the Supreme Court but changed its name to the High Court in 1980.

PIONTS OF INTEREST

Ahu whenua trust : Trust to manage Maori land for the benefit of the owners. The legal responsibility for the administration of the land is vested in the trustees.

Born with a Tooth : R v Born with a Tooth 1992 ABCA, a Canadian case in which the Court of Appeal allowed an appeal to let the defence admit evidence relevant to the appeal based on peaceable possession of an Indian Reservation.

Ministry of Business Innovation and Employment : Major public service department delivering a wide range of policy services, advice and regulations to support business.

Ch8

police protocol

"The prospects of proving these charges beyond a reasonable doubt, particularly given the difficulties the police have experienced to date in this prosecution against Mr Taueki and the public interest in proceeding with these charges after all this time, now needs to be properly considered."

Judge Lynch

The decision not to prosecute the rowers who had already admitted attacking Phil on 20 July 2013, but to proceed with assault charges against Phil following a similar incident down at the lake on 11 February 2013 was quite demoralising.

The Supreme Court at least had confirmed that Phil was in peaceable possession of this area, but the Area Commander decided it was immaterial whether these rowers were trespassing on this land or not.

But far more sinister was the message this decision sent the rowers and their supporters. On the one hand, the rowers could attack Phil with impunity because they would never be prosecuted. On the other, Phil would be arrested and thrown into custody whenever the rowers summoned the police to do so. So even if Phil's life was at risk, he could not defend himself. At times he could do nothing more than return to his home and lock the doors to protect himself from further allegations of assault.

On 3 March 2014, Judge Lynch had issued a minute reminding the local police prosecutor that he had undertaken to have these prosecutions reviewed by either the Crown Law Office or the Crown Solicitor on release of the Supreme Court decision. "While the police may consider that the Supreme Court decision cements their decision to prosecute, that is not the end of the matter. The prospects of proving these charges beyond a reasonable doubt, particularly given the difficulties the police have experienced to date in this prosecution against Mr Taueki and the public interest in proceeding with these charges after all this time, now needs to be properly considered. That is of course the function of the prosecutor, not the Court."

By this stage, fourteen consecutive charges had been withdrawn, dismissed or quashed on appeal, tying up considerable court resources as well as our own.

It wasn't until 24 March 2014 that Police Senior Sergeant Neil Coker as the district's prosecution manager posted Phil a letter reporting that his file had been reviewed by a legal adviser at Police National Headquarters. Although one charge had been withdrawn, the police decided to proceed with the remaining couple of charges.

Due to this Supreme Court decision, we might have been able to argue a s56 defence, but James Watson was claiming he was injured by a rock thrown at him. We therefore decided to resort to a defence of self-defence.

By now I was so exasperated with the attitude of the local police force, I decided that we should let the judge know that Phil could not rely on the police for protection even when somebody came onto his property to attack him. And so I arranged for Phil to sign a dozen forms and served a summons on a dozen police officers, including the area commander, Police Inspector Pat Handcock.

By the end of March 2014, Phil was once again in hiding, once again because the police were accusing him of being unlawfully in his own building. Since I had become his address for service, Phil had been scrupulous in making sure he turned up at court on the day and at the time stipulated. There was a case management hearing scheduled for 10am on 15 April 2014. By late afternoon the police prosecutor read out another eleven charges before Judge Lynch remanded him in custody.

Phil was bundled out of the courtroom into a police van and driven out to the Manawatu Corrections Centre, better known as Linton Prison. While there, Phil lost eight teeth defending himself in a jail yard scrap with the bully of B Block. There he remained until 17 June 2014 when he was released on electronic surveillance with a 24/7 curfew at Bryan Ten Have's place. Once again, Phil was wearing a bracelet around his ankle.

There were other setbacks preparing for trial on the assault charges laid the night his car was trashed. Whilst in custody, his home was burgled. Amongst items stolen were his bike, his 2013 diary and transcripts from the hearing before Judge Atkins when he had admonished them for crossing the domain boundary. On the night of this incident, his camera containing evidential photographs went missing from the passenger seat of his car and a child's baseball bat was no longer in the collection of toys left in the boot of his car.

Three days were allocated for this trial set down for 7 July 2014. Due to his stringent electronic monitoring, we took the precaution of clarifying bail conditions for this three-day

trial to avoid yet another bail breach arrest. The reply came back. At all times, he must remain confined to the court building and under supervision by his approved person at all times.

Phil e-mailed back: “Are you aware that consuming food is not allowed anywhere within the Court buildings? I would have thought ‘attending court’ would have allowed for the fact that the persons would need to eat at lunch-time.”

The response came back: “You are to leave and return to the EM Bail residence as instructed by an EM assessor and take the most direct route. You will remain in the confines of the Court premises until the conclusion of your hearing. You will be able to eat your lunch on the seats outside the Court.”

The seats outside the court could hardly be dignified by that name. It was a slab of wood sandwiched between the building and the footpath. For the middle of winter, it would be totally exposed to the wind and the rain. Additionally, there were no private facilities for a lay litigant to review their documents during adjournments. Lawyers of course have swipe cards to enter interview rooms for private meetings with their clients. As I was Phil’s approved person as well as his McKenzie Friend, arrangements were made for Bryan Ten Have to bring us a hot lunch and deal with any urgent photocopying. Fortunately, Judge Hastings took pity on us, and as there were no other hearings scheduled that week allowed us to eat our lunch in a room usually reserved for lawyers.

Although one of the charges Phil faced was possession of an offensive weapon, the police had made no effort to locate this alleged ‘weapon’.

From my perspective, it was intriguing to monitor the testimony from the rowers, knowing that Phil’s camera, the child’s baseball bat, Phil’s diary and transcripts from an earlier hearing had all been stolen while Phil was in custody. Without the child’s plastic baseball bat that was stolen from the boot of his car that night, how can the defence discount statements Phil was wielding a big stick two metres in length?

Jo Parker had been in court when Judge Atkins admonished the rowers for crossing the domain boundary on that evening in February 2013. This time, Jo Parker testified that they had been given permission to go there. “And in fact your sister Vivienne had also given us permission.”

“I don’t believe that it is private property and I don’t believe I do trespass,” she declared under cross-examination. “I don’t see it as being your land.”

And then she went on to comment: “We had actually appeased you by making sure that we went to the right-hand side of that peg when we actually went into the water.”

Helen Hansen was less convincing when asked where she had launched her boat. She kept glancing nervously over to somebody in the public gallery for guidance. “Yes, but it was, it’s probably north of the peg then... actually I think.”

Robyn Saulsbrey was asked : “Do you know what waahi tapu means, Mrs Saulsbrey?”

She replied : “I have no desire to know what that means.”

Q&A
Transcripts ; District Court

Phil Taueki
So why do you continue to put your boat in the water from land that was part of private property and part of waahi tapu?

Robyn Saulsbrey
Is this a serious question or are you joking? I joined rowing to enjoy living in the Horowhenua and being part of using water and land available to every citizen.

And when the complainant, James Watson took the stand, he was asked why he launched the boat where he did.

“Just to try and appease your small-mindedness”, he replied, “we decided to launch from the south.”

“Do you launch your boats north of the boundary now that I’m not at the lake?”

“Yes.” There was no hesitation.

Under cross-examination, James Watson was asked about his statement that he was twenty metres off-shore, but “about two metres away from me when he approached”.

Phil asked a perfectly reasonable question: “Did Mr Taueki enter the water?

Q&A
Transcripts ; District Court

Phil Taueki
So you walked towards Mr Taueki who was standing on his own land.

James Watson

I walked towards the exit. I don't find it your land. It's not your land.

In his police statement James Watson claimed he was twenty metres off-shore, in the next sentence he claimed he was about two metres away, when Phil "approaches".

Phil was standing on the bank of the lake and obviously never got his feet wet.

The prosecution also called Ian Tate, the Horowhenua District Council's team leader of land and information management. Phil put to him a very simple question. "Do you know who owns the title to the lake bed, the land around it?"

Q&A
Transcripts ; District Court

Ian Tate

No, I don't.

Down to the lake we went for Mr Ian Tate to locate the boundary pegs. But first, we had a small problem. If Phil is seen down at the lake by a police officer, he would be arrested for breach of bail. And the police prosecutor is a police officer. Judge Hastings thought for a minute or two and then came up with a bright idea. He would place a cocoon around Phil as if he was still within his courtroom. It was a welcome reprieve from the claustrophobia of the courtroom. The survey peg was easily located and identified. So was the small beach eighteen metres on the other side the boundary where the rowers launch their boats.

When the police officers started to take the witness stand, Phil questioned Constable Simon Carter about the police response. There could be no dispute my emergency phone call was timed at 6.46pm that evening. He replied that he was aware that Phil was on active charges and on bail. As far as he was concerned, it was normal standard police practice to check Phil's bail conditions if they have the time and availability.

Q&A
Transcripts ; District Court

Constable Simon Carter

Yes there were concerns for your safety. And yes on the job card event it was also mentioned of death threats...

And then Constable Simon Carter testified that the police were responding to the second call, a call made by the rowing club member at 7.17pm, and this was the call that had prompted the police to go down to the lake.

I was shocked to hear that the only response to my emergency call at 6.46pm, half an hour earlier, had been to check Phil's bail conditions. The police had therefore ignored the protocols put in place by Police Inspector Mark Harrison following mediation arranged by the Human Rights Commission to prevent these incidents happening.

After discovering Phil's vehicle vandalised the night he spent in custody, I had already sensed this was perhaps a set-up in retaliation for the notice we had served on the club's lawyer the evening beforehand.

Constable Simon Carter continued :

Q&A
Transcripts ; District Court

Phil Taueki
How could you be sure that the injury he showed you was caused by a rock thrown by Mr Taueki?

Constable Simon Carter
Because he told me.

Phil Taueki
So you relied solely on the evidence or the information provided you by the rowers.

Constable Simon Carter
Well yeah, I believe they're credible witnesses.

Phil Taueki
Do you know what happened to the camera that was put in Mr Taueki's car?

Constable Simon Carter
No I didn't know there was a camera.

Phil called the first of the dozen or so police witnesses. Police Inspector Pat Handcock was shown the letter he had sent Phil about the incident on 20 July 2013 when the rowers admitted assaulting Phil. Police Inspector Pat Handcock had written that: "It is clear

the rowers, twenty of them believed that an assault was imminent and the defence of self defence for the rowers in all likelihood would succeed."

He confirmed that nobody had been charged in respect of that incident. Then he made a comment that left me dumbfounded.

Q&A

Transcripts ; District Court

Police Inspector Pat Handcock

I think the fact that you did not face charges in that instance Mr Taueki might be good evidence to suggest that we were actually supporting you.

As soon as I received the transcripts, I skimmed through the pages to find the place where Police Inspector Pat Handcock's evidence was recorded.

And there it was in writing, Police Inspector Pat Handcock had indeed stated : "I think the fact that you did not face charges in that instance Mr Taueki might be good evidence to suggest that we were actually supporting you."

Bryan Ten Have meanwhile reported he was overhearing conversations in the waiting room, and expressed his concern that the next police witnesses were being primed to come down hard on Phil, to put him resoundingly in his place. Phil was also coming under mounting pressure from an amicus curiae, (the neutral lawyer to assist the court) to confess that he had hit James Watson with one of the stones he threw. Bryan Ten Have and I asked Phil if he had hit James Watson. Angrily, Phil replied that he would have known if he had. But we were well aware that it was Phil who had just spent eight weeks in jail, and it was his freedom at stake. Five years imprisonment, he was facing. Eventually Phil capitulated, and cancelled plans to call the remaining police officers.

For the defence Vivienne Taueki was called to the stand to confirm that she had not given permission for the rowers to launch their boats north of the boundary, as Jo Parker claimed on oath.

Phil had testified as usual, and as usual on oath, he is brutally honest.

Q&A
Transcripts ; District Court

Phil Taueki
I thought after the mediation with human rights and the decision of the Court of Appeal in particular that I wouldn't have to continually put myself at risk of arrest by simply asking the rowers to comply with the law.

So to hear Mr Watson state today that whilst I'm, because of my bail conditions, not allowed to live at the lake, to know his rowing club members are still crossing the domain onto privately-owned land and launching off one of the most sacred sites for Muaupoko absolutely disgusts me.

I know how the general MO of the rowers operate, they would generally say the Mad Maori's threatened us, attacked us, we've had to assault him to stop us being assaulted, and it's a line that seems to have a lot of favour with their mates in the police force.

As I stated, there was no intention to hit him, for it was purely to warn him not to come ashore on my private land that is sacred to me and my tribe.
There was no intention of hitting him, they were merely warning shots and they worked because Mr Watson then turned south and came ashore south of the boundary.

Police Sergeant Mike Toon the prosecutor asked :

Q&A
Transcripts ; District Court

Police Prosecutor Mike Toon
When Mr Watson came out of the water you threw a stone which hit him in the leg, didn't you?

Phil Taueki
No, totally false. The rocks that I threw landed in the water in front of him.

“I’ve been assaulted before by them, and I’ve been assaulted since” he said. “I’ve had death threats myself prior to that incident. Anne Hunt has had death threats.”

Phil also produced photographs of his vandalised vehicle. “When we drove into my property, the first thing I sighted was my car totally wrecked. And this had occurred whilst I was in custody. This had occurred and the only people who knew I was in custody was the police. My camera had actually gone missing, it had been in the car when I returned from the foreshore the previous night.”

As in any criminal case, the police have to prove the charges against the defendant beyond a reasonable doubt. In his closing submission, the police prosecutor stated: “Sir, it goes down to credibility, all five gave evidence that there was intention to exit south of the peg, and in fact they all said that’s how they exited.”

In his decision, Judge Hastings confirmed that of relevance to this issue “is where the boats had been launched in the past and where the rowers appeared to intend to land their boats on their return. Thus if the present incident took place on domain land to the south of the peg, Mr Taueki cannot avail himself of the s56 defence.”

Besides, assault requires intention. Recklessness is not enough. In his decision Judge Hastings concedes Mr Taueki did not intend to hit James Watson with a stone. “The closer Mr Watson came, the more Mr Taueki’s intention shifted from mere warning to the infliction of injury.”

He also found that Mr Taueki had not made out the defence of self defence because the evidence does not show that Mr Taueki believes that James Watson posed a threat to him. S48 of the Crimes Act 1961 puts it quite clearly: Everyone is justified in using, in the defence of himself or another, such forces as in the circumstances as he or she believes them to be, it is reasonable to use.

In his decision, Judge Hastings discounts the previous assaults or death threats I raised in my phone call to the police, the delay responding to the call while police checked out Phil’s bail conditions or the photographs of Phil’s vehicle vandalised while he was held in custody overnight.

As Constable Simon Carter explained it, the police were attending to the second call, the one from the rowers. The police response to my own call was to check out Phil’s bail conditions. Naturally we appealed.

The Banks decision had just been released. This was the case when the conviction of John Banks, Auckland’s former mayor and a former police minister was overturned after

his wife came forward with new information. John Banks had been charged with an offence over election spending for his mayoral campaign.

With our own appeal we reported that Phil "had been taken aback to hear all five civilian witnesses lying on oath, but his bail conditions constrained him producing the compelling evidence he required to challenge the veracity of their statements because he was unable to locate the previous transcript and also his 2013 diary. Despite his protests, the NZ Police failed to secure his property, and as a consequence his camera containing evidential photographs went missing from his vehicle that the Police knew had been left unlocked. His home had been subjected to a search warrant in his absence and a burglary while incarcerated at Linton Prison. On 20 June 2014, EM Bail denied the Appellant's request to travel to his home to identify items stolen and also to meet with defence witnesses for the trial scheduled to commence on 7 July."

It is always easy to be wise in hindsight. Phil's 2013 diary and the transcripts for the bail breach hearing on 21 February 2013, had gone missing while Phil was in custody at Linton Prison. If Jo Parker had not given evidence at this hearing that they had crossed the domain boundary to launch their boats that evening, why would Judge Atkins have gone to the trouble of summoning Police Inspector Mark Harrison to an in-chambers hearing? This diary confirmed the date of that hearing, 4 March 2013 at the Palmerston North courthouse. Would the rowers have had the confidence to modify their testimony if the police thought we could produce photographs, the diary and transcripts as evidence? Why did the diary and transcripts surface much later, stuffed amongst other items left in a suitcase outside Phil's back door, not long after Phil's trial? So many questions. Too few answers.

When we read the judgement quashing the conviction of John Banks after his wife came forward with new evidence, we were confident that we had solid grounds for appeal.

"Unlike Ms Banks who frankly acknowledged she could have made inquiries before the trial, but did not think it necessary, the Appellant has been actively thwarted in his endeavours to locate and retrieve documents that had gone missing from his home during a burglary while he was in custody on remand."

When Justice Dobson demonstrated in court how he carries his canoe, our hearts sunk.

chapter 8 notes

Time frame : March - July 2014

police protocol

milieu

While in custody Phil's car had been trashed and the evidence disappeared, crucial to his trial.

PEOPLE OF INTEREST

Banks, John : Former Police Minister who also served two terms as Auckland's Mayor. His conviction over election funding was overturned on appeal.

Carter, Simon : Constable.

Coker, Neil : Police Senior Sergeant, the district's prosecutions manager.

Dobson, Robert : Justice of the High Court appointed in 2007.

Handcock, Pat : Police Inspector Manawatu Area Commander.

Hansen, Helen : Rowing club member.

Hastings, Bill : Former Chief Censor appointed District Court judge in 2010.

Parker, Jo : Rowing club member.

Saulsbrey, Robyn : Rowing club member.

Tate, Ian : Horowhenua District Council's team leader of land and information management.

Watson, James : Rowing club member and complainant.

MAORI WORDS

Waahi tapu : Site sacred to Maori.

LEGAL TERMS

Amicus curiae : Friend of the court, generally a lawyer who does not represent either party at trial but assists the court by raising points of law.

MO : Modus operandi or a particular pattern of behaviour.

S56 defence : Everyone in peaceable possession of a property is justified in using reasonable force to prevent any person trespassing on that property provided that person does not strike or cause bodily harm.

POINTS OF INTEREST

Banks decision : In 2014, John Banks had been convicted of filing a fake election return by not disclosing two donations of $25,000. His conviction was overturned in May 2015, and Justice Edwin Wylie apologised to his wife Amanda after questioning her credibility as a witness.

Manawatu Corrections Centre : Also known as Linton Prison, it houses up to 260 prisoners and is situated 32 kilometres from Levin.

Ch9

weeds in the water

"While this may seem draconian, boaties should be reminded that if these aquatic weeds enter the lake, then there will probably be no boating at all in the future because the weed mats will make boating physically impossible. If anybody is of the belief that the lake can withstand business as usual, they are very much mistaken."

Bill Chisholm

One of the advantages of living on the shores of Lake Horowhenua meant Phil was able to meet with people who shared his concern about the state of the lake. In 1905, Lake Horowhenua was a place where children would frolic in the waters and it was brimming with fish-life. Ten years later, it was clean enough for training before Bernard Freyberg embarked overseas for his gallant swim at Gallipoli, to become one of New Zealand's greatest war heroes.

By 2010, NIWA rated this lake one of the worst in the country. Environment Minister Amy Adams ranked Lake Horowhenua not far behind Lake Ellesmere in Canterbury, considered one of the country's most degraded lakes.

On 8 February 2012 Phil and I had been to a meeting of the Horizons Regional Council's environment committee when Dr Max Gibbs as a Crown research institute (NIWA) scientist presented his report on the lake. To put it mildly, this report was damning.

Of all the people attending, Phil was the only lake owner present at that meeting. While sitting in the public gallery waiting for the meeting to start, Phil was summoned from the room and warned that the police would be called if he wasn't prepared to sit quietly through the meeting. I guess staff realised how controversial this report would be. Phil and I sat in stunned silence. Afterwards, those responsible for the state of the lake adjourned for a luncheon, no doubt keen to hatch a strategy to divert attention away from their own inexcusable negligence.

As a councillor, I could not believe what I was hearing. When a journalist phoned me afterwards for my reaction, I was relieved to discover that somebody else had recorded

these words. The headline in the Dominion Post newspaper put it boldly: Warning lake water toxicity could be deadly to children. It was accompanied by a graphic photo of the vivid green algal scum floating on the surface of the lake.

“If you let a dog run into the lake, there’s a good chance it will become very ill and it may die”, Dr Gibbs said. “Similarly, if you let someone swim in it, at the very least they’re going to get rashes and.. could become very ill with respiratory problems. Worse-case scenario: if they actually drank a quantity of water, it could be lethal.”

For a year or so nothing much happened. But in November 2013, Phil met up with Bill Chisholm, an independent consultant specialising in freshwater ecology and biosecurity. Within days he had provided Phil with a report warning that the lake was at risk of ‘flipping’. (Flipping is a phenomenon that destroys the aquatic plants in waterways, severely reducing water quality and changing the colour of the water to a grey-green.)

Bill Chisholm felt disheartened to see that nearly two years had passed since Dr Gibbs had delivered his report and yet no apparent action had been taken to implement its recommendations. “Once infected, it is extremely difficult and prohibitively expensive to eradicate aquatic weed species from the lake, even if infection was localised to a small area.”

Bill Chisholm recommended a complete ban on allowing trailer-mounted boats of any type from entering the lake. “While this may seem draconian, boaties should be reminded that if these aquatic weeds enter the lake, then there will probably be no boating at all in the future because the weed mats will make boating physically impossible. If anybody is of the belief that the lake can withstand business as usual, they are very much mistaken.”

During the Maori Land Court hearing the previous year, the domain board’s lawyer, James Hardy had claimed there was no evidence that boats were entering the lake unwashed.

“Isn’t it like saying there is no evidence that Levin has an excessive amount of drunk drivers than any other place in New Zealand?” asked Judge Harvey. “Well, maybe they are just getting away with it.”

Two years on from the Gibbs report, there were still no wash-down facilities at the lake. However there had been a lavish banquet in a marquee overlooking the lake to launch the Lake Accord, and thereafter this Lake Accord would be trotted out as an excuse to pacify any criticism of the Accord partners: Horizons, the Horowhenua District Council, the lake trust, the Department of Conservation (DOC) and the domain board. Phil was

not fooled by insincere apologies, nor the Accord as a genuine attempt to clean up the lake.

As soon as he received Bill Chisolm's report about the risk of weeds causing irreversible damage to the lake, Phil immediately filed an injunction seeking a ban on boating until a wash-down facility was installed. He served it on all parties, including the Horizons Regional Council, the lake domain board, the lake trust, the Department of Conservation, the rowing club and the police.

This Maori Land Court hearing during November 2013 was delayed by an hour as we waited for Judge Doogan. Matt Sword the new lake trust chairman arrived minutes later, making Phil suspicious that discussions had taken place immediately beforehand. As Phil suspected Matt Sword opposed the application.

After a brief hearing Judge Doogan concluded there was no evidence to support such a ban. Within days, Phil was able to take photographs of a trailer that had just emerged from the lake. Towing his boat out of the lake was Horizon Council's hydrologist, David Brown; ironically the very same David Brown who was not at all concerned about unwashed boats taking part in his sailing club's regatta on Lake Horowhenua back in 2008.

That month, I was scheduled to address the environment committee of the Horizons Council. In preperation, I photocopied Phil's photographs of weeds clinging to the Horizions Council's boat trailer. When I presented these damning photographs to this meeting, the reaction was dismissive; as if the councillors were in a state of denial about their bio-security obligations.

On the 15 January 2014, Horizons returned to the lake, this time with NIWA. In a desperate attempt to stop them putting their unwashed boats on the lake, Phil parked his truck on his own land near the edge of the lake where larger boats are often launched. Horizons naturally summoned the police, who swooped down in force; police vehicles parked all over the place. Phil remained defiantly in his truck.

When I arrived, the situation was tense. So I went up to Police Sergeant Marty Bull and told him about the bio-security regulations. He wanted to know who was responsible for policing them. I pointed over towards the Horizons vehicle. "Them", I replied.

Bryan Ten Have meanwhile had his video camera filming. And although a police officer tried to distract his attention from Phil still sitting in his truck, Bryan Ten Have was not duped. It all happened so quickly. Three or four police officers wrenched open the truck door, grabbled Phil around his neck and manhandled him out of his vehicle. He was

handcuffed and taken down to the police station where he would be charged with obstruction and resistance.

Meanwhile the police were scrambling to find a suitable place for the boats to be washed down. The local fire station, they suggested. I pointed out that the run-off would still be flushed into the stormwater system, down the Queen Street drain and travel a mere 400 metres or so into the lake.

For a change, Phil was processed promptly, but only because the police discovered we were scheduled to meet with a police inspector assigned to deal with lake issues by Police National Headquarters. When Police Inspector Frank Grant phoned to report he was nearing Levin, the local police politely offered to deliver Phil to this meeting but we refused to divulge our location. With Phil fretting about the unwashed Horizons boat cruising around the lake, this was a particularly fraught briefing that took up most of the day.

To his credit, Police Inspector Pat Handcock tried his best to resolve the situation. He communicated with Horizons to nail down a firm process of wash-down because he felt that scientific data collection was important. He wrote and underlined in bold print. "HOWEVER there must be environmental compliance!"

On 27 February 2014, Phil contacted Police Inspector Pat Handcock to report there was a boat out on the lake. He emailed us back. "Confirmed – (which I think you already know) that it was a Horizons boat. I have no idea where they launched from – and I had no idea that they were contemplating going onto the lake until after our planned meeting."

Phil was certain this boat hadn't been launched from the usual site, so we went scouting around to locate their new launching place, and photograph the recent tyre marks of their trailer. Sure enough, Horizons had launched their boat from the other side of the lake by going through a farm owned by Noel Procter, who worked for Horizons. Noel Procter was of course the pest control officer who had signed up to a lucrative contract authorised by his son while chairman of the lake trust, to spray the purple loosestrife weed infesting the lake.

Purple loosestrife, Horizons group manager Craig Mitchell had told the media, is a major pest that strangles and suffocates the surrounding plant life. "It grows in shallow lakes and wetlands and creates a mat of impenetrable purple", he said. He was unsure how the plant, which is a major problem in South America, arrived in Lake Horowhenua.

Meanwhile, the police realised we had video footage of Phil's latest arrest. The police wanted to view it, but we preferred to wait and show it to a judge, in court. After a refer-

ral to the IPCA, the Independent Police Conduct Authority, these charges were quietly dropped. But that didn't stop the media reporting there was a warrant out for Phil's arrest because he failed to turn up for a hearing when these charges were formally withdrawn.

The previous year had been the Horowhenua District Council's turn to arrange for Phil to be arrested. Phil turned up at a public meeting on the lake taking place in the Horowhenua District Council chambers on the 10th day of October 2013. The venue was packed. However Mayor Brendan Duffy refused to start the meeting until four police officers had arrived to escort Phil away in handcuffs. Phil was adamant he was not subject to any trespass order.

A month later, Phil was formally charged with wilful trespass as a result of his decision to attend this meeting. By the end of the year, the police had promised to review all remaining charges, and we were led to believe that this particular charge would be dropped. As I had warned Police Inspector Frank Grant, the police would be wasting their time proceeding with this prosecution.

When we turned up to court on 23 January 2014, the judge and the prosecution were ready to proceed with this trial. The council's chief executive David Clapperton and Constable Lionel Currie were waiting outside to appear as witnesses. Phil explained he had not summoned any of the defence witnesses he intended to call and he had done nothing to prepare for trial. The Judge decided he was going ahead with this case. He did however offer to excuse Phil if he did not want to remain in the courtroom for the hearing. So we left. Bryan Ten Have remained. Sure enough, the charge was thrown out. We never heard back from the court.

Constable Lionel Currie had certainly not picked a good time to claim he had served this trespass notice on Phil down at the lake. At that precise time, a whole team of councillors and candidates were erecting election hoardings in Levin, all prepared to testify that Phil was with us, hard at work digging holes in the stony ground.

At the same time that Phil was coping with all these criminal charges, he was also juggling Maori Land Court hearings, resource consent hearings and Waitangi Tribunal hearings for the Treaty settlement negotiations.

At the Maori Land Court hearing during March 2012, Phil had been shown a document that Mayor Brendan Duffy claimed gave the Horowhenua District Council the right to discharge all of Levin's stormwater into the lake. Phil took one look at it, and handed it back to the council's lawyer, Roger Downey.

"It's not signed", he said. Horowhenua District Council promised to produce a signed copy within 28 days. It was not until October 2013 that Horowhenua District Council finally admitted defeat by resolving to retrospectively ratify the unsigned 1973 document.

Levin's stormwater system is a major source of phosphorous, and it is this chemical that is the major cause of the cyanobacteria that has plagued the lake in recent years, making it lethal for children. In his 2012 report, Dr Max Gibbs referred to research that 80% of the lake's phosphorous chemical content comes from the town's stormwater system.

From Hong Kong, Dr Gerard McCoy QC contacted me, and based on an affidavit I'd sworn, Phil and 15 other owners applied for a declaratory judgement, which is supposed to be a relatively straight forward procedure to deal with issues such as this one. Dr Gerard McCoy QC participated in a teleconference with Justice Ron Young, and we assumed that we were just waiting for a hearing date to be allocated. We waited and waited...

Meanwhile, the Horowhenua District Council engaged Buddle Findlay who sent out a letter to all applicants on 17 June 2015. Beneficial owners were warned they did not have the standing to bring claims in nuisance, that a declaration would not end the litigation and that council considers that it is not liable for any costs in this proceeding. This letter was enough to discourage all but Phil.

Not hearing anything from the court or lawyers, I made some tentative inquiries and discovered this case was on the verge of lapsing. As it was a priority to divert Levin's stormwater away from the lake, Phil revived it.

Phil managed to dredge up $3000 from scarce resources to fund the hearing that finally got underway during July 2016. We felt we were on strong ground, because Dr Gerard McCoy QC had prepared the original application and that became the basis for all further submissions. Phil was able to point out that Horowhenua District Council does not have a resource consent, a signed authority or even an easement for Levin's stormwater to cross Maori freehold land. I felt that all the arguments we presented should have been enough. For instance, s191 of the Local Government Act 2002 does not allow any local authority to create a nuisance on private land. What greater nuisance could there be than contaminating a lake until it is so polluted that it is no longer safe for children to frolic in the shallows?

Phil was able to describe a personal background to this issue, and he also had access to the report commissioned by the Waitangi Tribunal because Dr Phil Hamer had chronicled the history of betrayals and broken promises that the owners of this lake encountered. A report prepared for the Horowhenua District Council by Dr Chris Tanner, a princi-

pal scientist from NIWA (the Crown Research Institute) commented on the "significant potential health effects from these drain flows," without even considering "potential toxicity issues with other contaminants such as metals or organics in the discharge from this drain." As usual, the decision would be reserved.

In the meantime some of the Government's Clean Up Fund of 1.27 million dollars was spent on a massive weed harvester purchased at a cost of $250,000. The wash-down facility was finally installed, but at some considerable distance from the lake. Instead it is now a popular destination for those who want to wash mud off their vehicles, even a dog or two has been subjected to a scrub down.

Phil could have pointed out the flaws in the design and location, but construction conveniently commenced while Phil was in prison on remand.

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chapter 9 notes

Time frame : February 2012 - January 2014

weeds in the water

milieu

A report reveals that Lake Horowhenua is now so toxic that a mouthful of water could be enough to kill a child.

PEOPLE OF INTEREST

Adams, Amy : Cabinet Minister who became Minister of the Environment in 2012, a role she held until 2014 when she became Minister of Justice.

Bull, Marty : Police Sergeant.

Chisholm, Bill : Certified environmental practitioner who has worked for the Department of Conservation and currently owns a consultancy company. One of the projects he has worked on is Lake Ellesmere, generally regarded as the most polluted lake in New Zealand.

Clapperton, David : Horowhenua District Council's Chief Executive, appointed 2013.

Currie, Lionel : Police Constable.

Doogan, Michael : Maori Land Court Judge.

Duffy, Brendan : Horowhenua's Mayor.

Freyberg, Bernard : Baron Freyberg VC – Lieutenant General and Governor General of New Zealand from 1946-54. On the eve of 25 April 1915 he swam some distance ashore to set flares on the beach that would divert Turkish attention from the main landing of Australian and New Zealand Forces at Gallipoli, saving thousands of lives.

Gibbs, Max : Dr Max Gibbs is a water quality scientist who works for NIWA, National Institute of Water and Atmospheric Research, a Crown research institute to enable sustainable management of national resources for New Zealand. He received a lifetime award for his services to science over fifty years.

Grant, Frank : Police Inspector assigned by Police National Headquarters to deal with Lake Horowhenua issues.

Hamer, Paul : Dr Paul Hamer is a historian whose has provided research for the Waitangi Tribunal and other agencies.

Handcock, Pat : Police Inspector Manawatu Area Commander.

Hardy, James : Lawyer for the Department of Conservation.

Harvey, Layne : Maori Land Court Judge.

McCoy, Gerard : Dr Gerard McCoy QC is a law professor currently based in Hong Kong.

Mitchell, Craig : Horizons manager of environmental management including bio-security.

Procter, Noel : Horizons Pest Control Officer.

Sword, Matt : Chairman of the lake trustees.

Tanner, Chris : Dr Chris Tanner is a principal scientist at NIWA specialising in aquatic pollution.

Young, Ron : Justice of the High Court who retired in 2015 after serving 26 years on the bench and was knighted the following year.

POINTS OF INTEREST

Gallipoli : Peninsula in Turkey where New Zealand forces landed on 25 April 2015 as part of the Allied Forces in World War Two.

IPCA : Independent Police Conduct Authority was set up by Parliament as an independent watchdog to receive and investigate complaints on the police.

Lake Accord : An agreement between the lake trustees, Horizons, Horowhenua District Council, Department of Conservation and the lake domain board that was signed during 2013.

Lake Ellesmere : New Zealand's most-polluted lake that flipped in 1968. Government invested 12 million dollars on a clean-up programme expected to take 25 to 30 years.

NIWA : National Institute of Water and Atmospheric Research is a Crown Research Institute established in 1992.

Ch10

identity theft on a tribal scale

"All other claims are fancy free, nonsensical and illegal."

Hapeta Taueki

To end this endless procession of criminal charges, our greatest hope lay with the Waitangi Tribunal. Not because there was a claim over the lake as most people assume, but because it would expose underlying tensions caused by identity theft on a tribal scale.

At every crucial phase in the history of Mua-Upoko, the very few with mana were undermined by kupapa, people who had infiltrated the tribe, yielding concessions to the Crown that would never be tolerated by those whose ancestry was authentic. Unfortunately, the Mua-Upoko tribal authority managed to scoop up all the funding to progress Mua-Upoko's Treaty claims.

On 24 August 2009, Honourable Chris Finlayson as the Minister for Treaty Settlements had written to the Muaupoko Tribal Authority (MTA) "pleased to confirm that the Crown considers this claimant group to be a suitable large natural grouping for Treaty settlement negotiations."

Yet two years later, on 31 October 2011, Honourable Chris Finlayson wrote to us with a reassurance that "the Crown would only recognise the mandate of an entity where there was clear support from the claimant community for the entity but also to progress to direct negotiations."

"The steps undertaken to gain support by the entity must also be fair, open and transparent", he added.

This process was far from that. Armed with an endorsement from this minister, the MTA sucked up all the resources for Treaty settlement negotiations and grabbed total control of the process, to the exclusion of all 29 other claimants including the claim from Hapeta Taueki, the grandson of Taueki's son.

Hapeta Taueki aptly described all other claims as “fancy free, nonsensical and illegal.”

It was no surprise that the MTA opted for direct negotiations rather than the usual process of the Waitangi Tribunal hearing procedure of allowing people to tell their stories. Research and hearings would inevitably expose not only the frailty of the MTA claim, but also the collusion of the Crown who are at present negotiating a settlement of past grievances with the descendants of the very families who had profited from the fraudulent sale of land, detected by the Royal Commission of Inquiry from a century ago.

Hearings are designed to evaluate the history before negotiating a settlement, but research for these hearings would inevitably unmask those who were masquerading as Mua-Upoko. Settlements are supposed to be based on legitimate grievances. The MTA base their claims on Major Kemp and Hunia, the very men who profited from the appalling way the Native Land Court treated Taueki. And when a Royal Commission of Inquiry condemned the ‘extraordinary attitude’ of the Native Court placing title in the hands of ‘fraudulent’ holders, it was not Hunia and Major Kemp who were penalised, it was Ihaia Taueki. When the Horowhenua Lake Act was passed in 1905, it was Wiki Kemp and Hunia who were invited to the meeting with Prime Minister Richard Seddon. And when it was replaced by ROLD in 1956, it was Captain Charles Broughton’s grandson who had usurped the mantle of Rangatira.

Fifty years later the practice of selective meetings was still happening. One morning Phil spotted a marquee on the far side of the lake. On Friday 28 February 2014, a clandestine meeting took place on private farmland between Honourable Chris Finlayson and the MTA. The first Phil knew of this meeting was a few days later when the local farmer happened to mention it, surprised Phil was not there. The Minister also visited Hokio Beach, but again Phil was not there. Only a day beforehand, there had been a teleconference when the claimants sought an assurance from the Crown that they would not be signing an agreement in principle any time soon. Nobody mentioned this Ministerial visit to the Horowhenua the very next day.

