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THE ALIENATION OF MAORI LAND

W D C Alcock

A thesis submitted for the degree of Bachelor of Laws with Honours at the University of Otago, Dunedin New Zealand

December 1992
Acknowledgments

I would like to express my sincere thanks to the staff of the Faculty of Law, University of Otago; in particular, to Peter Skegg, Bruce Harris, Jan Flood and John Dawson who constantly reminded and encouraged me to complete this work. Without that prodding I know I would never have completed this paper.

Thanks also to Noelene Cockroft for her extreme patience and co-operation.

Finally, I would like to offer my thanks to the many other people who assisted me throughout the years. Although this paper focuses on land and its customary importance to Maori, people were and are equally as important.

He aha te mea nui i te Ao?
He tangata he tangata, he tangata

What is the most important thing in the word?
It is people, people, people.
Preface

I became interested in Maori Land Law as a fourth year student of law attending the University of Otago. Unfortunately, this aspect of law was not formally taught in any of the prescribed subjects so I decided to canvass staff for assistance. Despite proclaiming interest, all members of staff, candidly disclaimed any knowledge of both Maori land and Maori land law. Unthwarted, I inquired amongst practising members of the profession. To my surprise, practitioners either arrogantly laughed off their ignorance, and justified this by submitting that there was little Maori land to merit their attention, or embarrassingly admitted being overawed by the complexities of a law and a culture that is, ironically, mostly foreign to them. Unfortunately I soon discovered that this was a national problem. It is patently clear, then, that Maori land law is an area of law which is neglected by both academics and practitioners.

What, then, are the consequences of this? Such an oversight directly disadvantages the intended beneficiaries of Maori land legislation, namely, Maori land owners who are primarily Maori people. These owners are forced to conform to a law which is complex, both substantively and procedurally, while being denied the benefit of legal advice. In some cases, goodwilled people have offered legal advice but, through their lack of expertise, their advice is often, but not always, inaccurate and/or incomplete.\footnote{Given the small number of practitioners who deal with Maori land, compromising situations can arise in certain areas. For instance, a lawyer may be listed on an ownership schedule of Maori land as, say, an administrator of a deceased owner, or even a number of owners. The same lawyer may then be approached to represent another client who wishes to buy or lease the block of land. On the one hand, the lawyer must present the submission to buy or lease while, on the other hand, having the capacity as a representative of the deceased owners, to vote for or against the submission. Lawyers faced with this problem should proceed with care. The potential for a breach of ethics is obvious. \textit{Farrington} \& \textit{Rowe} v \textit{McBride} \& \textit{Partners} [1985] 1 NZLR 83.} This is an entirely unsatisfactory position which stimulated me to write a paper on Maori land law as an attempt, amongst other things, to offer some modest guidance to practitioners in an area where such assistance has been sadly lacking.
To me, one of the major causes of the profession's neglect of Maori land law has been its past omission from university law courses and, as a consequence of this, the lack of written material available on Maori land legislation. Although the relative lack of money, and the opportunity costs of practising Maori land law, have also been important causative elements. But there is a large body of practitioners who avoid clients with Maori land problems because they perceive it as being too complicated. As a corollary to this, the absence of a current text book means there is no simple form of reference. Hopefully, this paper will fill part of that gap.

For similar reasons, I also see this paper as an attempt to stimulate academic interest. Academics, like practitioners, also need initial tutoring to help them find their feet. Their involvement in the discovery of Maori land law is necessary because the legislation is in dire need of reform. At present, it is a hotchpotch of provisions, gradually accumulated over time, lacking, inter alia, political continuity. It is allowed to exist virtually unchallenged because so few people are aware of the problems. Again, the cause of this is associated with the general lack of education in Maori land law.

The motivation for this paper is, then, a concern about the neglect of Maori land law by the legal profession as a whole, which has come about because of its past omission from legal education. In a small way, this paper attempts to offer some remedy.

Although this paper will essentially focus on one aspect of the law it will, I hope, provide a platform for future interest. As a postscript, I hope that it will also stimulate interest in other related topics such as issues regarding the Treaty of Waitangi. Such other topics have similarly been mostly neglected by legal educators. It is only recently that non-Maori are seeing these issues as pivotal in terms of future race relations in New Zealand. For Maori, they have generally always been fundamental. No reira, kia kaha.

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2 For example, at the University of Otago, a Maori land law course was only established in 1989 and, as a consequence, a Treaty of Waitangi course was initiated in 1990.
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1. INTRODUCTION

In recent times a topic which has been receiving extensive media attention has been the alienation of Maori land. For that reason the phrase “alienation of Maori land” has become familiar to most New Zealanders. Indeed, it is often emotively bandied about in discussions regarding the loss of Maori land. However, the phrase is very wide and covers many types of loss. Hence it is always important to identify the exact type of alienation being referred to. For present purposes it is important that the reader is aware of these different meanings. Such an overall understanding will avoid confusion and enable the reader to be clear as to the scope of this paper. It will therefore be more instructive to define the scope of this paper once these various meanings have been established.

At the outset, one can generally begin by classifying alienations into two broad categories—de facto and de jure alienations.

(a) De Facto Alienation

Here, alienation means loss in actuality though not in law. In this category, unlike de jure alienation, the title to the land is unaffected. That is, the title to the land may remain in Maori ownership but use of the land may be effectively estranged from the owners because of either practical or legal limitations on such use.

An illustration of a practical restriction on land use can be found in the method of tenure that is common to Maori freehold land, namely tenancy in common. Section 457 Maori Affairs Act 1953, creates a presumption that “...all Maori land that is held by two or more persons beneficially entitled thereto for an estate in fee simple shall, unless otherwise expressed...be deemed to be held by them as tenants in common...”. Without having any exact statistics, it is fair to say that almost all Maori freehold land is held for an estate in fee simple by two or more persons. Therefore, most Maori freehold land is held by owners as tenants in common.
Hinde, McMorland and Sim define the right of a tenant in common as:  

Each tenant in common is entitled to the possession of the whole of the land, and yet, unlike a joint tenant, is entitled only to a distinct share thereof, a combination of concepts possible only because the physical boundaries of his share called an undivided share have not yet been determined.

An owner then has no exclusive claim to any particular part of the land but owns the whole concurrently and co-extensively with the others. As a result, physical use of the land by individual owners becomes cased in uncertainty. Kawharu describes some of the difficulties created by this form of ownership:  

...every single person in a list of owners comprising perhaps over a hundred names, had as much right to occupy as anybody else, personal occupation for improvement or tillage was encompassed with uncertainty. If a man sowed a crop, others might allege an equal right to the produce. If a few fenced in a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture. That apprehension of results which paralyses industry cast its shadow over the whole Maori people.