If the process was to be fair and transparent, why would this visit be such a secret? Te Puni Koriri, the Government’s advisory body for Maori matters, was asked by Vivienne Taueki’s lawyer how could it be fair to grant one claimant group, the MTA, $180,000 but nothing to the rest of the claimants and then expect non-funded claimants to somehow progress their own claims.

The Office of Treaty Settlements was similarly asked to justify allocating the MTA a considerable sum of money for research and then decide the reports would remain the intellectual property of MTA who would have the right to withhold these reports from all other claimants. So if Taueki was written out of the tribe’s history, who would know?

For the financial year, 31 March 2015 Crown Forest Rental Trust allocated the MTA a total of $730,000.00. Phil Taueki and other entitled claimants received none of these funds.

It was a huge relief when the Waitangi Tribunal stepped in and arranged expedited hearings, scrounging enough finance from their own scarce resources to cover the cost of research on Lake Horowhenua and also the land deals. On the eve of a judicial conference in Wellington, Brenton Tukapua sent out an e-mail as the chair of the MTA to all members: “Sadly this action by a small group of our whanau encouraged by lawyers who have extensive experience in this process to delay and disrupt settlement negotiations, seeks to delay our progress. It seeks to stop our quest for justice.”

MTA sponsored vans to transport their members. We car pooled. Those already registered with the MTA were eligible to vote on the mandate. Those not on the register could cast a special vote but only after vetting by the MTA. Asked how they determined who could vote on the mandate, Brenton Tukapua was naively forthcoming. “There was a group, they met as a group at the MTA office and those who had their whakapapa confirmed through that group of people sitting around the table having a conversation about member’s whakapapa.. we knew, just by their surnames whether they whakapapaed or not, it was not difficult. Even just back to their grandparents.”

Q&A

Transcripts ; Waitangi Tribunal

Phil Taueki

So if you had a surname that you felt was typically Muaupoko, you would accept their ballot, is that right?

Brenton Tukapua

Well if that’s what their surname is, then yes, we could justify that.

Phil Taueki

And if a Pakeha were married to Muaupoko, then they would get a chance to vote?

Brenton Tukapua

Well if a Pakeha can whakapapa to Muaupoko, then they must be Muaupoko. Well that’s a dumb question, isn’t it?

The English term for whakapapa would be lineage. Phil asked, what would happen to a name on the list such as Hegetusch. “That obviously wouldn’t occur to you to be a Maori name?”

Brenton Tukapua replied: “It doesn’t resonate with me. No.”

Was he not aware this was the married name of one of Phil’s sisters, born a Taueki?

That afternoon, as an unrepresented claimant, Phil rose to address the Tribunal. “Hapeta Taueki”, he stated, “was adamant that he would not tolerate any of these imposters and thieves.

Q&A
Transcripts ; Waitangi Tribunal

For the MTA to pilfer this claim for their own personal profit at the expense of legitimate claimants is shameful and disgraceful.
Those whose ancestors risked extermination to preserve ahi kaa and to preserve Mua-Upoko to retain their ancestral lands are no longer prepared to sit back and let those descended from cowards, thieves and imposters, profit from that deceit and greed. That’s what’s happening.
The same blokes who robbed Mua-Upoko in the 1890’s, you are not going to give them what’s left of Mua-Upoko’s rights to settle.
Anybody without claim of right attempts to use any documents with intent to obtain any pecuniary advantage is liable to a period of imprisonment not exceeding seven years. It is a fitting punishment for anyone who has capitalised upon the courage of my ancestors. These people are even using our ancestors’ pain and suffering as if it was their own.
So the only issue facing this Tribunal is one thing.
If the purpose of the Treaty of Waitangi process is all about acknowledging and settling historic grievances, obviously the first step must be to find out who are the ones with the legitimate grievance and separate out those who aren’t.

For some reason, Hapeta Taueki’s claim had been lumped into the claim filed by Joe Tukapua and other members of his family, which was identified as Claim 52. After Joe Tukapua’s death, this morphed into the MTA claim. Nowhere in their statement of claim was there a single reference to Taueki, Phil pointed out.

“Hapeta’s claim was clear and unequivocal and he would not have countenanced anybody but his oldest son taking up his claim on behalf of Muaupoko.”

The next morning, Brenton Tukapua was given permission to return to the microphone. "During yesterday's korero, I took exception to the unnecessary challenging of my whakapapa and that of my grandfather and my grand-uncle Koro Joe Tukapua and this should not be allowed to happen. We get this kind of abuse thrown in our face all the time, and quite frankly your honour, I don't find that acceptable and I think demonstrates the deep divisions that now exist within our iwi."

The irony of all this was that Brenton Tukapua and his mates in the MTA had sat around a table to decide who could vote on the mandate, but when it came to his own whakapapa, he resented a justifiable challenge.

Some aspects of this tribe's history perplexed me. I had read the transcripts of the infamous Royal Commission of Inquiry. I had read reports written by researchers such as Dr Bryan Gilling and Ben White. I had read books written by Travers, Buick, McDonald and Adkins. But something didn't seem quite right. So I embarked upon a little research of my own, and became fascinated by the tribe's history.

At some stage, I became obsessed with birth, marriage and death certificates. Up popped a birth certificate of immense interest. There are many people who claim to be linked to Mua-Upoko through Ihaia Taueki's only sibling, Hereora Taueki.

Hereora Taueki was believed to be the mother of Captain Charles Broughton's children. Captain Charles Broughton had suffered a brutal death on 1 October 1865. Shot through the back, he fell upon the embers of a fire where he writhed in agony until he was dragged off the fire and thrown over the cliff into the Patea River. Such a hideous death while on government business warranted recompense. The Broughton Act passed in 1873 provided a grant of land to be held in trust for his surviving children; Captain Charles Broughton having left four half-caste children and another child of the Native woman to whom the deceased was married, born posthumously. The condition of this grant was that these children should be raised and educated by the Europeans.

According to the family genealogy, Captain Charles Broughton had five half-caste children, and each of these children married and had large families. But his daughter Emily Tukapua who is the source of much information in the book by GL Adkins, suggests Captain Charles Broughton and Hereora Taueki had only three children. The first of the Broughton offspring did not arrive in the Horowhenua until 1883. Emily was living at Turakina, some distance away, when James Hurunui Tukapua was born in 1890.

The birth certificate I discovered verifies that it was a woman by the name of Eterina who was the mother of a daughter born to Charles Broughton in 1861. Delving further into history, more information emerged. During the hearings, Tom Bennion who was now repre-

senting the MTA, produced baptism recordings advising that Emily was born on 25 April 1866. Therefore she was obviously the baby born after Charles Broughton's death. An official registry MTA also produced as evidence confirms that Hereora Taueki's only daughter Kahukore was two years of age when Emily was born. Kahukore had an older brother but no older sister. Therefore the female child born to Broughton and Eterina in 1961 could not have been Kahukore's sister.

In essence the Broughton land grant had been dissipated presumably by an unscrupulous trustee, but there remained the prospect of more land acquired through a maternal source by citing the Taueki name.

Ironically this Taueki name has been relegated to relative obscurity in most of the MTA reports. In fact, Dr Jon Procter who had managed to acquire the role as chief Treaty negotiator for MTA was asked in the Environment Court :

Q&A
Transcripts ; Environment Court

Anne Hunt
Do you know who signed the Treaty on behalf of the tribe?

Dr Jon Procter
No.

Anne Hunt
You don't?

Dr Jon Procter
No.

Under cross-examination he was also asked whether he was aware of the battles that occurred when Te Rauparaha came down with muskets. He replied: "In Kapiti, yes."

Despite being an academic, he then referred to one account where he believed it was Taueki who helped Ngati Toa find a way up Hokio stream so he could access Lake Horowhenua. "There were a number of people who died", he said, "but not to the levels recounted by the lay person in his book, Te Hekenga, I think it was."

His version of Mua-Upoko history is quite bizarre. As he wrote in his report for the Waitangi Tribunal: "Te Whatanaui was seeking a place to settle for his people after suffering severe defeats in the Hawkes Bay and similarly, Taueki had just returned to the area af-

ter living in the Wairarapa to avoid earlier conflict and was wanting to re-assert interests in this area. Both in conjunction then sought to sell land to the Crown until Major Kemp and Hunia Te Hakeke sought to protect the interests of Mua-Upoko in its lands."

On 25 September 2013, when the Crown granted the MTA full recognition of the Deed of Mandate, there were assurances they would be striving to bring along all Mua-Upoko iwi members during "this journey to settlement."

This attitude towards conciliation was exemplified by the MTA's meeting with Honourable Chris Finlayson in the marquee only five months later. Brenton Tukapua was asked who was invited to this meeting. "Well obviously the board members had the opportunity to invite whoever they saw fit to tell that the Minister was coming along."

Q&A
Transcripts of the Waitangi Tribunal

Phil Taueki
So what sites did the Minister say he wanted to see in advance?

Brenton Tukapua
Well he had an interest to see Hokio, Hokio School. That was pretty much it.

Phil Taueki
I think that's under the administration of the Hokio Trust. Did you inform the trustees that the Minister would be visiting?

Brenton Tukapua
No.

Phil already knew the answer to that question because he chairs that trust, the largest land trust in the Horowhenua.

In 1895 the Minister of Lands, Jock McKenzie had referred to the disgraceful dealings of the Native Land Court, but none to equal those in connection with the Horowhenua Block.

Justice Sir David Baragwanath once said that we are capable of the very kinds of abuse of power for which we criticised our predecessors.

The hearings concluded during December 2015, and their report has yet to be released.

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chapter 10 notes

Time frame : February 2014 - December 2015

identity theft on a tribal scale

milieu

Identity theft on a tribal scale would become one of the defining issues of the Waitangi Tribunal hearings.

PEOPLE OF INTEREST

Adkins, George Leslie (1888-1964) : Author of Horowhenua an account of Maori life in the Horowhenua.

Baragwanath, David : Justice Sir David Baragwanath was knighted in 2011. He is a former President of the NZ Law Commission and also served on the Court of Appeal until 2010.

Bennion, Tom : Principal lawyer at BennionLaw who was the founding editor of the Maori Law Review in 1993.

Broughton, Charles William (1833-1865) : Interpreter for the British military forces who was brutally murdered near Patea on 1 October 1865.

Buick, Thomas Lindsay (1865-1938) : Press gallery reporter who owned shares in several newspapers. He published Old Manawatu in 1903.

Eterina : The mother of Charles Broughton's daughter born in 1861 and four other children.

Finlayson, Chris : Attorney-General and Minister for Treaty Settlements appointed in 2008. A lawyer elected to Parliament as a list MP in 2005.

Gilling, Bryan : Dr Bryan Gilling is a historian and lawyer who has previously worked at the Office of Treaty Settlements as a senior historian.

Kahukore : Daughter of Hereora Taueki.

Kemp, Wiki : Daughter of Major Kemp.

Kemp : Major Kemp, son of Tanguru and Rere-o-Maki.

McDonald, Rod : Son of Hector McDonald. In 1890 he built the first store in Levin. He wrote Te Hekenga, reminiscences of early Horowhenua.

McKenzie, Jock : Lands Minister in Seddon government.

Procter, Jon : A lake trustee and Treaty negotiator.

Seddon, Richard : Premier and Prime Minister of New Zealand from 1893 to 1906.

Taueki, Hapeta : Taueki's great grandson.

Taueki, Hereora : Daughter of Taueki and sister of Ihaia Taueki.

Taueki, Ihaia : Taueki's only son.

Travers, William Thomas Locke (1819-1903) : A political journalist and author who published a biography of Te Rauparaha in 1872. He was also of the original shareholders of the Wellington and Manawatu Railway Company.

Tukapua, Brenton : Charles Broughton's descendant who chairs the MTA.

Tukapua, Joe : Uncle of Brenton Tukapua.

White, Ben : A historian who has worked for the Waitangi Tribunal, producing a number of reports including a comprehensive account on inland waterways.

MAORI WORDS

Iwi : Tribe.

Kupapa : Originally a Maori such as Major Kemp who fought for the British in the New Zealand Wars of the 19th century, but in a more modern sense, a kupapa is any Maori who acts against the interests of a tribe.

Mana : Prestige, authority, charisma.

Rangatira : Tribal leader.

Whakapapa : Lineage, which is important in terms of leadership, land and fishing rights.

POINTS OF INTEREST

Crown Forest Rental Trust : A trust set up under the Crown Forests Assets Act 1989 to invest the rental proceeds from crown forests and allocate the interest from these proceeds to assist eligible Maori claimants to prepare, present and negotiate claims. The CFRT allocated the MTA $730,000 for the financial year ending 31 March 2015.

Deed of Mandate : A deed of mandate signals that the mandated body has widespread support from members of the claimant community to negotiate a settlement of Treaty breaches by the Crown.

Environment Court : A court that specialises in appeals of resource consent decisions and other matters relating to the Resource Management Act 1991.

MTA : Muaupoko Tribal Authority, a tribal authority. (Muaupoko, the spelling used by the tribal authority.)

Office of Treaty Settlements : An office within the Ministry of Justice with the responsibility to negotiate Treaty settlements.

Royal Commission of Inquiry : Established by Parliament in 1896 to review the handling of land sales in the Horowhenua Block.

Te Hekenga : Book written by Rod McDonald reminiscing on the early days in the Horowhenua.

Te Puni Kokiri : Public service department advising on government policies and issues affecting the Maori community.

Waitangi Tribunal : Set up under the Treaty of Waitangi Act 1975, the Waitangi Tribunal is a permanent commission of inquiry to make recommendations on claims brought by Maori to address the Crown's actions and inactions that breach the promises made in the Treaty of Waitangi.

Ch11

hunt for an activist

"If police are unable to see the implications of this series of historic issues/grievances – and we continue with prosecutions – then we deserve a 'bollocking' from the judge and probably more besides."

Police Area Commander Pat Handcock

Intertwined with his Treaty settlement hearings were of course his criminal cases. While Phil's lifestyle was constantly disrupted by the activities of the police, just one particularly challenging week would place his life in turmoil for at least a year.

By 2014, we had confirmation that the domain buildings belonged, as fixtures, to the Maori owners and also the Supreme Court judgement that the clubs did not have any legal right to occupy them. We suspected that the rowers had finally vacated the northern domain building. Upon inquiries, we received tentative confirmation from a senior police officer.

During March 2014, a group of owners decided to move into the northern domain building, storing their own boats and a recently-purchased pump inside.

That same weekend, Phil as chairman of the Hokio Trust was obliged to implement a resolution of this Trust to remove belongings left behind by a person who had been remanded in custody some months beforehand. This Hokio Beach house had been damaged during a domestic violent incident and the property was no longer secure.

In a formal complaint laid with the police on 26 March 2014 Phil describes what happened on Saturday 22 March 2014 when he went to this Kemp Street house with others to help shift these chattels outside and place them in a carport for the family to collect. At 3.30pm he was speaking to a tenant next door when he observed a car containing Sandra and Henry Williams park up the drive.

"I walked over to the property to ask her what they were doing. As I walked up the drive, Sandra Williams started yelling abuse at me. As I got nearer to her she started swearing and coming towards me as if to attack and then she started swinging her arms at me

whilst Henry threw several pathetic punches. He was trying to punch me from behind her. I fended off both of them. I told them again to get off the property and not to return.

"At one point Sandra Williams picked up a child's scooter and started swinging it at me whilst Henry threw several more punches from behind her. I parried the blows off and defended myself until the threat was over. I then went back to the neighbours to wait. On Sunday 23 March, the trust had the locks changed by a local locksmith."

Sandra Williams had summoned the police, and although several police officers including Constable Lionel Currie responded, nobody was arrested on that particular day.

The next day, under the supervision of Constable Lionel Currie and Police Sergeant Nathan Hessell, the rowers broke into the northern domain building, removed gear belonging to the owners of the building and left it on the grass in front of the building. Constable Lionel Currie told us he was acting on orders from his boss. The rowers of course had no tenancy, and when Constable Lionel Currie was shown the Supreme Court judgement, his reaction was typical of the police force. He shrugged his shoulders and said this was all over his head. He then put in place a 24/7 scene guard.

The next day, Phil decided to ask the scene guard sitting in her car whether she was there to keep the owners out. Bryan Ten Have was poised ready to capture her response. The video confirms that Phil was polite, but immediately this scene guard was calling for reinforcements. In the distance can be heard the sound of sirens, and within five minutes several police cars, lights flashing, had pulled up at the scene. After some discussion, they left; this time without Phil handcuffed in the back seat.

On Tuesday 26 March, Police Inspector Waata Shepherd came up from Police National Headquarters in Wellington to meet with us, and once again we photocopied a large bundle of documents to corroborate our position. As soon as he arrived, he stood the scene guard down and then sat down for a cordial but frank discussion. Police Inspector Waata Shepherd seemed genuine in his attempt to sort everything out. Exasperated by the attitude of the local police Phil however gave him an ultimatum: that he would wait 24 hours and if he hadn't heard anything by then, he would be going back into the building. Phil also warned Police Inspector Waata Shepherd that he was not going to stick around the next time the police turned up to arrest him on any more bull charges. Before leaving, Police Inspector Waata Shepherd gave us a hint that Phil was likely to be arrested because Sandra Williams had laid a complaint of assault. That did not surprise us.

Police Inspector Waata Shepherd gave Phil another tip. If Phil removed the rowers' equipment, he must not keep any of it nor could he damage anything. Otherwise it would

count as burglary. Phil waited, and then reluctantly gave Police Inspector Waata Shepherd an extension of time until Thursday, midnight.

At 1am on Friday morning, I was woken by a phone call. It was Phil. The police were down there, and he was worried they might arrest him for being in his own building. We chatted for at least five minutes, and as usual, I asked to speak to the police. They were outside somewhere and when Phil asked for the senior officer to speak to me, Phil says he refused to come to the phone. However Phil put me onto speaker phone and when one of them finally came over, I could hear what this officer was saying to Phil and his replies. It was obvious that the police were waiting for instructions from their boss, Police Sergeant Marty Bull.

Earlier in the week, I had received a personal e-mail from Police Inspector Pat Handcock advising that Police Inspector Chris Benseman was meeting with a legal adviser and Police Sergeant Marty Bull on the Wednesday and he was hoping these discussions would lead to a sensible response. “If police are unable to see the implications of this series of historic issues/grievances – and we continue with prosecutions – then we deserve a ‘bollocking’ from the judge and probably more besides.”

When I put the phone down after this early morning call, I noticed Phil had also left a message on my answerphone. I received a third call early that morning. True to his word, Phil was not going to wait around for the police to arrest him.

The next morning was spent trying to figure out what was going on. A police officer called around to my place to ask if I knew where Phil was. Bryan Ten Have had a similar visit. Vivienne Taueki went down to the lake to check on Phil’s dogs, and discovered police cars all over the place. She was handed a search warrant. According to this search warrant, Phil was under suspicion for four offences, namely burglary, wilful damage, receiving property and the one that intrigued me, escaping lawful custody.

And then the Saturday night edition of the Manawatu Standard newspaper featured a huge unflattering photograph of Phil on the front page, under bold headlines: Police hunt for lake activist. “Lake Horowhenua activist Philip Taueki was still in hiding this morning after he fled police who had arrested him for burglary”, the journalist wrote. “Police said yesterday they were looking for Taueki, who lives in a former nursery at the lake after an incident in the early hours of Friday morning. Taueki had been arrested for burglary after police found him at the Horowhenua Rowing Club building, which he believes is unlawfully occupied.”

“Prior to Mr Taueki being transported to the Levin Police Station he was taken to his house to secure his property and from here he absconded from the police”, police Acting Manawatu Area Commander Detective Inspector Chris Bensemann said.

At least this article confirmed that the equipment stored in the building by the owners was “later removed by club members under the supervision of police.” From my perspective, these last five words were significant. It seemed to me to be a concession that the police had totally aligned themselves with the rowers, to the detriment of the owners who had every right to store their own gear in their own building. As for the rest, I was privy to the conversation between the police and Phil that night.

On Thursday 27 March 2014, Detective Inspector Chris Bensemann sent Phil a letter via my address regarding an e-mail sent to Police Inspector Waata Shepherd “which purports to address the current legal status” of Phil’s rights to enter the building. In this letter, Detective Inspector Chris Bensemann refers to a resolution of the domain board passed well over a year beforehand letting the club store their gear in the meantime. “Unless or until that resolution is found ultra vires, is rescinded or usurped by a new resolution concerning use rights, the authority for the Rowing Club to store gear in the building remains extant”, he continued. “The police currently take the position that if you are found in that building in the absence of such authority, you would be there unlawfully. This is relevant to determining the criminality of any conduct you engage in should you be found in that building. As you will appreciate Police must act within the parameters of the law as it currently stands.”

This letter struck me as odd. Here, the police were claiming they must act within the parameters of the law as it currently stands. Yet they ignored the judgement of the Supreme Court that stated quite clearly that the clubs had no legal right to occupy the buildings. This judgement was amongst those I had photocopied for Police Inspector Waata Shepherd.

The Court of Appeal explains the legal situation more coherently: In terms of s53 of the Reserves Act, the board’s power is to grant limited exclusive use rights. “It now appears to be accepted that there was no power to effectively attempt to roll over the terms of the licence on a month by month basis.”

Even Crown Law in their submission to the Supreme Court dated 25 October 2012, acknowledged that the board’s attempt to roll over the licence was subsequently found to have been invalidly granted. S53 of the Reserves Act 1977 prohibits the domain board from granting exclusive use of the buildings for any more than 40 days per annum or six days consecutively.

As soon as the rowing club locks the building up, that becomes exclusive use. By March 2014, the rowing club had well and truly exceeded forty days of 'exclusive use'. Yet Detective Inspector Chris Bensemann suggests the police were acting "within the parameters of the law as it currently stands".

Due to the search warrant, we could commence our own inquiries while Phil was in hiding, in the hope we could prevent the police laying any more bull charges.

One of Bryan Ten Have's first priorities was to investigate the allegations by the police that Phil had received a stolen trailer. This was a trailer that Phil had bought to transport a pump purchased for lake restoration work. Phil was so proud of this pump and trailer that he was photographed alongside it for an article in the local newspaper. Why would he pose alongside a distinctive trailer for media publicity if he knew it was stolen?

Bryan Ten Have quickly tracked down the name and address of the previous registered owner, and reported his findings to Police Sergeant Marty Bull. He came away with the distinct impression he was not telling Police Sergeant Marty Bull anything the sergeant did not already know.

Meanwhile I was receiving intermittent communications from Phil who was working furiously on an important Waitangi submission due within a fortnight and also obsessively uploading footage onto the Internet. Because the police were pushing the message that he had absconded from custody, he perhaps unwisely circulated an e-mail to the Waitangi claimant community that he was sending this e-mail from a clearing known only to Mua-Upoko as he was "on the run" after escaping police custody on the weekend. He also commented that the refusal of the Police to recognise a Court of Appeal ruling is a blatant misuse of the power of Government, adding that he will not be free to keep in touch much longer.

Phil was due for a case management hearing on another matter 15 April 2014, and after his experience during the Christmas of 2010, he was diligent about turning up for court appearances. We also knew that the police had the authority to approach the courts at any time for a warrant to arrest for 'escaping from custody', but had not done so. Therefore we planned a meticulous operation to get Phil to the Levin District Court at precisely 10am, without being waylaid along the way by the police. My car was well-known to the police, but it was my responsibility to pick Phil up from a secret rendezvous. I would be driving, with Bryan Ten Have in the back seat ready to record any intervention to delay Phil's arrival.

As soon as Phil entered the courtroom, the police were ready to spring into action. Judge Lynch condoned Phil's arrest and so Phil was marched down to the police station

in handcuffs, while Bryan Ten Have followed, filming. As police failed to follow the proper procedures for this arrest, I had inadvertently asked Bryan Ten Have to start filming, forgetting that we were still in the courtroom. For that reason the police confiscated his chip and refused to return it unless he agreed for this footage to be deleted. They probably sensed that we intended to use this footage as evidence that the police rarely follow proper procedures when arresting Phil.

After Phil had disappeared into the bowels of the police station, Bryan Ten Have and I returned to the court waiting room, where we waited, and waited, and waited. It was not until the sky was verging on darkness that Phil was brought up into the dock. We could see the shock on his face as the police prosecutor read out eleven charges and then remanded him in custody. Amongst this list of charges was a charge of receiving the stolen trailer, and three drug charges, including possession of a utensil for smoking methamphetamine. He had also been charged with assault on a female, namely Sandra Williams. Phil was facing seven years imprisonment.

My first priority was to make sure Phil got the essentials for prison, but every step of the way, it was a nightmare. Phil had been sleeping rough for the past three weeks. He had no money, nothing but the clothes on his back and these were by now dirty. Without his signature, I could not file any submissions and I had no idea how to seek bail for a person remanded in custody.

On top of these difficulties, we were preparing for trial early in July 2014 on other charges, and all our communications by phone were recorded. When I finally managed to get a visitor's pass, giving me permission to visit Phil twice a week, I discovered I could not take any pens or paper into prison. To overcome this problem I wrote on my hand a series of queries. After each visit I would try to recall his comments.

The only consolation during this bleak period was a phone call the day after his remand in custody; one I initially considered to be a hoax. It was a phone call from somebody trying to track Phil down, and my first instinct was to brace for another death threat. So my first response was tentative. The caller explained he was a television producer who had just seen some footage of Phil's arrest that he had recently uploaded onto the Internet. By now, I was really convinced this call was a hoax.

The TV Producer Martin Cleave said he was planning a television series on kaitiaki, and he felt Phil could be an ideal person to appear on the programme. One problem, I finally confessed, Phil is in jail. Martin Cleave did not seem too fazed by that admission. I agreed to send him some material, but before wasting precious funds on photocopying, I checked him out. He was indeed an award-winning producer. Martin Cleave had viewed some footage Phil had been obsessively loading on the Internet while in hiding.

Watching this footage of Phil being manhandled out of the truck, Martin Cleave had reached the conclusion that the police were using a choke hold that could have broken Phil's neck. If anybody was a true kaitiaki, somebody prepared to put his life on the line for a cause, it was Phil Taueki.

The next four months were frazzled, and all captured on film for screening on Maori Television as "The Kaitiaki Wars". I have never visited a prison before and naturally I was apprehensive, even without the company of microphones and cameras. Sitting all day in a court waiting for Phil's name to be called is tedious at the best of times. But sitting around for a second time until it is dark outside, is infuriating when the judge once again denies Phil bail. My distraught dismay on the steps of the courthouse, all filmed for the series. Then the relief finally getting him out on EM bail. And then returning from Wellington triumphant because Justice Ron Young released him from that dreaded bracelet on an interim basis so that he could attend the tangi of his cousin, Alexander Taueki. To this day, Phil refers to Justice Ron Young with gratitude as 'Young Ronnie'.

But even so, my own anxieties were far from over. Justice Ron Young had promised to issue a minute with his final decision the next day and until then, we only had his word that Phil would not be subject to electronic monitoring in the meantime. It would be a hectic day, commencing in court for yet another case management hearing, then a tangi for Mua-Upoko's Rangatira and at mid-day down to the lake for a meeting with Greg Kroef from Heron Construction. Greg Kroef had flown from Auckland to meet with Phil because he wanted to see for himself a lake that had been polluted by the town's sewage for thirty years or more. As head of an inter-generational specialist dredging company, he wanted to help. Greg Kroef and Phil would go out on the lake in one boat, while another carried the film crew.

The only aspects we couldn't plan were the weather, which was bitterly cold, and Phil's presence, which had been dependent on the High Court. Because we had not yet received anything in writing from Justice Ron Young, I was worried that the police would spoil our arrangements by escorting Phil back to the police cells. So it was my duty to remain on stand-by to intervene and try to prevent that happening. It was an exhilarating day, but also, I was petrified something would go wrong.

chapter 11 notes

Time frame : March - August 2014

hunt for an activist

milieu

Phil Taueki follows through on his promise not to stick around to be arrested on any more bull charges.

PEOPLE OF INTEREST

Bensemann, Chris : Acting Manawatu Area Commander / Detective Police Inspector.

Bull, Marty : Police sergeant.

Cleave, Martin : As a television producer Martin Cleave has won Qantas awards for his observational reality series. He is a former director for the Maori Television service.

Handcock, Pat : Police Inspector Manawatu Area Commander.

Hessell Nathan : Police Sergeant.

Kroef, Greg : Third generation member of Heron Construction which specialises in dredging operations and marine construction works. This company became a pioneer in trenchless and other technology.

Lynch, Gerard : District Court Judge.

Shepherd, Waata : Inspector designated by Police National Headquarters to deal with Lake Horowhenua issues.

Taueki, Alexander (Tu) : The first son in-line going back several generations to the Paramount Chief Taueki, the Treaty signatory.

Williams, Sandra : Hokio Beach resident.

Young, Ron : Justice of the High Court.

MAORI WORDS

Rangatira : Tribal leader.

Tangi : Funeral.

LEGAL TERMS

Ultra vires : Acting outside legal authority.

POINTS OF INTEREST

Hokio Trust : The largest Maori land trust in the Horowhenua.

Kaitiaki Wars : "Kaitiaki Wars" is 13 episodes initially screened in 2015 that follows four groups determined to protect their whenua and their culture before all is lost.

Manawatu Standard : Daily newspaper based in Palmerston North.

Supreme Court decision : Taueki v Queen SC 64/2012.

Ch12
behind bars

"I am satisfied that there were not legitimate grounds to remand Mr Taueki in custody and I am satisfied that the imposition of electronically monitored bail was not necessary to meet the three factors particularly relevant to bail for the reasons that I have set out above in the judgement."

Justice Ron Young

Looking back over the year, 2014 had certainly been a year of upheaval for Phil.

On the 15 April 2014, Phil had been arrested when he turned up in court for a case management hearing scheduled for 10am. He had been held in custody to become the last defendant to appear during the afternoon sitting. His pre-trial application for the Watson charges had been removed from him, and he was never ever given any other opportunity to raise issues that inevitably surface when preparing for trial.

Because nobody else can communicate with a prisoner sitting in the police cells, Phil had been totally reliant on the services of a duty solicitor. This solicitor had appeared in court earlier in the day negotiating for his client, Sandra William's son, to be bailed to the Kemp Street address owned by the Hokio Trust. Although Judge Lynch and this solicitor both acknowledged this conflict of interests, Phil was denied impartial advice to protect him from the prospect of a remand in custody. The irony is that Sandra William's son would be going to live in a house owned by the Hokio Trust Phil chaired, while Phil would be taking his place in jail. It had been a long day. But none of us, not even Phil was prepared for so many charges to be thrown at him all at once.

Somehow, Phil had managed to apply for bail. On the Thursday before Easter 2014, I had answered the phone to hear the familiar automated voice asking if I would be prepared to accept a phone call from a prisoner. I jotted down a note that he had been 'pretty seriously assaulted' and although we were not free to speak openly because all calls were recorded, I heard enough to discover he had lost eight teeth. He sought an urgent application for bail, reporting that it was only due to the intervention of prison guards that he

avoided being seriously maimed or killed. In a subsequent submission for the court, he would be more forthcoming :

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Submission ; District Court

I lost eight teeth and was given such a serious whack to my calf that my leg was still swollen and discoloured when I appeared in court nine days after this incident. Facial injuries to my forehead were still visible. In addition I was suffering from blurred vision and dizzy spells.

The other party was disciplined and transferred to another wing. Contrary to media reports, I was not disciplined.

If Phil had expected any sympathy from Judge Ross, he was very much mistaken. On 7 May 2014, he was transported to the court in the prison van, arriving at 9am. There, he was held in a cell until his appearance in court after 5pm that evening. Again, the events surrounding that brief appearance were recorded in a further submission :

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Submission ; District Court

I appeared barefoot because my shoes had been removed.
When I asked for toilet paper, I was told to use my hand which meant appearing in court with faeces under my fingernails.
During my hearings, I felt disorientated and unable to focus and find the notes I had scribbled on the back of prison forms.
I also had an uncharacteristic craving for water, which I was guzzling compulsively from several cups at a time.
To help me focus my McKenzie Friend took hold of my hands which she later tells me were cold and clammy.
During the afternoon, six other prisoners were served cups of tea on a tray, whereas my own cup of tea was later handed to me through the prison bars by a police officer who said something along the lines of: 'Here's yours, Phil'.
My uncharacteristic behaviour in court was consistent with being drugged against my will and without my knowledge.

As far Judge Ross was concerned, "Judge Lynch had just cause to remand the appellant in custody because of the likelihood (the appellant) would continue to re-offend in the same vein while on bail". It is hard to appreciate how offensive his comments were when

our tally of charges withdrawn, dismissed or quashed on appeal was rapidly rising. Judges frequently overlook the presumption of innocence.

That particular hearing is one I will never forget. Martin Cleave and the film crew had never met Phil because he was imprisoned at the time. They had applied for the right to film inside the courtroom but this application had been declined. During those idle hours waiting for Phil to appear, the team decided to get some footage of me sitting in the waiting room reading through the submission I had prepared overnight. Suddenly we were in trouble. We knew permission was necessary to film inside the courtroom, but court staff insisted this rule applied to the whole building. I had asked where the signs were. A staff member scurried around plastering hastily-prepared notices everywhere. I suspect the reason Martin Cleave's application to film inside the courtroom had been declined was that they did not want any recording of the injuries Phil sustained during his beating while inside the walls of his prison.

Phil knew, however that Martin Cleave and his producer Mark Ihaia would be seated in the public gallery. He knew also the importance of creating a good impression. From the reports we were receiving from that day's duty solicitor, Phil was in good spirits despite the long day sitting in a cell. But when Phil finally entered the dock, he did not turn towards me as he usually did and nod in acknowledgement. Something was wrong. He requested and was granted permission to spread out the disorganised mass of papers he was clutching in his hands. When I am his McKenzie Friend, I usually manage his documents which are all packaged up in clear plastic folders identified on the front in large print.

This time I watched in dismay as he searched frantically for his notes, and worried that he might spill the cups of water scattered all over the bench because he was grabbing at the water jug and filling paper cup after paper cup. He was gulping this water down rather than taking his usual refined sips. The judge must have sensed he was in trouble, because he gestured for me to come forward. Phil did not even seem to realise I was there. I grabbed his hands to get his attention. They were cold and clammy, and his eyes were glazed over. There was nothing I could do to help him. I had to let him be taken back down to the cells, before gathering up his papers to race down the stairs in the hope that I could wave to him as he was driven away in the prison van.

By now, it was dark outside, and I was absolutely fuming. When I arrived home I discovered that he had smuggled out a note to me by leaving it on the court bench while he was led away by the police. His note addressed to me was hastily scribbled :

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Phil's prison note extract

> The cops + others will be hoping my 'luck' runs out one day/night in Linton. I was on my last legs!! Anything happens to me or my dogs, cats or property outside, then I will be left with no decision to make.

Reading Phil's prison notes ; it's hard to explain how helpless one feels at a time like this.

But first things first. When Bryan Ten Have and I had visited Phil in jail, we had been escorted to a special room where we were separated by a glass window and left to communicate via a phone. Phil was wearing his usual prison-issue orange zipped-up-jumpsuit. For twenty years I had worked as a journalist, and was well-trained in the technique of extracting sensitive information that would be credible. After exchanging pleasantries, I slipped in our conversational tone a question or two about what he had to eat and drink while down in the court cells for his previous appearance. He was describing his afternoon cup of tea, when the penny dropped. Until then, he had no idea why his brief court appearance had gone so horribly wrong.

He suddenly realised : "I'd been drugged", he said quietly.

I laid yet another complaint with the IPCA, the Independent Police Conduct Authority. The reply that I received from Pieter Roozendaal on 5 September 2014 was typical. A police officer spoke to the police officer who had served that cup of tea. "First he stated that the police categorically deny spiking your drink. None of the staff spoken to recall you asking for toilet paper, and that had you asked for it, they would have supplied it. Further to this there do not appear to be any lines of enquiry that could reasonably be made to secure further relevant information that would be of assistance to the Authority."

It was another brush off. Why did they not to speak to me, Martin Cleave, Bryan Ten Have or an experienced drug counsellor sitting in the public gallery? For that matter, why did they not speak to Phil? The police must have been relieved to hear that 'categorically' denying allegations was enough to end that line of inquiry.

Phil was by now becoming frustrated by my attempt to get another bail hearing and was venting his frustration on me in particular. He was becoming so abusive that I started declining his calls. As for visits, I dreaded them. Nevertheless I finally managed to get his signature on an application I had posted in to him, and that he had posted back, seeking an urgent hearing on the grounds that Phil was worried about his safety while on re-

mand in custody. He was also losing weight, because he could no longer chew his food properly.

We managed to get another hearing on 11 June 2014, and alerted Martin Cleave. He wanted an assurance that there was a good chance we could get Phil out of jail this time, but I could no longer be certain of anything. Also we were hearing rumours that Phil was being targeted. Fortunately the prison guards were also concerned about Phil's safety and transferred him to a segregated block.

Meanwhile Martin Cleave and his crew were on stand-by, while frantic negotiations took place with Corrections, the government department responsible for prisoners and others in some form of custodial arrangement. First we were told Phil would not get out unless he was prepared to accept a bail address outside the district. And when we managed to arrange a safe haven in the Hawkes Bay, I reminded the Corrections Officer of Phil's three day hearing in July on the Watson charges. Corrections told me that I would have to drive up to Hawkes Bay to collect Phil each morning before trial and then drive him back each evening after the trial. Two hundred kilometres. Two and a half hours each way. Five hours per day! And that's assuming the treacherous Manawatu Gorge was not closed in the middle of winter due to slips.