The uncertainty created by this form of ownership has led Maori people to colloquially refer to multiply owned land as "Everybody's land is nobody's land".

A classical European response to this claim would be that tenancy in common is not peculiar to Maori land tenure and that General land can also be held under such tenure. However, it is very rare to see General land owned in this manner. Indeed, its importance to General land is now mostly historical. As we have seen, by way of contrast, the Maori Affairs Act creates a presumption that Maori land owned by 2 or more owners is held by them as tenants in common. To give some idea of the seriousness of the problem the "Report on the Department of Maori Affairs" recorded that a title in Rotorua had 2,334 owners while, in Wanganui, a title had 5,000 owners.

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5 Hunn, J K, 1961 "Report on Department of Maori Affairs".
Without court intervention, each owner's right to possession is inextricably mixed with the other owners' rights to possession. These are certainly extreme examples, but almost every owner of Maori land must deal, in some degree, with the practical obstacles to utilisation as a result of multiple ownership and tenancy in common.6

Legal limitations can also hinder practical use of the land. An example lies in the implementation of zoning provisions contained in the Town and Country Planning Act.7 John Tamihere observes the plight of the Ngati Wai8 people:9

...[i]n 1974 the Whangarei City Council announced its proposed reviewed district scheme. The scheme rezoned all Ngati Wai coastal lands as proposed public reserve and open space.

In the Ngati Wai tribal area seven-eighths of the coastal strip is owned by pakehas. Of the land zoned for public reserve and open space, only 800 acres is pakeha land—over 5,500 acres was being demanded from the Maori.... The failure to...designate 2,000 acres of coastal land, held by New Zealand Breweries and also an American owned island in the area, might be seen to support those who allege discrimination in favour of vested interests....

Given the limits imposed on land use by a public reserve zoning, the Ngati Wai may feel somewhat alienated from the land.

Once again, the response may be that General land is equally subject to zoning limitations, so why should Maori land owners complain. The answer lies in the fact that, in the past, Maori land has been easy prey for planners10 and particularly

8 Hapu of Nga Puhi tribe located near Whangarei (see Appendix 1).
vulnerable to restrictive zoning requirements. This is because there was formerly less likelihood of objections to such zoning proposals insofar as they affected Maori land. Often such proposals passed through the review periods unchallenged because of owner ignorance of proposed changes, or the consequences of such a change, or simply because of apathy. Unfortunately, apathy is common amongst Maori land owners because often they are not utilising the land and, again, often because the land is not producing revenue. Equally, it is not uncommon for owners to be deceased and their interest remains unsucceeded. The deceased owners clearly cannot object while the unsucceeded beneficiaries have no right to object. Imagine the response from New Zealand Breweries if the Whangarei District Council's proposed public reserve zoning included the land they owned. I suspect that the answer to this would go a long way to explaining why their adjacent land was not included. Not surprisingly, Maori view the Town and Country Planning Act as in breach of the Treaty of Waitangi.¹¹

Both of the above examples show how land can be alienated from the owners, notwithstanding that title remains unaffected. In both cases the Maori owners justifiably feel a sense of loss. Ostensibly, however, they have title to valuable land and, sadly, others are quick to condemn their non-utilisation and dismiss their complaints as an excuse for laziness.

(b) De Jure Alienation

In this category, alienation means the transfer or encumbering of the legal or equitable ownership of Maori land. Thus there is a loss or encumbering of the title to the land. Within this category it is appropriate to make a further distinction between two different types of de jure alienations. These being, first, transfer by cession and, secondly, transfer or encumbrance by statute.

¹¹ Kenderdine, supra, n 10 at 251.
(i) Transfer by Cession

In the mid-nineteenth century, one method of extinguishing native title was by voluntary cession or negotiation.\(^{12}\) A significant amount of Maori land was alienated in this manner, particularly in the South Island. For example, Kemp's Deed purports to cede the central South Island, stretching from Kaiapoi to Taiaroa Head.\(^{13}\) Most of these cession arrangements are now subject to claims before the Waitangi Tribunal.

(ii) Transfer or Encumbrance by Statute

Within this sub-category it is necessary to make a further delineation between statutes whose primary jurisdiction is not Maori land nor the alienation of such land, for example, Public Works Act 1981, Mining Act 1971 etc, and statutes whose prime jurisdiction is Maori land. An example of a statute within this last category is the Maori Affairs Act 1953. This Act has jurisdiction over all Maori land and attempts to keep a check on all conceivable dispositions of or affecting Maori land. These include, inter alia, licences, leases, trusts, easements, profits, mortgages and all transfers. All alienations must be either confirmed or noted by the Maori Land Court.

(c) The Scope of this Paper

Those, then, are the various meanings that can be attributed to the phrase "alienation of Maori land". Given these differences, it is important, then, to be precise about the type of alienation one is referring to. It would not be possible for a paper of this length to satisfactorily cover all the respective meanings. For that reason, this paper will concentrate on only the last of the above meanings, namely, alienation under the Maori Affairs Act 1953.


\(^{13}\) Kawharu, *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi* see O'Regan, "The Ngai Tahu Claim" 243.
All the various meanings are individually worthy of discussion, but this aspect was selected because it is the most common form of alienation that a practitioner will encounter. Despite this, however, there are difficulties gaining access to Maori Land Court decisions on the law and there are comparatively few articles or commentaries on the legislation. Maori Land Court decisions are not reported in a published series and can only be accessed by writing to the district office in which the decision was made. In terms of commentaries on the law, only P McHugh and Feist write regularly. Because of this, those who are interested in this area of law are afforded little guidance from the Maori Land Court itself or from those familiar with the Maori land system.

Therefore, both the law and the Maori Land Court remain, to most, as foreign entities. For most readers, then, this paper will be their first introduction to Maori land law. Consequently, the next part of this paper offers a very brief introduction to the Maori Land Court and the law it implements. This is a necessary background to an understanding of the specific area of the law chosen. That preamble aside, this paper will then analyse in depth two specific methods of alienation under the Maori Affairs Act. The two methods selected will be defined in Part 3.

14 Although there is a series which offers summaries of cases that affect Maoris and Maori land, called, "Tai Whati, Judicial Decisions Affecting Maoris and Maori Land 1958–1983", Department of Maori Affairs, Wellington. A supplement to this was published in 1984.
16 "Maori Land" (1982) 1 BCB 9, 22; "Searching in the Maori Land Court" (1982) 1 BCB 35; "Wills and Succession" (1983) 1 BCB 83; "Alienation by a Sole Owner" (1983) 1 BCB 56; "Alienation by Multiple Owners" (1983) 1 BCB 71; "Sales, Leases and Other Alienations" (1982) 1 BCB 47.
17 The two books by Norman Smith, Native Custom Affecting Land (1942), Maori Land Law (1960) are now largely outdated.
2. THE MAORI LAND COURT

(a) Present Constitution

There exists a very comprehensive body of legislation called the Maori Affairs Act 1953. Since its introduction there have been amendments made almost annually, although the 1967 and 1974 Maori Affairs Amendment Acts are major amendments which effect substantial changes in the law.

Section 15 of the Act provides for the continuation of the Maori Land Court. This Court, formerly known as the Native Land Court, was first introduced in 1862. The legislation allows the Governor-General to divide New Zealand into Maori Land Court Districts. Currently there are seven districts.

Each district has one Court Registry, so, for instance, Te Waipounamu (South Island) has a Court Registry in Christchurch. However, in each district, the Court travels on circuit to notified locations. For example, in Te Waipounamu the Court sits twice a year at Christchurch, the Chatham Islands, Dunedin, Invercargill and Picton. These locations are published in the *New Zealand Gazette* before the first day of
January, or as soon as practicable thereafter. The Gazette notice specifies the time and place for sittings of each court district to be held during the ensuing year.

As well as dates for the respective sittings, the Gazette notice will also list a date called the "Panui Closes" date. The word "panui" translates to "invitation". Hence, the panui is an invitation from the Court, distributed to applicants and to those affected by the application, inviting them to attend the hearing of the application. The panui itself simply lists the applications to be heard at each court sitting, the lands involved, and the fixture date and time. Therefore, to have an application to the Maori Land Court heard at a specified court sitting, all documentary material must be completed and the appropriate fees paid before the panui closes.

The Maori Land Court is served by specialist judges and a Chief Judge. The office of the Chief Judge is important because of the special powers contained in s 452 which supplement the appeal procedure. The Chief Judge can "...cancel or amend any order of the Court [or a registrar]...or make such other order as in his opinion is required for the purpose of remedying..." any order "...erroneous in fact or in law by reason of a mistake, error, or omission on the part of the Court [or a registrar], or in the presentation of the facts of the case...."

There is also a Maori Appellate Court which consists of three or more Maori Land Court judges who have jurisdiction to hear and determine appeals from any final order of the Maori Land Court.

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24 Maori Affairs Act, s 29. Maori Land Court Rules R 10.
25 See Appendix 4.
26 Maori Affairs Act, s 16. Formerly there was power to appoint commissioners, but this power was never exercised and consequently was repealed in 1982. There is now a Deputy Chief Judge appointed under s 17 Maori Affairs Act 1953.
27 See also ibid ss 59–60A.
28 Ibid s 452(5).
29 Ibid s 452(1).
30 Ibid s 37. It was first constituted under the Maori Land Court Act 1894.
31 Ibid s 42.
The Appellate Court or, with the sanction of the Chief Judge, the Maori Land Court, may state a case for the opinion of the High Court on any point of law. Any decision of the High Court is subject to appeal to the Court of Appeal. However, no order or other proceeding of either the Maori Land Court or the Appellate Court may be removed by certiorari or otherwise into the High Court. Reciprocally, the High Court may state a case for the opinion of the Maori Appellate Court on a "...question of fact or of Maori custom or usage relating to the interests of Maoris in any land or in any personal property...." Finally, there are rights of appeal direct to the Privy Council from the Maori Appellate Court. This was utilised recently in the boundary dispute between Ngai Tahu and the northern tribes of Te Waipounamu.

(b) Jurisdiction of the Court

The jurisdiction of the Court is principally in questions affecting Maori land—successions, trusts, alienations, surveys and so on. Central to a description of the Court's jurisdiction is a series of interlocking definitions:

- "Crown land" means any land other than Maori land which has not been alienated from the Crown for a subsisting estate in fee simple.
- "General land" means any land other than Maori land which has been alienated from the Crown for a subsisting estate in fee simple.
- "Maori land" means customary land or Maori freehold land.
- "Customary land" means land which, being vested in the Crown, is held by Maoris "...under the customs and usages of the Maori people."

32 Ibid, s 67.
33 Ibid, s 67(2).
34 Ibid, s 64.
36 The Court also has some jurisdiction over General land and Crown land. For example, ss 419, 420 dealing with the laying of roadways. However, such instances are not common.
37 This was formerly known as European land but was considered inappropriate because such land, as defined in s 2 of the Act, can also be owned by a Maori. Maori Purposes Act 1975, s 16.
38 "Maori" means a person of the Maori race of New Zealand, and includes any descendant of such a person. Maori Affairs Act 1953, s 2.
"Maori freehold land" means land other than [General land] which, or any undivided share in which, is owned by a Maori for a beneficial estate\textsuperscript{39} in fee simple, whether legal or equitable.

Leaving aside the definitions of Crown land and General land which are self-explanatory, the important definitions, for our purposes, are those relating to Customary land and Maori freehold land. Maori land is either Customary or Maori freehold land. Consequently it is important to appreciate the distinction between these two definitions.

Looking first at Customary land, to understand exactly what Customary land is, as defined in the Act, the history of the Land Court must be examined. When the Court was established in 1862 its sole function was to transmute customary title into freehold title, that is, to transform a system of communal ownership into one consisting of individual ownership. The establishment of the Court was essentially a response to frustrations experienced by European land purchasers attempting to buy land from a body of people who owned land communally. Put simply, its primary purpose was to facilitate the easier acquisition of Maori land. The Court still retains this jurisdiction\textsuperscript{40} although it remains mostly redundant because there is so little Customary Maori land remaining. Customary title was also formerly extinguished by voluntary cession, either by gift, sale or otherwise, of land to the Crown.\textsuperscript{41}

Under the Maori Affairs Act, Customary land, then, is land that has not been either voluntarily ceded to the Crown, or land for which no freehold order has been

\textsuperscript{39} "Beneficial estate" or "beneficial interest" does not include an estate or interest vested in any person by way of trust, mortgage or charge: Maori Affairs Act 1953, s 2.

\textsuperscript{40} Ibid, ss 161, 162.

\textsuperscript{41} Sir John Salmond, supra n 12. A significant portion of customary title in the South Island was extinguished in this manner. See Appendix 2.
issued. As stated earlier, there is very little Customary land remaining. Such land as
does remain consists of pa, marae, urupa, barren islands, rocky islets and the like.42 The words “...being vested in the Crown...” in the definition of Customary land refer
to the legal theory that the fee simple of the whole territory is vested in the Crown.43

Maori freehold land is land that was formerly Customary land but has been through the freehold process set out in the preceding paragraphs. It is the most significant area of Maori land law as almost all Maori land is held as Maori freehold land. At this stage I shall refrain from any further comment on this definition as it is more fully covered in Part 3 (a)(ii).