Eventually, we managed to convince Corrections to let Phil stay at Bryan Ten Have's place, and that proved to be a blessing in disguise because his spacious home and landscaped gardens became the setting for most of the filming for Kaitiaki Wars, and a party or two to celebrate the occasional victory. Once these arrangements were in place, I was warned that Phil was to be released into my supervision after the hearing. We were not permitted to stop to be interviewed by the media and I was to drive by the most direct route to Bryan Ten Have's place. Any infringement and Phil would be back in jail.

Armed with these directives, Martin Cleave made his own arrangements. Fitted with cameras, my car was parked across the road from the side door where Phil would emerge upon his release. A little red light flicks on when the door is about to be opened, and I have spent many times pacing up and down waiting to collect Phil. This time I would have a microphone. As soon as Phil appeared, I would give him a big hug and whisper in his ear that we were recording. Joe Whitehead was in his usual position lying down under the green blanket in the back seat. Jason Wetizel would be wielding the large camera as we crossed the road. Phil would hop into the front seat of my car while I would drive him home to the party waiting to welcome him.

The usual bracelet attachment ritual would be a minor distraction, because Bryan Ten Have is a fabulous host, guests would stream in and the guitars would come out. Martin Cleave's television crew blended in well, and I knew Phil was in a safe pair of hands. But

as for me, I was exhausted and slipped out into the night to head home. I had done my duty, and for once I just wanted to be able to relax without worrying about Phil.

Bryan Ten Have's home is truly magnificent, surrounded by a splendid garden. Phil had his own private alcove at one end of the house, and unlike the previous time he was bailed to live with Bryan Ten Have, he would not have to endure the nightly visits of the police force, waking him up in the early hours of the morning and demand that he present himself at the front door.

But in some ways, EM Bail with a 24/7 curfew is prison even in a gilded cage. He could not leave the property for any reason, except to go to court, and was always tracked to make sure we did not deviate from the direct route. He was reliant on Bryan Ten Have for personal matters and on me, to handle the workload of preparing for court: photocopying exhibits, conducting scene visits and purchasing stationery and other supplies required. He could not attend Waitangi Tribunal hearings, Maori Land Court hearings, resource consent hearings or Hokio Trust meetings. Nor could he undertake site visits for the Watson charges. Bryan Ten Have and I would go out and take photographs and measurements, come back and check with Phil; returning if we did not get it right. Bryan Ten Have was meticulous, as he knew he would have to be. We would now have to call on Bryan Ten Have as a defence witness to place these measurements on record.

But on the positive side, Phil could spare plenty of time to be interviewed for Kaitiaki Wars. It was not until I look back over these episodes that I realised how gaunt Phil had become. Also his cousin Alexander (Tu) Taueki had been dying. And Zeus was pining away. Both dogs had been too ill to visit Phil, and Phil was not permitted to visit them. Phil was angry with me again. He refused to listen when I tried to explain that the corrections officer had reassured me that the first step is to get Phil out of jail and then ask for a variation of these conditions.

And so it had been back to writing submissions, this time to get him off EM bail. This application had been heard by Judge Lynch on 17 June 2014, and once again there was consternation amongst court staff due to the media interest in Phil's case. This time it was Karl du Fresne from the NZ Listener magazine who planned to cover this hearing. The court staff had no idea what Karl du Fresne looked like, so a hapless reporter from Palmerston North became their initial target. Then when Karl du Fresne arrived, they demanded to see his press card. As his face appears on articles and weekly columns he writes for one of the country's top newspapers, he is so well-recognised that it never occurred to him to check he had brought it with him. A security guard escorted him out of

the building. Karl du Fresne came back. There was nothing to stop him sitting in the public gallery, provided he did not take notes.

Judge Lynch was in no mood to be lenient. There is no change in circumstances, he announced. “At the end of the day, the clear conclusion Judge Ross arrived at is that the risks under the Bail Act were ameliorated by the restrictions of electronically-monitored bail. But for electronically-monitored bail, at that point in time you would not have been bailed.”

We appealed. Our submission to the High Court reflects our state of mind at the time.

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Submission ; High Court

Today, you will be reminded of the reason Judges exist.
I Philip Dean Taueki as a lay litigant am hereby appealing my electronic bail conditions on the grounds that the current conditions well exceed the provisions of the Bail Act of 2000, and are therefore punitive in nature.
As Justice Gendall has stated, bail conditions must be logically related to the risk and no more than reasonably necessary to address this.
I would remind the court that I have not been convicted of any offence.
To demonstrate the unreasonableness of current bail conditions, I attach e-mail communications with EM Bail declining a release to visit Alexander Taueki, the Rangatira of Mua-Upoko who died on Sunday morning, depriving me of my solemn duty to pay my respects to our rangatira at his tangi.
I cannot stress strongly enough that unless convicted, the law upholds a presumption of innocence.
This presumption of innocence is particularly applicable to my own circumstances, due to the appalling track record of police prosecutions since I rejected reliance on legal aid lawyers – preferring to represent myself without an intermediary.
During the past three years, I have been arrested twenty times.
Of the 22 charges that have been finalised, 19 have been dismissed, withdrawn or quashed by the High Court.
Since an incident on 9 October 2011, the Police have failed to secure a single conviction from all 16 consecutive charges.

Crown Law responded by opposing a relaxation of Phil’s bail conditions :

The opposition records that the circumstances of each of the incidents relating to the charges against the appellant involve his personal views in relation to various assets owned or administered by trusts and boards operating on behalf of the Mua-Upoko iwi. In particular his offending has focussed on the Horowhenua Rowing Club using the Horowhenua Lake and the rental property of 7 Kemp Street Hokio Beach.

Personal views, is that what Crown Law said? How can they be personal views when they were decisions of the Supreme Court and Maori Land Court?

Maori Land Court and the Supreme Court judgements concurred that Phil Taueki has legal entitlement to the land and assets, yet Crown Law in this submission argue it was only his personal views, ignoring existing judgements.

The prosecution continued to claim that Lake Horowhenua and the domain are assets made freely available for use and enjoyment by the community. “As they are entitled to do, community groups use the area for recreational purposes. As they are entitled to do, the victims of the Kemp Street matters will continue to frequent that address.”

“Herein lies the crux of the problem,” Phil replied, “and the reason the police have such a spectacular failure rate with prosecutions. They refuse to accept the judgements of the courts.”

For good measure, we added correspondence from police officers repudiating the judgements of the Supreme Court, the Court of Appeal, Lord Cooke of Thorndon and the Maori Land Court.

There had been a special sitting of the Maori Land Court on 22 May 2014, which Phil had not been permitted to attend because he was still in prison on remand. In Phil’s absence, Judge Doogan had apologised to the Hokio Trustees for issuing an ex parte injunction based on misleading information given by the complainant, Sandra Williams. He had established that her son’s occupation of the Kemp Street address was in the nature of a bare licence revocable at will by those who have the legal right to control these properties. In other words, the Hokio Trust had every right to evict Sandra Williams’s son and remove his belongings. The police got it wrong.

Driving down to the Wellington High Court for yet another bail variation hearing, Phil had relished the freedom, although still obliged to remain under my supervision at all times.

Justice Ron Young had seemed to be intrigued by the situation we presented to him, but we were under no illusions. Our hopes had been dashed far too often.

At least Phil had been given special dispensation to attend Alexander Taueki's tangi the next morning. When Phil arrived at this tangi, he was greeted with the warmth of a homecoming hero. Phil as usual, responded with humility. Phil had not been able to visit Alexander Taueki in his dying days, but at least he could attend the tangi and pay his last respects, delivering a heartfelt eulogy pledging his commitment to the tribe's cause and then as a pallbearer, carrying Alexander Taueki's casket to his final resting place overlooking the lake. But as always, I worried that the police might arrive to spoil the solemnity of this occasion; so little respect had they shown when Phil was grieving the passing of his mother.

And down at the lake for Greg Kroef's visit, my anxiety intensified when a late arrival mentioned that a police car was cruising around. It had been another gruelling day, and it was not until later that evening that I suddenly remembered to check my e-mails. It was there. I could hardly bring myself to open the file and read it.

Justice Ron Young commented that Mr Phil Taueki is firm in his conviction that his rights have been constantly breached and that the police have unfairly arrested him when others have trespassed and committed crimes against him. "I am satisfied that there were not legitimate grounds to remand Mr Phil Taueki in custody and I am satisfied that the imposition of electronically monitored bail was not necessary to meet the three factors particularly relevant to bail for the reasons that I have set out above in the judgement."

Euphoric, I phoned Phil. He couldn't wait to remove that dreaded bracelet. He was free, free to go where he pleased. Phil's first priority was to visit Cleo and Zeus, his loyal pets he had not seen since that night back in March 2014. He was too late. Zeus had never recovered from his own ordeal and had been put down. Cleo would later die in similar circumstances; Phil unable to console either of his loyal companions in their dying moments. Phil was heartbroken.

But within a day or so, he was in trouble again. During his two months of imprisonment, his benefit payments had stopped, and with a further two months on EM bail with a 24/7 curfew, he was unable to go up town and do anything about automatic payments that had lapsed. He returned to a home without power or a phone.

His truck was no longer parked where he had left it four months beforehand, but it never crossed his mind that it had been borrowed by people taking it on long trips to transport furniture. Long trips use up road user charges. Nevertheless he knew his certificate of fitness had expired, and on the very first Monday after his release, he was on his

way to the VTNZ vehicle testing station when he was pulled over by police officers on a routine road check. In his confused state, when they mentioned road user charges he had no idea what they meant. Even if he had realised that his road user charges had been used up during his enforced absence, he had made no credit arrangements to purchase these charges over the phone or by fax. And of course, his phone had been disconnected.

Another series of court appearances. When he was fined, he appealed. The judge was not sympathetic, and he was forced to pay several thousand dollars in fines, money he could ill afford, particularly at that period of time.

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chapter 12 notes

Time frame : April - August 2014

behind bars

milieu

As soon as Phil Taueki appears in court he is arrested, then thrown into jail.

PEOPLE OF INTEREST

Cleave, Martin : Producer of Kaitiaki Wars.

Doogan, Michael : Maori Land Court Judge.

du Fresne, Karl : Feature writer for the NZ Listener, former Editor of the Dominion, columnist and author.

Ihaia, Mark : Producer of Kaitiaki Wars.

Lynch, Gerard : District Court Judge.

Roozendaal, Pieter : IPCA investigator.

Ross, Gregory : District Court Judge.

Taueki, Alexander (Tu) : Mua-Upoko Rangatira.

Wetizel, Jason : Principal cameraman of Kaitiaki Wars.

Whitehead, Joe : Researcher/Interviewer for Kaitiaki Wars.

Young, Ron : Justice of the High Court.

MAORI WORDS

Rangatira : Tribal leader.

Tangi : Funeral.

POINTS OF INTEREST

Corrections : Public service department that supervises offenders and those on bail while in prison or out in the community.

Crown Law : Public service department that oversees prosecution of criminal offences.

EM Bail with 24/7 curfew : Electronically monitored bail to an approved address that does not allow a defendant awaiting trial to leave the property except to attend court.

Hokio Trust : Horowhenua's largest Maori Land Trust.

IPCA : Independent Police Conduct Authority.

Kaitiaki Wars : Television series of thirteen episodes that screened on Maori Television during 2015, following four kaitiaki and supporters in their efforts to protect their environment and their culture.

Manawatu Corrections Centre : Also known as Linton Prison, it is a prison that can accommodate 260 prisoners situated 30km from Levin.

Manawatu Gorge : A narrow road between the Tararua and Ruahine Ranges linking the Manawatu to the Hawkes Bay that is prone to closure due to slips.

Road user charges : A levy on light diesel vehicles and trucks to pay for road maintenance.

VTNZ : Vehicle Testing NZ is a government-mandated company that carries out Warrant of Fitness inspections for vehicles.

Watson charges : The assault charges laid in February 2013.

Ch13
the bull charges

"I would like to point out that the Police have wasted considerable time and resources prosecuting charges that are unable to be substantiated when placed before the Court. They have already exceeded the threshold to be considered a vexatious litigant."

Phil Taueki

With Phil now facing a total of eleven charges in one hit, we were encountering our biggest challenge to date. However, I decided to pick them off one by one. In the meantime, the rowers were continuing to exploit Phil's prolonged absence. And even when Phil was allowed to return to the lake, he was still subject to bail conditions not to approach witnesses from the club.

On Sunday 17 August 2014, only days after his return, a large contingent of rowers gleefully crossed the domain boundary to launch their boats. Careful to avoid any confrontation, Phil took some photographs and then locked himself in the house to await the arrival of the police and supporters he had contacted. When Police Sergeant Jeff Lyver arrived, Phil refused to let him enter his home and spoke to him through open louvres.

When Bryan Ten Have arrived, he filmed tracks left by the rowers to confirm they had launched their boats eighteen metres across the domain boundary, verification from Police Sergeant Jeff Lyver that the rowers admitted crossing the domain boundary and notification that they did not care that this site was waahi tapu. The rowers demanded that Bryan Ten Have refrain from videotaping them.

Police Sergeant Jeff Lyver seemed to think that there was a question over who owns this property and furthermore, he was not aware of any protocols to deal with these incidents.

Afterwards, we followed a vehicle towing a trailer-load of canoes as it drove straight past the wash-down facility installed while Phil was in prison. As this vehicle was sign-written, we could only presume it was heading back to Cambridge, taking into the Waikato, the purple loosestrife that infested Lake Horowhenua. I did wonder if there was

any coincidence about the timing of this event only ten days after Phil's return to the lake. But for now, a crisis had been averted.

Phil's case review hearing was scheduled to take place on 21 October 2014, so I had taken a gamble and placed our cards on the table for several of these eleven charges. Obviously Phil would be pleading 'not guilty' to every charge. Once again the police procrastinated. Without witness lists, how could we suggest how many days to allocate for trial?

The receiving charge carried one of the largest penalties, so I tackled that one first. This charge related to receiving a blue trailer K914E that was stolen from a Levin business during the early hours of 14 January 2014. Under disclosure, I received no statement from the businessman whose trailer was stolen, no police notes and no job sheets relating to this burglary. Phil admits purchasing a white trailer with the registration number Y323L from the registered owner. He also admitted storing a trailer with the registration Y323L in an unlocked shed where it had been photographed in situ by the police. Under disclosure, Phil received a copy of the NZTA certificate of registration for this trailer with the plate number Y323L. The name of the registered owner had been redacted prior to disclosure. However that didn't matter to us. Bryan Ten Have had already given this name to Police Sergeant Marty Bull a week or so before Phil was arrested.

As Phil said: "I have been charged with receiving a trailer with the registration number K914E but the trailer seized by the police carried a registration plate Y323L. I purchased it from the registered owner."

Even if Phil had known the trailer was stolen, which he didn't, according to s246(4) of the Crimes Act 1961, a subsequent receiving is not an offence if legal title to any such property has been acquired by any person, even though the receiver may know that the property had been previously been stolen or obtained by any other imprisonable offence. We should not have to teach the police basic law. Well before Phil's arrest, the police knew the name and address of the person who registered the vehicle on 14 January 2014. If Phil bought it off the registered owner, why was he charged with receiving? And why did the police not bother to arrest the person who actually stole this trailer? They knew the full name of the person who registered this trailer the day after it was stolen, and her address in Palmerston North.

At the case management review hearing on 21 October 2014, the police quietly dropped this charge. They later had the audacity to claim it was always their intention to drop this charge. We did not believe them.

Next, I addressed the three drug charges; the most serious one being possession of a utensil to smoke methamphetamine. This was located during the search warrant carried out on Phil's place, and was photographed in situ on the desk beside Phil's phone. Obviously the police officers who observed Phil talking on the phone that night, would have spotted a P-pipe sitting on the desk right next to the phone. Yet, nobody mentioned drugs in their police notes or the search warrant. Technically speaking, the police don't need a search warrant to search for drugs.

However, I spotted several irregularities in the search warrant and decided to highlight just one of them. This search warrant was executed on the building where Phil lived and the adjacent unlocked shed. These buildings are not situated within the area of the Lake Horowhenua Domain. The search conducted in his home was therefore unlawful and invalid. It is tantamount to a search of a neighbouring property. If a search is found to be illegal, the court has an obligation to determine whether any items seized during this unlawful search can be produced as evidence in court. Phil therefore asked that all items seized as a result of this unlawful search be eliminated as evidence. He requested an order for the destruction of the drugs and drug utensils whereas all other property should be returned to the owner. We are adamant the P-pipe was fabricated evidence.

At the case management review, these three charges were also quietly dropped. The judge didn't even have to consider the admissibility of these items as evidence. Withdrawing these charges might seem to be a technicality, but in reality we were simply offering the police an opportunity to back down on charges that would be embarrassing for them if they proceeded to trial. We had more evidence, and kept it in reserve. However we could not resist concluding our pre-trial memorandum by observing that the police had wasted considerable time and resources prosecuting charges that were unable to be substantiated when placed before the Court. "They have already exceeded the threshold to be considered a vexatious litigant."

That left just seven charges. Ten days were set down during February 2015 to hear these charges. Although Phil was still on bail, thanks to Justice Ron Young these latest conditions were not too onerous. We were winding down to relax for Christmas, when there was just one more fraught situation when Phil put his freedom on the line to protect the environment. This time it was not the lake at stake, but the Hokio Stream that links the lake to the sea.

As chair of the Hokio Trust, Phil had been invited to a meeting on 11 December 2014 to discuss a proposal to re-align the Hokio Stream to straighten the outlet to the sea. Operations Manager Allan Cook said Horizons was aware of this situation but was not convinced that cutting a new outlet to the sea was the answer to the problem. Phil consid-

ered the proposal but pointed out that a resource consent would be necessary for a project of this nature, and he would also need to discuss this proposal with the other trustees. He was shouted down by the others present. Nevertheless the official report prepared by council staff described support for the proposal as 'unanimous'.

Then Phil heard that the council was going ahead with the project, the very next day. So he rushed around contacting the other trustees to prepare an application for an urgent injunction from the Maori Land Court. The next morning we were up well before dawn, and in his truck Phil passed the heavy machinery slowly heading down to the Hokio Beach while I followed in my car. The idea was for him to park his truck on the bridge, thereby obstructing access to the trust land, a wetlands of environmental significance for eels and inanga, more usually known as whitebait. Naturally the police were called.

As a former Resource Management Act hearings commissioner, I knew only too well the procedures to be followed before carrying out this type of activity in such an environmentally-sensitive area. I asked somebody to produce the paperwork. Once again, I was brushed off with assurances that everything was in order. By now Police Senior Sergeant Sarn Paroli was threatening to call a tow truck, and send the bill to Phil who had left in my car to transfer funds over to the Maori Land Court in Whanganui. However he had left the truck keys with a trustee who begrudgingly moved the truck off the bridge.

A few locals who claimed the right to speak on behalf of the trust had stirred the locals up, and by the time Phil arrived back with my car, Peter Heremaia was forced to shield me while I squeezed into the passenger seat to get away. People were banging heavily on the bonnet, as Phil reversed out of their reach. The four police officers just stood by and watched.

It was not until the afternoon that the Maori Land Court was able to arrange a teleconference to consider the Hokio Trust's urgent application. Lawyers Felix Geiringer and Donna Hall represented the Hokio Trust for this teleconference. But it was too late. The Horowhenua District Council's lawyer reported back that the work was done. Under the supervision of Horizons engineers, council contractors had excavated a new channel 200 metres in length and five metres wide.

And as we suspected, the Horowhenua District Council did not have a resource consent to carry out this activity. David Clapperton, the Horowhenua District Council's chief executive, had invoked the emergency provisions of s330 of the Resource Management Act to undertake this work without a resource consent. When council finally applied for the retrospective resource consent, it was declined. But in the meantime, those of us who opposed this work had to prepare yet more submissions. It bemused me to dis-

cover that council had ticked the box to claim they were the owners of the property, even though it was identified as Crown Land.

Whoever owned the property, the damage was done. That summer, holidaymakers no longer had access to the beach. Large sand-dunes collapsed into the channel, making the area dangerous for children. The wetlands dried up, damaging a sensitive habitat, eventually the stream meandered back to the original course. But two years later, the Horowhenua District Council was still consulting the locals on how to fix up the mess they had created, further wasting our time and sparse resources.

chapter 13 notes

Time frame : October - December 2014

the bull charges

milieu

Four charges are withdrawn due to a dubious warrant and good detective work by Bryan Ten Have.

PEOPLE OF INTEREST

Bull, Marty : Police Sergeant.

Clapperton, David : Horowhenua District Council Chief Executive, appointed 2013.

Cook, Allan : Horizons Operations Manager.

Geringer, Felix : Wellington lawyer who is currently representing the Maori Council in the Freshwater and Geothermal claim.

Hall, Donna : Wellington lawyer who is currently representing the Maori Council in the Freshwater and Geothermal claim.

Heremaia, Peter : Hokio Beach resident and Hokio trustee.

Lyver, Jeff : Police Sergeant.

Paroli, Sarn : Senior Police Sergeant, promoted to Horowhenua's Commanding Officer.

MAORI WORDS

Waahi tapu : Site sacred to Maori.

LEGAL TERMS

Crown Land : Land owned by the Government.

In situ : In the original place.

Search warrant : Court order that a Judge issues to authorise a police officer to search a property.

Vexatious litigant : A person who brings legal proceedings to harass the other party.

POINTS OF INTEREST

Case management review : A preliminary hearing to discuss any issues that may arise at trial.

Methamphetamine : Stimulant drug also known as P.

Resource Management Commissioner : Councillors must be accredited to sit on hearing panels to consider resource consent applications under the Resource Management Act 1991.

Ch14

the battle of Hastings

"His acquisition of knowledge over the years as to what he believed is the correct legal position with respect of proprietory rights in the building tends to indicate if anything a minimisation of risk rather than a reckless disregard."

Judge Hastings

The Levin District Court's registrar advised us that two weeks had been allocated for a trial starting 9 February 2015. One would follow the other. The four Hokio charges resulted in a three-day hearing. The remaining three took a marathon six days.

My usual strategy is to prepare a brief opening submission, a comprehensive closing submission that deals with all the legal technicalities and also a set of questions for each of the defence and prosecution witnesses. I then photocopy all the exhibits, generally expensive colour photographs, and package everything up into folders so that I can hand Phil whatever he requires as soon as the name for each witness is called. I live and breathe the case, conscious of the penalty at stake for each offence. As Phil's place of residence is never reliable, at least the prosecution accepts that all documents are to be served on me because I have stable contact details.

Often it is the omissions that are just as significant as the disclosure. For instance we received an occurrence scene examination sheet dated 2 April 2014 but Senior Constable Mike Tate who dealt with this scene examination was not listed as a witness. This form stated : "Child's scooter developed a fingerprint on underside of foot deck. Elimination for Taueki." On the scooter police considered to be a weapon, there was a fingerprint, but it was not Phil Taueki's. The police knew this at least a fortnight before they arrested him, yet they still went ahead with the charge of assault with a weapon.

We had the DVD recording and transcripts that Constable Bernie O'Brien conducted with Phil the morning of his arrest. I watched it repeatedly with relief. Messy. Not getting the admissions the police hoped for. Nothing too incriminating and typical of the confusion surrounding their interactions with Phil.

Writing a closing submission pre-trial is tricky, because there can be no certainty what will happen in a courtroom. Far too often, the pre-trial formal statements that the judge does not see, do not match the testimony in court. But they are still useful to expose these discrepancies.

The Kemp Street charges were first up. The police were selective about the witnesses they called. Up our sleeve we had the judgement of the Maori Land Court. The Kemp Street house had been occupied on a bare licence, revocable at will. We also had proof that the trust Phil chaired had resolved to revoke this bare licence in order to repair internal damage caused by domestic violence and secure the property.

Phil faced four charges arising out of this incident : two charges of male assaults female, one of wilful damage and one of assault with a blunt instrument – the scooter. Testifying in court, Sandra Williams confirmed that Phil had told her to get off the property because it belonged to the Hokio Trust. She says she told him to go to hell. Essentially, she claimed that Phil had tried and failed to push her car down the driveway so he got into the driver's seat to reverse it. She dragged him out of the car and then locked it. Phil tried to get into the car by the left rear door, but broke the handle off when he tried to open it. When she confronted him, her evidence was that she said, "You wait, you mongrel, I'm going to get you."

She then gives her version of the alleged assault, testifying that Phil raised his fist, she put her hands up to protect herself and Phil punched her once on the top of her head. She admits landing a few punches on him. She said that Phil then picked up a scooter, intending to smash it on her, but missed and it landed on Henry Williams. Sandra Williams then phoned the police who told her she could put the contents of the house back inside. While she was on the phone, Phil's cousin came over wielding a crowbar telling them to get off Taueki land.

Her husband Henry Williams testified that he could not see very well and was due to have an operation two days after the incident. When he arrived at the hospital, he told staff he had suffered a blow to his head. He was sent to A&E (Accident and Emergency) where they found no evidence of injury. Henry Williams had not made a statement to the police that day. But the next day he makes a formal statement to Constable Harvey to corroborate his wife's claim he was hit by the scooter and got a bump on his head that was sore. Five days later he makes a further statement, and this time he claims he was "seeing stars". He confirms that his wife remained in the room with him while making a statement to Detective Constable Joe Pointon.

All this might have sounded plausible if her emergency call had not been recorded. Sandra Williams had told the 111 operator that Philip was the only one with a weapon and

that weapon was a crowbar. She made no mention of a scooter and did not report that Henry Williams had been hit with a scooter. When asked if anyone was hurt, she replied no. But it was the menacing and repetitive "We'll see, we'll see" that left a lingering impression with me. She was obviously determined to get her revenge.

When Phil asked her if the police had taken her fingerprints, Sandra Williams was clearly affronted. That question served its purpose. Even though the prosecution did not call Senior Constable Mike Tate as a witness, Sandra William's expression gave the game away. The police had never asked Sandra Williams for her fingerprints, and we all knew why.

When Detective Constable Joe Pointon took the witness stand as officer in charge, Phil placed before him his own complaint that it was he who had been assaulted. It had been disclosed to him under discovery so Detective Constable Joe Pointon could not deny the police had received it. All he could do was reassure Phil that his complaint against Sandra Williams was still being investigated, but a year after this incident, he did not sound convincing.

In his closing submission, Phil suggested that it was most unusual and unprofessional for Sandra Williams not to be fingerprinted, not even for elimination purposes. Through disclosure we knew the police had obtained statements from witnesses who claimed that it was Sandra Williams who attacked Phil. However the police were selective about the witnesses they called. We had our own witnesses on stand-by ready to be called if necessary, but we sensed they would not be necessary. And so this trial was wrapped up on 10 February 2015, after only three days.

Fortunately we did not have to wait too long for this reserved judgement. On 10 March 2015, Judge Hastings found Phil not guilty on all four charges. There are problems with Mrs Williams' evidence, he says. In terms of the scooter he pointed out that Mr and Mrs Williams were closer to the carport where the scooter was more likely to have been than Mr Taueki because Mr Taueki was at the rear of the car when Mrs Williams operated the central locking system from the driver's seat. He considered the facial injuries to be consistent with injuries inflicted during a struggle with a scooter in which Mr Taueki was disarming Mrs Williams. "The force used was in self-defence and was reasonable in the circumstances in that it was proportionate and no more than necessary to remove the scooter from Mrs Williams", he said. "Mr Taueki threw it away after removing it."

He also said there was no credible corroborative evidence that Mr Williams had been hit on the head with the scooter. There is evidence in Mrs William's contemporaneous 111 call and in the opinion of the doctors two days later, that he suffered no injury. Self defence involves three questions, he pointed out. "First what did the defendant believe the

circumstances to be, from his point of view; second bearing in mind what the accused believed was happening, was he acting in self-defence; and third, given that belief, was the force used actually reasonable."

As for the intentional damage to the car door, he said that to walk around the rear of the vehicle without doing any damage to the vehicle on the way is more consistent with trying to gain entry to it by opening the door furthest from a risk of Mrs William's interference, than with damaging the vehicle by breaking off the handle.

We were rapt. The judgement was a pleasure to read because Judge Hastings had carefully sifted through all the evidence impartially, and given his considered opinion.

I also appreciated his comments on the background to this incident. "Shortly after the previous occupant died, her son Bryce moved in with his partner and child, without the authority of the trust. When Bryce was charged with assaulting his partner during December 2013, he had been remanded in custody and his partner moved out, leaving the place unsecured. It is also apparent that Mrs Williams had in the past expressed an interest through words and actions in retaining 7 Kemp Street for her family's use. She said she wanted her son bailed there. Neither Probation nor the Court was told that Judge Doogan said the property was not a viable address for home detention due to the nature of Bryce's occupancy of the property as a bare licensee. This is recorded by Judge Doogan in an addendum to his decision of 22 May 2014. She said Mr Williams lived there to make sure 'none of you moved in'. She was outraged to arrive at the property and see her son's belongings in the carport. She expressed that outrage by asking loudly what was going on, causing Mr Taueki to respond by ordering her off the property. This would explain why the Trust was keen to avoid a confrontation with Mrs Williams, although in hindsight it was likely that a confrontation was inevitable whichever manner the bare licence was revoked."

Four charges down; three to go. These charges I had assumed would be easier: burglary, wilful damage and escaping from custody.

The northern domain building had a large mural and wording on one of the side walls. Phil painted over it with blue paint. He never denied that. The charge sheet confirmed the offence Phil faced was, he had intentionally damaged an exterior wall of a building, the property of the Horowhenua Rowing Club. There were four elements for the prosecution to prove and we knew that they would fail at the very first hurdle. The police like to think that this building is the property of the Horowhenua Rowing Club. But it is not. It belongs to the Maori owners, as affirmed by the Maori Land Court judgement we intended to produce as evidence.

Andrew Bealing, a rowing club member testified that this mural had been in good condition two days before it was painted over. But we had taken photographs of a small area not covered over by the blue paint which revealed that the wall had already been spray-painted with black paint before Phil painted the wall blue. Council contractors who paint over graffiti at the lake are not arrested, even though they are not the owners of these buildings, as Phil is. Therefore I decided to summons a couple of councillors, Garry Good and Tony Rush who also chairs Keep NZ Beautiful, a voluntary organisation to tackle issues such littering and graffiti. I even intended to produce evidence that council planned to introduce a graffiti eradication by-law, giving staff the power to enter private property to remove graffiti visible from public places.

But when we got to court on the Thursday, the first day of this trial, we encountered a problem. Unbeknown to us, this charge had been amended to one of defacement. We objected but to no avail. At the outset, Judge Hastings declared the crucial issue would be one of lawful authority. This complicated proceedings. Both the burglary and defacing charges incorporated the concept of 'without lawful authority' and while we felt that it would not be such a big issue for the burglary charge, it would have an impact on a charge of defacement. Erin FitzHerbert as crown prosecutor was primed to argue the amended charge of defacement, that Phil had no lawful authority to paint over the mural on the building.

With burglary, the onus is upon the police to prove two strands; namely that Phil entered the northern building without authority and also with intent to commit an imprisonable offence in that building. That imprisonable offence would be theft. And even with the charge of theft, there are two strands: taking any property with intent to permanently deprive that owner of this property or not to return it in the same condition. Police Inspector Waata Shepherd had indeed given Phil good advice.

We found a case where it was held that if the plaintiff did not have exclusive possession of any part of the hangar, the defendant was therefore free to move property around as he saw fit. The rowers did not have exclusive possession of the building. The week of this incident, the rowers had, under the supervision of the police, broken into a building they did not lease and removed gear belonging to the owners, leaving everything lying around outside. After his meeting with Police Inspector Waata Shepherd, Phil waited until midnight to hear back from him, and then entered his building to remove junk left behind, a piece of old hose, guttering fittings etc. When the police arrived, Phil told them in no uncertain terms that they had been forced to back down last time he had been arrested for being unlawfully in his own building.

Both police officers recorded in their police notes that they had decided to contact Police Sergeant Marty Bull for further instructions. Under cross-examination Constable Daly Johns was asked :

Q&A
Transcripts ; District Court

Phil Taueki
What made you assume I was in there to commit a crime?

Constable Daly Johns
I arrested you for unlawfully in a building, there's no need to commit a crime in that building for that charge to be fulfilled, that –

Phil Taueki
So how can you assume I was unlawfully in the building when I'm an owner of that building?

Constable Daly Johns
It is my understanding it's leased by the rowing club

Phil Taueki
What if I had a reasonable excuse to be there, in that building?

Constable Daly Johns
You are talking hypotheses now, aren't you?

Everybody claims there is a lease but nobody as yet had managed to produce a copy. Not even Chris Lester who chaired the domain board. We showed him the board's audited financial accounts, and asked if he could identify any rental revenue. Of course he couldn't, because there is no rental revenue.

To deal with the lawful authority aspect, I had sat up late at night photocopying and collating various court judgements, and in the midst of this workload, my 93 year old father suffered a fall and was rushed to hospital. The demands of working through transcripts and adjusting Phil's case was certainly taking a toll on both of us. After a mammoth nine days of hearings in total, we were relieved when it was finally all over.

Now that the trial was over, we assumed that Phil's bail conditions would also be over, but Judge Hastings apologised and said that they must remain because one of the charges was escaping from custody.

His reserved judgement arrived on 6 May 2015. We were pleased that he agreed that the mens rea of the alleged offence must be assessed at the time of the alleged offending. If the defendant entered at a time when he lacked the mens rea for any offence, there is no burglary.

As for the defacement charge, Judge Hastings had made it a personal mission to research the issues of defacement and graffiti. However, the crucial point as far as we were concerned was his grounds for dismissing this charge. "The burden is on the prosecution to establish that Mr Taueki was subjectively reckless in that he appreciated that there was a risk that he had no unlawful authority and that he disregarded that risk. His acquisition of knowledge over the years as to what he believed is the correct legal position with respect of proprietory rights in the building tends to indicate if anything a minimisation of risk rather than a reckless disregard."

Perhaps I had gone overboard photocopying numerous court judgements to establish 'lawful authority'. Nevertheless it must have had the desired effect. Phil's grasp of 'lawful authority' was well-founded.

But it was a single e-mail that tripped Phil up on the final charge, escaping from custody. While Phil was in the witness stand, Erin FitzHerbert had sprung on him the e-mail Phil unwisely sent out to the Waitangi Tribunal claimant community to explain his predicament. He had used the words "on the run", but in quotation marks. In the document placed before him, these quotation marks had been redacted. Forced to read these three little words into the transcripts, it was damaging evidence.

Phil told me afterwards that he had seen Matt Sword getting up from the public gallery and hand it up to Erin FitzHerbert. His mother in law is Sandra Williams.

By now I was exhausted and could not figure out how to counter this last-minute setback. In the end, I approached Bryan Ten Have who had remained outside the courtroom in case he was needed as witness. I asked if he could help out by producing that newspaper article accusing Phil of being on the run. It never occurred to me to use the search warrant, which would have been a far more effective antidote to this toxic e-mail. I planned to meet with Bryan Ten Have early the next morning to let him read through this newspaper clipping to remind him of the content.

But the next morning, Horizons turned up with heavy bulldozing gear for their annual spraying programme. Heading this convoy was Noel Procter. Phil couldn't resist yelling at Noel Procter. Noel Procter called the police, and after dealing with that distraction, we managed to make it to the court only just in time. But Phil was uptight and I was uptight and now Bryan Ten Have was uptight as well. To add to our woes, rumours were flying around the courtroom that the police might burst into the courtroom and arrest Phil on yet another charge. Even Judge Hastings seemed to be on edge, poised for a disruption. Tactics. Whether coincidental or not, they are effective.

When evaluating the charges, I had made a mistake that escaping from custody would be the easiest to defend. All the other ten charges were chucked out. The only conviction, ironically was for escaping from custody.

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chapter 14 notes

Time frame : February - May 2015

the battle of Hastings

milieu

After a gruelling nine days of trial, another six charges are dismissed.

PEOPLE OF INTEREST

Bealing, Andrew : Rowing club member.

Bull, Marty : Police Sergeant.

FitzHerbert, Erin : Crown Prosector based in Palmerston North.

Good, Garry : Horowhenua's Deputy-Mayor appointed in 2013.

Hastings, Bill : District Court Judge.

Johns, Daly : Constable.

Lester, Chris : Chairperson of the Horowhenua Lake Domain Board.

O'Brien, Bernie : Constable.

Pointon, Joe : Detective Constable.

Procter, Noel : Horizons pest control officer.

Rush, Tony : Horowhenua district councillor and Keep NZ Beautiful Chairperson.

Shepherd, Waata : Police Inspector.

Sword, Matt : Chair of lake trustees and son-in-law of Sandra Williams.

Tate, Mike : Senior Constable.

Williams, Bryce : Son of Sandra Williams.

Williams, Henry and Sandra : Hokio Beach residents and complainants.

LEGAL TERMS

Mens rea : Guilty mind; having an intent to do wrong.

POINTS OF INTEREST

Keep New Zealand Beautiful : Voluntary organisation that tackles environmental issues such as littering and graffiti.

Kemp Street charges : Three assaults charges and one of wilful damage laid following an incident at Hokio Beach during March 2014.

Court registrar : A Ministry of Justice employee whose main duty is to assist the judges.

Occurrence scene examination sheet : Police form to record information on an exhibit.