There is approximately 1,305,698 hectares of Maori land remaining in New Zealand. For comparison, this is out of a total area of 26,905,700 hectares. Therefore, approximately 4.8 percent of New Zealand is Maori land. Most Maori land is concentrated in the Aotea, Waiariki and Tairawhiti Districts.

<table>
<thead>
<tr>
<th>District</th>
<th>Hectares</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tokerau</td>
<td>142,321</td>
</tr>
<tr>
<td>Waikato-Maniopoto</td>
<td>136,852</td>
</tr>
<tr>
<td>Waiariki</td>
<td>296,277</td>
</tr>
<tr>
<td>Tairawhiti</td>
<td>245,134</td>
</tr>
<tr>
<td>Aotea</td>
<td>349,790</td>
</tr>
<tr>
<td>Takitimu</td>
<td>77,573</td>
</tr>
<tr>
<td>Te Waipounamu</td>
<td>57,748</td>
</tr>
</tbody>
</table>

(c) Maori Land Court Titles

Like the land transfer system, each district only maintains titles and records for the land in its district, although with project Maia, Maori land records are being

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42 Asher and Naulls, *Maori Land* (New Zealand Planning Council) 49. Statistics as to the quantum of customary land remaining appear to be unobtainable.

43 Smith, Native Customs Affecting Land (supra n 17) 9; Hinde, McMorland and Sim, *Introduction to Land Law* (2nd Ed, 1986) para 1.017.
transmitted to computer which will eventually allow national access to all records. At present, Maori land titles are kept in a series of title binders. Every block of Maori freehold land has a title which is held in a title binder by the district in which the land is situated.

A Maori land title consists of:

- Ownership list (Appendix 5).
- Schedule of ownership orders (Appendix 6). This lists succession orders made by the Court and therefore updates the ownership list.
- Memorial schedule (Appendix 7). This notes any memorials (trusts, encumbrances, easements) affecting the land.
- Survey plan or sketch plan (Appendix 8).
- Original title order (Appendix 9). This is the order which created the title, be it a freehold order, partition order, a grant under one of the various Landless Native Acts etc.

Although titles can become quite cumbersome, through multiple ownership and succession, searching a Maori land title is not, in itself, a complicated task. Problems arise only because alienations are, for one reason or another, excluded from the records.44

(d) Commencing Proceedings in the Court

Proceedings in the Maori Land Court are commenced by lodging the appropriate application form with the Registrar.45 Rule 14 of the Maori Land Court Rules 1958 stipulates that the application is to be lodged in the district in which the land is situated.46

45 Maori Land Court Rules R 13.
46 Although the judge has power to adjourn any matter to any other district subject to the consent of the Court in that district.
3. THE MAORI AFFAIRS ACT AND ALIENATION

This paper, then, is about alienation under the Maori Affairs Act 1953. However, even this requires a further breakdown. This is because alienation, in this context, means almost all conceivable dispositions that affect land. For example, transfers, licences, leases, profits, trusts, easements and so on. The Act provides a very comprehensive definition of "alienation" which means:

...With respect to Maori land, the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition, whether absolute or limited, and whether legal or equitable (other than a disposition by will) of or affecting customary land or the legal or equitable fee simple of freehold land or any share therein and includes a contract to make any such alienation and also includes the surrender or variation of a lease or licence and the variation of the terms of any other alienation as hereinbefore defined.

Given the breadth of this definition almost every part of the Act deals with an alienation in one form or another. However, my only concern is with methods by which an owner or owners of Maori freehold land can transfer that land or an undivided interest in it. By definition, then, this would exclude a lease or licence granted by a Board of Maori Affairs under Part XXIV, a lease executed by a receiver under s 33, a sale ordered by the Court upon an application by the owners for partition under s 175 and an alienation executed by trustees under a s 438 trust. Equally,

---

47 "Lease" is further defined in s 2 as including, inter alia, a tenancy at will. It also has a definition in Part XIX, s 234 of the Act. "'Lease' ... includes ... any licence, grant or other disposition conferring upon any person a right at law or in equity to the use or the occupation of the land for any purpose, or a right to enter thereon for the purpose of removing timber, minerals, flax, or any other valuable thing attached to or forming part thereof...." Note also, Maori Trustee v Tauranga Big Game Fishing Club (Inc) (1981) 1 DCR 231 where it was held that a renewal of a lease amounted to an alienation.

48 Miscellaneous provisions, outside the main methods of alienation, normally have their own special provisions which exempt it, or otherwise, from confirmation. Under section 341(5) such an alienation is exempt from confirmation by the Court.

49 s 33(4).

50 s 175(4).
this paper is not concerned with court imposed alienations. For instance, a roadway order under Part XXVII. Consequently, this paper is concerned only with transfers of Maori freehold land, or an undivided share by an owner or owners. For this purpose, the Act supplies four main methods. These are:

(a) Transfer by vesting order under s 213
(b) By an instrument of alienation executed by the Maori Trustee as a statutory agent of the owners following the confirmation by the Court of a resolution of assembled owners under Part XXIII of the Act.
(c) Instruments of alienation colloquially referred to by Maori Land Court staff as Part XIX alienations.
(d) An exchange of land under Part XVII

This thesis will look in detail at s 213 vesting orders and Part XIX alienations. These procedures were selected because they are two of the more common methods of alienation that practitioners will encounter.

(a) Methods of Alienation

When faced with a client who claims to be an owner of Maori land and would like to transfer that interest, there are two important preliminary matters that must first be satisfied. The practitioner should ensure that the person is indeed an owner in the block and that the block has the status of Maori freehold land. These are important prerequisites to your client's ability to transfer Maori freehold land under s 213 and Part XIX. To satisfy oneself of these, a search of the Maori Land Court records is required.

51 s 438(7).
52 As s 213 is contained in Part XIX, the reference to Part XIX alienations, as opposed to s 213 alienations, can be somewhat confusing. For clarification purposes, Part XIX alienations refer to those required to be either confirmed or noted under ss 224 or 233 respectively.
53 For the year ended 31/3/86 the Court made, in total, 11,099 orders, 1203 being s 213 orders. Apart from succession orders, this was double any other court order.
(i) Searching

Clients will usually either suspect that they have land interests in a certain area or they will maintain that they have an interest in a particular block. In either case, it is necessary to do a search of the Maori Land Court records to discover if the client is an owner of Maori land or, if they are not so, whether they are entitled to be an owner. This involves communicating with the respective court district requesting them to do a nominal index search.

All districts maintain a nominal index of owners which records the name of an owner and the block(s) he or she has interests in. It is important that when you request a search of your client's name you send in all possible nicknames and any other names that they might have been known by. For instance, John Hohepa may also have been known as Hone Hohepa or Smillie Hohepa—Hone being Maori for John, and he may have been nicknamed Smillie. The index may record these as three different people. Searching problems are accentuated because the index is filed by reference to first names, not surnames.

If a search fails to disclose any land interests, this does not necessarily mean that the person is not entitled to land. Several events may explain a client's exclusion from the ownership list. First, the client may not have formally succeeded and the interests may still be vested in deceased persons. If so, you will need to apply to the Court for succession. Secondly, a succession order may have inadvertently excluded your client. This is a common problem because Maori Land Court Orders are always made on the oral evidence of a family member. Section 54 of the Act relaxes the rules of evidence and allows the Court to act on almost any formal or informal evidence. Hence a

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54 See Appendix 10. This is a search schedule for Mereaira Te Ngaio. However, she was also known as Mereaira Omana, or Mary or Mereaira Wairau, or Ormond, or Mere Aira Ormond.
witness giving oral evidence may inadvertently exclude a person entitled to succeed. Practitioners can check to see if this has occurred by searching the names of other family members. When an application for succession is made, the Court is required to determine all the beneficiaries, not just the applicant. Therefore, if brothers and sisters of the client have interests, then it is likely, but not conclusive, that the client has been erroneously excluded. For convenience, one might prefer to ask for nominal searches of all family members at the time of the initial search.

Other clients will be adamant that they have an interest in a certain block. A nominal index search would confirm or contradict this. If the latter occurs it may be because, once again, the person has simply failed to apply for succession, or because they have been erroneously excluded.

This first step is necessary because it allows you to determine whether your client is an owner of Maori land or is merely entitled to become an owner. From here you can take the appropriate measures. That is, either continue with the transfer, if they are an owner, or lodge succession or s 452 applications if they are not.

Once the person is confirmed as an owner, then you will need to know details of the land and your client's interest in it. These can be discovered by requesting a search schedule or a copy of the title itself. It is also appropriate to conduct a land transfer search for the block. If the respective titles are different, then you can take the appropriate steps. Often the land transfer title is out of date because of unregistered Maori Land Court Orders. This would not preclude one using the methods in the Maori Affairs Act so long as the person is listed as an owner on the Maori land title.

55 Maori Affairs Act, s 135.
56 The deceased parent may have left a will, with the provisions of the will excluding your client from a share in the Maori land interests. In terms of the law, there are no restrictions placed on a Maori making a will as to whom he or she can leave property, subject to the Family Protection Act 1955, although Maori rarely exclude children. If there is no will then, depending on the date of death, generally all children receive equally. See Parts XI, XII of the Act.
57 At present there is no fee for this service, but I suspect that, as the Court is now under the auspices of the Justice Department, a fee will soon be imposed.
(ii) **Status**

As a prerequisite to the application of these methods, the land must be Maori freehold land. Without such, the Maori Land Court has no jurisdiction to effect transfers. As recorded earlier, Maori freehold land is defined as:

land other than [General land] which, or any undivided share in which, is owned by a Maori for a beneficial estate in fee simple, whether legal or equitable.

The central feature of the definition is that the land must be owned for a beneficial estate by a Maori. However, if a Maori has a beneficial interest in a block of land, it does not automatically indicate that the land is Maori freehold land. Another feature of the definition is that, by the words “...other than [General land]...”, the definition itself indicates that some land owned by Maori for a beneficial estate is General land. Therefore land owned for a beneficial estate by a Maori could be either Maori freehold land or General land.

When dealing with a particular block, one needs to contact the respective Maori Land Court to check its status. If it is Maori freehold land they will have a title for that block. A search schedule would reveal whether a block has ceased to be Maori freehold land but a nominal index might not. The Court will inform you of this if the land has ceased to be Maori freehold land.

(iii) **Transfer Procedures**

Once you have confirmed that the person is an owner and that the land concerned is Maori land, then you are in a position to determine the appropriate transfer procedure. However, before delving into each method individually, it is important to point to some of the Act's broad objectives. This will form an important yardstick for our assessment of both s 213 and Part XIX alienations.
Unfortunately, identifying broad objectives is no simple matter. The problem is that, given the political sensitivities of Maori land, the law has, since 1953, been caught in a political pendulum. The result is that the law lacks ideological continuity. This paper has already noted that the 1953 Act has been amended almost annually with significant amendments in 1967 and 1974. The reason for this is that Maori land has been, and still is, shunted back and forth like a political football and the law reflects this. The major political groups have simply made piecemeal amendments to the 1953 Act to suit their political policies regarding Maori land. Unfortunately the policy of the two major political parties, Labour and National, have not complemented but rather have been the antithesis of each other.

The National Party has consistently sought assimilation through eliminating the Maori Land Court and therefore the need for separate Maori affairs legislation. The National Party realise, however, that it would be politically unacceptable to attempt this by simply abolishing the Maori Land Court overnight. Instead, they have attempted to achieve this by reducing the amount of land with the status of Maori freehold. By reducing such, it is then possible to question the need for a Maori Land Court. To this end National have sought to encourage alienation, especially to Europeans, and omitted to recognise Maori custom. The recognition of Maori custom, with its emphasis on the family and retention of land by the family in trust for the future, is seen as an obstacle to alienation. The Labour Party, on the other hand, have more readily recognised Maori custom and therefore have also more readily recognised Maori desire to retain land as Maori freehold. However, despite this, there are still hints of assimilation in parts of Labour-promoted legislation, but often this is far more subtle and largely passes unnoticed.

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58 Status of land can alter upon the occurrence of an event such as a partition, transfer, amalgamation etc. In these cases there are special provisions which determine status upon the completion of the event. For example, in s 2(2)(f) Maori Affairs Act 1953 Maori freehold land, transferred otherwise than by a court order, is deemed to be General land, irrespective of its actual status. Therefore, on a transfer of Maori freehold land, from a Maori to a Maori by memorandum of transfer, the land is deemed General land. Why? The ostensible purpose is certainty, but by deeming the land Maori freehold land, the same purpose could be achieved.
The history of s 213 itself illustrates how Maori land has been politically shunted back and forth at the whim of the respective political groups. The original s 213 provided that "the Court may...make a vesting order for the transfer of any interest in any Maori freehold land...to any Maori or to the descendant of a Maori..."59 In 1967 the National-sponsored Maori Affairs Amendment Act substantially altered this by providing that "...the Court may...make a vesting order for the transfer to any person..." (emphasis added). Then in 1970 the Maori Purposes Act restricted dispositions back to Maori or certain relatives of the owner. The 1974 Maori Affairs Amendment Act likewise restricts alienees to Maori who have some blood-line connection with the land involved in the transfer. Unfortunately this example is not peculiar to s 213 alienations but common throughout the legislation.60

The difficulty is not so much in identifying specific policy of individual methods, but rather in formulating policy for the Act as a whole. The problem is that, because amendments have been piecemeal, they often do not blend in well with other parts of the Act which have not been amended. These continual amendments have disrupted the Act's policy continuity. Instead of having one consistent policy direction we now have a complex matrix of policies, not necessarily complementary. This itself can be used as a yardstick to measure the merit of the current law. That is, do s 213 and Part XIX complement each other? If not, are they in need of reform?