Waitangi Tribunal claimant community : Claimants whose claims to the Waitangi Tribunal can be clustered together.

Ch15
a perfect oxymoron

"For a situation to constitute detention, there must be a clear and deliberate act or statement by the officer whereby he exerts and authority to restrain."

Judge Hardie Boys

As I said, I had made the mistake of thinking that the escaping from custody charge would be the easiest one to repudiate. Phil had phoned me three times that night, I had a recording of his answerphone message, I had overheard what the police were saying to Phil, and no way was he under arrest. In fact, several times, Phil commented he wondered where the police had gone. He was fully expecting them to come over and apologise because they'd received instructions from the area commander not to arrest Phil again. He was certainly not packing up his laptop and locking the building, as the police claim. The thought did cross my mind, however that the police had deliberately planned to let Phil leave, so that they could then accuse him of escaping from custody. After all, he'd already told Police Inspector Waata Shepherd he wasn't going to stick around to be arrested next time.

But the aspect that really annoyed me was ignorance of the law. What constitutes a burglary? Surely even the most junior constables should know better.

In their police notes, both police officers reported that they 'allowed' Mr Taueki to get into his truck and drive away. The photographs of the truck taken on the night and the next morning establish that Phil's truck had been moved from its original location outside the northern building to a new site within the nursery parking area. This crucial photo was excluded from the Exhibit Book. Whenever a crucial photo is left out of the Exhibit Book, I immediately become suspicious. My first thought was the prosecution must have sensed that allowing Phil to drive the truck away would be problematic when proving this charge.

There are also some difficulties determining when a person is considered to be in custody. Justice Hardie Boys suggested that for a situation to constitute detention, there

must be 'a clear and deliberate act or statement by the officer whereby he exerts and authority to restrain'. And in Goodwin, the test was formulated: If a police officer makes it clear to a suspect that he is not free to go and is to be interrogated by the officer on suspicion of a crime that person is arrested within the meaning of the NZ Bill of Rights Act.

Judge Hastings states Constable Daly Johns gave evidence that he said to Mr Taueki, "You are under arrest for unlawfully being in a building", words to that effect. He said that Mr Taueki acknowledged he was under arrest. Constable Nathan Daly said he overheard this conversation, and the conversation was recorded in Constable Daly Johns' notebook. In his decision, he states he was satisfied that Mr Taueki was told and knew that he was no longer free to go where he pleased. "He asked to go to a particular place for a particular purpose and the arresting officer consented. This does not mean the custody then ended".

Judge Hastings concludes that: "To my mind, Mr Taueki's actions in asking for permission to go back to the nursery means that he accepted that he was no longer free to go where he pleased. He would not otherwise have asked for permission. The evidence of both Constable Johns and Mr Taueki indicates that Mr Taueki was arrested, and that Mr Taueki knew he was arrested."

Judge Hastings reports that the nursery is about 40 metres from the domain building. "Constable Daly walked behind the truck as Mr Taueki drove it to the nursery. Constable Johns stayed behind to take pictures of the rowing club building before walking over the nursery to join Constable Daly. On arrival at the nursery, Constable Johns said he saw Constable Daly at the door to the nursery and Mr Taueki talking inside on the phone."

During cross-examination Phil testified that he never thought he was under arrest at any stage during his interaction with the police and also denied asking for permission to return to the nursery. Nevertheless, in their police notes, both police officers say they allowed Phil to drive away. Yet Judge Hastings considers asking and receiving permission to leave as evidence of ongoing arrest, rather than termination of custody. Phil still wonders why anybody would be foolish enough to ask a police officer for permission to drive away in a truck which might contain stolen goods in the back.

As Phil puts it : 'Given permission to leave' and 'remaining in custody' is the perfect oxymoron.

Because Phil had been found guilty on this one charge, he was ordered to turn up for court for sentencing on 22 July 2015. After visiting Phil on 9 June, a Corrections Officer in-

dicated that the prosecution was contemplating home detention. We never had any proof of that because the prosecution never bothered to provide any sentencing report.

I had always been suspicious about the search warrant that the police used to authorise their search of Phil's place in his absence. For one thing, it referred to the Lake Horowhenua Domain but Phil's home was not within the domain area. The signature was an indecipherable squiggle, and there was just the one stamp: BA Johnston. This was just a basic cheap stamp that could be purchased from any stamp shop. So there was nothing whatsoever to signify that it was an official document executed by the court.

We had the police notes from Constable Chris Chapman : "Scene guard reports that dogs at the property are out of the building, they were locked inside last night. Possibility of TAUEKI in buildings." The police notes of Constable Shaun Stout : "at approximately 0900, received information that TAUEKI may have returned to the address, due to dogs being released from a building which was previously secure. Spoke of roles. Myself contact and o/c arrest if TAUEKI present. Constable Chapman cover."

We had never figured out how to deal with our concern that a P-pipe had been planted in Phil's place while a scene guard was on duty overnight. The police would not bother to investigate it. Nor would the IPCA, the Independent Police Conduct Authority. Sentencing on the escaping from custody charge gave us the ideal opportunity. So in our sentencing submission dated 15 July 2015, we wrote :

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Submission ; District Court

Would any reasonable person who thought he was in custody seek permission from a police officer to collect his laptop from his desk knowing there were drug utensils alongside his phone and laptop?
The police notes of a police officer at the scene after Mr Taueki's departure confirm that Mr Taueki's dogs were secure inside the nursery.
However the police notes of a police officer who arrived in the morning to take over scene guard duty confirm that both dogs were running loose and had to be pepper sprayed.
Both dogs are large and elderly. One died within weeks. The other is blind and epileptic. Neither was capable of clambering through high louvred windows.
The scenario leading to a finding of guilt is that Mr Taueki knew he was in custody when he drove his vehicle back to the nursery carpark and went inside the nursery to collect his laptop and make some phone calls.
If drug utensils were sitting near the phone on the desk adjacent to the door, they were in full view of any police officer observing Mr Taueki on the phone.

The alternative scenario is that these utensils and drugs were later planted.
If Mr Taueki's dogs had not escaped, the police might have got away with it.
There is no more mitigating factor more serious than a police officer planting incriminating evidence during Mr Taueki's absence from his property.
The police officer on scene guard duty overnight was Constable Lionel Currie.
During trial, rowing club member James Watson volunteered the information that he had known Mr Currie before he joined the police force.
When Mr Taueki was arrested and charged with serious drug offences on 15 April 2014, he was remanded in custody. Police opposed bail five times.
Constable Currie in particular had a motive to frame Mr Taueki so that he would be arrested and charged on serious drug offences.

For the hearing on 22 July 2015, Phil had taken the precaution of packing his bags. The Manawatu Standard journalist was in court to cover the sentencing hearing. Although I was miffed they were present to report on Phil's penalty, in hindsight it was fortunate he was present to record a recommendation from Judge Hastings that Phil's allegations of serious misconduct need to be explored further. This recommendation appeared on Stuff, a media web-site, by the end of the day.

Phil was convicted and discharged. He was free to go. No bail. No penalty. Before we left the court building, we had filed an application to appeal this conviction.

Over the past few years, Phil had faced a deluge of charges. Preparing for this case had taken a huge toll on my time and resources so Phil decided that we should do something to discourage incessant arrests by applying for costs. We had plenty of evidence to support our contention that the police took a blinkered approach to their investigations. The Manawatu Standard newspaper had reported on a pre-trial hearing when Phil protested that the police version of what happened on the day of the Kemp Street incident was not a : 'Summary of facts, but in fact a summary of fiction.'

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Newspaper extract ; Manawatu Standard

"Other witnesses had gone into the police station and been told the police were busy", Taueki said. "They don't want to hear any evidence that isn't against me."

At trial, Phil asked Detective Constable Joe Pointon under cross-examination if he spoke to people who might have a different view on lawful authority. His response was unusual: he did not see it as a priority as he was aware of what Anne Hunt's views on the matter were. When asked if he was aware that copies of the Reserve Act, the ROLD Act and other documents had been forwarded to various police officers, he replied :

Q&A
Transcripts ; District Court

Detective Constable Joe Pointon
No, I guess that's very much an issue in this case is the frequency, the volume, the amount of e-mails being thrown around at this police officer, at that police officer, at this high ranking police officer. Yeah, if someone had time to establish what had been, what dialogue had been engaged in, every single e-mail in relation to these charges, it would be a mammoth task.

But what about the mammoth task we faced, defending charges that lacked substance?

The Costs in Criminal Cases Act 1967 makes provision under s5 for an order that where a defence is acquitted of an offence or where the charge is dismissed or withdrawn, the defendant be paid such sum as it thinks just and reasonable towards the costs of his defence. Costs were defined in s2 as being "any expenses incurred by a party in carrying out a prosecution, carrying in a defence or in making or defending an appeal". Phil as a qualified accountant helped me prepare an invoice for disbursements. I calculated that I had spent 547 hours working on this latest suite of charges and travelled 3,468 kilometres which included trips to the Linton prison and down to the Wellington High Court.

When Judge Hastings considered our application, he relied on Meyrick, a Court of Appeal decision from 2008, telling Phil :

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Judgement ; District Court

I will be upfront with you, I am reluctant to accept this document as a claim for disbursements. These are costs that would normally be covered by a lawyer and as a self-represented litigant, R v Meyrick would apply to preclude this claim.

As you are a self-represented litigant, as I have said, I consider the Court of Appeal judgement in Meyrick applies and that you are therefore not entitled to costs under s6.

Judge Hastings decided that :

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Judgement ; District Court

The most obvious interpretation of the relevant provisions of the Act and regulations is that they contemplate awards of costs to provide partial reimbursement of fees paid to barristers and/or solicitors. This interpretation would exclude an award of costs for any self-represented litigant.

However, he did concede that a decision at appellate level on whether disbursements of the kind claimed were recoverable would be of assistance to district courts around the country.

ΩΩΩ

Judgement ; District Court

Wiser heads than mine will be able to determine whether this is a claim for disbursements that should be allowed under the Costs in Criminal Cases Act should this be appealed.

Naturally we appealed. More research; more submissions. But at long last, we felt we had reached a reprieve from the constant pressure of defending charges.

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chapter 15 notes

Time frame : July 2015

a perfect oxymoron

milieu

When a person is given permission to leave by two police officers, is that person still in custody?

PEOPLE OF INTEREST

Chapman, Chris : Constable.

Currie, Lionel : Constable.

Daly, Nathan : Constable.

Hardie Boys, Michael : Former Justice of Court of Appeal who was knighted in 1995 and served as NZ's Governor-General from 1996 until 2001.

Hastings, Bill : District Court Judge.

Johns, Daly : Constable.

Pointon, Joe : Detective Constable.

Stout, Shaun : Constable.

LEGAL TERMS

NZ Bill of Rights Act : Statute passed by Parliament in 1990 to affirm, protect and promote human rights and freedoms.

POINTS OF INTEREST

Goodwin : R v Goodwin (no 2) (1993) 2NZLR.

Meyrick : R v Meyrick (2008) NZCA 45.

Stuff : Fairfax Internet news site.

Ch16

changing of the locks

"I now have a broad understanding of the very complex ownership, governance, access, use arrangements and rights that apply to Lake Horowhenua and understood how these arrangements had generated conflicts going back into the early 1900s and earlier. They appear to me to be arrangements that we would not put in place today."

Minister for Maori Development Te Ururoa Flavell.

No active charges meant no bail. We were keen to celebrate – at long last, no active charges! Good friends invited us to dinner one evening at their home in Otaki. I collected Phil in my car, leaving his red Mazda ute behind at the nursery. By Sunday morning, Phil's ute had been vandalised; the roof and rear panels stoved in. Perhaps the rear panels could have been an accident, but certainly not the roof.

On the morning of Sunday 30 August 2015, Phil went down to the dairy, he was in good spirits because he was heading down to Wellington to meet up with his daughter. Before he left, he phoned me to report that there had been another altercation with the rowers. He admits he should have driven straight past and ignored the rower who was cycling up the footpath to use the rowing club building, but something in him snapped and he couldn't resist pulling up alongside and 'having a go' at him.

As soon as I could, I prepared yet another sworn affidavit to report what happened that afternoon. "We were on the phone when he told me that a car had just pulled up and within seconds, I heard a police officer telling Mr Taueki in a loud voice that he was under arrest. No caution was given."

At 3pm, Phil had been arrested by Constable Lionel Currie and Constable Daly Johns. Phil prepared his own sworn affidavit.

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Affidavit ; District Court

While I was being fingerprinted, I said to Constable Johns: "By the way, you know the drugs were not sitting on my desk that night".

He replied that, "It could have been one of my friends who came and planted the P-pipe".

When I mentioned the thirty charges that had been withdrawn, dismissed or quashed on appeal, Constable Currie replied: "We'll get lucky one day."

The case review memorandum we prepared on 9 November 2015 contained the usual requests for disclosure, attached Phil's affidavit and stated that the only person Phil had contacted on the night the drugs were planted was former Horowhenua District Councillor Anne Hunt. "Therefore the Defence refutes any suggestions that it was Mrs Hunt who located a P-pipe in the middle of the night, eluded Constable Lionel Currie on scene guard duty and planted the P-pipe inside the Defendant's home that night, knowing that she would then be required to defend the drug charges subsequently withdrawn due to her discovery that the search warrant was not valid."

The police bond imposed on Phil to avoid custody was not to enter the Horowhenua Domain. Once again, Bryan Ten Have and I had to go down to the lake and hurriedly collect his belongings and this time, it was to Bryan Ten Have's place he went. The trial would not take place until 20 January 2016. So we churned out another bail variation application, this time attaching the judgement of Justice Ron Young. As District Court Judges must heed what High Court judges say, Phil was allowed to return to the lake but not to go within 20 metres of the domain building.

Meanwhile the rowers were continuing to exclusively occupy a building they neither owned nor leased. Being found in a building without reasonable excuse is a summary offence, with offenders liable to imprisonment for up to three months or a $2,000 fine. The police had no qualms about arresting Phil for being in the building, even though he is an owner, but they were perfectly content to let the rowers remain in there.

Whenever I get a phone call from Phil because the police are down there, I would quickly grab a spare exhibit booklet and race over to Levin. This booklet contained a DOC map, the legal status of Horowhenua 11B (Lake), s18 ROLD 1956, and judgements from the Maori Land Court, Court of Appeal and Supreme Court. There was even a submission from Crown Law conceding that the attempt by the Lake Domain Board to roll over the lease of the domain buildings was 'invalidly granted'. In the Maori Land Court decision dated 17 December 2012, Judge Harvey had reported: "Mr Roxburgh for the Board stated that the Sailing Club, like the Rowing Club had been verbally advised of the need to vacate the buildings. He pointed out that while Mr Brown disputed this recollection of events, the Rowing Club had themselves vacated the building they had used previously, which he suggested demonstrated that the Rowing Club understood the message he had provided."

As already stated, Phil holds the view that if you don't stand up for your rights, you don't deserve to have them. He had always been an active sportsperson and was exceptionally fit in his prime. Knee problems curtailed competitive sport, but on his return to New Zealand he responded to an advertisement to join the rowing club. His application was turned down. He was told they were fielding only female teams. He sensed the real reason. It was not his gender that was the problem; it was the colour of his skin.

As he drove past the northern domain building every day, it irked him that it is the waka ama boat, a double-hulled craft, left outside. So he decided to place an ad in the local paper for people keen to join a waka ama club, and invited them down to the lake for a recruitment day on 20 September 2015. The week beforehand, a group of owners occupied the two-storied southern building, scrubbed it down, hoisted a flag and prepared to cater for a crowd. There were to be drinks for the kids and sausages with salad for everybody. Local fisherman Russell Packer offered to serve up a local delicacy, smoked eels. About sixty people turned up, and registrations were taken to form a club. Members of an Otaki club were thrilled about the prospect of a lake larger than the quarry where they trained, which was so small they had to paddle a circular course rather than the straight line required for racing.

The whole operation to take over this building was carefully organised. Apart from placing a few boats out on the lake on the day of the community working bee, the sailing club had pretty much abandoned the building. However burglar alarms had been installed, so after somebody else broke the lock, Bryan Ten Have would follow, filming the initial inspection of the building to avoid any allegations that the owners were responsible for the internal damage. The police obviously turned up. But this time, Phil was surrounded by other owners who were sweeping away the cobwebs and broken glass, or sitting around on a sunny afternoon enjoying the music and refreshments. Older members of the Taueki family were walking around with a sense of pride, and of course Bryan Ten Have kept his camera close at hand. The police backed off.

By sheer coincidence, that very same week a group of protesters occupied the Kaitaia Airport, and this occupation had been dominating the news. On his return journey from defusing that situation, Police Superintendent Wallace Haumaha visited the lake to deal with this latest 'occupation'. As we had all expected high-ranking police to become involved, it was my role to explain the legal situation. I had been back at Phil's place waiting for a phone call when somebody rushed in to report that Police Superintendent Wallace Haumaha had arrived, and the owners were worried they were going to be arrested. I was shunted forth to do battle. Bryan Ten Have would be filming my exchange, while others would be keeping an eye on Phil because he usually bore the brunt of police attention.

In addition to my usual booklet, I also had s57 of the Crimes Act 1961 which allows owners to enter their own building during daylight hours to take possession thereof. At first, it was obvious that Police Superintendent Wallace Haumaha had assumed this was yet another Treaty claim, and it was also apparent that he did indeed have plans to place everybody under arrest. I told him in no uncertain terms, this was not a Treaty claim. These people were the owners, and here is the proof. To his credit, Police Superintendent Wallace Haumaha listened. He then went over to speak to the owners huddled around and much to their relief, reassured them he would not be arresting anybody. Also to his credit, he returned on 16 September 2015 for an on-site meeting.

On my return home from this meeting there was a message on my answerphone from Radio Waatea asking if I would be prepared to be interviewed on air. According to this message, the reporter had contacted Jo Mason who put them onto her close friend BJ Packer because she was an owner of the lake. I checked out the ownership list. Her name was not there. When the reporter raised her status as an owner, I simply pointed out there is a process to be followed before anybody can be registered as an owner.

My interview was broadcast on 17 September 2015, and I didn't think any more about it. That is until BJ Packer phoned me to politely report she was going to get the papers to become an owner. She then said something about going around to see Phil, so I contacted him to forewarn him. He asked me to call the police. The operator had no idea where Lake Horowhenua was and wanted me to identify a large natural feature in the vicinity so the police would know where to go. As if the local police did not know where Lake Horowhenua is!

When I eventually got off the phone, Phil had been trying to get in touch with me. He asked me to get the police down there urgently because he had barricaded himself inside when BJ Packer turned up with two male accomplices threatening to kill him. I immediately got back in touch with the police and then phoned Bryan Ten Have. Even though he lives on a lifestyle block on the outskirts of town and must keep within the speed limit, he still managed to reach Phil before the police. Bryan Ten Have also heard these threats, but by the time the police arrived, BJ Packer had left.

There is a very good reason Phil locks himself inside his own home in situations such as this one. He knows only too well how easy it is for people to make false allegations, and the only way he can protect himself is to make absolutely certain there is no risk of any physical contact whatsoever. These situations generally occur shortly before an important commitment.

Eleven days later, on the 28 September 2015, we had an on-site meeting with Hon Te Ururoa Flavell, the Minister for Maori Development. On 20 July 2015 he had sent us a let-

ter advising that he now had a broad understanding of the “very complex ownership, governance, access, use arrangements and rights that apply to Lake Horowhenua”, and he understood how these arrangements had generated conflicts going back into the early 1900s and earlier. “I can also understand the viewpoint of those that question the appropriateness of the historical and the current arrangements” he added. “They appear to me to be arrangements that we would not put in place today.”

It was now five years since Phil had filed an application under s29 of the Te Ture Whenua Maori Act 1993 seeking a review of these governance arrangements. Hon Te Ururoa Flavell wanted both of us to be involved in initiatives such as a section 29 hearing, that had arisen out of the litigation we have been involved in. Having prepared so many submissions over the years, it was easy to explain to his PA, a young woman with a legal background, how simple it would be to fix the main issues causing the strife by repealing a few clauses in ROLD. Revoke the right of public access. Dis-establish the lake domain board. And review the obsolete clause vesting the property in trustees appointed in 1951.

I confided my anxiety Phil’s life was in danger. This was not paranoia on my part. Not long afterwards bullets were fired into the heavy-gauge roller doors near where we stood, one of them penetrating the building. The police did investigate, but in a perfunctory way. Nothing more came of it.

To attach to one of Phil’s submissions for court, I had already prepared a previous sworn affidavit.

On 25 September 2015 Police Inspector Cliff Brown asked me to meet him down at the lake.

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Affidavit ; District Court

It was dark when he left. When I went back to my car, Phil could not accompany me due to his latest bail conditions. BJ and her mother were parked metres away. BJ bragged that she had been reassured by Haumaha that she would not be arrested for threatening to kill Phil...
On 26 September I was advised by Johnny Ellison and later again by Russell Packer that BJ was approaching people to take a hit out on Phil.
On 1 October I had an appointment arranged by the officer in charge to make a statement about the incident on 17 September. When I got there, the police told me he would not be on duty until 10pm that night.

On 7 October, I was working upstairs with my light on when I heard a loud noise downstairs. As I was concerned about my safety, I remained upstairs until I saw the intruder abscond through my back yard. The police confirmed that I would have been visible to the intruder who used a garden ornament to smash my rear ranch slider door to gain access to my home and prowl around. In the kitchen, cupboards and cutlery drawers were left open. The next morning, I discovered two pottles of pouring yoghurt missing from my fridge.
The next morning, I went down to collect Phil from the lake, and discovered every single window of the southern building smashed.
On 23 October, I was standing outside the northern domain building, when BJ and her daughter broke free from a huddle of rowers, including Helen Hansen, fifty metres away. They came racing 50 metres towards me, threatening to kill 'that Anne Hunt', throwing stones at me and spitting. When they were a few metres away, they were forcibly restrained by three police officers. A number of people were hit by these stones. I later asked Constable Nic Lawton whether they had arrested BJ but he replied that they did not have the resources to do so. We had counted seven police cars at the scene.

This last incident became the subject of a formal complaint that I laid with the police. There were plenty of witnesses including Police Senior Sergeant Sarn Paroli. On 15 February 2016, Police Senior Sergeant Sarn Paroli wrote to me to report there was insufficient evidence available to commence a prosecution against Mrs Packer or her daughter. "The matter was resolved appropriately by the intervention of the police at the time."

Nor did they charge BJ Packer for threatening to kill Phil the day he was forced to barricade himself in his home. On 21 March 2016, Phil received an almost identical letter from Police Senior Sergeant Sarn Paroli. In his case, "BJ Packer and her partner had both been warned for speaking threatenly". Ironically, it was Police Senior Sergeant Sarn Paroli who had arrested Phil on the day of Te Takere's opening, and there were plenty of police around that day also. Obviously, it is one rule for Phil, another for others.

The catalyst for the incident that had occurred on 23 October 2015 had been a decision by a group of owners to occupy the other domain building, the northern one. The police had sensed this was inevitable. Due to the vandalism of the southern building, the owners had laid a complaint, and Police Sergeant Slade Sturmey was the latest in a long string of police officers to be assigned a liaison role. Bryan Ten Have and I were asked to travel down to Otaki to meet with him, and by now we had become exasperated going over the same old ground with one police officer after another after another, and making

no progress. When we got down there, he didn't seem to be interested in the vandalism to the southern building. Instead Bryan Ten Have and I both got the distinct impression he wanted to find out more about rumours the owners were planning to take over the northern building as well.

What was the motive here? Apparently the rowers had got wind of these rumours and intended to bring children to surround the building on the day. Resorting to tactics involving children sounded machiavellian to me.

While campaigning for the mayoralty in 2013, I would occasionally be asked to drive Phil to important commitments because he was still without transport after his car was trashed. On this occasion Phil was to be a keynote speaker at a seminar in Otaki. As we were driving through the domain, we came across a group of rowers. Among them was the pair who had attacked Phil from behind, a month or so beforehand. They were jeering at him, bragging that the police were never going to arrest them for their attack on Phil. Naturally this upset him. No way do I blame Phil for letting rip with a volley of expletives. However, I reminded him that I was not only a councillor but also a serious contender for the mayoralty. Too late. This short video clip was posted on the Internet, and with a link from the council's official Facebook page, it scored 4000 hits in a matter of days. My mayoral campaign was effectively sabotaged.

Bryan Ten Have was also targeted. When he was filming rowers inside the building, Councillor Jo Mason called him a 'child pervert'. He managed to record her malicious lie. Any man knows how damaging such allegations can be, Bryan Ten Have went to the council's chief executive, and demanded CEO David Clapperton's intervention. Fortunately Jo Mason's efforts to defame Bryan Ten Have ceased.

None of us are naïve. We knew that the community would resent the owners occupying their own buildings. But the owners knew what they were doing. The rowers got the day wrong. In a concerted effort, the owners occupied their own building, and I was grateful to see other owners once again protecting Phil, because he had truly borne the brunt of police persecution. Once the owners were inside, they found a few older canoes which they carefully moved to the back of the building to avoid any damage. Photographs were taken of the interior.

Meanwhile Police Senior Sergeant Sarn Paroli and Phil were in deep discussions, and although the police allowed the rowers to replace the locks on the building, the rowers removed the bulk of their gear that night. Ironically it was BJ Packer who described this day as "actually really horrible."

“Just to see the power that someone has over something without having any evidence”, she said. “They are not going to get away with this.”

A few days later the owners changed the locks once again, moving in to fix the buildings and sweep the place out again. At long last, they felt they were able to assert their rights as owners. I thought it was nice to see the smiles on their faces as they worked.

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chapter 16 notes

Time frame : August - October 2015

changing of the locks

milieu

When owners enter their own buildings, seven police cars turn up.

PEOPLE OF INTEREST

Brown, Cliff : Police Inspector.

Currie, Lionel : Constable.

Ellison, Johnny : Local fisherman.

Flavell, Te Ururoa : Minister for Maori Development appointed in 2014. Elected to Parliament in 2005, and became co-Leader of the Maori Party in 2013.

Hansen, Helen : Rowing Club member.

Harvey, Layne : District Court Judge.

Haumaha, Wallace : Police Superintendent who is New Zealand's senior police officer responsible for Maori issues.

Johns, Daly : Constable.

Lawton, Nic : Constable.

Mason, Jo : Rowing Club member. Elected to the Horowhenua District Council in 2013.

Packer, BJ : Rowing Club member.

Packer, Russell : Lake owner and local fisherman.

Paroli, Sarn : Senior Sergeant who is Horowhenua's Commanding Officer.

Roxburgh, Jason : Former Chairman of the Horowhenua Lake Domain Board.

Sturmey, Slade : Police Sergeant.

Young, Ron : Justice of the High Court.

MAORI WORDS

Waka ama : Outrigger canoe.

POINTS OF INTEREST

Radio Waatea : Maori Radio Station that provides bi-lingual broadcasts.

s29 of the Te Ture Whenua Maori Act 1993 : The section of law that made provision for an inquiry, in this case to review the governance arrangements at Lake Horowhenua that was filed in 2010.

Ch17

trespassed from his own place

"I made it clear to both Mr Taueki and the prosecutor that this condition is imposed temporarily until 1 December."

Judge Edwards

A week later I was down at the lake with Phil and Bryan Ten Have when a couple of security guards turned up and served trespass notices on all three of us warning us to stay out of the domain buildings. Phil took one look at his and showed it to me. It was signed by one of the security guards. Phil gave him the usual message – it was not worth the paper it was written on.

On Monday 9 November 2015 I had filed a case review memorandum as a precaution to place on record the intimidation defence witnesses were experiencing, including the threat to kill Phil, the threat to kill me and within 24 hours, the bullets being fired through a heavy-gauge roller door at the domain. The bullets fired through the roller doors certainly reinforced the risk Phil faced. It had the desired effect, because Judge Lynch sought an assurance from the police that these complaints were being investigated and directed an update be provided for the next case review hearing.

On Tuesday, 10 November 2015, I was relaxing at home on a lovely sunny afternoon when I received a phone call from Constable Demelza Joines to report that Phil had been arrested, this time for trespass. I could not believe the stupidity of the police. Once again I raced over to Levin, wasted time waiting around the police station for Phil to be processed and released on a bail bond.

As always, the first thing I do is read the police bail bond and the date of his first court appearance. As soon I can, I record Phil's version of events which is generally far more accurate than the police 'summary of facts' that Phil prefers to label as a 'summary of fiction'. I could not believe it. The roller doors were up when the police arrived, but he was not even in the building when the police handcuffed him and took him down to the police station. When I received the police notes under discovery, they were acting on alle-

gations from an anonymous informant, who had not even made a formal statement to the police.

First appearance was on 12 November 2015, two days later. In the meantime, his police bail bond prohibited from going within 20 metres of the rowing club building. As I arrived at Phil's place to take him to court, council contractors were changing the locks yet again. Obviously there had been collusion between the council and the courts, because it was no coincidence this work was being carried out at the very time Phil was scheduled to appear in court.

As usual, we are always anxious to find out who is the judge on duty that day, and it was a relief to discover it was neither Judge Ross nor Judge Lynch. However Police Sergeant Simon Chamberlain was there. As police prosecutor, he informed Judge Edwards that the locks were being changed and the tenants would be moving back into the building in the next few days. Tenants? How often have we challenged them to produce a copy of their lease?

One of the advantages of being a self-represented litigant is that Phil is generally allowed to sit at the bench for lawyers instead of standing submissively in the dock trying to make eye contact with a solicitor. If possible, I deliver a written submission to the court staff and the police station beforehand. If not, I give Phil notes to follow. But he didn't need any paperwork this time. He objected.

When Phil managed to explain the background, Judge Edwards grasped the situation straightaway, and turning to Police Sergeant Simon Chamberlain, advised him not to move the rowers back into the rowing club building, until the police could satisfy the court that these rowers had a right to enter this building. As for bail, the record of hearing confirms Judge Edwards "made it clear to both Mr Taueki and the prosecutor that this condition is imposed temporarily until 1 December. Written submissions in support of application to delete this condition to be filed by 20/11/15. Prosecution to clarify validity of trespass notice and current occupation of the Rowing Club building and to provide that information to the court in writing by 27/11/15."

My brief reprieve was over and it was back to work, assembling and photocopying all the necessary documents - yet again! As directed, we served our memorandum on both the Levin District Court and Levin Police Station on 20 November 2015.

By now, the rowers were back in the building. Whenever Phil saw them there, he would contact the police, if only to encourage them to place in their police notes, that they had gone down there to confirm the presence of the rowers inside the rowing club building, even though they had no lawful authority to be in there. Each time he called the police,

he would go through the rigmarole of explaining everything to the senior police officer who would go over to the rowers and invariably come back to report that the rowing club members said they had a lease to be in there. Never were they asked to produce a copy of that lease.

On 23 November 2015, the roller doors were wide open when we drove back to the lake from the first day of Waitangi Tribunal hearings. I grabbed Phil's camera to take some photographs of Helen Hansen and others standing defiantly inside the building. Phil is always protective of me, because he is just as worried about me as I am about him. In my next sworn affidavit, I said I was relieved when I realised Phil was hovering some distance behind me, careful not to breach his bail conditions. In other words, he had remained well outside his exclusion zone.

In my affidavit : "Later that evening I had a phone call from a police officer to report that Phil had been arrested for a breach of bail and would be held in custody overnight to appear in the Levin District Court at 2.15pm."

I passed another sleepless night worrying about Phil locked up in a police cell when he should have been busy preparing to address the Waitangi Tribunal in the morning. He had been allocated the first session, and his focus was to be on lake issues. In the police cells, it is cold and uncomfortable, a long night unable to sleep and a long day of boredom unable to do anything, anything at all.

The next morning I arrived at the hearing early to let the Waitangi Tribunal know that Phil was in custody – again! Police Sergeant Wayne Panapa immediately dropped what he was doing and headed straight down to the police station. The police as usual opposed bail. We finally managed to get Phil out, but he was bailed to live with me, and his new bail conditions extended his exclusion zone to 500 metres. It was the usual story : jail or bail to my place. As his home was well within this new exclusion zone, once again, I was bundling up his belongings and throwing them in my car.

But we managed to get him to the Waitangi Tribunal hearing for a later time slot. Judge Caryn Fox was as usual welcoming and accommodating because she is well-accustomed to our predicament. Curious about a comment Bryan Ten Have whispered in his ear, Police Sergeant Wayne Panapa came over to ask Phil to show him his wrists. As usual they were lacerated.

When Phil appeared in court as scheduled on 1 December 2015, Judge Ross was back. We still had no idea why Phil had been arrested for a breach of bail, but Judge Ross did not consider that an issue at all. "The bail breach alleged will not be consequenced but there will be a warning recorded as to bail compliance as far as the defendant is con-

cerned", he said. "In my view, it would be fruitless and is not going to be constructive to set the matter down for an opposed bail breach hearing."

In other words, Phil was being punished for a bail breach but the police were under no obligation to produce any proof that bail had actually been breached. Rather than the temporary bail condition that was supposed to be eased that day, Judge Ross retained the bail conditions that Phil was to reside with me, and added he was not permitted to go within the 500 metres of the domain buildings. We had such high hopes for this hearing, but instead Judge Ross let the prosecution off the hook on both counts. Police Sergeant Simon Chamberlain did not have to prove whether the rowers had any right to be in the building, or that the trespass notice was valid. As for the witness intimidation, Police Sergeant Simon Chamberlain muttered that I had not made any complaint. E-mails to his superiors showed he was wrong about that as well.

Perhaps Judge Ross thought it was a magnanimous gesture to let Phil drive past the building to access his office from 9am until 12 noon each day. We did not agree. Immediately we appealed.

As the High Court registrar, Keith Brown managed to slot a hearing in the Palmerston North courtrooms on 9 December 2015 when Justice Palmer would appear via a telelink. Once again, I prepared a comprehensive submission and filed it within the time frame set by the court. Not so, the Crown Prosecution. So we headed off to Palmerston North with no idea what stance they would take. The Crown Prosecutor had not managed to file a submission, because the police prosecution had not briefed her on the situation. This Crown Prosecutor bore the brunt of the Judge's displeasure and to help her out, Phil offered not to go within 30 metres of the building.

The next day, we received the promised judgement, and it was a beauty! Thrilled, Phil grabbed his belongings from my place and moved back to the lake again. For a short while, Justice Matthew Palmer and High Court registrar Keith Brown restored our faith in justice.

At approximately 2pm on Sunday 13 December 2015, only four days later, Peter Heremaia went down to the lake to visit Phil. Concerned about the behaviour of a couple of rowers, he provided the court with a sworn affidavit. "When I arrived I noticed the southern roller door was open and a vehicle with a covered trailer had reversed back into the building. I then noticed that they were driving round and round in circles. They parked head on so they could see into Phil's place, with half the vehicle over the domain boundary."

Peter Heremaia observed Bruce Tate and James Watson talking on cell phones, and soon the police arrived to speak with them. “Then the police came over to me and said they had complained of a bail breach. I asked the police what they were going to do to get the rowers out of the building. The police said that the rowers had told them they were tenants.”

Once again, the police were repeating their mantra; that the rowers were tenants. I was rapt that Peter Heremaia happened to be there that day, and relieved he had witnessed for himself the behaviour of the rowers and the response from the police. “Tate and Watson had been going around and around in circles deliberately antagonising Phil”, he observed in his sworn affidavit.

When Phil showed the police his new bail conditions, the police realised there was no excuse to arrest Phil this time. With a huge sigh of relief, Phil was able to join the rest of the convoy travelling down Wellington early the next morning for the final week of Waitangi Tribunal hearings.

On Wednesday 6 January 2016, Phil was arrested at 2pm on new allegations of a bail breach. He managed to get a message through to me that he would be held in custody in the police cells overnight for a court appearance at 2.15pm. I know how hard it is for Phil to endure the mind-numbing boredom of sitting in a police cell with nothing to do but watch the police amble back and forth staring at him as if he is an animal in a cage. When Phil came up from the police cells, he was remanded in custody to Linton Prison to appear before Judge Ross the next day. He did so at 1pm, and once again, Police Sergeant Simon Chamberlain insisted that the police would oppose bail.

Fortunately, Phil had developed a habit of phoning me at regular intervals so I could keep track of anything that might cause problems. Seriously. Earlier on the Wednesday morning, he had phoned to report he had bumped into Charles Rudd Snr at the traffic lights when he went up to the post office, and they had a good chat about the pending environment court hearing, and a tangi coming up. When Phil phoned me from the police station, he told me his arrest was something to do with Jo Mason overhearing his conversation with Charles Rudd. So I phoned Charles Rudd to let him know Phil had been arrested, and he asked: what for this time? I replied: you should know, you were there.

Charles Rudd offered to prepare a sworn affidavit which we handed in to the judge. He stated that: “At approximately 9am on Wednesday 6 January 2016, I met Phil at the intersection of Oxford and Queen Street. While waiting for traffic lights, we discussed the passing of Kevin Hill and arrangements for his tangi. We also chatted in general terms about all the RMA cases that were coming up in the new year. At no stage did we talk

about any incidents down at Lake Horowhenua. At no stage did Mr Taueki abuse anybody. I did not even notice Jo Mason was anywhere near us."

Perhaps stung by the comments from Justice Palmer, this time the police provided a brief report. According to this police report, Jo Mason had made a formal complaint that she heard Phil discussing the specific case she is involved in with another person nearby before he began shouting verbal abuse at her in a voice loud enough that other members of the public began looking to see what was happening. Due to her allegations, Phil was back behind bars.

While Phil is in prison, communications are restricted. And while he is in the cells waiting to appear in court, there is no communication whatsoever. I am not privy to the discussions taking between Phil down in the cells and the duty solicitor that day. As Phil would be appearing before Judge Ross again, Police Sergeant Simon Chamberlain was smiling at the prospect of Phil being remanded in custody again, which would in turn disrupt his preparation for the trial on the assault charges on 20 January 2016, only a fortnight away.

Somehow I managed to get Phil's signature on my latest submission, and attached the most recent judgement from the High Court. During this time, I have one goal, and one goal alone, and that is to get Phil out of the clutches of Police Sergeant Simon Chamberlain. But down in the cells, Phil had agreed not to go within 100 metres of the CBD, he was so desperate to get out of jail. And of course, with less than a fortnight to go to trial, we believed any bail conditions would be short-lived. My hunch however was that Judge Ross would be chastened to read what Justice Palmer had written about him, and sure enough, Judge Ross could not have been more pleasant. But the offer had already been made, and neither Phil nor the duty solicitor were prepared to take any chances. As usual, it was bail or jail.

It was not until Phil got back to his usual routine that he discovered what an imposition this bail condition would be. Rather than focus on preparing for trial, I was now dealing with all Phil's business affairs, including the hassle of getting his benefit reinstated after Corrections failed to provide him with the form confirming the date he had been released from jail. One night in prison is enough for payments to cease.

His first day out, Phil suddenly remembered something that had happened during his first night in the prison cells. Thus, on 9 January 2016, I e-mailed Police Senior Sergeant Sarn Paroli. "At midnight Constable Sawyer woke Mr Taueki up and despite his protests that he needed a good night's sleep, he was taken out of his cell into the interview room and against his wishes interviewed about an alleged break in at the rowing club on 23 October 2015."

On 13 January 2016, Police Senior Sergeant Sarn Paroli replied: “Thank you for advising that you intend to lay a complaint with the IPCA – the CCTV footage of the cell block and DVD recorded interview conducted with Mr Taueki are available and will be provided to the IPCA upon request in accordance with standard practice.”

One of my previous books documented a murder trial in which the accused was acquitted on retrial because the police had taken a statement under duress. Since then the rules had been tightened up by new legislation, and so I laid yet another complaint with the IPCA. The response arrived the very next day. On 14 January 2016, Kathy Irvine acknowledged my on-line complaint in connection with an incident when Mr Taueki was taken from his cells at midnight to undertake an interview. “The Authority understands that your complaint relates to criminal charges that are still before the court awaiting resolution”.

The IPCA decided to exercise its discretion not to take any action on my complaint. But no, the IPCA was wrong to assume my complaint related to criminal charges still before the court. This midnight interrogation was not about any criminal charges still before the court. It was a fishing expedition to try and encourage Phil to let something slip about the occupation of the northern building two months earlier. The day after this occupation, I had e-mailed Police Senior Sergeant Sarn Paroli asking him to explain why the rowers were permitted to change the locks on this building, while the police watched. By the time of this midnight interrogation, the police had already decided not to prosecute the rowers who threw stones at us and threatened to kill us, but it seemed that they still wanted an excuse to arrest Phil for entering his own building.

Dealing with Phil’s latest arrest and filing a complaint with the IPCA disrupted preparation for the trial on the assault charges on 20 January 2016. Nevertheless we looked forward to this date when the condition not to contact witnesses would be removed. But even after this trial, Judge Large refused to ease this condition, and so we appealed.

A teleconference was arranged with Justice Dobson who urged ‘a constructive dialogue between the Crown Solicitor’s Office on the need for the remaining bail conditions’. Crown Law could not argue there was any risk of witness interference because the trial was over. But while these bail conditions remained in force, Phil risked being thrown into jail again on the whim of the rowers. Justice Dobson asked for this condition to be removed while we awaited his reserved decision.

Less than an hour or so later, Phil was served notice of yet another bail breach. Ironically, it was because another judge had ordered Phil as chair of the Hokio Trusts to serve a notice of appeal on all submitters for a resource consent case within 15 days. Supplied

with a list of 28 e-mail addresses, he complied with these directions with no reason to suspect that one of the recipients might be Helen Hansen.

On 30 January 2016 Phil received an e-mail from Detective Constable Joe Pointon headed: Incident Breach of Bail. According to Detective Constable Joe Pointon, contacting Helen Hansen by any means was a bail breach. “This e-mail serves as a warning for breach of bail. The details will be recorded by the police for future reference.”

Helen Hansen had obviously laid yet another complaint. I suppose we should be grateful for small mercies. At least, Phil hadn’t been chucked in jail again. But the rowers had already achieved their objective. Planning for the trial taking place on 20 January 2016 had been shelved while Phil contended with this constant harassment by a group of people whose behaviour I considered to be despicable. Phil was facing five years of imprisonment, and Constable Lionel Currie hoped the police would get lucky this time.

chapter 17 notes

Time frame : October 2015 - February 2016

trespassed from his own place

milieu

Phil Taueki is arrested while he walks across his own land after the domain board decides to ban all owners from their own buildings.

PEOPLE OF INTEREST

Brown, Keith : High Court registrar.

Chamberlain, Simon : Police Sergeant who is a Police Prosecutor.

Dobson, Robert : Justice of the High Court.

Edwards, Stephanie : District Court Judge appointed 2014.

Fox, Caryn : Deputy Chief Judge of the Waitangi Tribunal and Maori Land Court, appointed in 2010. She won the NZ Human Rights Commission 2000 Millenium Medal for her work in human rights.

Hansen, Helen : Rowing club member.

Heremaia, Peter : Hokio trustee.

Hill, Kevin : Horowhenua District Council cultural adviser.

Irvine, Kathy : IPCA investigator.

Joines, Demelza : Constable.

Palmer, Matthew : Justice of the High Court appointed in 2015. Former Deputy Solicitor-General. In 2005, he was awarded the NZ Law Foundation's International Research Fellowship.

Panapa, Wayne : Police sergeant, based at Police National Headquarters. In 2014 he became one of the first recipients of the Meritorious Service Medal, due to his duties as National Manager of the Maori Wardens.

Pointon, Joe : Detective Constable.

Ross, Gregory : District Court Judge.

Rudd, Charles snr : Former lake trustee.

Sawyer, Daniel : Police Constable.

Tate, Bruce : Rowing Club member and complainant.

Watson, James : Rowing Club member.

MAORI WORDS

Tangi : Funeral.

LEGAL TERMS

Maori Wardens : Māori Wardens are not police, but they have legal responsibilities under the Māori Community Development Act 1962.

Summary of facts : Police document that summarises the facts of a case as the police perceive them to be.

POINTS OF INTEREST

CBD : Central business district.

IPCA : Independent Police Conduct Authority.

Ch18

a large mistake

"It became apparent from Mr Taueki's closing submissions that in part, I may have been at fault."

Judge Large

Before preparing for trial, I always print off a copy of the laws applying to that charge and also any case law I can locate on the Internet. Obviously I don't have the resources of a legal firm, but I do my best. Assault for instance means the act of intentionally applying or attempting to apply force to the person of another directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has, or causes the other to believe on reasonable ground that he has present ability to effect his or her purpose. A mouthful, I know, but I do not write the law.

Phil was charged with two counts; assault and assault with a weapon, namely his vehicle. Although there was no contact by the vehicle or injury, this second charge would be the priority because the penalty was imprisonment not exceeding five years. That was my starting point – Phil was facing five years in jail.

Furthermore, I was intrigued to read the formal statements of other witnesses because they had each specified where they had seen this incident. Scrutinising the CCTV footage time and time and time again, I was able to develop a precise time line of events, from the time Bruce Tate cycled up the pathway to the time the rowers trooped into the building after standing around outside chatting amongst themselves in a rather relaxed manner.

The second incident, the alleged assault, occurs out of camera range, but we see Phil getting out of his ute and then returning to it. There were 33 seconds from the time Phil returns into camera range before Jo Mason's van comes into view. Due to the trees lining the roadways in the domain, the rowers in the van had only 16 seconds of visibility. We obtained photographs and video footage to confirm that. Therefore, these witnesses could not have seen either incident, but they all filed into the building, where the CCTV footage would be viewed.

The prosecution's exhibit book contained two photographs that I sensed might be the crux of the case. One showed Phil's red ute entering his own driveway at 09.31.39. The other showed Jo Mason's people van at 09.31.50, and also the tyremarks across the grass and pathway that establish beyond all reasonable doubt it would be physically impossible for Phil to have left the scene after Jo Mason's van pulled up to park.

Finally, I checked out the Summary Offences Act 1981 and confirmed that any person found without reasonable excuse in or on any building is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding $2,000. Phil had been arrested on this charge before, and this was the charge that Constable Nathan Daly had been contemplating for Phil the night he was found in that same building. Plus, the Supreme Court had said these rowers had no legal right to be in the building. So it would be part of Phil's defence to point out the rowers were planning to commit a criminal offence that morning. Indeed the CCTV footage confirms they had all entered this building.

The difficulty in analysing transcripts when a judge has been heavy-handed in his approach by excluding evidence that he did not consider to be relevant, is that it is not possible to know what would have been said, if the judge had not intervened. It is not for a judge to then speculate on evidence that might have been produced if this judge denied the defence the right to introduce it. In this respect, the police got lucky.

At least we can admire Judge Large for his frankness. As he said in his reserved judgement dated 27 January 2016 :

ΩΩΩ

Judgement ; District Court

It became clear at the beginning of the hearing that there was a great deal of history between the respective parties, there having been ongoing proceedings in a variety of jurisdictions for some time.
I felt it was appropriate to contain the evidence to the events or allegations that occurred on 30 August 2015.
It became apparent from Mr Taueki's closing submissions that in part, I may have been at fault, however, given the Supreme Court decision in Taueki v Police, it seems to me on reflection that what I did was correct in that the issues as to the rights of protecting property were well settled by the Supreme Court and Mr Taueki, for reasons which I will express later, was not able to avail himself of the various defences he alleged or purported to use to justify his actions.

In his brief opening submission, Phil had signalled grounds for his defence, and each of these defences is available to a person charged with assault – by virtue of the Crimes Act 1961.

At the conclusion of this trial, an exasperated Phil handed up his written closing submission, which was not read out in court. We just wanted to get out of there, and escape the close confinement of the court where we felt we had endured oppressive interruptions by the judge – in addition to the usual discrepancies between the formal witness statements and the testimony of the prosecution witnesses. These discrepancies, I considered to be significant. I had already detected their major difficulty would be their claim that they had witnessed either alleged assault.

Even though the CCTV footage was damning, at least it provided us with precise time frames and as I have said, I had spent a considerable amount of time viewing the minute or so of this incident time and time again, recording what happened each second. Then we photographed and meticulously recorded the journey from the entrance of the park to the car park, and the areas where visibility was not obscured the trees that lined the roadway.

In his reserved decision, Judge Large allocates a full page to explain his need to consider the evidence with the aim of being 'objective, careful, impartial and dispassionate' in his assessment. He lists seven factors to be taken into account, including the interest any particular witness may have had in the outcome of this case. If he had read the Supreme Court judgement thoroughly, he would have realised that the club did not have any legal right to occupy the land or buildings at the lake.

Entering a building without lawful authority is a summary offence. But in court, Phil was denied his right to produce any evidence providing motivation for the prosecution witnesses to 'lie, distort or minimise the actions of any parties'. If anything best exemplifies the dilemma Phil faced throughout this entire trial, it was the intervention of Judge Large when Phil tried to cross-examine Helen Hansen about her phone call to the police that day. Helen Hansen is of course the secretary of the rowing club who had written the letter during August 2012 confirming she knew who owned the lake. The recording of her emergency call and the transcripts were handed up as evidence in court.

Q&A
Transcripts ; District Court

Phil Taueki
Did you also tell the police on your transcript, “He thinks we’re on Maori land, although the Maori Courts have decided that we have got access to the building.” Did you state that to the police?

Helen Hansen
Quite possibly.

Judge Large interrupted...

Q&A
Transcripts ; District Court

Judge Large
Mr Hewson, you may like to talk to Mr Taueki about that. I mentioned yesterday that the issue is – (pause) the issues I have to determine are whether there was an assault with a weapon, namely a car, or whether it was a separate incident of assault. The issue of Maori land, occupancy, rights or other rights or wrongs or otherwise are not matters that can affect –

That’s not what the Supreme Court says. Aware of the s52 – 56 defences available to Phil under the Crimes Act 1961, the Supreme Court had already decided “it was necessary to discuss Mr Taueki’s interest as one of the beneficial owners of the land around Lake Horowhenua, the Club’s use of its clubrooms and adjacent land, and the rights of the public to recreational use in respect of Lake Horowhenua”.

Such was the rigour of rulings from Judge Large, he challenged the relevance of Phil’s simple question about the Google photograph in the Police Photograph Booklet.

Q&A
Transcripts ; District Court

Phil Taueki
This photo is not that recent, is it Mr Tate, that we’re looking at? Specifically the grassed area that’s in front of the northern building has now been sealed, hasn’t it?

Of course, it was relevant. It establishes that Phil had driven across this sealed area, as the most direct route home. But Judge Large raised no objection to a question the police prosecutor put to this same witness :

Q&A
Transcripts ; District Court

Police Prosecutor ; Royston Beveridge
Just some background, how long is the, it's the Horowhenua Rowing Club isn't it?

Bruce Tate
Yeah.

Police Prosecutor ; Royston Beveridge
How long has it been down at the lake there?

Bruce Tate
1960 it started down there, some policeman actually from here, started it and they were from Whanganui originally I think.

Under cross-examination, Bruce Tate was asked :

Q&A
Transcripts ; District Court

Phil Taueki
Was I on my land or your land?

Judge Large
No, ownership of land is irrelevant.

Phil persevered but was again halted.

Q&A
Transcripts ; District Court

Phil Taueki
So does the rowing club have a lease for those buildings?

Judge Large
Sorry Mr Taueki, I'm not going to allow that question, it's not relevant to the issue that I have to determine. It's a question of whether or not there was an assault with a weapon and whether or not there was an assault. Irrespective of whose land it occurred on.'

Bruce Tate had testified that he had forgotten his key so Phil asked :

Q&A
Transcripts ; District Court

Phil Taueki
Is that building usually locked?

Bruce Tate
The rowing club building?

Phil Taueki
Yes.

Bruce Tate
Yes.

Phil Taueki
And does that mean your club has exclusive use of that building?

Once again, Phil was interrupted by Judge Large, so he tried another approach.

Q&A
Transcripts ; District Court

Phil Taueki
Mr Tate, there have been previous court cases relating to the rowing club, were you aware of one of the cases that went to the Court of Appeal and the Supreme Court?

Judge Large
Can I ask you again Mr Taueki. I don't see the relevance of that because I don't know the history. I'm not from this part of the land, there may be an incredible issue and there may be all sorts of other underlying matters. But I don't see that they're

relevant to this matter today. The matter I have to determine is whether, on the 30th of April (sic) you assaulted Mr Tate using a Mazda ute as a weapon and further on the 30th August whether you assaulted Mr Tate. I just am concerned that we may get off on a tangent which is not going to assist the determination of the critical questions.

Judge Large rejects Phil's claim that he was two metres away from the complainant when he crossed the pathway leading to the side door of the building. By his own admission, Bruce Tate was standing by this side door. Constable Daly Johns was challenged about this aspect of his investigation.

Q&A
Transcripts ; District Court

Phil Taueki
Did you measure how long that pathway is?

Constable Daly Johns
No.

Phil Taueki
Did you bother to take measurements from the doorway back to where these tyre marks showed Mr Taueki reversed?

Constable Daly Johns
No.

Phil Taueki
Did you bother to take a measurement from where Mr Taueki reversed to the front door of the rowing club building?

Constable Daly Johns
No.

Phil Taueki
Do you know how long that footpath is, Mr Johns?

Constable Daly Johns
No.

He was also cross-examined about his inspection of Phil's vehicle.

Q&A
Transcripts ; District Court

Phil Taueki
Did you check for damage to the front bumper?

Constable Daly Johns
I did not.

Phil Taueki
You didn't take photos of the front bumper?

Constable Daly Johns
I did not.

Phil Taueki
Did you take any photos of the bike?

Constable Daly Johns
I explained to you Mr Taueki that I believe these are all the photos...

Judge Large
Yes or no, let's not hedge around it, did you take photographs of the bike or not?

Constable Daly Johns
No.

During cross-examination, Phil questioned Constable Lionel Currie about the photographs he had taken of Phil's ute :

Q&A
Transcripts ; District Court

Phil Taueki
Why did you not take any pictures of the front of the ute?

Constable Lionel Currie
Because I was walking past and I just, the ute that I saw in the morning, Mr Taueki, I wanted to confirm it was the same ute. That's why I took the photographs.

Phil Taueki
Had Mr Tate alleged that he was hit by the front of the ute, in talking to him before you made, took the statement?

Constable Lionel Currie
Yes he did.

Phil Taueki
So why did you not take a photo of the front of the ute?

Constable Lionel Currie
I didn't feel it was required...

Phil Taueki
On the photograph that you did take, the back of the ute, did you notice some indentations in the panel?

Constable Lionel Currie
I didn't notice them at the time, but yeah, I can see that the ute has a number of indentations.

At some stage, Judge Large paused to admonish Constable Lionel Currie. "Constable, lose that attitude. Just give a direct answer. Don't let your voice raise beyond a normal answer to a question. You seem to be starting to get mad."

Phil was entitled to a robust and impartial investigation by the police. Due to his bail conditions, Phil could not venture anywhere near the scene. While the tyre marks were fresh, the police failed to measure the length of this footpath, or the distance of the tyre tracks across the pathway from the position where Bruce Tate says he was standing. From photographs extracted from the CCTV footage, the footpath was longer than the people mover van, and that the tyre marks of Phil's vehicle were closer to the road than the side door where Bruce Tate was standing.

On the day, Constable Daly Johns had snapped off forty or so photographs, but only a few were included in the exhibit book. One photograph showed tyre marks in the mulched garden beside the main roadway. The CCTV footage confirmed that Phil had reversed his vehicle before turning right to cross the pathway and drive home over the sealed parking area. This photograph that the prosecution chose not to produce as evi-

dence confirmed how far back Phil had reversed. At least, I was able to measure that distance. To go any further, he would have backed into the trees. He had reversed far enough to be able to turn right to head home across the sealed parking area.

We knew from their formal statements that Jo Mason and other members had entered the building, where the CCTV camera was located.

Phil asked Bruce Tate whether he had watched the video before making his statement to Constable Lionel Currie. He replied : I cannot remember.

Judge Large asked, well to be fair had you watched it at all?

Q&A
Transcripts ; District Court

Bruce Tate
Yes.

Judge Large
When?

Bruce Tate
At the rowing club.

Judge Large
When?

Bruce Tate
Um-

Judge Large
That day? Another day?

Bruce Tate
That day, either after, um, either after the statement or before.

We questioned the police on their arrangements to secure this footage. After all the CCTV footage captured the time sequence, and there could be no doubt whatsoever that Phil had been driving up his driveway well before Jo Mason parks her van.

Jo Mason confirmed that she had watched the footage before making her statement and so possibly had Helen Hansen. Judge Large watched it only once. “Thank you I don’t need to see the footage again.”

The CCTV footage appeared convincing, but it needs to be placed in context. There was no evidence of any physical contact. Perspective is distorted in any photographs or footage and I had even downloaded images of Leaning Tower of Pisa, as a popular destination for weird photographs. Something that appears to be up close may be much further away, and this is the reason that the distances that Constable Lionel Currie and Constable Daly Johns failed to measure was so crucial for the defence. But Phil’s bail conditions precluded him from going anywhere near the domain so he would not have seen the tyre marks across the path way that confirmed how far away he had been from Bruce Tate who was standing at the side door when he crossed the six metre path to head home. Phil’s wheels were turning right, and there was no way he would have been accelerating towards Bruce Tate who was standing, by his own admission “beside the side door”. If he was accelerating towards Bruce Tate, his car would have crashed into the building and he would once again be left without a vehicle for transport.

Phil is, and always will be, entitled to the benefit of the doubt. Sure Phil was agitated, but feeling agitated is not yet a crime. Because his vehicles had been vandalised, and he suspected Bruce Tate was responsible, he had every right to warn Bruce Tate not to come anywhere near his property. That is a defence that is available to him under the Crimes Act 1961. But there was no way he could explain that to a judge who refused to accept any evidence to sustain this defence, a defence that is perfectly legal.

As for the second incident, Judge Large rejected Phil’s defence of self-defence. But Judge Large was selective about the testimony he used to justify his stance. By his own admission under re-examination, Bruce Tate confessed that he had ‘squared up’ when Phil was ‘eyeing’ him.

Q&A

Transcripts ; District Court

Phil Taueki

And you said that I said to you: “Go on Tate have a f-ing go?’

Bruce Tate

Yes.

Phil Taueki

... Could I put it to you Mr Tate that you actually shaped up to throw punches at Mr Taueki? Did you pull your fist back?

Judge Large
Did you shape up to have a go at him?

Bruce Tate
I did.

Phil Taueki
Yes, did you shape up to hit Mr Taueki on the day?

Bruce Tate
I didn't do any shaping up until you attacked me Philip okay?

Judge Large
And wasn't it while Mr Taueki was preparing to defend himself against an attack from you, that he grabbed you by the neck?

Bruce Tate
I didn't get out of my car and walk around.

Under re-examination, Bruce Tate finally admitted what happened.

Q&A
Transcripts ; District Court

Police Prosecutor ; Royston Beveridge
And it was put to you that you shaped up to throw punches at, sorry yes, shaped up to throw punches at Mr Taueki and you said "Yes", why did you say that?

Bruce Tate
It was to basically defend myself.

Police Prosecutor ; Royston Beveridge
When you shaped up, what was happening?

Bruce Tate
Well he was standing there eyeing me.

Why was this comment not mentioned in Judge Large's decision? Bruce Tate stated : He shaped up, because Phil was standing there 'eyeing' him.

When we were preparing for trial, we were both well aware that none of the witnesses could have seen what they claimed to have seen as they were entering the domain. The foliage along the domain roadway obscures total vision of the rowing club. We were poised for cross-examination. But we were far too seasoned to presume that any of the witnesses would follow the script in their original statements, which we could so easily discount. Previously Phil had read a comment, the CCTV footage had been shown to some of the rowers at the police station prior making their formal statements.

In court, Jo Mason testified that she could see both Phil's hands around Bruce Tate's throat.

Q&A

Transcripts ; District Court

Jo Mason

I was pulling up and parking, I was, I was coming into the rowing, into the parking area.

Phil Taueki

And Mr Taueki's vehicle was, was parked there and you saw the assault from Mr Tate from then on?

Jo Mason

Mmm.

Judge Large

Is that a yes?

Jo Mason

Yes.

Judge Large

Thank you, I just need to record it.

Marcus Anderson also described seeing Phil's hands closed around Bruce Tate's neck and Bruce Tate with open hands pushed the male away. Under cross examination, he added :

Q&A
Transcripts ; District Court

Phil Taueki
And your vehicle, I think you said was just entering that area when you observed this.

Marcus Anderson
Yep.

Phil Taueki
And you described him getting back into his vehicle, where was your vehicle when that happened?

Marcus Anderson
By that point we had parked up at the, alongside the club shed.

In her evidence in chief, Helen Hansen testifies as follows.

Q&A
Transcripts ; District Court

Police Prosecutor ; Royston Beveridge
You said you saw Phil get out of the vehicle...

Helen Hansen
Yes.

Police Prosecutor ; Royston Beveridge
What are his next movements?

Helen Hansen
He was shouting at Bruce (Tate) and then he just started attacking Bruce.....
Yeah he was, and he was yeah, just attacking him.

Police Prosecutor ; Royston Beveridge
So how did this end?

Helen Hansen
I believe it ended when we, when the car stopped and all of the passengers got out of the car.

Under cross examination Helen Hansen ...

Q&A
Transcripts ; District Court

Phil Taueki
Are you aware that there was an 18 second gap between the time Mr Taueki's vehicle leaves the rowing club premises and the time your vehicle enters the rowing club carpark?

Helen Hansen
I don't think that would be correct.

Under her evidence in chief, Debbie Broughton-Cross , the only civilian witness who was not a member of the rowing club, testified :

Q&A
Transcripts ; District Court

Debbie Broughton - Cross
The guy just pushed him away and then the rowing club, a white van turned up and Philip jumped in his car and took off.

Under cross examination Debbie Broughton-Cross was asked :

Q&A
Transcripts ; District Court

Phil Taueki
And when did the white van turn up Mrs Broughton?

Debbie Broughton - Cross
Not long afterwards, before you left the scene.

Phil Taueki
This was during the attack you witnessed?

Debbie Broughton - Cross
Yeah.

Phil Taueki
So whilst I was attacking, allegedly attacking Mr Tate, the white van turned up.

Debbie Broughton - Cross
Turned up, then you hopped in your ute and drove around the back where, the back of the rowing club...

Phil Taueki
So let's confirm that. You saw the white van turn up before I left the building.

Debbie Broughton - Cross
Mmm. You hopped in your truck, your ute and left...

Phil Taueki
So just to clarify further if we can, did Mr Taueki get back in his vehicle before or after the van parked?

Debbie Broughton - Cross
After.

Phil Taueki
After?

Debbie Broughton - Cross
Sorry he got into his vehicle after the van parked.

In his decision, Judge Large comments that there were further questions about when the white van turned up with rowing club members in relation to Mr Taueki leaving the scene, but "that evidence is of little assistance to the determination of the matters I have to make."

Had he not devoted a whole page to the issue of credibility? Surely his suspicions should have been aroused by the conformity of their evidence? Did he not consider the possibility that these rowers had been coached? While Constable Lionel Currie was in the witness stand, Judge Large had interrupted to address Bryan Ten Have who was in

the public gallery. He asked : do you have a problem sir, you are either sitting down or standing up?

Q&A

Transcripts ; District Court

Bryan Ten Have

Well Mr Pointon seems to be talking to the next witness and –

Judge Large

And who are you?

Bryan Ten Have

I'm Brian Ten Have.

Judge Large

Why would it worry you if the sergeant is –

Bryan Ten Have

Because I don't think he should be giving evidence to the next witness.

Judge Large

He may not be giving information to the next witness, we will find that out. Either way, you are a member of the public, not a participant. If you start taking a part, I'll ask you to leave.

Bryan Ten Have

I wasn't taking a part.

Judge Large

You were taking a part, I'll not have you standing up and looking at people outside the door. You are either in the Court or out of the Court. If you are in, you are sitting down, do you understand that?

By contrast, he had been far more lenient, in fact apologetic towards a woman sitting alongside members of the rowing club who had already given evidence.

Judge Large

Excuse me, if the lady in the back starts keeping her head moving up or down or sideways, I'll ask her to leave. I'm sorry you cannot indicate any body language one way or another, so I'm sorry you have to sit there in a very – thank you - you're welcome to stay if you're prepared to sit still, sorry.

Bryan Ten Have was so upset about the way he was treated by Judge Large, that he sent me an e-mail explaining that he had seen Detective Constable Joe Pointon speaking with witnesses in the waiting room. "All conversation between them stopped uncomfortably when they saw me and I carried on to the rest room. When I left the restroom the same things occurred. So when I repeatedly noticed Mr Pointon leaving the courtroom during proceedings so I decided to watch where he was going. Each time it was to converse with the upcoming witnesses."

The transcripts revealed that witnesses told the same story on oath, an account that was implausible. Why did Judge Large not take seriously these observations from Bryan Ten Have? The transcripts noted the reaction from Judge Large, when he observed a woman sitting in the public gallery. Could her actions have affected the course of justice?

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chapter 18 notes

Time frame : January 2016

a large mistake

milieu

Phil has a frustrating day in court due to the interruptions.

PEOPLE OF INTEREST

Anderson, Marcus : Rowing Club member.

Broughton Cross, Debbie : Visitor to Lake Horowhenua.

Daly, Nathan : Constable.

Hansen, Helen : Rowing Club member.

Johns, Daly : Constable.

Large, Jim : District Court Judge appointed in 2015.

Mason, Jo : Rowing Club member.

Pointon, Joe : Detective Constable.

Tate, Bruce : Rowing Club member and complainant.

POINTS OF INTEREST

S56 defence : Defence available to people in peaceable possession of land.

Ch19
tainted investigation

"The second related issue concerns the investigation of the offence and the allegation of bias. Mr Taueki has laid complaints about the conduct of local police in relation to him. He is dissatisfied with the response he has received to these complaints, and believed the relevant police officers should have been stood down pending resolution of his complaints."

Judge Simon France

When the prosecution had concluded their case for these assault charges, Phil had made a brief opening submission. "It's quite simple. The defence is relying on the following defences available for charges of assault, under section 48, 53 and 56 of the Crimes Act. The defendant's state of mind is relevant to the charges."

In his defence, Phil had taken the stand because he never hesitates to swear on oath to tell the truth, and he has no qualms about giving the judge his version of events.

Q&A
Transcripts ; District Court

Phil Taueki

So on the day I saw Mr Tate park himself and his bike at the front door of the rowing club I pulled in alongside him, near the ah, between the bushes and the doorway where he was standing. We exchanged a few words, he made some comments, I made some comments. I went to drive my vehicle home, I turned right towards my home to do so, I cross the footpath at least two metres distance from where Mr Tate was standing, my vehicle did not contact Mr Tate, my vehicle did not make contact with his bike.

At the point I saw Mr Tate apparently fall over, I stopped the vehicle and you'll see on the video that I was going slow enough for the front tyre not actually mount the lip of the footpath which is only a matter of an inch. So there was no momentum at that point. As I said, I got out of the car to remonstrate with Mr Tate. I had a feeling he was going to call the police and accuse me of whatever

he could think of to get me jailed and evicted from the lake. So I got out of my van to remonstrate with him.

Phil's concerns that he was going to be arrested proved justified :

Q&A
Transcripts ; District Court

When I returned home from seeing my daughter, I was in my home, carrying out my normal daily activities when at about 3.30 police arrived, they did not ask me anything about the incident, did not give me a chance to explain my view of what had happened that day and I was placed under arrest and I was transported to the Levin Police Station where I was charged. At that point in time as I'm sure you're aware, the police made the most of the fact that they could insist on whatever bail conditions they wanted and then know that I would only be granted bail, my freedom if I agreed to them. At that point they made a bail condition that I not return to the lake and not be within 500 metres of the lake.

Once again Judge Large interrupted :

Q&A
Transcripts ; District Court

Judge Large
Mr Taueki, in fairness I don't think it relevant for my purposes and my consideration to be influenced one way or another by any bail terms or lack of or too many of, that's not the issue I have to determine today. It's these separate matters which I have not been privy to because this is the first time I've seen the file so all I am going to focus on and ask you to focus on is the events of the 30th August please.

But hadn't he said that he had to consider whether a witness had a motive to lie, exaggerate, distort or minimise the actions of any of the parties? It was only when the trial was over that Phil was able to attach a judgement of the Supreme Court in his closing submission confirming the club does not have any legal right to occupy the buildings at the lake. It was the only way he could get that point across, but even then, Judge Large ignored the club's motivation to testify as they did.

Judge Large makes a valid point when he stated that this is a criminal prosecution. “The onus is on the police to prove the elements of each charge beyond reasonable doubt. There is no onus on Mr Taueki to prove or disprove anything. All facts need not be proved beyond reasonable doubt, only the elements of the charges.”

Phil does not dispute that there was well-entrenched animosity between Bruce Tate and him. But he had reversed back to head home by the most direct route, and in the soggy ground his vehicle failed to mount the lip of the footpath. The onus was upon the prosecution to prove beyond all reasonable doubt that it was Phil’s intention to hit Bruce Tate.

As already stated, once this trial was over, we had assumed that the bail conditions would be adjusted to get rid of the condition not to have indirect contact with witnesses. Not so. We were aghast. For the one consolation we had after a ghastly day in court was the prospect of no more bail conditions regarding contact with witnesses. We wanted an end to the pressure of chaperoning Phil everywhere to eliminate the possibility of any further malicious complaints from the rowers.

Only a week later, Phil was found guilty on both counts, in a reserved decision full of irony. And now Phil was bracing himself for a harsh penalty, even though we both felt his hearing had been far from fair. If this whole case came down to credibility, why did Judge Large choose to believe witnesses who had blatantly lied on oath? The photograph on the lower right corner of page 8 of the Police Exhibit Book proved that – beyond all reasonable doubt! Phil felt gutted that this judge was so gullible, and so did I.

The original 23 March 2016 sentencing was adjourned until 27 April 2016. In his submission for sentencing, Police Sergeant Simon Chamberlain described Phil’s actions as “vigilante”.

ΔΔΔ

Police Submission ; District Court

The defendant will not dispute that it is his stated intention to have the Horowhenua Rowing Club and its members out of the buildings, which he considers himself to own.
It is submitted that these offences are part of his ongoing campaign and involve using stand over tactics. It is submitted his obvious goal is to force the rowing club to abandon their buildings.
This is supported by previous convictions of assaulting persons at the Lake, including members of the Horowhenua Sailing Club which was formally (sic) located at the Lake Domain.

His previous offending, was a significant factor in the Horowhenua Sailing Club abandoning their premises at Lake Horowhenua.
He has a previous conviction for assaulting another member of the Rowing Club.
It is therefore submitted that the defendant's actions in the current offending, fit the criteria of the aggravated factor mentioned above from the Taueki case.

Police Sergeant Simon Chamberlain wanted Phil sentenced to sixteen months imprisonment. The Corrections report recommended community detention. Police Sergeant Simon Chamberlain refused to let Phil serve any electronic surveillance at the lake. Therefore Phil was forced to find another address. On 29 March 2016 he notified Corrections that he had a house at Hokio and sought time to assess the address. It was not suitable for signals. On 20 April 2016, Corrections confirmed that a property at Foxton Beach was suitable, and that he would be granted 48 hours to move into this unfurnished house.

On 27 April 2016, Phil once again packed a bag in case he was sentenced to imprisonment. Police Sergeant Simon Chamberlain conceded the police were wrong to include charges in his sentencing submission where convictions had been quashed.

The case Judge Large considered to be relevant for sentencing was one where the offender drove his car down the ramp in the direction of two men. "One was struck by the vehicle and his leg became trapped. The offender continued to accelerate pushing him into the water, and then drove to other man who managed to avoid being hit. The offender then parked his car and punched the injured man six times. The victim sustained serious injuries to his leg."

He noted Phil showed no remorse and no apology but balanced that with the grievances against the tribe. However Judge Large did comment on Phil's commendable work and clear passion for the lake, so upon these grounds he stepped back from imprisonment. That was a relief!

Judge Large therefore sentenced Phil to six months home detention at an address mentioned in corrections report although he was not going to publicly say it. He added that this address was on a needs to know basis that was not for general publication with the police. "And Sergeant, I trust that can be accommodated and it is not to be a subject of gossip in the police staffroom at any point in the near future. That will be in breach of a court order and I would be most upset or concerned if that occurred."

He then turned to Phil: "Mr Taueki, you are to travel directly to that address and await the arrival of an agent of the monitoring company". In the darkness, Phil was forced to travel

to an unfurnished house, where a security guard would be waiting to install a monitoring device and place an electronic bracelet on his ankle, with a battery that had to be charged on a daily basis. I was to drive him there, and along the way he could not stop to pick up a toothbrush, toilet paper or even something to eat for tea. Upon arrival, he could not leave his home for any reason without permission from a corrections officer, obtained sparingly and only after giving 48 hours notice.

And for his own personal safety, an order was put in place to prevent the police finding out where he was living. At least our comprehensive submission had convinced Judge Large that Phil's safety was at risk due to the behaviour of the local police. He might also have figured out that something was seriously wrong when we brought to his attention the number of times Phil had been assaulted by these rowers and the police had done nothing about it!

All Phil's community housing and other projects came to a grinding halt.

Judge Large did not need to advise us that Phil's right to appeal was available to him as of now because the matter was now concluded. I already had an application ready to appeal both conviction and sentence. And I had already applied for a stay of sentence which Judge Large declined. So we appealed that as well. Corrections did not hold out much hope, but granted Phil leave to travel down to Wellington to argue yet another case before the High Court.

On 19 May 2016, Justice Clifford allowed the appeal for a stay of sentance and suspended the sentence of home detention for the period of bail. Phil's new bail conditions let him return to his home address on the condition that he surrender himself to the court for his appeal. We were thrilled when the security officer arrived to remove the clunky bracelet, and Phil was already packed up ready to return to the lake.

This stay of sentence was timely. Friday, Phil returned to the lake. On the Monday, Phil was able to sit beside Leo Watson, the Hokio Trust's lawyer for an Environment Court sitting to hear the Trust's appeal of resource consents for the Lake Accord to carry out activities Phil could not condone.

Horizons regional council had already purchased a huge weed harvester at the cost of $250,000 and it was in storage awaiting the favourable outcome obviously expected. Bill Chisholm had pointed out the risks of the lake flipping due to this weed harvesting, and Phil was adamant that he was not going to let the council get away with any more experimental activities on this vulnerable lake.

Although Phil's input had been hampered by his home detention, and neither of us felt like spending any more time in a courtroom, Phil knew he would regret his absence and could not abrogate his duty as kaitiaki.