For this reason I resist from offering any broad objectives in this part. It will be more appropriate to offer comment regarding the policy of the individual methods in the respective parts of this paper.

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59 s 213 Maori Affairs Act as originally enacted.
60 For example, on the intestate succession of a Maori the substantive and procedural law differs, depending on the date of death of the deceased. Under s 76, as originally inserted, if the deceased died before 1 April 1968, that person's real and personal property devolves as if he or she were a European, except that their Maori freehold land interests devolve according to Maori custom. However, the Maori Affairs Amendment Act 1967 reversed this so that for those who die after that date, all their property, including Maori freehold land, devolves as if that person were a European. The law was again altered by the 1974 amendment to provide that, on an intestacy, undivided interests in common in Maori freehold land devolve according to a codified form of Maori custom set out in s 76A of the Maori Affairs Amendment Act 1967 (as inserted by the 1974 amendment).
4. TRANSFER BY VESTING ORDER SECTION 213

(a) Current Law

The Court is given jurisdiction to make a vesting order for "...the purpose of giving effect to any arrangement or agreement between the parties...for the transfer of the freehold interests, whether legal or equitable, of an owner in common of Maori freehold land...". But the order can only be made in favour of:

1. A Maori who is:
   (1) A beneficial owner of the land, or
   (2) A child or remoter issue of a beneficial owner of the land, or
   (3) A brother, sister, or parent of a beneficial owner of the land, or
   (4) A brother or sister of a parent of a beneficial owner of the land, or
   (5) A child or remoter issue of a parent of a beneficial owner of the land, or a child or remoter issue of a brother or sister of any such parent.

2. A Maori incorporation under Part IV of the Maori Affairs Amendment Act 1967

3. A trustee appointed under s 438 of this Act who is authorised by the trust order to acquire an interest in land.

4. A Maori Trust Board within the meaning of s 2 of the Maori Trust Boards Act 1955.

At the outset, then, there must be an "...arrangement or agreement..." which, under s 213(7), must be executed and attested in the manner provided for in s 222. Section 222 provides that the instrument must be in writing and executed by the Maori alienating. Further, the signature of a Maori to such an instrument must be attested by either a notary public, barrister, solicitor, justice of the peace and the like. The s 213 application form will satisfy these requirements.

61 "'Owner' includes any person holding...in a representative capacity whether as executor, administrator, or trustee and the Official Assignee and the Maori Trustee." s 213(1).

62 Hence, lands held severally, solely or jointly are excluded from s 213 In Re Matakaana 132D1 Tuikaki and Poiau 1980 16 Waikato Manioporto ACMB 94 per Chief Judge Smith.
It is important to note, however, that, by virtue of subsection (7), the executed instrument is deemed not "...to constitute an enforceable contract...". This allows the court to check whether the parties are still in agreement at the time of the hearing. Therefore the question becomes "...not whether consensus existed at the time that any agreement was entered into but whether consensus existed at the time of the hearing." The absence of a time limit for the filing of a s 213 application corroborates the view that Parliament intended consensus to be tested at the time of the hearing. On this basis the arrangement or agreement may be modified and a party to such may withdraw at any stage prior to the order being made.

The Court's jurisdiction under s 213 is limited, except in certain situations, to transfers where the value of the interest exceeds $50. Conversely, the section imposes no ceiling on the value of an interest that can be transferred, although the court may refuse to make the vesting order and require that the transfer be effected by a memorandum of transfer. It should also be remembered that by virtue of the Estate and Gift Duty Act 1968 an individual may incur gift duties.

63 "...[T]his Court recognises that Section 213(7) of the Maori Affairs Act 1953 precludes the Appellant from relying upon the agreement between the parties to establish a legal right to the land interests...." Mimity-Ruarei 10B2 Block and an appeal by Brook James Pulham 1989 Tokerau.


65 Where the transferee already possesses a freehold interest in the same land or the interest being transferred consists of the whole of the transferor's interest in the land. s 213(2)(a)(b).

66 The formula for calculating values is (Capital value x Personal Shares) + Total Shares.

67 Maori Affairs Act 1953, s 213(3). Compare the wording of s 213(3), as it presently exists, with its equivalent, prior to the 1974 Amendment, s 213(5)(a) and (b) (as substituted for the original s 213 by s 90 of the Maori Affairs Amendment Act 1967). The change probably resulted from counsel's arguments in Bialek to Economic Butchery Limited and subsequent criticism of the decision—see Wilson "The Maori Affairs Act 1953, ss 213 and 215: Vesting Order or Transfer?" [1970] NZLJ 157.

68 Estate and Gift Duties Act 1968.
When a duly completed application and its corresponding fee have been lodged the Court will proceed to make the vesting order if it is satisfied, inter alia, that the consideration is adequate and, if the consideration is in excess of $100, the purchase money payable has been paid to the Maori Trustee. If the Court is not so satisfied it can modify the terms of the alienation in favour of the Maori owners, but such a modification must be accepted by the alienee. If the alienee rejects the modification, the Court can refuse to confirm the transfer. The Court has a discretionary power to insist on a special government valuation, procured and paid for by the applicant but in practice the Court will accept an existing valuation. Conveyance duty is payable on transfers where the value of the land exceeds $200 except where the transfer is from a person holding in a representative capacity to those beneficially entitled.

The Act states that "...[n]o vesting order by way of gift shall be made where the value of the interest to be so vested in the opinion of the Court exceeds $100 unless and until the Court has first heard the evidence of the donor in person in support of the

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69 The Court will also satisfy itself that the instrument of alienation has been properly executed and attested; that the alienation would not result in an undue aggregation of farmland; that the value of millable timber, minerals or other valuable thing in or upon the land has been properly assessed in ascertaining the consideration payable; Maori Affairs Act 1953, s 227(1) as substituted for the original s 227 by s 100 of the Maori Affairs Amendment Act 1967 and variously amended.

70 Although s 213(5)(a) requires the purchase money to be paid to the Maori Trustee, it also requires the payment to be made pursuant to s 227B which in turn requires the payment to be made pursuant to s 231. Section 231 states that "...all proceeds derived from any alienation of Maori land...shall be paid to the Maori Trustee..." but s 231(2)(a) exempts alienations effected by a vesting order under s 213. Despite this contradiction, the Court insists on the purchase money for a s 213, where it exceeds $100, to be paid to the Maori Trustee. Note that in s 231(2)(a) the words in brackets are now obsolete.