Horizons had a dozen or so experts and three or four lawyers, all financed from the vast resources that a regional council generates from rates. We had but one lawyer and one expert. Nevertheless Bill Chisholm stood his ground, explaining that Lake Horowhenua was "on a knife-edge of flipping and only required a trigger such as slight elevation in nutrients. The mobilisation of substrate sediments by a weed harvester could be such a trigger." He cited as an example Lake Ellesmere that had flipped in 1968 and remains in its degraded state to this day.

Naturally this was a risk Phil was not prepared to tolerate. Every decision central and local government had made over the past century or so had been detrimental to the lake, leaving it up to the owners to protest and risk arrest to alleviate the harm to Mua-Upoko's ancestral food source.

Phil often describes the lake as "the town's toilet". It is an apt description. From 1952 until the 1980's, Levin's sewage was pumped into the lake. Since 1973 to this very day, Levin's stormwater is discharged into this lake. In the 1920's, the level of the lake was lowered because neighbouring farmers who had bought swampland blamed lake owners whenever their farms flooded. And for the market gardeners, trenches diverted heavy rain into the Arawhata stream and down to the lake. From north, south, east and west, Lake Horowhenua was under siege. Dr Paul Hamer in his research for the Waitangi Tribunal documents a litany of broken promises. Phil was adamant this cycle of abuse must cease.

Every day I entered the courtroom for this gruelling week-long hearing, I silently blessed Justice Clifford for granting Phil the opportunity to attend this hearing and counter assertions from the opposition that were excruciating in their audacity. The agony of the lake, is Phil's own agony. I am the lake; the lake is me, as the Maori saying goes.

But Judge Dwyer had determined, even before the hearing commenced that he was going to treat all Maori as the same. In his decision, he put it plainly that no priority would be given to the evidence from any individual Maori group or groups party to these proceedings. "This Court considered all had a relationship to Lake Horowhenua and its surrounding land as ancestral land and water."

The Resource Management Act of 1991 considers the relationship of Maori to their ancestral lands to be a matter of national importance, and the principles of the Treaty must

also be taken into account. Some judges do not seem to grasp their Treaty obligations. The Treaty is quite specific. Her Majesty Queen Victoria of England guaranteed Taueki and other signatories : “The full, exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they may collectively and individually possess”. Is there a racial disparity in the law?

All claimants have to prove their right to inherit a property or farm. Why do these standards not apply to the ancestral lands of Maori, particularly when this country’s founding document is the Treaty of Waitangi?

Dr Jon Procter is an academic and Treaty negotiator. How could this academic and Treaty negotiator have the audacity to claim – on oath - that he did not know who signed the Treaty on behalf of Mua-Upoko? How could he claim there were no battles on this lake? How could he accuse Taueki of leading Ngati Toa up the Hokio stream to attack his own people? How could anybody consider such a person to be credible?

Even though he is a lawyer and currently chairman of the lake trust, how could Matt Sword get away with his ignorance on basic lake issues such as the ownership of the lake bed?

And Robert Warrington claims he has formal qualifications in “Mua-Upoko tikanga”. If that is so, why does he not respect the mana of the Mua-Upoko Rangatira?

When Phil took the stand, I had been ordered to seek advice over the lunch-time on how to frame my questions to put to him under cross-examination. Somehow I managed to come up with a question that satisfied the judge and would generate the response I knew Phil, with his experience in the witness stand, could deliver. Phil’s passion overwhelms him at times, but he at least was able to convey what the lake meant to those of his ancestors whose blood coloured the waters red. The judge concluded the hearing by stating it was an interesting case. But it wasn’t long before we were appealing his decision as well.

It had been a hectic month getting Phil back into circulation after five weeks locked away in his secret site and there was a lot for Phil to absorb. There were times when he would look at me blankly, and I could sympathise with his information overload.

A High Court hearing was scheduled to take place down in Wellington on 21 June 2016 to consider Phil’s appeal of the escaping from custody charge. I had gone to a lot of trouble to place on record in writing conduct I considered to be serious misconduct by the

police on this night the police alleged he had escaped from custody. On 22 July 2015, the Stuff news web-site had reported the comment from Judge Hastings that our allegations of serious misconduct needed to be explored further.

I had been in touch with the Police National Headquarters, and on 27 April 2016, Police Superintendent Anna Jackson reported that to date the police had no matters relating to my complaint. In our submission we referred to an e-mail dated 24 November 2014 confirming receipt of documents supplied to Superintendent Sue Schwalger, the Central Region's commander. Plus there was the comment by Judge Hastings in the courtroom with police officers present. Plus there was the comment reported in the local newspaper and on Stuff. But the police hierarchy obviously wanted to pretend there was nothing to investigate.

How could it be standard police procedure for two police officers who were at the centre of allegations of serious misconduct on 22 July 2015 to then become the sole investigating officers for an incident that occurred only a month later, on 30 August 2015? Disturbingly, the officer in charge of both cases was Detective Constable Joe Pointon.

We had police notes confirming that Phil's large elderly dogs had escaped while a scene guard was on duty, testimony that two police officers had observed Phil on the phone at the desk where the P-pipe was placed, and a search warrant signed with a squiggle and no official stamp of the court.

Due to Phil's existing allegations of serious misconduct against the police, there should have been some procedure to ensure there was no malice in any subsequent dealings between Phil and the police.

I am convinced that if any police officer had measured the distance of the tyre marks to the door, Phil would have been acquitted. He had reversed back, the ground was soggy and he was moving slowly enough to stall on the inch-high lip of the path.

We had high hopes that Justice Simon France would take these allegations of misconduct seriously, because I had studied his judgement and that of Justice David Collins in the Red Devils case. In that judgement delivered only recently on 14 December 2015, the Supreme Court had quashed the appellant's conviction with no order for retrial. This appellant had previously been sentenced to a prison term of two and a half years imprisonment. According to this judgement, the conduct of the police amounted to an abuse

of process, and further, an abuse of process sufficient to justify staying the prosecutions of the remaining defendants.

For his own appeal, the Judge's first question floored Phil, because he was asked what evidence he would have produced if he had been granted an opportunity to do so. That is not an easy question to answer. Probably I would have shrugged my shoulders and sweetly replied: Where do I start? I sincerely hoped Justice Simon France had read the written submissions we had prepared.

This time, we had appealed both conviction and sentence. Phil had already spent 48 hours in custody as a result of these charges and 24 days on Home Detention. We pointed out that only a week beforehand, a New Zealand Transport Agency highway manager whose careless driving had killed a Levin woman was discharged without conviction. We pointed out there was no proof that Phil's ute had touched Bruce Tate. We objected to the Corrections report that his risk of re-offending was medium, and produced an Incorporated Societies Register update to show the rowing club had been struck off, eliminating the prospect of any further confrontation between owners and rowers.

For the conviction, there were transcripts recording every intervention by Judge Large during the course of Phil's trial. Judge Large accepts that it became apparent from Phil's closing submissions that in part, he may have been at fault. We pointed out that the complainant was not injured when Phil reversed his vehicle and turned right to head home. We pointed out that the complainant admitted that he squared up because Phil was eyeing him.

Our trump card, however, we felt was evidence that the rowers had lied on oath because photographs confirmed there was no way Phil could have left the scene after Jo Mason had parked her van. It is an impossible scenario for one vehicle to drive through another.

Phil simply said : "I do not accept that I am guilty of either charge."

Unfortunately judges have the final say when it comes to conviction and sentence. On 2 August 2016, Justice Simon France dismissed Phil's appeal substituting five months and two weeks community detention for the sentence of six months home detention. We were devastated.

In his reserved decision, this judge agreed that the District Court's decision to prevent Mr Taueki from exploring the past history was an error at the time. But then he went on to vindicate the approach this judge had taken :

ΩΩΩ

Judgement ; High Court

The land dispute and prior events between Mr Taueki and the rowers are irrelevant to his explanation of his conduct. For neither charge is Mr Taueki giving an explanation that is sourced in his alleged control or guardianship role. That may be why he approached the victim, but thereafter liability turns on the specifics of the incident. Did he drive his vehicle at the victim, and was he acting in defence of himself when he put his hands around the victim's throat?

It is therefore unnecessary to consider the correctness of the limits imposed by the Judge on the land issue evidence.

It is likely therefore that the ruling was at least premature, and probably wrong at the time it was made. Mr Taueki also says that as a lay litigant he was thrown off his stride because he was prepared to run the case a particular way. He became flustered when he was prevented from doing that, and so did not do his case justice.

Justice Simon France then ruled the prohibited evidence was irrelevant and inadmissible.

ΩΩΩ

Judgement ; High Court

Its exclusion cannot be a source of an unfair trial.

I have not been pointed to any evidence of past conduct directly between him and the victim that might be led of the past history between Mr Taueki and the rowing club has not occasioned a miscarriage.

The second related issue concerns the investigation of the offence and the allegation of bias. Mr Taueki has laid complaints about the conduct of local police in relation to him. He is dissatisfied with the response he has received to these complaints, and believed the relevant police officers should have been stood down pending resolution of his complaints. The two police officers who gave evidence in the present trial are officers who have had previous involvement with Mr Taueki and concerning whom he has made complaints.

My assessment is that the restriction on Mr Taueki went too far, and Mr Taueki should have been able to further explore the contention of actual bias. However the context was that the evidence of the police officers was of peripheral relevance.
I am not satisfied the poor investigation, as Mr Taueki would have it, caused a miscarriage of justice. Photos of the victim would not advance things as it was not alleged he was injured. The measurements have still not been obtained so there is no basis to say they show anything. Mr Taueki says the conditions of his bail prevented him from taking the measurements himself. That may have been so initially, but there has been ample time for them to be obtained.
I appreciate Mr Taueki is a lay litigant who may not have understood how to make arrangements to obtain access. However the reality is there are no measurements and the Court cannot speculate what they may show.

If only this judge had viewed the collection of bail changes accumulated during the five months leading to trial, I believe he would have realised that the police had effectively barred him from carrying out the investigation that any impartial police officer would have undertaken. Even filming the drive from the entrance of the domain to the area where Jo Mason's people mover carried a risk of arrest, if CCTV footage captured Phil in my car recording it so that he could legitimately produce it as evidence in court.

Justice Simon France continues :

ΩΩΩ

Judgement ; High Court

"The next challenge is to the credibility of certain witnesses and of their evidence", he said. "It is clear some of the witnesses were in error as to the timing of events. CCTV footage established the correct sequence of the arrival of vehicles. (The other independent witness also got this wrong.) Mr Taueki contends the common effort about sequence is explicable only by a conspiracy to lie.
The judge recognised the error but did not draw this conclusion of a conspiracy to lie, seeing it instead as a mistake. I do not see any reason to differ.
Mr Taueki claims the CCTV footage is misleading as it compressed the distances and makes everything seem closer than it is. It is here that the claimed inadequate investigation bites because Mr Taueki submits proper measurements would show there was more distance than appears on the CCTV footage. I have commented on

the measurements issue, but in reality there is no risk the CCTV footage is misleading. It is crystal clear and the message it conveys is beyond dispute. An agitated Mr Taueki drove directly at the victim in a very dangerous manner. The victim was fortunate to avoid serious injury.

It was common ground Mr Taueki grabbed the man's throat. Why he did so was the issue. Although the victim admitted he shaped up, he made it clear that he did so only after Mr Taueki approached him. It was open to the judge to find this charge proved, and Mr Taueki has not satisfied me the Judge was in error to do so.

There is no doubt Mr Taueki feels committed to his cause and has a legitimate role in relation to the general precinct. However the victim was only going to enter a building.

There is a total disproportion between that and a response of driving a car at him. The reality is that Mr Taueki has a level of anger about the whole matter that on this occasion led to an excessive and dangerous reaction.

Although there is a temptation to bridle at the proposition a sentence should be changed because an offender finds it inconvenient, I am satisfied there is a public interest in this work that should be accommodated to the extent circumstances allow. The key such circumstance is that the offender was not hurt.

He quashed the sentence of home detention and considered the full term of community detention appropriate. Phil was back on the bracelet and forced to return to his secret address until Anniversary Weekend the following year. As I read this reserved decision, I couldn't help wondering if this judge would feel agitated if somebody was 'only' going to enter his own property, without his permission.

Once again, I cursed the national government for their procrastination, refusing to repeal law that should never have been enacted in the first place.

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chapter 19 notes

Time frame : January - August 2016

tainted investigation

milieu

Phil Taueki accuses police officers of a tainted investigation and serious misconduct.

PEOPLE OF INTEREST

Chamberlain, Simon : Police Sergeant who is a Police Prosecutor.

Chisholm, Bill : Environmental consultant.

Clifford, Denis : Justice of the High Court appointed in 2006. In April 2017, he was promoted to the Court of Appeal.

Dwyer, Brian : Environment Court Judge appointed in 2006. He had previously worked as an independent commissioner for local authorities in the South Island.

France, Simon : Justice of the High Court appointed in 2005.

Hamer, Paul : Historian.

Hastings, Bill : District Court Judge.

Jackson, Anna : Superintendent. National Manager for police professional conduct. Awarded a NZ Order of Merit in 2014.

Large, Jim : District Court Judge.

Pointon, Joe : Detective Constable.

Procter, Jon : Lake trustee and domain board member.

Schwalger, Sue : Superintendent. Commander of Central Region.

Sword, Matt : Chair of Lake Trust.

Tate, Bruce : Rowing Club member and complainant.

Warrington, Robert : Chair of MTA, lake trustee and lake domain board member.

MAORI WORDS

Kaitiaki : Guardian or person with a duty of care.

Mana : Prestige, authority, charisma.

Rangatira : Tribal leader.

Tikanga : Correct procedure or custom.

POINTS OF INTEREST

Anniversary Weekend : Wellington Anniversary Day is celebrated on a Monday towards the end of January to commemorate the arrival of the first settler ship to arrive in New Zealand.

Arawhata Stream : Stream at the southern end of Lake Horowhenua near Levin's market gardens.

CCTV : Closed circuit television monitoring.

Community detention : Sentence whereby an offender is required to live at an approved address and is electronically-monitored to ensure compliance with curfew hours.

Home detention : Sentence whereby an offender is electronically-monitored and unable to leave an approved address without the approval of a Corrections Officer unless there is an emergency.

Lake Accord : Agreement between Horizons, Horowhenua District Council, DOC, lake domain board and lake trustees.

Lake Ellesmere : Lake near Christchurch that is regarded as the worst lake in the country.
Stuff : Fairfax Media Internet news service.

Ch20

paying the price

"Any decision I came to would not be authoritative. The issue is best left for decision in a case where it would be determinative. Furthermore, it is one which is of some importance and the Court would benefit from argument from counsel both for prosecution and defence. Given that public funds would be at stake, it is arguably an issue on which the Solicitor General might seek leave to intervene."

Justice Toogood

To dispel our despair over this decision dismissing our appeal, out of the blue arrived an e-mail from Judge Sir David Carruthers, Chairman of the Independent Police Conduct Authority. We did not want to prejudice his investigation by resorting to an appeal of this latest decision. And so our focus was upon applying for a variation or cancellation of sentence which was served on the District Court and Corrections on 4 September 2016.

Once again we had gone to a lot of trouble preparing a comprehensive submission that dealt with all the circumstances applicable to the law. The Sentencing Act 2002 makes provision in s691 (1) (c) for a variation or cancellation of sentence of community detention, "having regard to any changes in circumstances since the sentence was imposed and if the continuation of the sentence was no longer in the interests of the community or the offender". Furthermore, Phil's sentencing address had been a temporary arrangement over the winter, but his sentence was now prolonged until late January 2017.

A hearing was scheduled to take place on 16 September 2016, and we turned up for court without the benefit of a response from Corrections. Judge Rowe adjourned the hearing while somebody raced out to photocopy the Corrections report withheld from us. When Phil read it, he was dismayed to read what Corrections had written. And of course, we had no opportunity to grab documents necessary to refute their assertions. Corrections claimed for instance that the monitoring company report indicated that the lake address was technically not suitable to serve any electronically monitored sentence. That was not true. At home amongst my copious files, I had a previous corrections report dated 21 March 2016 confirming this address had in fact been assessed as suitable for electronic monitoring.

Corrections alleged that Phil's criminal history would suggest he was a threat to the community at the lake. Phil has no problems with anybody coming down to the lake, provided they were not putting the lake at risk by launching unwashed boats and failing to comply with the by-laws. Phil had already reported that: "The rowers responsible for the friction at the lake have finally vacated our buildings and the Club has been struck off the register of Incorporated Societies."

Corrections then alleged that the landlord only wanted to withdraw consent at his address if Phil could return to his lake address. Phil disputed this, but the landlord was not in court because he was delivering pamphlets for another mayoral candidate. At great inconvenience, this landlord was summoned to Levin District Court and waited around for an hour or so before Judge Rowe finally got back to Phil's case. Suddenly Judge Rowe decided he no longer wanted to hear from the landlord.

"We believe it is in the public's interests and in particular the victim's interest for Mr Taueki to complete his sentence" declared this young woman from Corrections. "Sentence integrity and public perception should be maintained."

Judge Rowe dismissed Phil's application. Sometime later I did manage to get a concession from the Corrections Ministry that the Corrections Officer had not disclosed documentation related to Phil's court appearance in a timely manner.

After a false start, Phil was prepared to give it another go. He filed another application on 19 September 2016 and this time Corrections provided a timely response but once again, his application was declined. He filed yet another application, and on 9 November 2016, Judge Rowe altered his curfew hours from 7pm until 6am to 9pm until 6am.

Phil filed yet another application, which was scheduled to be heard on 16 November 2016. The day beforehand, I received a phone call from Bryan Ten Have to report that the police were down at the lake, and I had better get Phil over there fast. His power and water had been disconnected. Bryan Ten Have also reported that the doors had been removed, and they were planning to throw all his personal belongings outside into the pouring rain. He said he was told that none of us could go inside to salvage anything, so Phil and I went down to the police station where we were told that the trustees had obtained a sheriff's warrant and e-mailed it to him. When Phil checked his e-mails, he had received no such warning. Bryan Ten Have did his best to secure the place, but the next morning the doors had been torn down again.

The next day, Judge Lynch was in charge. Claiming this incident did not have any relevance to Phil's situation, he declined Phil's application. Nothing changed, and Phil was

forced to serve out the remainder of his sentence in his secret hideaway, wearing a bracelet around his ankle.

However Phil had refused to accept the High Court decision to decline his application for a recovery of costs and conviction for escaping from custody. Although he seemed to listen attentively to Phil's usual passionate arguments, Justice Toogood dismissed both the appeal of Phil's conviction and recovery of costs. However on the recovery of costs, Justice Toogood did concede :

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Judgement ; High Court

> ... any decision I came to would not be authoritative. The issue is best left for decision in a case where it would be determinative. Furthermore, it is one which is of some importance and the Court would benefit from argument from counsel both for prosecution and defence. Given that public funds would be at stake, it is arguably an issue on which the Solicitor General might seek leave to intervene.

Judges have an obligation to defer to superior courts, and with the growing number of lay litigants arising from changes to legal aid provisions, I felt certain that this would be a matter that would appeal to the Court of Appeal. Since Meyrick, there had been a development in 2014 when the District Court Rules were updated. Disbursements in relation to a proceeding was defined as an expense paid or incurred for separately from professional services in a solicitor's bill of costs. It did not include counsel's fee. And yes, we did appeal.

In our written submission seeking leave to appeal to the Court of Appeal, Phil pointed out that there are many valid reasons lay litigants choose to represent themselves.

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Submission ; Court of Appeal

> In my case it was because I was forced to dismiss my legal aid lawyer in court after failing to inform me of a hearing date, leading to a warrant for my arrest and remand in custody two weeks prior to Christmas. He fled the country before I could lay a formal complaint to the Law Society.
> Lay litigants should not be discriminated against when seeking a recovery of expenses incurred defending criminal charges.
> These expenses are compounded when a lay litigant is remanded in custody and is forced to rely on other parties to prepare a defence or apply for bail. While in custody all phone calls are recorded and neither the person in custody on remand nor any visitors are able to

carry a pen or paper during the two hour-long visits permitted each week. Registered post is necessary for a signature on documents.

As Phil said, Meyrick discriminates against lay litigants in a manner that does not appear to have been envisaged in the Bill of Rights Act 1990. "As a well-established lay litigant, I have successfully defended 33 criminal charges brought against me by the police."

Our application seeking leave to appeal would be heard before three judges of the Court of Appeal on 30 August 2016. Phil was granted just fifteen minutes to argue his application. During the brief time allotted to him, Phil gave a rapid but graphic description of what happened on the night of 28 March 2014, remaining adamant that he drove away to the nursery so he could not have been in custody, and knew he was not in custody. Referring to the notorious e-mail, he said it had not been disclosed to him and was tainted by redacting the quotation marks.

As for the costs appeal, the central issue was whether self-represented litigants had the same right to disbursements as represented litigants. But Crown Law argued that the criteria required to be established for awards had not been made out in Mr Taueki's case. Crown Law also suggested that the alleged misconduct does not raise any issue of general or public importance or give rise to and risk of miscarriage of justice.

In their decision, the Court of Appeal always summarises previous findings. Referring to the original decision by Judge Hastings, "the Judge reviewed the history of the relationship between Mr Taueki and the police and the police's approach the prosecutions. The judge was not satisfied that the prosecutions were unreasonable or improper or that the police had acted in bad faith. The Judge, accordingly, declined to make an award of costs."

As for reference to the High Court judgement, "Mr Taueki maintained his claim that the police officer's evidence was not credible. He said that his email used quotation marks for the words 'escaping from custody' … and complained that the email produced to the court had the quotation marks redacted.

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Judgement ; Court of Appeal

The judgement also referred to Mr Taueki's argument that there was some evidence that a P pipe and drug utensils had been planted on a desk in his room by the police. The Judge rejected each of these arguments, noting that Mr Taueki made no reference to the quotation marks in cross examination, Mr Taueki had not been

charged with any offence at the time the email was sent and that the allegations about the P pipe and drugs were not put to the District Court at trial.
The Judge concluded that Judge Hastings was well placed to make any relevant credibility findings and that there was sufficient evidence to justify conviction based on his conclusions that Mr Taueki was in lawful custody, that he knew that and that he escaped.

With the drugs charges withdrawn, there had been no reason to raise this matter at trial. Fortunately, the Court of Appeal accepted one of the other points Phil made.

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Judgement ; Court of Appeal

In this case, the issue is whether the officers maintained ongoing custody of Mr Taueki when they gave him permission to drive to the nursery. The Judge regarded asking and receiving permission to leave as evidence of ongoing arrest, rather than termination of custody.
Mr Taueki put it colourfully : "Given permission to leave' and 'remaining in custody' is the perfect oxymoron."
Being granted this permission was completely contrary to his past experience of arrest.

The Court of Appeal was therefore satisfied that Mr Taueki raised a matter of public importance in terms of defining the circumstances where the police may maintain remote custody of an arrested person and the conditions that must be satisfied in order to maintain such custody. "If in this case, those conditions have not been met, the possibility of miscarriage is raised."

As to the costs appeal, the Court of Appeal accepted that the availability of disbursement awards to self-represented litigants under the new legislation is an issue of general importance. But in Phil's case, it was considered no principle of public or general importance was engaged by this fact-specific appeal evaluation.

For self-litigants, it is a significant challenge to explore their way through the labyrinth of court protocols. There is little literature to assist and there should be no impediment just because their profession is not the rarefied enclave of law. Where is there any justifica-

tion for discrimination against self-litigants, when everyone is supposed to be equal before the law? But due to this Court of Appeal decision, these issues were dead in the water. And so was lost a golden opportunity to get rid of the Meyrick precedent that is so clearly prejudicial against lay litigants.

Phil's appeal of the escaping from custody conviction was set down for 20 February 2017. On that date, we once again travelled down to Wellington, and as we entered the foyer we paused to read all the ideals of justice etched on the large glass windows.

Justice French presided, with Justice Mallon and Justice Duffy on either side of her. This time Phil had an amicus curiae who had already filed a written submission, so he was not permitted a McKenzie Friend. However, I had advised Phil to go through the extracts highlighted in our written submission because that would cover all the points he needed to raise.

The previous month had been strewn with setbacks, but we had been impressed with the submission forward to us by Elizabeth Hall as his amicus. It was well-researched, well-balanced and informative. I was confident that any reasonable judge would have no option but to agree with the highly-relevant precedents she presented.

Phil felt he was being judged not on the merit of his case but on the colour of his skin. Phil knew how much I craved a clean sweep of charges but on this occasion he could not resist a compulsion to remind these judges of the reason for their existence. He told them in no uncertain terms that he didn't care whether they liked him or not; they were there to judge this case on the law.

Phil pointed above them to the place on the wall where there is the symbol of justice, a woman in robes and a male in a cloak; equal partners. Britannia the woman who personifies Britain and a Maori Rangatira; equal partners.

He, Philip Dean Taueki was standing in this courtroom as a direct descendent of Taueki. And he spoke with the mana of a Treaty descendent.

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Phil is not alone in his views on justice.

"Until justice is blind to colour, emancipation will be a proclamation but not a fact". So said Lyndon B Johnson, the 36th president of the United States of America.
"Justice is justly represented blind", says William Penn. "She has but one scale and one weight, for rich and poor, great and small."

"It is not possible to be in favour of justice for some people and not be in favour of justice for all people", commented Martin Luther King.

Afterwards Phil apologised to me because he knew how much I had wanted a perfect score, eleven out of eleven. But I could not begrudge him his oration. He had said what needed to be said and I was relieved to see a dark cloud lift once he'd got that off his chest.

The decision delivered on 7 April 2017 at precisely 2.30pm was as dismissive as he had expected it would be. Six pages in length, it was little more than a precis of the previous decision.

"As Constable Daly himself conceded under cross-examination, it was in hindsight probably unwise to allow an arrested person to drive away in a vehicle.

"As for Mr Taueki's knowledge that he was not free to leave the shed, Mr Taueki's submission was that only he knows the state of his own mind. Therefore if he asserted (as he does) that he considered he was free to go, then that must be the end of the inquiry."

Phil disputes he was under arrest and will dispute he was under arrest until the day he dies.

The judges then listed a series of comments they described as 'facts'. We were disappointed that they rejected an appeal on the concept of 'remote custody' that Justice Kos as the President of the Court of Appeal had considered to be a matter of public importance.

Elizabeth Hall had researched her subject thoroughly, and deserved better than this. It rankled me to read this decision, but I felt it was more an indictment on the judges than on Phil himself. These three judges of the Court of Appeal have now set a precedent that muddied the waters pertaining to custody.

But the District Court is beneath the High Court which is beneath the Court of Appeal, and unless an appeal can somehow be catapulted to the Supreme Court, this seriously flawed decision stands.

Another depressing decision was released during the first month of the year 2017. This was Phil's application for a declaratory judgement to remove Levin's stormwater from this privately-owned lake. The original application had been filed by Dr Gerard McCoy QC after the Horowhenua District Council had passed a resolution in 2013 to try and ratify an agreement that had not been signed in 1973. Justice Ron Young had arranged a

teleconference, and although Dr Gerard McCoy QC participated, the council's lawyer was conspicuous by his absence. We were assured that this was, nevertheless, a straightforward matter.

Then we had discovered that Justice Dobson was now handling this case, and he had suggested that if any party wanted to cross-examine any witness, we would need to apply to do so. And so we did, paying a fee to do so. The council's chief executive David Clapperton sworn affidavit was unprofessional, we could not leave it unchallenged.

Once again there was a lengthy delay, until we discovered that yet another judge would be taking over, and a date was finally set down for a hearing. Shortly before the hearing, Justice Clark arranged a teleconference to consider our application to cross-examine Mr Clapperton, and promised us a decision the next day. Much to our surprise, she declined our application and ordered Phil to pay something in the order of $1,300 in costs. The only consolation is that no judge could in future claim that we had not tried to refute a report that we considered to be inaccurate and unprofessional.

This hearing had finally taken place on the 25 August 2016, and as usual, at the end of the hearing the judge reported that it would be a reserved decision. Once again the hearing had been a demanding day for Phil; this time lined up against lawyers who were slick in their legal arguments. Phil had referred to a comment made by Dr Paul Hamer, a Waitangi Tribunal researcher who referred to "the solemn promise that council would take steps to ensure its storm-water did not harm the lake".

Confident that Dr Gerard McCoy QC had handled the legal issues and irked by some claims made by Buddle Findlay, Phil referred to the numerous times the courts had let Mua-Upoko down and added that he had little hope times had changed. Justice Clark smiled and reminded Phil that the courts have come a long way since those days.

We waited and waited for her decision. Christmas came and went. Unbeknown to us, during January Justice Clark was dealing with an ex parte matter. This is a legal proceeding kept secret from the other party. So Phil had no idea about this case, being handled 'without notice' by Alastair Hall, a lawyer from Fitzherbert Rowe, the firm who also represents Horizons Regional Council. As a regional council, Horizons has a responsibility to prevent pollution of waterways, and it is Horizons who has turned a blind eye to the Horowhenua District Council discharging Levin's stormwater into Lake Horowhenua without a resource consent. Was it a coincidence that a week after this hearing, the long-awaited stormwater decision emerged?

Dr Max Gibbs had already indicated that 80% of the external phosphorous entered the lake through the stormwater into the lake, and pointed out that it is the seasonable release of P from the lake sediment which results in cyanobacteria blooms in summer". Dr Chris Tanner, a principal scientist from NIWA had pointed out that there were 'significant potential health effects from these drain flows" without even considering "potential toxic-

ity issues with other contaminants such as metals or organics in the discharge from this drain."

With section 15 of the Resource Management Act 1991 : No person may discharge any contaminant into water. With the Te Ture Whenua (Maori) Act 1993, an injunction can be imposed against any person in respect of any injury to Maori freehold land. And s191 of the Local Government Act 2002 does not entitle a local authority to create a nuisance on private property.

Justice Clark decided that the 'agreement' unsigned by the Levin Borough Council in 1973 is "not invalid, unlawful, unenforceable or of no legal effect."

To add insult to injury, the Horowhenua District Council has demanded that Phil pay $25,442 for their legal expenses to finance an expensive legal firm so that councillors could continue polluting a privately-owned lake.

Apparently, the Public Bodies Contracts Act of 1959 "saves contracts from invalidity for want or signature or seal" if the agreement gives effect to a resolution of council. And the Illegal Contracts Act 1970 does not make a contract illegal or unenforceable just because its performance is in breach of the law.

But we felt there was a flaw in her decision, and it was a tiny word 'etc'. This word had been emboldened in every submission we wrote because it was crucial. It was omitted from the decision.

The Levin Borough Council had resolved not to pollute the lake with trade wastes etc. Safeguards to prevent any type of pollution were not incorporated in this 'agreement' that supposedly gave effect to this resolution of council. The only filter is a grill to remove plastic bottles and other large items that council contractors scoop out in heavy rain. Therefore if this so-called agreement is based on the resolution of the Levin Borough Council, then council has reneged on its obligations not to contaminate the waters of the lake. The alternative, of course is that this 'agreement' is invalid because it does not give effect to this resolution of council.

Either way, the Horowhenua District Council exposes the hypocrisy of the Lake Accord by showing they have no qualms about being one of the lake's primary polluters. And the lake trust is complicit in this contamination, because Matt Sword had already informed Judge Doogan that the trust does not support Phil's legal proceedings to divert Levin's stormwater away from the lake. Naturally, we appealed.

chapter 20 notes

Time frame : August 2016 - January 2017

paying the price

milieu

When Phil Taueki was sentenced, Judge Large kept this sentencing address secret, even from the police.

PEOPLE OF INTEREST

Carruthers, David : Judge Sir David Carruthers is Chair of the IPCA. He served as Chief District Court Judge from 2001 to 2005 when became chair of the NZ Parole Board. He was knighted in 2009.

Clapperton, David : Horowhenua District Council Chief Executive.

Clark, Karen : Justice of the High Court appointed in 2015. Former Deputy Solicitor-General.

Daly, Nathan : Constable.

Dobson, Robert : Justice of the High Court.

Doogan, Michael : Maori Land Court Judge.

Duffy, Ailsa : Justice of the High Court appointed in 2007

French, Christine : Justice of the Court of Appeal appointed in 2012.

Gibbs, Max : Dr Max Gibbs is a NIWA scientist.

Hall, Alastair : Partner at Fitzherbert Rowe.

Hall, Elizabeth : Wellington barrister who specialises in serious criminal cases.

Hamer, Paul : Dr Paul Hamer is a historian.

Hastings, Bill : District Court Judge.

Kos, Stephen : Justice, President of the Court of Appeal.

Lynch, Gerard : District Court Judge.

Mallen, Jillian : Justice of the High Court appointed in 2006.

McCoy, Gerard : Dr Gerard McCoy QC is a Professor of Law currently based in Hong Kong.

Rowe, Lance : Judge former Crown Solicitor who became an Acting Judge on June 2016.

Sword, Matt : Chair of the lake trustees.

Tanner, Chris : Dr Chris Tanner is a principal scientist at NIWA.

Toogood; Kit : Justice of the High Court appointed in 2011.

Young, Ron : Justice of the High Court.

MAORI WORDS

Rangatira : Tribal leader.

LEGAL TERMS

Amicus curiae : Friend of the court, generally a lawyer who does not represent either party at trial but assists the court by raising points of law.

Ex parte : Legal proceedings where one of the parties is not notified of the proceedings or is not present.

Lay litigant : Person who represents himself in court.

McKenzie Friend : Support person to assist a person who does not have a lawyer.

POINTS OF INTEREST

Levin Borough Council : Territorial authority for Levin prior to the amalgamation of local authorities in 1989.

Ch21

fatally flawed

"I have taken that unusual step because in my view the foundation for the prosecution is fatally flawed. The obligation to prove all elements of the offence have rested throughout on the police prosecution. The standard of proof is beyond all reasonable doubt."

Judge Moss

Meanwhile, the trespass charge would be heard in the Levin District Court on 5 May 2016. It was now six months since Judge Edwards had issued directions for the police prosecution to file a submission by 27 November 2015 to clarify the validity of the trespass notice and current occupation of the building. Police Sergeant Simon Chamberlain had informed her that the 'tenants' would be moving back into the building within the next few days, and she replied that she would not advise that. Nevertheless, the prosecution ignored her and by 23 November 2015 the rowers were not only well ensconced in a building they neither owned nor leased, they were flaunting it. When I had taken photographs of them inside the building, they complained of a bail breach and Phil was thrown back in jail.

For Phil's case management hearing the previous December 2015, the prosecution had managed to deflect attention away from these directions due to this alleged bail breach. Instead Judge Ross had produced a minute stating that all matters are in issue at the hearing, including the validity of the trespass notice and other steps taken by the police against the defendant, and he claims, improbably not against others. We filed a written request objecting to Judge Ross's failure to recuse himself, and accordingly he felt it was appropriate to pass on this file to another judge.

We were not the only ones to criticise his handling of this hearing, judging by Justice Palmer's minute granting Phil's bail variation. Unfortunately, Judge Ross had been the only judge on duty over the summer period when the rowers made yet another complaint, and Phil had landed back in Linton Prison. Distracted by the need to get Phil out of jail so he could prepare for trial on the assault charges set down for 20 January 2016, I had hastily prepared the usual pre-trial case review memorandum for the trespass charge.

This trial date of 20 January 2016 for the assault charges had therefore doubled as the date for our case review hearing for the trespass charge that had been shelved due to the allegations of bail breaches. As usual we were struggling to extract a witness list from the police; one we were particularly keen to view in order to find out who would be speaking on behalf of the domain board and whether the anonymous informant would finally come out of hiding. For the case review, Judge Large hadn't even given Phil a chance to speak before setting a date for the trial on this trespass charge.

None of the usual pre-trial issues had been addressed and the only concession we managed to get out of Judge Large was that disclosure must be completed within 21 days. This included the witness list.

As usual, the prosecution had ignored the judge. By 10 February 2016, we were still waiting, and after pestering the central prosecution service, we finally received disclosure of the witness lists, their statements and photographs on 18 April 2016, only a fortnight or so before trial. The anonymous informant who claimed Phil had been in the building had not provided any statement. Nor was that person identified or summoned as a witness.

The person representing the lake domain board would be the chairman Alan McKenzie who had provided a sworn statement describing himself as "a delegate of the Director General specifically selected for the role to help enable progress with the lake."

But as far as we were concerned, Alan McKenzie had got off to a bad start by getting basic information wrong in this formal statement. "The underlying ownership of the land on which the building sits", he said, "is a combination of Maori freehold land and Crown land." As our DOC maps prove, these buildings sit entirely on land that is Maori freehold.

The police had ample opportunity to sort these issues out. On 26 January 2016 I had filed an application to dismiss the trespass charge on the grounds there was no case to answer. By setting a date for trial in May, meant that for another four months, Phil could not go within 30 metres of a building on his own land without risking arrest and imprisonment for a bail breach. This was an undue imposition, Judge Edwards had tried to prevent. In this application, I had taken a calculated risk by revealing the nature of our defence while pointing out the reason the trespass notice was invalid. Whenever I tried to find out what was happening with this application, I received no response. And so this case had meandered to trial.

Police Sergeant Mike Toon was assigned the role as police prosecutor. The first witness was Robert Kirwan the security officer who produced as evidence the trespass notice that he had signed and served on Phil. This would be the only exhibit that the prosecution produced at trial. It was the defence who produced the only other exhibits, two

DOC maps that Phil put to Alan McKenzie to establish that he was wrong about the building being on Crown Land.

It did not surprise us when Alan McKenzie concluded his evidence without producing any resolutions he claimed the domain board had passed to trespass Phil. It did surprise us when he testified that the board was not the 'occupier' of the building. Phil looked at me with disbelief. Did he not know the law on trespass?

As soon as Alan McKenzie had left the stand, Judge Moss turned to the prosecutor and said: "Sergeant, I don't think I have the resolution. Am I right in thinking that?"

Then she asked : "Am I right in assuming that the next three witnesses relate to the events which unfolded on 10 November, all right. I don't need to hear that evidence because you haven't proved the fundamentals of the case and I will give a decision at 2.15pm."

Constable Demelza Joines left the courtroom fuming. Phil had told her in no uncertain terms at the time of his arrest that the trespass notice wasn't worth the paper it was written on, and I had also berated her for being so stupid. To have a trial curtailed before she had a chance to take the stand must have been humiliating. But both civilian witnesses had given evidence.

When the court resumed at 2.15pm, Judge Moss read out a written statement disposing of this matter. "I have taken that unusual step because in my view the foundation for the prosecution is fatally flawed", she said. "The obligation to prove all elements of the offence have rested throughout on the police prosecution. The standard of proof is beyond all reasonable doubt. There are three essential elements of a trespass prosecution. The first is that a trespass notice has been properly created. The second is that it has been executed signed and served, and the third is that the named person has acted in such a way as to enter onto the place, building or land defined in the trespass notice. Creation of a trespass notice requires a number of elements. The first is proof of occupation. The second is proof of authority to act as a representative where the occupier is a corporate body. The third is proof of a delegation to sign the trespass notice."

She also said there were fatal problems with proof relating to the trespass notice. There is no proof of the resolution to issue the trespass notice but there was oral evidence. "The resolution was not introduced which was somewhat surprising."

After reading out her statement, Judge Moss said it had been a privilege to hear this case, swiftly gathered up her files and left the courtroom. We were elated. Afterwards, Police Sergeant Mike Toon admitted that he knew there was no case to answer but he

was under political pressure to proceed with the prosecution. We admired him for that, because it confirmed something we had suspected all along.

Judge Moss had suggested there was something unsavoury about the board's meeting. Her intuition was correct. Alan McKenzie resumed chairmanship of the domain board on 30 October 2015; ironically the 110th anniversary of the enactment of legislation establishing this board. By 11am on his very first day, he was sitting down to chair a special meeting of the board. This meeting concluded after ninety minutes, and the trespass notice was served about an hour later. But the board had actually banned all Maori owners from their own buildings. The board wanted the owners out so that the rowers could move back in. And Police Sergeant Mike Toon knew that.

Police Sergeant Simon Chamberlain, his colleague, had made a big blunder by bragging to Judge Edwards that the 'tenants' would be moving back into the building within the next few days.

Three out of three trespass charges chucked out, and in all three, we never even needed to mount a defence to secure an acquittal. That should have been the end of this case, because, as everybody knows, you can't appeal an acquittal. Or so we thought...

About a month later, I was communicating with High Court registrar Keith Brown about an appeal to the High Court when I became confused about a submission that was due. It was only when he re-sent a previous e-mail that I discovered Crown Law had the audacity to appeal Phil's acquittal. They were posing three questions of law, and wanted this case returned to the district court for retrial. I read this application with disbelief!

A few days later I received a letter from Kelvin Davis, the MP for Te Tai Tokerau, enclosing a letter he had received from Police Inspector Sarah Stewart, the new Manawatu Area Commander. It was then the penny dropped. I had sent her the judgement from Judge Moss, but Police Inspector Sarah Stewart was obviously not prepared to accept that decision. Instead she informed Kelvin Davis: "Police can advise that officers recognise the Domain Board as the body entitled to make decisions about the use of, and access to, buildings located on the domain. Police rely on information from the Board with respect to who may or may not access buildings. This is consistent with the Board's resolutions of 30 October 2015, which provide that the Board may expressly authorise access to and occupation of the Rowing Club."

This was the same woman who had issued a statement to Alastair Thompson of Scoop, a media web-site, shortly after Phil's arrest, that: "Police is very mindful of the issues surrounding the long running and complex dispute over the use of, and access to the Hor-

owhenua Domain. We appreciate there are a number of people in the community with passionate and conflicting views regarding this matter, and that there are people within the community on both sides who feel frustrated over the ongoing dispute. However, it is important that Police act independently and within the law while the various parties involved to attempt to find a resolution. Police is clear in its position that the courts are the appropriate body to resolve these issues, and it is not appropriate for us to intervene in the resolution of the underlying land disputes."

On the one hand, Police Inspector Sarah Stewart was saying that the courts are the appropriate body to resolve these issues. On the other, she stated that the board may expressly authorise access to and occupation of the Rowing Club building, even though the court had already resolved that issue by deciding that the board did not have that authority. Put simply: the police refuse to accept that the owners are entitled to use their own buildings. And therefore Crown Law on behalf of the police, had the audacity to appeal an acquittal.

Despite my workload at the time, I had to delve back through my overwhelming bundles of documents to ferret out the trespass file I'd shelved. I have covered the concept of 'double jeopardy' in a book documenting a case that was the initial interpretation of this principle in the Bill of Rights Act of 1990. In that case, the Privy Council concluded that it was an abuse of process to retry a person who had been acquitted of a charge. The Law Lords who heard this case were some of the world's most pre-eminent jurists.

The principle of double jeopardy prohibits any person being tried twice for the same conduct.

• Article 20 of the Statute of the International Criminal Court says no person shall be tried before the court with respect to conduct which formed the basis for crimes for which the person has been convicted or acquitted by the court.

• Article 14 (7) of the International Covenant on Civil and Political Rights, which New Zealand ratified in 1978, states that: No one shall be liable to be tried or punished again for an offence for which he has already been convicted or acquitted in accordance with the law and penal procedure of each country.

As we said in one of our submissions, Crown Law might try to diminish the impact of this application by claiming they are only asking two or three questions. It is the impact of these questions that carries the sting. "In the unlikely event the answer lies in the affirmative, the penalty will be the declaration that the Crown seeks: the right of non-owners to trespass owners from their own buildings, depriving these owners of all rights of ownership, including the fundamental right to enter their own buildings."

We knew there was political pressure to proceed with this case. In a NZ Listener article published in 2014, Mayor Brendan Duffy had been asked if there would be no more argument about the club's rights to be there. "None whatsoever", he replied.

I attend most Lake domain board meetings, and since his appointment to the board in 2007, Mayor Brendan Duffy's influence dominated speaking rights, debate and virtually every decision.

The term of office for all domain board members was due to expire on 24 March 2016. During September 2015, the board had placed an advertisement in the local newspaper calling for nominations for the Muaupoko iwi representatives. Apparently there were seven nominations for the four vacancies, but these names were never made public. However Charles Rudd tells us he put his name forward.

On 28 February 2016, the Hokio Trust convened a meeting of lake owners. This hui was advertised in the media and conducted along the same lines as all previous elections. The day afterwards, the Hokio Trust chairman wrote to Hon Maggie Barry as the Minister of Conservation to notify her of the four names selected to represent Mua-Upoko on the board. One of these was Charles Rudd who can be quite cunning. He deliberately placed his foot in both camps to monitor the Minister's response.

By now, many of the owners knew it was Robert Warrington and Marakopa Matakatea who had moved and seconded the resolution banning all Maori owners from entering their own buildings. "In other words" said Phil, "the members of the Domain Board who were supposed to represent our interests have given the DOC and HDC members the power to trespass owners from their own buildings and presumably summon the police to have us arrested and charged with trespassing in our buildings."

The Hokio Trust also pointed out that the lake trustees' present term of office had ended on 26 November 2015, but they had not made arrangements to hold an election and were continuing to operate as usual.

During their March 2016 meeting, the Horowhenua District Council selected their new representatives for the domain board, and by August, their appointments had been confirmed by the Minister of Conservation. But not so, the Mua-Upoko representatives elected in February.

The Minister of Conservation wrote to the Hokio Trust in October 2016 to advise she had decided not to appoint any of the nominees at the present. "The rationale for my decision is that I have received 13 nominations for Muaupoko representatives arising from two separate processes involving iwi members. I consider that in these circumstances I

am not able to appoint four representatives to the Domain Board 'on the recommendation of the Muaupoko Maori Tribe' as provided for in the governing legislation."

Where is there any discretion within s18 (8) of ROLD for the Minister to take this stance? The four persons to be appointed by the Minister were those 'on the recommendation of the Muaupoko Maori Tribe'. Not the domain board. Not the Lake Trust. The Muaupoko Maori Tribe!

In the meantime, "Please be aware that the Reserves Act makes provision for Board members to remain in office until their successors are in place. I expect that this will ensure that the Lake domain board can continue to operate effectively until that time".

In other words, the status quo remained, and of course that suits the incumbents. The domain board's process to select the Mua-Upoko representatives was deeply flawed. By calling for nominations, the board provided no opportunity for the tribe to vet or select their representatives. Furthermore, there was no transparency in the process, and there was nothing to stop the board discarding nominations the incumbents did not support.

If anybody is under any illusion that ROLD protects the rights of the owners, then this current debacle should disabuse them of that notion. Six months before their term of office expired, board members voted to ban all Maori owners from entering their own buildings. These owners obviously no longer wanted these kupapa to represent them. The board calls for nominations for the new term of office, but there is nothing to stop the incumbents discarding any nominations they don't support. The tribe holds a publicly-advertised meeting to elect their representatives, and forwards these names to the Minister. The Minister refuses to appoint these replacements for the tribal representatives, allowing the incumbents to remain in office well after their five-year term has expired.

In doing so, she exposes the power politicians wield over this privately-owned lake.

chapter 21 notes

Time frame : May - June 2016

fatally flawed

milieu

A judge tosses out a trespass charge that is fatally flawed.

PEOPLE OF INTEREST

Barry, Maggie : Minister of Conservation appointed in 2014. A broadcaster elected to Parliament in 2011. Hosted Maggie's Garden Show, a popular television series, from 1991-2003.

Brown, Brendan : Justice of the High Court. Promoted to Court of Appeal in August 2016.

Davis, Kelvin : Member of Parliament for Te Tai Tokerau.

Duffy, Brendan : Horowhenua's Mayor from 2004 until 2016.

Edwards, Stephanie : District Court Judge.

Joines, Demelza : Constable.

Kirwan, Robert : Security officer.

Large, Jim : District Court Judge.

Matakatea, Marakopa : Lake domain board member and lake trustee.

McKenzie, Alan : Chair of Horowhenua Lake Domain Board.

Moss, Jill : District Court Judge appointed in 1995.

Palmer, Matthew : Justice of the High Court.

Ross, Gregory : District Court Judge.

Stewart, Sarah : Police Inspector, now the Manawatu Area Commander.

Thompson, Alastair : Co-founder of Scoop, with 25 years of experience as an editor and journalist.

Toon, Mike : Police Sergeant / Prosecutor. Died tragically while rescuing his daughter from the Manawatu River in December 2016.

Warrington, Robert : Lake domain board member and lake trustee.

MAORI WORDS

Hui : A gathering or meeting.

Kupapa : Maori who act against the interests of a tribe.

POINTS OF INTEREST

Scoop : Independent Internet News Service reaching more than 500,000 readers per month.

ROLD : Reserves and Other Lands Disposal Act 1956, section 18.

Ch22

if push comes to shove

"If push comes to shove, the owners' rights are not to interfere with the reasonable rights of the public."

Justice Ellis

Despite Ministerial manipulation of domain board membership, we still had to deal with the implications of the resolutions the domain board had passed on 30 October 2015, in defiance of the Reserves Act and the judgements of the Court of Appeal and Supreme Court. If the domain board had no power to roll over the leases to the rowing club on a month by month basis, how could the occupation of the buildings by the owners interfere with 'rights' that cannot lawfully exist? But Crown Law would not accept that, and we had to deal with their application. Crown Law was relying on s296 of the Criminal Procedure Act 2011 which applies if a person has been charged with an offence. The prosecutor may, with leave of the first appeal court, appeal to that court on a question of law against a ruling by the trial court.

The first hurdle Crown Law faced would be obtaining leave of the court. Whether the domain board had any authority to trespass owners from their own buildings had been raised by us on four separate occasions during the six months from Phil's arrest until the date of the trial. Therefore we felt Crown Law had no grounds to come cap in hand seeking leave to raise the very issues that Phil had raised at the time of his arrest.

Crown Law could not claim fresh evidence because s18 ROLD 1956 had been around for some sixty years. S 151 of the Criminal Procedure Act 2011 makes provision for a retrial if an acquittal was tainted. In other words an acquitted person can be retried for a specific offence if a retrial is in the interests of justice or the High Court is satisfied that it is more likely than not that commission of the administration of justice offence was a significant factor in the person's acquittal.

In Crown Law's application, there was no suggestion that Mr Taueki's acquittal had been tainted by an administration of justice offence. As there was no need for him to testify in court, he could not have committed perjury, nor could he interfere with witnesses be-

cause he had never met Alan McKenzie until he appeared in the witness stand. And he certainly does not have the financial resources to bribe well-paid officials who would lose their jobs if they were ever found out. To be considered new evidence, it could not be evidence that could not with the exercise of reasonable diligence have been given in those proceedings. For the evidence to be compelling, it must implicate the acquitted person with a high degree of probability in the commission of the specified serious offence. A specified serious offence means an offence that is punishable by imprisonment for 14 years or more.

A lot of time and trouble was put into Phil's written submissions, while his oral submission was also founded on international law, an international covenant New Zealand had ratified and finally New Zealand's own Bill of Rights Act 1990.

The hearing to consider leave to appeal was scheduled to take place in Wellington before Justice Brown on 2 August 2016. Unfortunately I could not be there because I had flown to Auckland to support my daughter in a Family Court hearing. Heidi did not leave the courtroom until late that afternoon. Phil was out within fifteen minutes. Phil tells me he never had a chance to say anything about double jeopardy. He certainly was not prepared for a brief discussion to refine the questions Crown Law had posed.

In his minute, Justice Brown says he made the following directions 'after hearing from the parties and exploring with them the most appropriate process for the progression of this matter". After hearing from both parties? At least he was honest enough to admit he was 'exploring the most appropriate process for the progression of this matter'. In other words, before Justice Brown had even entered the courtroom, it seems that he had already discounted double jeopardy, and that the purpose of this hearing was to make arrangements to progress this matter. That very same month, Justice Brown was promoted to the Court of Appeal.

Hadn't Police Sergeant Mike Toon warned us this case was political? Is the double jeopardy clause in the Bill of Rights now meaningless? What about international criminal law and the international covenant, New Zealand had ratified?

It irked me that despite Phil's acquittal, there were more submissions to prepare. Crown Law was relying on two cases; Abbott and Polly. I looked them up. Abbott related to a protest on a public road. As a councillor, I knew that s316 of the Local Government Act 1974 vests all roads in fee simple in the council of the district. Polly related to a protest in a privately-owned hotel. Once again the protestors were not the owners. Of course our case related to a privately-owned building, but in this instance it was the owners who were trespassed, not members of the public protesting. We could not see the relevance of either case Crown Law cited.

Before Phil's hearing before Justice Brown, we were so disgusted with the offensive nature of submissions Crown Law was churning out, we had facetiously drafted up a question of our own: If the Crown was not prepared to meet their Treaty obligations, does this nullify the Treaty? Perfectly reasonable question, I would have thought.

It's commonly understood what a contract means. You make someone an offer, and promise something in return as a condition of that contract. Once these terms are accepted, these terms are binding to the contract by both parties!

Why is the Treaty of Waitangi any different? If Her Majesty, Queen Victoria guarantees Taueki undisturbed possession of his lands, estates and fisheries, is the Crown not then bound by this guarantee or contract in order to retain the sovereignty to govern and enact legislation? Without royal assent, legislation cannot be enacted in New Zealand. Without legislation, judges cease to exist.

So what Phil was saying in effect is this : If judges decide that the lake domain board appointed by the Minister of Conservation has the authority to trespass Treaty descendants from ancestral land they still own, isn't it perfectly reasonable for Phil Taueki to declare that the Crown has failed to comply with its Treaty obligations? And if this binding contract is broken, have judges effectively denied their own legitimacy? More disturbingly, has Parliament lost their authority to govern and enact legislation?

As one small consolation, Justice Brown did grant us leave to cross appeal on this question because this gave us grounds to take our appeal all the way to the Supreme Court if necessary. Not that we expected it to go that far, because we were confident that any reasonable judge would see through the outrageous claims Crown Law was making.

Crown Law sent us a memorandum on 30 August 2016, in an attempt to tackle the Treaty :

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Crown Law Submission ; High Court

The Treaty itself envisages that Maori property rights are subject to change – in particular by providing for the sale of land. Here the land has not been sold but the bundle of rights of the original owners has been modified to a lesser extent by statute, based upon antecedent negotiations and agreement between the Crown and these owners.

We challenged Crown Law to produce that agreement. They failed to do so. By this stage we had filed our own memorandum providing a historical background to the lake, pointing out that the only document located by researchers for the Waitangi Tribunal was a memo from a Government official listing nine conditions. These were the conditions developed at a meeting between Prime Minister Richard Seddon, a delegation of Levin citizens and a couple of Natives who were neither owners of this property nor representatives of these owners. And Prime Minister Richard Seddon knew that. “It was this memo that the Attorney-General read out in Parliament and touted as an agreement between the Crown and the Maori owners of this privately-owned and inalienable property.”

And we did not forget to mention that a year later, MP Tame Parata was questioning legislation passed without the consent of the owners. Even if the original legislation was based on an agreement, Parliament had originally not allowed the public to interfere with the fishing and other rights of the Native owners.

And to counter our own question on the Treaty, Crown Law salvaged a case that had no relevance to this situation whatsoever. Justice Heath decided in R v Mason that the jurisdiction of this Court is not derived from the Treaty. I looked this case up. Tamati Mason had been convicted of one count of murder and another of attempted murder after pleading guilty on both counts. Tamati Mason appealed on the basis that he should have been dealt with in accordance with tikanga Maori. As Justice Heath asserted :

ΩΩΩ

Judgement ; High Court

Objections to the jurisdiction of the District and High Courts to try alleged offenders for criminal offences have been roundly rejected in cases leading up to Wallace v J. Courts derive their authority to determine criminal cases from the exercise of Parliament’s legislative powers.

There was no comparison between Mason and this case, we explained. “First, Mr Taueki was acquitted of the trespass charge. Second, s26 of the Bill of Rights Act 1990 states that no one who has been finally acquitted or convicted of, or pardoned for an offence shall be tried or punished for it again. Third, Mr Taueki has not asked for this matter to be dealt with in accordance with tikanga Maori. Quite the contrary, Mr Taueki is asking that the Maori owners be accorded the same rights of property ownership as any other New Zealand citizen, the right not to be trespassed from his own property!”

The hearing was scheduled to take place on 12 October 2016, and I had to juggle Dad's funeral arrangements to be there. The day before this hearing, Dad would be farewelled with all the military honours to be accorded one of the few remaining World War Two veterans. The day after this hearing, my family were gathering for a private ceremony to inter his ashes in the military cemetery. In between was a court case that defied everything he fought for. How disillusioned Dad had been. Nazi Germany evicted the Jews from their homes. Apartheid South Africa evicted 'blacks' from their homes. And now New Zealand was evicting Maori from their ancestral lands.

The hearing before Justice Ellis took place in Wellington's number one courtroom where the portraits of Chief Justices frowned down on us. As we were citing Justice Prendergast in our submissions, it seemed a bad omen that his portrait was hidden behind the large screen for teleconferences. We were also quoting an extract from the Legislative Design and Advisory Committee that express language is required to extinguish any subsisting Maori customary title or customary right. "Legislation that is intended to extinguish or apply to customary title and customary rights will require wording to that effect."

Crown Law as appellant went first. They failed to impress us. They cited all their authorities and then portrayed Phil as a trouble maker who warranted eviction from his own property.

Phil is usually stoic on the hour-long journey down to Wellington for court cases. But this time he did not feel comfortable, and within ten minutes he was whispering to me that he felt sick. I wasn't feeling much better because the very next day we would be burying Dad's ashes in the same plot as my Mum's, a Wren (Womens Royal Navy Service). How dare Crown Law put Phil through this ordeal? How dare they?

Phil persevered with his oral submissions, and countered aspects of the Crown Law case that warranted rebuttal. In the presence of the judge, we challenged Crown Law to produce the agreement, they continued to insist existed. We challenged them to produce the approval of the Solicitor-General because there was no signature, no letter to suggest she approved this appeal. And when Crown Law persisted with the proposition Phil had been trespassed because he was a trouble maker, we challenged them to produce the domain board's resolutions. Not one of these documents could Crown Law produce.

After rummaging through Phil's files, I finally found a copy of these resolutions and handed it up to him to read out. All Maori owners were banned from entering their own buildings. All appeals must be founded on matters of public importance. But in this

case, we felt that the Crown had managed to hijack an acquittal in order to be able to ban the owners from their own buildings and accommodate the rowers.

We guessed that once again the decision would be released right on Christmas when the academics and lawyers who might be interested in this case were away on holiday. We were not far wrong.

The reserved judgement came out on Friday 16 December 2016, at 11.35am. Justice Ellis quashed Phil's acquittal and ordered him to stand trial in the District Court again. The very next e-mail was a High Court document that Crown Law's appeal be allowed and this case be remitted to the District Court for administration and retrial. Copies of this document were circulated to the District Court, victim advisors and Corrections.

Our dream of Phil's very first Christmas in eight years without a charge hanging over his head had been cruelly extinguished. I was fully expecting the police to turn up with a warrant for his arrest and for bail conditions to be re-imposed. I was furious.

For a start, Justice Ellis claims that : "In 1905, Parliament enacted the Horowhenua Lake Act, as a result of an agreement between representatives of the Muaupoko iwi and the government. This agreement was subsequently referred to in the House, where the Attorney-General observed there : '... was no doubt the Natives had acted handsomely and generously'."

She then transcribes the preamble to this legislation that makes the place available as a resort, "in so far as it is possible to do so without unduly interfering with the fishing and other rights of the Native owners thereof." As Justice Ellis admitted, she is required to apply the relevant statute but for some reason, she overlooked that aspect of the act.

Citing Abbot, she commented that the court had held that the TA (Trespass Act) could operate in relation to a public place where the public have a statutory right of access. Accordingly the Council was an occupier capable of issuing a trespass notice. We did not dispute that. But roads are vested in local authorities by virtue of s316 of the Local Government Act 1974. The lake is not vested in the domain board. Far from it. ROLD specifically states that nothing shall affect the Maori title.

Nevertheless, we had countered Crown Law's argument by citing Lord Justice Denning in Bishopsgate Motor Finance Corpn v Transport Brakes Ltd that no one can give a better title than he himself possesses. And in Morgate Mercantile Co v Twitchings, the House of Lords held that inactivity on the part of the owners in relation to safeguarding his property would not estop that owner from asserting his rights. Far from any inactivity, the owners had occupied their own building a week beforehand, and therefore were

both owners and occupiers at the time Phil was arrested. Police Superintendent Wallace Haumaha had not arrested these owners because they were asserting their rights pursuant to s 57 of the Crimes Act 1961 to enter these buildings to take possession thereof.

"In short", declares Justice Ellis, "it seems to be me to be clear that the Domain Board was and is an occupier of the relevant land for the purposes of the TA by virtue of its control it is required and does in fact exercise over it."

She also agreed with Crown Law that the interpretation of Judge Moss inverts the meaning of the subsection, which is to qualify the owners' 'free and unrestricted' use of the area. "While it was no doubt hoped the respective rights would peacefully co-exist, if push comes to shove, the owners' rights are not to interfere with the reasonable rights of the public."

Let's reiterate. Lake Horowhenua is not vested in the domain board. ROLD makes it quite clear that the establishment of a domain does not affect the title to the lake. And besides, the Court of Appeal had already established that the domain board had no power to roll over the leases to the building that had expired in 2003 and 2007. Therefore the owners could not interfere with the reasonable rights of the public because the Reserves Act 1977 did not let the domain board lease this building to the public.

When Alan McKenzie testified that the board was not the occupier of the building, that should have been the end of this matter. No trial judge has the discretion to overlook such a crucial concession. But suddenly the domain board has been become the occupier. Not the owners who were actually occupying their own buildings at the time.

Then Justice Ellis blames Phil for the way he handled his defence. "In short Mr McKenzie in his capacity as chairman of the Domain Board had given evidence of the resolution and its terms. There was no challenge to the veracity or reliability of that evidence from Mr Taueki or the amicus, both of whom had the relevant document in front of them. In my view, it cannot be on any analysis be said that the proof of the resolution was either inadequate or equivocal."

Why should Phil challenge the veracity of Alan McKenzie's evidence? Any astute defence lawyer would have known how stupid that would be, when Alan McKenzie's confession that the board was not the occupier was all we needed to win this case. It suited Phil's defence to treat Alan McKenzie as a credible witness.

If an order for retrial is granted, s155 of the Criminal Procedures Act 2011 places an onus on the judge to make sure that it must be subject to any conditions that the court con-

siders are required to safeguard the fairness of the trial. For the retrial Justice Ellis did quite the opposite. The prosecution no longer has to offer proof of occupation, proof of authority whether the occupier is a corporate body or proof of delegation to sign the trespass notice.

Imagine Phil Taueki's predicament. His ancestral land, his family has owned for generations. Somebody who neither owns nor leases this property decides to ban all members of his family from entering their own home. Phil is arrested while wandering across his own lawn. He is acquitted. But that's not good enough for the police. They want to have a second bite at the cherry, and the very courts that are supposed to uphold the law, let them do it.

As for the final question we raised, Justice Ellis allocated just three paragraphs to this significant question. While she appreciated that Phil took issue with the statutory modification of the original owners' rights in the Horowhenua Block XI land, she said that the appropriate forum for the exploration of this complaint is the Waitangi Tribunal not this court. "In the meantime, however, this Court is required to interpret and apply the relevant statutes enacted by legislature."

She then cited Justice Heath. "The answer to the fourth question is 'no', accordingly." Naturally, we appealed. More work.

On top of this workload, the Hokio Trust had appealed plans by the Horizons Regional Council to operate a weed harvester on Lake Horowhenua, necessitating the construction of two ramps. The Arawhata boat ramp will be 18 metres long, seven metres wide and extend out in the lake to a depth of 2.2 metres. The other ramp within the domain area will require a 20 tonne excavator.

If anything exemplifies the attitude of judges towards their Treaty and legal obligations, I consider Judge Dwyer's decision to treat all Maori as if they have a relationship to the lake as ancestral land and water is indicative of their perspective towards sensitive cultural matters. Why disregard the entrapment of the rare long-finned eels in the mechanics of the harvester, because one of the experts considered that "fish entrapped during harvesting would be of minor conservation significance?" What about the disturbance of rare plant species or the dab-chick nesting sites or the freshwater mussels? He put in place no provisions for washing down of the weed harvester if it is used at other lakes, or storage and disposal of the cut weed as "this was not the subject of the consents applied for."

As for the taonga unearthed while Horizons excavated large areas of dewatered land to a considerable depth, it was the lake trustees and the MTA who would be entrusted to

retrieve these treasures from ancestral lands where Taueki and his brave stalwarts fended off a brutal attack from the ruthless Te Rauparaha and his armed warriors.

But the most disturbing aspect of all is that Horizons as the regulatory authority was granted the right to review during July 2018 all conditions placed on Horizons as the applicant for the 35 year life span of the resource consents. Horizons can therefore have a field day, relaxing every condition with complete impunity. The submissions filed by the lawyers representing both Horizons as the regulatory authority and Horizons the applicant are equally dismissive of the Crown's Treaty obligations.

Nick Jesson from CR Law suggests that the issues Phil raised on appeal are "diversions from the determinate matter before the Court, namely whether or not the specific proposals under appeal achieve the sustainable management of Lake Horowhenua".

But Dr Max Gibbs had acknowledged in his evidence that the proposed weed harvesting was not designed to address the root cause of the degraded water quality in the lake.

As far as Nick Jesson was concerned, the Treaty provides a basis for a changing relationship and should always be progressively adapted. "We are required to assess the facts as they relate to Maori issues in light of the Treaty principles", he said, "and the Court should not be bogged down with legal niceties as for example the precise meaning and manner of application of the Treaty principles."

There is a legal principle of contra proferentem that addresses any situation whereby an ambiguity in an agreement should be interpreted most strongly against the party who caused this uncertainty to exist. Even if there is any ambiguity in the Treaty, interpretation must favour the Maori signatories, not the immigrants who composed the wording of this signed contract.

This Treaty is certainly not a flexible arrangement that can be diluted to suit the dominant party that drafted this agreement in the first place.

As for Shannon Johnston from Fitzherbert Rowe : "it was open to the Environment Court to reach the view that all Maori groups before it in the proceedings has a relationship and its surrounds as ancestral land."

What gives either lawyer the right to modify the principles of the Treaty which come as an iron-clad guarantee from Her Majesty the Queen of England? How would they react if Phil as a Treaty partner decided that the court should not be bogged down with legal niceties such as case law and complying with judicial directions?

If one party to the Treaty of Waitangi reckons they have the right to progressively adapt the treaty, surely that right applies to both parties.

This appeal was heard on 15th May 2017, and previously Horizons bombarded us with beautifully-presented files couriered to us in a large security archives box. It was a daunting prospect to delve through all the files presented with such professionalism.

All Phil had to counter this material was a profound knowledge on the history of the lake, endorsed by Waitangi Tribunal research on the litany of broken promises. Trust us, the experts kept saying. No, the eel patunas would not be destroyed. No, stormwater would not contaminate the lake. No, effluent from Levin's wastewater treatment plant would not spill into the lake. It was not until this particular resource consent was appealed, did the experts from Horizons admit that this latest project was experimental and could place the lake at risk of flipping.

When we entered the High Court, Matt Sword was sitting in the public gallery. So were the usual experts from Horizons. One of the questions put to Phil by the judge related to the number of experts Horizons had engaged. How could Phil be right and these dozen or so experts be wrong?

However we were buoyed by the recent Wakatu decision from the Supreme Court that the Crown owed its fiduciary duty to the customary owners, not trusts nor incorporations such as the MTA. Also, the trust had provided no proof that they were the legal owners of the lake, as they claimed to be.

The reason they chose not to produce proof is perhaps due to the evidence. On the twelfth day of October 1959 a certificate of title was issued under the Land Transfer Act transferring title of this property into the names of the trustees appointed in 1951, in accordance with s18(2) of ROLD. This conundrum was not of Phil's making although he had asked Parliament long ago to rectify the problem.

The first question posed by Judge Thomas was reasonable, asking him about the Hokio Trust he chaired. But then the series of questions posed thereafter placed Phil in a quandary. How were these relevant to the issue? Would questions of this nature be put to parties contesting a will? More importantly, should they be put to a direct descendant of a Treaty signatory?

If anything exemplifies the predicament Phil faced in that courtroom, it was the dilemma dealing with Judges who disregard the deep divisions within Mua-Upoko and who prefer to deal with the Pakeha trusts and incoporations imposed on the traditional or cus-

tomary leaders of this tribe. Phil had every reason to hope that the Supreme Court's Wakatu decision would enlighten judges in the lower courts, but obviously not.

How could it be acceptable for all Maori to hold the same relationship over ancestral land, when the witnesses Horizons relied upon did not arrive in the area until the 1860's, half a century after Te Rauparaha's raids and the slaughter on the lake? How offensive had it been for Phil to listen to Dr Jon Procter deny there were battles on the lake, or his claim he did not know who signed the Treaty of Waitangi?

Out of deference to the judge, Phil was forced to remain on his feet for an hour and a half, and I could sense his discomfort, physical as well as psychological. When Phil had finished responding to questions that understandably perplexed him, he was given five minutes to wrap up his case. Where was the opportunity to present his case, the one relying on the recent Supreme Court judgement in Wakatu?

When the judge decided to take an adjournment before hearing the case from Horizons, we decided there was no point staying around. Phil could not bear to listen to the offensive statements from both lawyers representing Horizons as the applicant and the regulatory authority. He was not prepared to remain any longer in the same room as Matt Sword whom he detests, and he was not prepared to waste any more time in a courtroom knowing the outcome was inevitable.

As we drove back to Levin, I was saddened that Phil's heart was no longer in this appeal that was obviously of such importance to him. It seemed to me that he had appeared in too many courts and tried to explain his tribe's history to far too many judges, and he just couldn't muster the motivation to do so anymore.

Phil emerged from the courtroom frustrated that it was yet another case of 'any old brown face will do'. After all it was his ancestor who signed the Treaty and it was his ancestors who stood and fought, rather than flee the muskets of Ngati Toa? Where is the sensitivity towards these ancestral lands and this lake, the scene of the tragic Mua-Upoko massacre, the killing of Phil's kin? Why do New Zealanders show due reverence to battle sites overseas, but no respect for those within our own shores?

chapter 22 notes

Time frame : August 2016 - May 2017

if push comes to shove

milieu

Crown Law appeals Phil Taueki's acquittal, and a Judge agrees that if push comes to shove, the owners are not to interfere with the rights of the public.

PEOPLE OF INTEREST

Brown, Brendan : Justice of the High Court. Promoted to Court of Appeal in August 2016.

Denning, Tom : Baron Denning who died six weeks after his 100th birthday in 1999 is considered one of the greatest English judges of the century.

Dwyer, Brian : Environment Court Judge.

Ellis, Rebecca : Justice of the High Court appointed in 2008. For the previous four years she worked for Crown Law.

Haumaha, Wallace : Police Superintendent based at Police National Headquarters.

Heath, Paul : Justice of the High Court appointed in 2002. Also a consultant for the Law Commission.

Moss, Jill : District Court Judge.

Gibbs, Max : Dr Max Gibbs is a NIWA scientist.

Jessen, Nick : Partner at CR Law.

Johnston, Shannon : Partner at Fitzherbert Rowe.

McKenzie, Alan : Chair of Horowhenua Lake Domain Board.

Parata, Tame : Member of Parliament for Southern Maori from 1885 to 1911.

Seddon, Richard : Prime Minister from 1893 to 1906.

Sword, Matt : Chair of lake trustees.

MAORI WORDS

Kaitiaki : Guardian or person with a duty of care.

Pakeha : Generally referred to immigrants.

Taonga : A highly valued treasure.

Tikanga : Correct procedure or custom or method.

LEGAL TERMS

Contra proferentem : Rule whereby an agreement that is ambiguous, the preferred meaning is the one that works against the interests of the party that wrote it.

POINTS OF INTEREST

Crown Law : Public service department that oversees prosecution of criminal offences.

MTA : Muaupoko Tribal Authority.

Solicitor General : The Government's chief legal adviser and advocate in court.

Ch23

hijacking criminal proceedings

"It is a serious abuse of process for Crown Law to hijack criminal proceedings by appealing an acquittal in order to extinguish by stealth the customary, Treaty, piscatory and property rights of Mua-Upoko."

Philip Taueki

To say we had been shell-shocked by the 'Ellis Decision' would be putting it mildly. It was not the promising start for 2017 we had hoped for. I went over the aspects that disgusted me. First, it is unusual for a modern judge to rely on a comment a politician made in Parliament to confirm there was an agreement that Crown Law failed to produce. The Attorney-General, Colonel Albert Pitt could not be considered a reliable source, for it was he who led 900 volunteers on the raid of Parihaka and subsequent jailing, without trial, of Te Whiti. Secondly, even if there was such an agreement, legislation passed at the time stipulated that it was the public who could not interfere with the rights of the owners. Even ROLD in its preamble preserves the fishing and other rights of the owners.

In a previous High Court judgement, "Huakina Development Trust v Waikato Development Authority, it was held that the Treaty was 'part of the fabric of New Zealand' society and therefore was to be deployed as an interpretive aid where ever there was any ambiguity in the statute. Naturally we appealed.

Christmas and New Year were not the relaxing holidays I had envisaged them to be. We managed to file the notice of appeal on Christmas Eve, and the supporting submission on New Year's Eve. Crown Law responded with a submission that we felt warranted a rebuttle because it speculated facts.

And when Justice Cooper invited us to send a yet another memorandum providing particulars as to why leave to appear should be granted, back to work we went.

There are two strands to this appeal, we wrote, both of paramount importance.

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Submission ; Court of Appeal

The first questions whether the threshold has been met pursuant to the Criminal Procedure Act 2011 to justify quashing an acquittal on a trespass charge and ordering a retrial. The Privy Council has indicated it is an abuse of process to prosecute an acquitted person.

The thrust of the second strand of this appeal is whether any court in Zealand has the jurisdiction to over-ride the guarantee made by Her Majesty, the Queen of England in the Treaty of Waitangi signed by Taueki and other Paramount Chiefs.

Mr Taueki, a direct descendent of Taueki was walking across his own ancestral land on 10 November 2015 when he was arrested, handcuffed and taken into custody, charged with trespass.

It is an inconvenient truth that the Treaty of Waitangi is a binding contract signed by both parties.

It is another inconvenient truth that the bed of Lake Horowhenua and surrounding land is ancestral land that has belonged to Mua-Upoko in 'fee simple' since a certificate of title was issued on 1899.