71 Maori Affairs Act 1953, s 229.
72 Ibid, s 228.
73 See n 121.
74 Maori Affairs Act 1953, s 214(3).
75 Ibid, s 214(6).
application...". However, the Court's policy is to insist on transferors being present in all cases. An affidavit is an unacceptable substitute. The justification for this policy is epitomised in an extract from South Island Minute Book 68 Folio 335. The extract reads:

...[AR]...is my nephew. His father came to me and we went down to Maori Affairs. There was something about giving shares to...[AR]...I'm not sure.

As one would expect, the application was immediately adjourned. The requirement that transferors be present in all cases is often vigorously contested by transferors who foresee the inconvenience they will suffer. However, the Court is well within the limits set by the Act. Although s 213(6) imposes a mandatory requirement in relation to gifts in excess of $100 it does not prohibit the imposition of a similar requirement in all other cases. That is, the section does not say that in every other case the donor or the transferor, as the case may be, does not have to appear. It merely leaves it open. Despite any inconvenience that may result, it is undoubtedly a wise approach which operates as a safeguard for the unwary owner, as well as protecting the Court itself from future claims by the transferor and family.

(b) Discussion

The introduction of s 213 was intended to provide "...a simple and inexpensive mechanism for the transfer or rearrangement of individual interests." Through the provision of a convenient and inexpensive procedure for the transfer of undivided interests an attempt is made to encourage amalgamation. That is, owners can buy

76 Ibid, s 213(6).
77 Given this policy, Note 2 in Takitimu's s 213, one to many, application could be somewhat misleading. The note reads: "Where the transfer is by way of gift and the value exceeds $100 the Court must hear the evidence of the donor in person." It gives the impression that they do not have to appear in all other cases.
interests from other co-owners with a view to acquiring sufficient interests to warrant partition. Further, an owner might possibly buy out all the other owners in the block. The result is that the owner is now better placed to use the land. Equally, families could more conveniently enter into family arrangements. For example, three children succeed (Hone, Mere and Paore), on an intestacy, to their deceased father's interests (One Te Uki) in Maori freehold land. The father has interests in three different blocks of Maori freehold land (Rotopounamu A, Akaroa 4B and Otakou 6).

<table>
<thead>
<tr>
<th>Deceased, One Te Uki (d. 2/4/81)</th>
<th>Shareholding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maori Freehold Interests</td>
<td></td>
</tr>
<tr>
<td>(1) Rotopounamu A</td>
<td>0.1568</td>
</tr>
<tr>
<td>(2) Akaroa 4B</td>
<td>0.256</td>
</tr>
<tr>
<td>(3) Otakou 6</td>
<td>0.0142</td>
</tr>
</tbody>
</table>

Therefore each child will receive a one-third share in each block. So in Rotopounamu A each child receives 0.0522 shares while in Akaroa 4B and Otakou 6 each child receives 0.085 and 0.00473 shares respectively. Other things being equal, however, each child might be better off taking their father's interest in one block each instead of an equal share in each block. So, for example, Hone taking 0.1568 shares in Rotopounamu A, Mere taking 0.256 shares in Akaroa 4B and Paore taking 0.0142 shares in Otakou 6. If succession orders have already granted them a one third share in each block then section 213 is there to effect such a rearrangement. The purpose of the rearrangement is to facilitate use through having larger interests.

This priority on land use is also supported by the presence of subsections (b), (c) and (d) which allows transfers to Maori incorporations, s 438 trustees and Maori Trust Boards respectively. These three entities are amongst the principal methods the Act supplies to combat land use problems created by fragmentation.

With this aim in mind s 213 then attempts to offer a cheap and efficient method of transferring undivided interests.
For the most part s 213 succeeds in providing such. However, this is not the case in every arrangement. In cases which involve either several transferors, several transferees, several blocks of land, or any combination of these, the section's prime aim is frustrated by the basic policy of having each application contain one transferor, one transferee and one block of land. Further, and this is the main problem, the policy then requires a $20 fee for every application lodged. So, for example, a gift involving a transfer from owner A to his or her five children in Tarawera Block would, according to this policy, require the applicant to lodge five applications and a corresponding fee of $100. If the transfer were to include A's interests in Rotopounamu (as well as Tarawera), it would require the lodging of ten applications and a $200 fee. Ironically, because of the cumbersome collection of paper work, the procedure, as well as being a handicap to the general public, also results in inconvenience to the Court's alienation officer and to the judge. So, the very reason for the introduction of s 213, namely, to encourage arrangements, is not being fully realised because of the practice policy of the Court.

This basic policy is not, however, entirely consistent with the Maori Land Court Rules 1958. Rules 93(1) and 132 provide respectively:

...[a]n application for a vesting order under s 213 of the Act shall be in form 157.79 ...no application shall be received unless the prescribed fee has been paid.

The prescribed fee is set out in the Second Schedule to the Rules. This provides that:

...[f]or each of the following applications the fee shall be $20.... Vesting order for transfer of freehold interests, per block...s 213 [emphasis added].

79 Appendix 11.
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Therefore, according to the Maori Land Court Rules, all s 213 applications must use Form 157, with the appropriate fee being a function of the number of blocks involved in the application. The number of transferors or the number of transferees should not affect the fee payable. The difficulty, however, is with Form 157 which is not designed for multiple transfers.

Fortunately, the various Maori Land Court Districts have developed their own formulae to help alleviate these difficulties. Takitimu, for instance, has modified their application forms to cater for, inter alia, many to one and one to many transfers. That is, many transferors to one transferee in one block and one transferor to many transferees in one block and also many to one in many blocks, the fee being based on the number of blocks. Waikato-Maniapoto and Waiariki have adopted a similar approach, whereas Tokerau's fee is a function of the number of transferors. A more liberal approach is adopted by the Aotea Court District which charges a flat $20, irrespective of the number of transferors, transferees or blocks. The Te Waipounamu District will charge only one fee if there is more than one block, so long as the parties are the same, otherwise the basic policy prevails. Much of Te Waipounamu's problem—and this applies to Tairawhiti—revolves around the lack of appropriate application forms. Differences of opinion between the respective court registrars and judges usually results in a difference in procedure amongst the various districts.

As has been shown, the appropriate procedure should base the fee on the number of blocks involved, as Takitimu, Waikato-Maniapoto and Waiariki have done. However all districts are handicapped by Rule 93(1) and its requirement that all applications for a s 213 vesting order be in Form 157, although the Court is granted discretionary powers under Rule 5, where the procedure does not comply with the rules, and Rule 7, which allows modifications of prescribed forms. Nonetheless it should not be necessary to have to rely on these provisions. Both the rules and the application forms are in need of review to allow s 213 to efficiently fulfil its objectives.