The decision by Justice Ellis to quash Mr Taueki's acquittal is proof beyond all reasonable doubt that the Crown has reneged on its Treaty of Waitangi obligations to provide Mr Taueki with the 'full, exclusive possession' of land collectively possessed.

While extant, the Justice Ellis decision nullifies the Crown's sovereignty.

We then went on to refer to s151(2) of the Criminal Procedure Act 2011 : "... an acquitted person to be retried for a specific offence if a retrial is in the interests of justice or the High Court is satisfied that it is more likely than not that commission of the administration of justice offence was a significant contributing factor in the person's acquittal."

"There has been no suggestion that Mr Taueki's acquittal has been tainted by an administration of justice offence", we wrote. "He was not required to testify so could not have committed perjury, nor did he interfere with witnesses because he had not met Mr Alan McKenzie until his appearance in the witness stand. He did not bribe any official."

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Submission ; Court of Appeal

There is no compelling new evidence. To be new evidence, it must be evidence that could not with the exercise of reasonable diligence have been given in those proceedings. For the evidence to be compelling, it must implicate the acquitted person with a high degree of probability in the commission of the specified serious offence. A specified serious offence means an offence that is punishable by imprisonment of 14 years or more.

The maximum penalty for trespass is three months imprisonment, not 14 years or more.

The minutes of the Domain Board meeting that took place on 30 October 2015 could have been produced by Mr McKenzie while in the witness stand, but not surprisingly, he chose not to do so.

These minutes confirm that the resolutions passed by the Domain Board at an extraordinary meeting on that date banned all Maori owners from entering their own buildings.

It is not in the interests of justice for the Horowhenua Lake Domain Board to have the authority to arrest Maori owners who enter their own buildings in order to accommodate members of the rowing club who have no legal right to occupy these buildings.

We then mentioned section 154 of the Criminal Procedure Act 2011 that identifies the matters that the Court of Appeal must have regard to when considering an application of the Solicitor-General to order that an acquitted person be retried.

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Submission ; Court of Appeal

- Whether before or during the proceedings that led to the acquittal of the acquitted person for the specified serious offence all reasonable efforts were made to obtain and present all relevant evidence then available.

- The length of time since the acquitted time is alleged to have committed the specified serious offence.

- Whether the Police and the Solicitor-General acted with reasonable speed in making the application after obtaining new evidence against the acquitted person.

- The interests of any victim of the specified serious offence alleged to have been committed.

- Whether the retrial for which leave is sought can be conducted fairly.

Next we responded to these matters.

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Submission ; Court of Appeal

First, Mr Taueki has yet to view an application from the Solicitor-General to order him as an acquitted person to be retried.
During the High Court hearing on 12 October 2016, Mr Taueki had raised his concern that he had not been served with an application authorised by the Solicitor-General. This lacuna was not addressed.
A trespass charge does not meet the threshold to be considered a 'specified serious offence'.
There are no victims.
Mr Taueki had been arrested on 10 November 2015, and remained on bail conditions until this trespass charge was dismissed on 5 May 2016. Due to the decision by Ellis J to quash Mr Taueki's acquittal, Mr Taueki is once again facing an active charge, even though he has already been acquitted of this charge.
If ordered to stand retrial, Mr Taueki will plead autrefois acquit.
Mr Taueki will continue to assert that his rights pursuant to s26 of the Bill of Rights Act 1990, International Criminal Law and the United Nations Civil and Political Rights have been ignored.
No safeguards have been put in place to retry this case fairly. Mr McKenzie had testified in court that he was not the 'occupier' of the property, and therefore the trial judge had no alternative but to dismiss this charge. This witness is likely to change his testimony in order to secure a conviction.
Prior to trial, all reasonable efforts were made to obtain and present all relevant evidence then available because Mr Taueki had challenged the validity of the trespass notice at the time of his arrest and at the time of his first appearance in the Levin District Court on 12 November 2015.

We then cut and pasted extracts from previous submissions to reveal the information that was available to Justice Ellis before she reached her decision.

“Mr Taueki was disappointed to discover that many of the factual findings of Ellis J were seriously flawed” we wrote. “However there is no excuse for these flawed factual findings because these matters were fully addressed in Mr Taueki’s written submission dated 23 September 2016.”

As just one example, we mentioned the orientation papers prepared for the incoming domain board members in 2011 stating that :

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Submission ; Court of Appeal

> The Reserves Act is one of the Acts contained in the First Schedule to the Conservation Act 1987. Section 4 of the Conservation Act requires that the Act should be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. Accordingly, in performing functions and duties under the Act, the administering body has a duty similar to the Crown’s to interpret and administer the Act to give effect to the principles of the Treaty of Waitangi.

As for the purported agreement, we indicated that Phil was particularly disturbed that Justice Ellis chose to rely on historic hearsay evidence to support her contention that :

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Judgement ; High Court

> In 1905, Parliament enacted the Horowhenua Lake Act (the HLA) as a result of an agreement between representatives of the Muaupoko iwi and the Government. This agreement was subsequently referred to in the House, where the Attorney-General observed there was ‘no doubt the Natives had acted handsomely and generously’.

“Mr Taueki had challenged Crown Law to produce a copy of this agreement but Crown Law failed to do so”, we said.

“This is because no such agreement exists”, we added.

We also noted that it had been Fergus Sinclair from Crown Law who first raised this so-called agreement in their memorandum dated 30 August 2016, claiming that :

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Crown Law Submission ; High Court

The Treaty itself envisages that Maori property rights are subject to change – in particular, by providing for the sale of land. Here the land has not been sold but the bundle of rights of the original owners has been modified to a lesser extent by statute based in antecedent negotiations and agreement between the Crown and these owners.

"At this point, a simple trespass appeal became complex", we wrote. "However the case law cited by Crown Law is irrelevant because neither case applies to owners as the trespassers. To understand how offensive this appeal and questions of law is to Mua-Upoko, it is important to understand the historical background in order to place ROLD in context".

This historical background material was made available to the court prior to the hearing.

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Submission ; Court of Appeal

Due to research commissioned by the Waitangi Tribunal, the Maori owners of Lake Horowhenua and surrounding land are now enlightened on the tactics used by Crown Law to gain control over ancestral lands that Mua-Upoko owns in fee simple estate due to the certificate of title issued on 19 October 1898.
The Court of Appeal had determined that this land is inalienable.
This 'inalienable' status is confirmed in a report that James Cowan produced for a Government department in 1903.
Mr Cowan had been commissioned to write a report for the Department of Tourist and Health Resorts about a proposal to acquire Lake Horowhenua as a national park for the public to use.
Mr Cowan cannot claim to be ill-informed on the cultural significance of Lake Horowhenua because he reported that the slaughter on the lake was so great that the waters of the lake were red with blood and the seagulls came in from the coast to feast on what Ngatitoa left. "On Nainu-iti isle near the northern end of the lake, Rauparaha shut up a number of Muaupoko prisoners, killing some from day to day as required for food." However Mr Cowan also stated that members of the public were at any time liable to be denied the privilege even of access to the Levin people's boat sheds on the lake side and it was desirable that the present unsatisfactory state of affairs should be terminated.

His proposal was to set aside a reserve and explain to the Maoris afterwards that their ancestral rights would not be interfered with beyond forbidding them to destroy the bush or other vegetation.

In terms of the questions of law that would be addressed on appeal, we felt it was important for the Court of Appeal to understand the impact of the Justice Ellis decision on the customary and property rights of Mua-Upoko.

We repeated the question, Phil had been granted leave to cross appeal :

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Submission ; High Court (Question for cross appeal)

As Mr Philip Dean Taueki is a direct descendent of Taueki who signed the Treaty of Waitangi on behalf of Mua-Upoko, and as these questions apply to ancestral lands that have belonged in fee simple estate to Mua-Upoko since a certificate of title was issued in 1899, will an affirmative response effectively nullify the Treaty of Waitangi upon which the jurisdiction of this Court is founded?

It is this fourth and final question that should have alerted Justice Ellis to the matter of extraordinary public importance she faced, but she brushed it aside.

In terms of the second question of law, Justice Ellis stated :

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Judgement ; High Court

But I agree with Mr Sinclair that this interpretation inverts the meaning of the subsection, which is to qualify the owners' "free and unrestricted" use of the area. While it was no doubt hoped the respective rights would peacefully co-exist, if push comes to shove, the owners' rights are not to interfere with the reasonable rights of the public.

Any such contest would need squarely to be based on the contention that the notice was not valid because it was not reasonably necessary to protect the reasonable rights of the public. In light of Mr Taueki's history of sometimes dangerous conflict with members of the public using the land, a challenge on those grounds would be difficult.

The answer to the second question must also be "no".

"Mr Taueki takes the strongest possible exception to these comments", we responded. "Mua-Upoko's customary rights have never been extinguished. ROLD is statutory recognition of these customary rights. The Domain Board's resolution affects all Maori owners".

"Due to this decision that the Maori owners cannot interfere with the rights of the public, the Maori owners now have less rights than members of the public who have used this privately-owned property for the past 111 years 'free of charge'. This means that rowing club members can launch unwashed boats and urinate on waahi tapu land with impunity. Furthermore, in their latest submission dated 20 January 2017, Crown Law has gone even one step further by claiming that..."

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Crown Law Submission ; Court of Appeal

The Lake Domain Board has the responsibility of mediating, if need be, the rights of the public and the owners' rights of use and fishery.

We said that : "Mr Taueki is not prepared to tolerate this continual whittling down of Mua-Upoko's rights to the extent that a Crown-appointed Domain Board can now suppress the owners' rights of use and fishery, in order to accommodate the 'rights' of the public."

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Submission ; Court of Appeal

The piscatory rights of Mua-Upoko are customary rights. The Treaty of Waitangi specifically lists 'fisheries' as being a right guaranteed by the Queen in exchange for sovereignty.

The Lake Domain Board has already demonstrated a scant regard for the law by banning all Maori owners from entering their own buildings in order to accommodate members of the rowing club who were continuing to unlawfully occupy these buildings, despite rulings from the Court of Appeal and Supreme Court.

If the rowing club, for instance, plans to hold a weekend regatta on Lake Horowhenua, Crown Law contends that the Domain Board would have the authority to stop all Maori owners from fishing on their own lake while this event is taking place.

In other words, even the customary piscatory rights of the owners have become subservient to the 'rights' of the public who have been using this lake free of charge for the past century or so.
If there is any ambiguity in the law, the High Court has previously established that the Treaty of Waitangi was "part of the fabric of New Zealand society" and could therefore be deployed as an interpretative aid wherever there was ambiguity in a statute and the subject matter was such that Treaty interests would be affected.
The Court of Appeal has found that, all other things being equal, Treaty principles required that the local iwi be given "a substantial degree of preference" when the Crown was determining whether or not to grant applications for whale-watching concessions in that area.
The Court of Appeal has also previously held that the Crown and Maori were the Treaty partners, each with obligations to the other, similar to the obligations entailed in a private law partnership. Acting towards each other reasonable and with utmost good faith were central principles of this Treaty partnership. The Court describes the Crown's obligations as similar to those that exist within a fiduciary relationship. Treaty principles involve a duty of active protection to reflect the Crown's promises in Article Two which are expressed as positive guarantees. Furthermore the Court finds that where Treaty principles have been breached, some form of redress ought to be provided.
Ellis J took the opposite approach, determining that the rights of the Maori owners were subservient to the 'rights' of the public using this privately-owned lake free of charge.

After explaining all this background, we felt we were perfectly entitled to set down on record for all time, the duplicity of the Crown.

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Submission ; Court of Appeal

Crown Law claims that the bundle of rights of the original owners has been modified to a lesser extent by statute based in antecedent negotiations and agreement between the Crown and these owners.
Crown Law was challenged to produce that agreement but failed to do so, because no such agreement exists.
Nevertheless, Ellis J refers to an agreement between representatives of the Muaupoko iwi and the Government.

It is a criminal offence under s240 of the Crimes Act 1961 to obtain control of a property by deception.
It is also a serious offence for a lawyer to mislead a court.
But more importantly, it is a serious abuse of process for Crown Law to hijack criminal proceedings by appealing an acquittal in order to extinguish by stealth the customary, Treaty, piscatory and property rights of Mua-Upoko.

This submission was 18 pages in its entirety, but for me, one particular comment encapsulates our frustration :

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Submission ; Court of Appeal

Crown Law had hijacked criminal proceedings by appealing an acquittal in order to extinguish by stealth the customary, Treaty, piscatory and property rights of Mua-Upoko.

When we arrived at the Court of Appeal for the hearing on Monday 20 March 2017, Phil was once again bracing himself for yet another attempt to convey the significance of the issues he would raise, and as we passed though the foyer of the Court of Appeal I brushed my hand over the sculpture in the foyer donated by Lord Cooke of Thorndon to represent the Treaty. Two hands, equal partners.

But in the Court of Appeal, once again, Justice French presided. We did not get off to a good start. On sudden impulse, I asked Phil to check whether these judges had read our 18 page submission. They looked at each other, and then Crown Law piped up to confirm he had received it. Fortunately, I had an unstapled copy so the registrar raced off to photocopy copies for the judges.

During his oral submission, Phil raised the recent Wakatu judgement of the Supreme Court that had heartened us. “Three weeks ago,” he said, “the Supreme Court in Wakatu established that the Crown has a fiduciary duty to those of us who have customary rights.”

Crown Law had little to say and we were out the door within the fifteen minutes allotted.

A mere ten days later, their decision arrived. Applications for leave to appeal and stay declined. Eight pages, the first four or five pretty much a precis of previous decisions.

The issue of double jeopardy was neatly circumvented.

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Judgement ; Court of Appeal

The effect of Ellis J's judgement is to quash the earlier acquittal. That being the case, no issue of double jeopardy arises and the threshold set out in the Criminal Procedure Act for the ordering of a retrial of an acquitted person do not apply. They only apply where the acquittal is still "in force" at law.

As for the Treaty of Waitangi :

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Judgement ; Court of Appeal

As Ellis J observed, the courts are required to interpret and apply relevant statutes enacted by the legislature. Mr Taueki wishes to argue that the Treaty of Waitangi be used as an interpretative aid in the case of ambiguity in the relevant legislative provisions. But the difficulty for this argument is that the provisions which Ellis J was called upon to construe were plain in their terms. There was no ambiguity. Mr Taueki's fundamental concern appears to be that the legislative regime is not consistent with the Treaty of Waitangi or with tikanga Maori, but that is not an issue that he can pursue in this forum.

For Crown Law's three questions, these three judges decided the cases Phil cited were not on point. So Polly and Abbott were on point? As for the 'occupier' issue, these judges neatly circumvented that.

Referring to Justice Ellis, "she noted that s2(1) of the Trespass Act includes within the definition of occupier and agent of the occupier. These conclusions were unsurprising, given the evidence produced in the District Court and the extension of the definition of occupier to include the occupier's agents."

This issue was not about the occupier's agents. It was about the occupier.

"We conclude that none of the arguments Mr Taueki wishes to advance on appeal have any realistic prospect of success", Justice French, Justice Miller and Justice Winkleman

decided. “In light of this, the proposed appeal cannot be said to raise any matters of general or public importance and nor is there any appearance of a miscarriage of justice.”

And as Justice French pointed out, we have apparently exhausted our right of appeal. So it is back to the District Court, that Phil must go.

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chapter 23 notes

Time frame : January - March 2017

hijacking criminal proceedings

milieu

The Crown hi-jacks criminal proceedings to oust an indigenous people from ancestral lands they collectively own.

PEOPLE OF INTEREST

Cooper, Mark : Justice of the Court of Appeal appointed in 2014. Of Ngati Mahanga descent.

French, Christine : Justice of the Court of Appeal appointed in 2012.

McKenzie, Alan : Chair of the Horowhenua Lake Domain Board.

Miller, Forrie : Justice of the Court of Appeal appointed in 2013.

Sinclair Fergus : Solicitor from Crown Law.

Winklemann, Helen : Justice of the Court of Appeal appointed in 2015

MAORI WORDS

Waahi tapu : Site sacred to Maori.

LEGAL TERMS

Autrefois acquit : Plea made by a defendant who has already been acquitted for the same conduct.

Piscatory rights : Fishery rights.

Fee simple : an absolute tenure in land

POINTS OF INTEREST

Wakatu : Proprietors of Wakatu and Ors v Attorney-General SC 13/2015 2017 NZSC 17

Ch24
sitting on a log

"In order to establish contempt the law requires there to be proof beyond reasonable doubt of the conduct and the state of mind required to establish the allegations, clearly that is something that cannot be decided by me today. It needs to be the subject of a hearing."

Justice Thomas

It seems unthinkable that in today's day and age, anybody would resort to Magna Carta. But that's precisely what we did. "It disturbs me greatly", Phil set down on record, "that I should be forced to invoke Magna Carta to protect the very rights that King John was forced to accept in England more than 800 years ago."

King John was obliged to affix his great seal on Magna Carta to prevent him arbitrarily depriving citizens of their property rights. Half a world away and eight centuries later, the Sheriff of Wellington was issuing a warrant for Phil's arrest because he was found sitting on a log outside his home on his own property. Quite by chance I had discovered that Extract 29 of Magna Carta is now New Zealand law, incorporated in the Imperial Act of 1989.

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Magna Carta

No freeman shall be taken or imprisoned or be disseised of his freehold, or liberties or free customs, or be outlawed, or exiled .. we will not deny any man either justice or right.

Perhaps it was the name of the Sheriff, John Earles that inspired me. How is it possible in a supposedly democratic society that a warrant can be issued to arrest a man sitting on a log on his own land? Quite simple, really. The courts denied him justice.

On 17 January 2017, Justice Clark had issued an order authorising and requiring the Sheriff at Wellington to arrest Philip Dean Taueki and to bring him before the High Court at Wellington on 13 March 2017 at 10.00am and until then, to keep the said Philip Dean Taueki in safe custody. Phil knew nothing about all this until 10 February, when an agent served this arrest order on him. Also served was a letter from the trust's lawyer, Alastair Hall from Fitzherbert Rowe. As soon as he phoned me to report this latest development, I advised him to record the date and scribble 'ex parte', across the cover page. He did so. The 'ex parte' was important. It meant that he was deprived of his right to a defence.

On 13 December 2016, the Horowhenua Lake Trust had held a secret meeting. At this meeting they unanimously resolved to instruct a lawyer to apply for an arrest order 'without notice'. The 'without notice' words were also important. Contrary to Magna Carta, Phil was to be disseised of his freehold and his liberties, and furthermore he was to be denied justice because he would be given no right of defence.

I immediately requested full disclosure. By the time we received it, it was too late to appeal. There were grounds to do so. But first, it is important to know the objective of this arrest order. It was to force him to obey the terms of an injunction order made in the Maori Land Court on 4 November 2015, namely :

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Judgement ; Maori Land Court

That the Respondent, Philip Dean Taueki (together with his agents, servants, invitees, licensees or workmen) immediately remove themselves and their possessions, chattels and materials from, on or under the Horowhenua 11 (Lake) block including the buildings known as the Nursery.
That the Respondent, Philip Dean Taueki (together with his agents, servants, invitees, licensees or workmen) are prohibited from taking up the future possession of Horowhenua 11 (Lake) block including the buildings on a permanent or temporary basis unless authorised to do so by the trustees of the Horowhenua 11 Part Reservation Trust.
That on and from the date of this order the trustees of the Horowhenua 11 Part Reservation Trust are entitled to vacant possession of the Horowhenua 11 (Lake) block including the buildings known as the Nursery.

Compare these terms with the Treaty of Waitangi which features in the preamble to Te Ture Whenua (Maori) Act 1993 that underpins the Maori Land Court :

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Treaty of Waitangi

> Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession...

On the one hand, Her Majesty Queen Victoria of England has guaranteed Phil undisturbed possession of lands he collectively possesses. On the other, Judge Doogan had decreed that Phil is prohibited from future possession of ancestral land Phil collectively owns.

Not until eight months later did Judge Doogan declare, in a courtroom, his conflict of interests with Matt Sword, the trust's chair. There were and still are, valid grounds to quash his injunction.

Any judge who read Matt Sword's sworn affidavit, would discover a major discrepancy. Matt Sword claims he chairs the Horowhenua 11 (Lake) Part Reservation Trust, but further on, he refers to the unanimous resolutions of the Horowhenua Lake Trust. A former police prosecutor who is now a private investigator carried out a thorough check on both names and found no record that either is a legal entity. In terms of legal proceedings, that is significant. In order to recover land, the applicant must be able to prove it is not only a legal entity but also is entitled to recovery of property.

We invested $400 in a couple of applications to address these issues. Both applications were rejected. Falling into the hands of Justice Clark, she declined both applications on 8 March 2017. We appealed, paying a fee of $1,100 because it was a civil matter.

Meanwhile time had almost run out to 'purge his contempt' and avoid arrest. By midnight on Thursday 9 March 2017, Phil had removed all his personal belongings. Not good enough. By lunch-time he has also removed property that was in the building when he took up residence. Not good enough. He left the door unlocked and keys on the table. Not good enough. He removed the door from the hinges. At the eleventh hour, his arrest was averted.

He would later inform the High Court: "By the deadline set by the ex parte order of the High Court, I had purged the contempt by not only removing my personal possessions

but also property and chattels that belonged to other owners who were not subject to the Maori Land Court injunction. Furthermore, this facility had already been fully furnished with curtains, a bed, an oven, refrigerator, tables and chairs. Under pressure from Alastair Hall, I also removed the exterior doors to purge the contempt."

On Thursday 15th March 2017, he went down to the lake to feed a crippled chook, a feral cat he had befriended and her kittens. Chooks had been getting inside the Nursery and making a mess on the floor, so a tarpaulin had been placed over the doorway and a log moved along a metre or two. Phil parked his car in its usual place, and was sitting on this log feeding the chooks when Matt Sword and Dr Jon Procter turned up. Sensing trouble, Phil phoned Vivienne Taueki, placing his call on speakerphone.

He called Bryan Ten Have and then called me. He told me the police had arrived. He also informed me that Matt Sword and Dr Jon Procter were shoving him around and hoping he would retaliate so that he could be arrested. When I got there, the police had gone, but so had Matt Sword and Dr Jon Procter. I asked the others what had happened. Vivienne Taueki said that she heard one of them say: "We are going to get you arrested any way we can, you nigger." I asked Phil if he had been in the building, and he assured me he had not. Next we heard from the police that Matt Sword was accusing Phil of assault. Phil urged the police to seize their phones because he knew their footage would exonerate him. That was the last we heard from the police about the assault allegations.

At 5.29pm that evening, John Earles sent me an e-mail stating: "Trouble is he is back in the buildings and blocking access by the Trust. Enough is enough." At 12.44pm the next day, I received another e-mail from John Earles reporting that he had received a photograph of Phil on the premises and that the police had to be summoned because of his presence. "They say he then called some of his associates up to join him."

Phil had also received an e-mail from John Earles that day. "Why go near the place when you know the restrictions imposed on you? Keep away or be arrested." On Phil's behalf, I informed him of Judge Doogan's ruling that this injunction was not meant to operate so as to inhibit or restrain Phil's rights of access to the Horowhenua 11 (Lake) Block that he shares in common with other beneficial owners. At 4.41pm that day, I received yet another e-mail from John Earles, this time notifying me that a warrant had been issued for Phil's arrest.

On the Monday Phil was due to appear in the Court of Appeal for the trespass matter. Three days prior Phil had gone into hiding, unable to use his cell-phone, his Eftpos card or the Internet. Vivienne Taueki, Bryan Ten Have and I meanwhile braced ourselves for a visit from the police with a warrant to search our homes. At 9.01am on the Monday, John Earles confirmed that Phil's arrest warrant was in the hands of the police. I had already

left my home by then, and at lunch-time, I called in at the Wellington High Court to uplift disclosure. I took one look at the photograph, and yet again, it was evident that Phil had told me the truth. Phil was sitting on a log, outside the Nursery. Also disclosed was the e-mail Alastair Hall had sent the Court on the Friday afternoon, and a further affidavit from Matt Sword. "The matter is now urgent" Alastair Hall had emailed the High Court. "I am thinking how best to bring this before the Court. It may be that a conference call would assist which might include Mr Sword. No doubt Justice Clark will want to know more."

John Earles informed me that Alastair Hall had travelled to Wellington and was now waiting for Phil to appear in the High Court. He wanted to know where Phil was. I replied that I did not know. However Phil would be arriving for his Court of Appeal hearing at 2.50pm and perhaps he could slot something in for 2.15pm. John Earles indicated that would be insufficient time, and therefore arrangements were made for Phil to head to the High Court after the Court of Appeal. But it was obvious John Earles did not trust us. He had assigned a couple of security guards to keep Phil under surveillance as soon as he arrived at the Court of Appeal. Although they were pleasant enough, Phil was starting to fret that he might be heading to jail in his best suit.

The Court of Appeal judges handling Phil's trespass charge had hurried through their hearing, and after a quick break for a cigarette to calm his nerves, Phil entered the High Court of his own volition. Alastair Hall was there, with another lawyer seated beside him. The judge was a woman I had never encountered before.

Alastair Hall told this judge that the trust would like Phil held to account for his breach of the possession order and injunction either by way of a fine or imprisonment. Amongst other things, he accused Phil of shifting the log in place and installing the tarpaulin to obstruct entry into the building. He offered no proof. Alastair Hall also demanded new measures 'to ensure compliance going forward.'

But we had managed to serve a submission on the High Court, the submission in which we invoked Magna Carta. First, we referred to the Siemer case when the Supreme Court agreed that the Bill of Rights Act 1990 required a generous reading.

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Judgement ; Supreme Court

> Whenever someone faces a proceeding for contempt, they face the possibility of a sentence of imprisonment for such length as the court may reasonably impose. It would be extraordinary if, as must be the case, someone charged with minor offending had the benefit of the ss24 and ss25 guarantees, insofar as they can apply

> it in the circumstances, when as a matter of law, that person may not actually be liable to imprisonment or where as a matter of practice imprisonment will never be imposed, and yet a person proceeded against for contempt and undoubtedly exposed to the possibility of imprisonment does not.

And if there was to be any application for a variation of the order, she said it needed to be on notice with clarity as to exactly what is being sought, so Mr Taueki has an opportunity to consider and respond. Alastair Hall and his colleague were forced to return home empty-handed. And Phil was also able to return home, with a great sense of relief for all of us.

A date had been set for another hearing on 5 April 2017, and the trust was given until 5pm on Thursday 23 March 2017 to file any further evidence. The very next morning, I sent an e-mail to Alastair Hall asking for a certificate of incorporation to avoid any further confusion over the name of this trust. Thursday came and went. Nothing. Not until late Sunday afternoon, did we receive anything. It was a memorandum from another Fitzherbert Rowe lawyer not only seeking leave to withdraw but also requesting an adjournment of this hearing and recommending an amended timetable because the trust wanted more time to file further evidence. Immediately, we fired off a response.

On 29 March 2017, only two days later, Justice Simon France replied. Counsel was given leave to withdraw. The adjournment was declined. “It is not appropriate to defer an application of this type at the convenience of the Trust”, he said. “The Court expects and will require anyone representing the Trust to know the rules of the Court and be able to advance the application in a proper manner.” Furthermore, “if the Trust is not to be represented by a lawyer, then the Court will need to be satisfied as to the standing of the person representing the Trust. Only a trustee, duly authorised will suffice.”

With Phil’s own memorandum, we had attached a total of five sworn affidavits. Two were from Phil, and the others from Vivienne Taueki, Bryan Ten Have, Peter Heremaia and me. There was a stern admonition. “Witnesses must be available for cross-examination or their evidence would not be received.” So Phil contacted everybody, and we all set aside the day to travel down to Wellington for the hearing commencing at 10am. But it was not to be. Less than 24 hours beforehand, Matt Sword asked the Court to withdraw this complaint. The High Court therefore had no option but to forward Matt Sword’s e-mail on to us, together with confirmation this hearing for 5 April 2017 had been vacated.

In his minute, Justice Simon France also noted that the application of 22 December 2016 is withdrawn and formally dismissed. Matt Sword reacted quickly, asking for the Court’s

dismissal to be recalled. “Further, if, unbeknownst to me the entire arrest order proceedings must be dismissed as a consequence of asking for just the allegation of contempt to be withdrawn, the Trustees would instead wish to pursue the allegation of contempt through to a determination.”

We were given until 5pm on the Monday to respond. And respond we did. Mr Taueki opposes that request, we put in plain and simple language. “The difficulty that arises can be directly attributed to the resolution passed by the Horowhenua Lake Trust to instruct legal counsel to apply for an arrest order ‘without notice’”, we added. “The resolution passed by the Horowhenua Lake Trust to apply for an arrest order ‘without notice’ deprived Mr Taueki of his legal right to defend an application filed by the Horowhenua 11 (Lake) Part Reservation Trust.”

If it was indeed the wish of the trust pursue the allegation of contempt through to determination, “and there is no evidence to suggest that it is indeed the wish of the trust,” the first hurdle that this trust will be obliged to address is their standing as a legal entity.

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Submission ; High Court

Despite a request for proof that either trust is a legal entity, neither counsel for the trust nor the trust itself has done so.
Therefore any proceeding for contempt cannot succeed.
Neither Mr Sword nor Mr Procter are registered as owners.
As Mr Sword has failed to produce proof that either trust is a legal entity, the Maori Land Court injunction and order for arrest can have no legal standing.

In effect, we requested a ruling “to deter Mr Sword from any further abuse of process to place Mr Taueki under arrest”. We did not expect such a swift response from Justice Simon France. “There is no basis for recall”, he said. “It is irrelevant that Mr Sword did not appreciate that was a consequence of withdrawing the application. An arrest warrant does not remain in place as some sort of good behaviour bond.”

Then he added: “The arrest warrant is formally quashed.” It was a victory, and a victory we savoured. The police had failed to do Matt Sword’s bidding and now not one, but two Judges had shown they were also immune to Matt Sword’s ingratiating prose. But always, we remain poised for the next attack.

This trust is predictable. Easter 2013 was the year the trust had tried to demolish the Nursery, Phil’s home. Easter 2017, the trust made another attempt. Same timing.

To complete his community detention over the summer holiday, Phil had been living in a self-contained caravan at his sister's place, and he continued to do so until April due to the Maori Land Court injunction and arrest order. Each day, he returned to feed the animals.

On Thursday 13 April 2017, only eight days after the hearing Matt Sword had terminated, Phil went down to the lake as usual and spotted a local contractor removing the plumbing and hot water cylinder. He asked them to produce the paperwork, and when they could not do so, ordered them to leave. On Good Friday, three contractors turned up, this time in the presence of the police. Once again, Phil arrived just in the nick of time, and asked them to produce the paperwork. Again they left. This time, it was Bryan Ten Have's turn to contact the council to check whether they had applied for a consent to remove or demolish the building. I sent the contractor an extract from the Building Act. Work stopped.

Phil moved his self-contained caravan down to the lake, to protect the building. Other owners have moved into the southern domain building. The police tried to move them out, but these owners have refused to vacate this building. Waka ama is out on the lake. Phil watches them train with a great deal of satisfaction.

There are still battles to be fought.

There is still the appeal of the Horizon's Regional Council's weed harvester project to be determined after the Environment Court assumed every Maori witness had "a relationship to Lake Horowhenua and its surrounding land as ancestral land and water". Only those with a true affinity to this lake would reject an experimental proposal that places the lake at risk of permanent damage from flipping. The lake is on a knife-edge, Bill Chisholm had warned.

The lake's owners have no reason to trust their local authorities, whether they be drainage boards, borough councils, district councils or regional councils who have all contributed to the current degraded state of the lake.

Producing copious comprehensive reports is not convincing when the thrust of their proposal is 'experimental'; and could be the tipping point that submerges this once-bountiful lake beyond restoration.

Then there is still the appeal of the Horowhenua District Council's determination to continue discharging Levin's stormwater into this privately-owned lake – without an authority signed by both parties, a resource consent or easement. As part of their Annual Plan this district council confirms it is working with the regional council to prepare an applica-

tion for a resource consent. And it will probably be granted by Horizons, their Accord partner.

The Minister has yet to appoint the representatives elected by the Mua-Upoko owners onto the domain board, and even though their term of office lapsed during March 2016, the incumbents continue to meet and negotiate the return of the rowers and sailors.

Phil has yet to face retrial on the charge of trespassing on his own land.

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chapter 24 notes

Time frame : January - May 2017

sitting on a log

milieu

When warrant is issued for his arrest after he was found sitting on a log on his own property, Phil Taueki invokes Magna Carta.

PEOPLE OF INTEREST

Clark, Karen : Justice of the High Court appointed in 2015. Former Deputy Solicitor-General.

Doogan, Michael : Maori Land Court Judge.

France, Simon : Justice of the High Court.

Thomas, Susan : Justice of the High Court appointed in 2014.

Chisholm, Bill Chisholm : Environmental Consultant.

Earles, John : Sheriff of Wellington.

Hall, Alastair : Partner of Fitzherbert Rowe.

Procter, Jon : Lake trustee.

Sword, Matt : Chairman of lake trustees.

MAORI WORDS

Waka ama : Outrigger canoe.

LEGAL TERMS

Ex parte : Where one of the parties is not present or represented.

POINTS OF INTEREST

Horowhenua 11 (Lake) Part Reservation Trust : The name of the lake trust on the application for an order for a warrant to arrest Philip Dean Taueki.

Horowhenua Lake Trust : The name of the lake trust on the minutes of the meeting held in December 2016 to apply for a warrant to arrest Philip Dean Taueki.

Seimer : Seimer v Solicitor-General SC 48/2009 (2010) NZSC 54.

final words

In the grounds of Parliament stands the statue of a thief. His name is Richard John Seddon. 'King Dick' is his alias, and he named his realm 'God's own country'. No king should have the right to seize control of ancestral lands that remain freehold. But that is precisely what 'King Dick' did.

'No man shall be deprived of his freehold or his liberty, or denied justice.' This extract from Magna Carta has been subsumed into New Zealand law. Nelson Mandala, Ghandi and Martin Luther King all resorted to Magna Carta. Now so does Philip Dean Taueki.

Nelson Mandela once said: "I have no doubt that posterity will pronounce that I was innocent and that the criminals that should have been brought before this court are the members of the government." Do these words apply also to New Zealand? Modern parliamentarians have not repealed legislation that is undoubtedly theft by statute.

Has the judiciary compromised Magna Carta? Justice Ellis quashed an acquittal on a trespass charge that was not tainted. Three justices of the Court of Appeal who were given the opportunity to overturn the Ellis Decision, chose not to do so. Without further right of appeal, the Ellis Decision stands. As police prosecutor Sergeant Mike Toon so courageously pointed out, he was under political pressure to proceed with a prosecution even though he knew there was no case to answer.

And when a warrant can be issued to arrest an owner caught sitting on a log outside his home on his own land, New Zealand has indeed reverted to the inhumane practices of medieval England.

To compound Parliament's duplicity, Philip Dean Taueki is the great great grandson of Taueki, the paramount chief who signed the Treaty of Waitangi on behalf of his tribe, Mua-Upoko. In any civilised country, contracts are honoured. This guarantee is iron-clad and cannot be diluted at the whim of those who "assert the Treaty provides a basis for a changing relationship and should always be progressively adapted."

Justice is reflected in a symbol, Britannia in her robes and the Maori chief in his cloak; equal partners. This symbol, the police wear on the sleeve of their jackets. This symbol stands above every judge in every courtroom of New Zealand. But it is more than a symbol; it is constant affirmation of the Crown's Treaty obligations. Any court that defies this Treaty denies their own legitimacy.

Meanwhile, partisan policing is unprofessional and unacceptable. How can the police explain the extraordinary number of charges withdrawn, dismissed or quashed on appeal?

Furthermore, I have no doubt whatsoever that prosecution witnesses are coached. Judges should be alert to testimony in unison. Upon lies, the innocent are convicted. Perjury is such an insidious offence, that those who offend should taste its harsh penalty.

Phil Taueki's lonely crusade is founded upon his resolve to protect and restore his lake. The hypocrisy of Lake Accord partners is ruthless in its audacity. For a regulatory council to let a territorial council discharge urban stormwater into a privately-owned lake is reprehensible. Yet Parliament rewards these councils with substantial funding that has been squandered on experimental projects that place this lake at risk. As certified environmental practitioner Bill Chisholm warns, Lake Horowhenua is on a knife edge, and needs only a trigger to 'flip'.

Blame must also rest upon kupapa who have infiltrated Mua-Upoko over the past century or so; not only undermining a tribe they purportedly represent but also usurping the mana of Taueki who bravely stood his ground rather than flee the muskets of Te Rauparaha and his Ngati Toa warriors. Kaitiaki with any true affinity to their environment can be identified by their protective desperation rather than their disposition to benefit from their betrayal of Maori tikanga. It is, after all, Lake Horowhenua that lies at the heart of all Phil's trials and tribulations.

Philip Dean Taueki is truly a man of his convictions. Perhaps this book's final words belong to Phil Taueki, words he once uttered in a district courtroom :

"As I said, my duty is in my DNA. I'm kaitiaki. My duty is to look after the lake as my ancestors did. And when I compare the trials and tribulations that I'm facing at the moment, it is nothing compared to what faced my ancestors when Te Rauparaha was coming down to annihilate them and he had the advantage of having guns. My people at the time didn't. Despite the imbalance and power we didn't run away. We stood and fought and that's the only reason I am standing here today."