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80 Hence, persons applying to the Maori Land Court for a s 213 vesting order, or any other application, should check with the relevant court district, as the application forms and/or the documentary requirements may differ between districts.
Despite the genuine efforts of the respective court districts to assist the public, with the exception of Aotea, one could still envisage various permutations involving the applicant in relatively unnecessary expense and inconvenience. The obvious response to this criticism is that in today's economic climate of user pays and corporatisation, $20, be it per transferor or per block, is a comparatively reasonable fee given the amount of work involved in preparing the application for the Court sitting and preparing the orders after the sitting. Equally one should bear in mind the exorbitant lawyers' fees that would be payable for a memorandum of transfer effected under Part XIX of the Act. On the basis of these, s 213 does provide a cheap transfer procedure. Those are certainly very valid responses but when one considers that a lot of s 213 transfers involve interests whose value would be less than $20 then there is merit in seeking to minimise the costs of implementing s 213. My submission is that there are unnecessary expenses that could be eliminated by the production of a universal application form that caters for many to many transfers.

The apparent intention of s 213 is to provide a cheap and expedient procedure for transferring undivided Maori freehold interests. Unfortunately this objective is not, as yet, being fully realised. But this could be easily remedied by a universal application form which caters for multiple transfers. This would reduce the monetary costs to applicants while reducing administrative costs for the Court. Why the various court districts persevere with the current forms is incomprehensible. Certainly relative to other methods of transfer s 213 does provide a cheap mechanism for transfer. But its implementation could be improved to enhance its effect and therefore more successfully achieve its desired aim.

Another important aspect of s 213 is the restriction on alienees. At present, only those Maori who have some blood connection with the land can receive freehold interests in common. This restriction is an acknowledgment of Maori custom which prohibited strangers or those with no ancestral link to the land, be they Maori or
Pakeha, from succeeding to the land. Therefore the restriction ensures that these strangers cannot buy a block of land by individually convincing owners to sell their undivided interests. The limit on alienees, then, is an attempt to encourage Maori to retain land within the kin group. Retention of Maori land as Maori land must always form an objective of Maori land legislation, but it is also important to recognise that traditional customs specifically sought to retain land within the kin group. Section 213 is the only section in the Act which seeks to preserve this custom.

In an ancillary way the restriction also helps to alleviate the degree of fragmentation. Only those listed in s 213 can receive interests, hence more distant family members cannot receive interests under s 213. In this way it assists with fragmentation problems. Further, by encouraging amalgamation, s 213 again helps to alleviate fragmentation. However, given the nature of Maori custom which is primarily concerned with holding land as an inheritance for our children and remoter issue, fragmentation, through succession, will always be present. Hence, in a traditional sense, fragmentation is less of a concern. The priority should be toward promoting use of the land.

In summary, then, s 213's primary aim is to encourage co-owners to rearrange shareholdings with a view to facilitating greater use of the land. As we have seen there is scope for improvement but, for the most part, a cheap mechanism is provided for this purpose. It is important for utilisation of Maori land to form an integral part of Maori land policy. Such land can provide an important resource base that Maoridom needs in today's economic climate. Certainly this is largely a European approach to land value, but one should bear in mind that even under traditional Maori custom, rights to land were based partly on appropriation by labour or occupation. Traditionally, Maori viewed land as the provider of sustenance. Hence, promoting use of Maori land is also consistent with Maori ideology. Successful use of the land will more than likely also ensure retention of that land.

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81 Smith, Native Custom Affecting Land, supra n 15, 54.
In itself s 213 successfully achieves a blend of both European and Maori tenets. On the one hand, it promotes land use but, on the other hand, it aims to retain undivided interests within the kin group. Although some criticism can be made of the practical implementation of s 213, this should not detract from its conceptual merit. It is not easy to balance the interests of two different cultures, but s 213 successfully achieves this.

(c) Proposed Reform

In 1983 the New Zealand Maori Council issued a discussion paper titled "Kaupapa Te Wahanga Tuatahi". As stated in the foreword, it establishes a "...set of principles that will serve as a guide for laws determining our use of our land in accordance with our customs and traditions."82 In terms of land, the paper insists that "...the law must provide for the retention of Maori land to the fullest extent possible."83

Land is viewed as important to Maoridom, both culturally and economically. Culturally it provides Maoridom with a "sense of identity, belonging and continuity. It is proof of our continued existence not only as a people, but as tangatawhenua of this country. Maori land represents turangawaewae."84 Equally, land is an important resource that can support our people. It is capable of providing employment, dwelling sites and income. Hence, to realise these, laws must "...emphasise and consolidate Maori land ownership and use by the whanau or kin group."85

The kaupapa places a high priority on retention. Maori land owners should acknowledge, consistent with Maori custom, that they are merely custodians of land.

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83 Ibid 10.
84 Idem.
85 Idem.
On this basis they must be firmly discouraged from selling land. If they are going to sell it, it should be to those entitled by custom. Notwithstanding these, the kaupapa also acknowledges that "...the European ideals of individual ownership and the rights of the individual are firmly held by some of our people and the law should protect these rights." Therefore, future law should primarily encourage retention and use by owners. But, at the same time, the law must recognise individual rights such as the right to sell.

Most of the proposals set out in the kaupapa were accepted, in principle, by the Government. As a result, in 1983, a Maori Affairs Bill was subsequently introduced. That Bill was not passed but most of its provisions were brought forward into the Maori Affairs Bill 1987. The explanatory note to this Bill states "...the aim is to provide machinery for greater freedom for owners to use their land, while at the same time reaffirming the validity and legality of the traditional Maori view that land is held in trust for the collective benefit of the owners and their descendants rather than as a personal material possession." Further, the Bill recognises that the law should primarily provide for ownership and use by the whanau. Alienation provisions should therefore emphasise ownership by the kin group. These are not new ideas but both the Kaupapa and the Bill go further to implementing these objectives than any previous legislation. More importantly, for once, this policy is consistent throughout. As we shall see after the analysis of Part XIX, although s 213 itself attempts to encourage ownership and use by the kin group, Part XIX frustrates this. These continuity problems would be remedied by this Bill. This alone is sufficient to recommend this Bill.

In terms of the scope of this paper, the equivalent alienation provisions are contained in Part IX. Clause 157 states that "...no person has the capacity to

86 Ibid p 11.
87 Maori Affairs Bill 1987, explanatory note (ii).
88 Ibid XXV.
alienate any interest in Maori freehold land otherwise than in accordance with this [Bill]." The succeeding two clauses then set out capacity to alienate. Clause 158 dealing with alienation of a whole block and clause 159 dealing with alienation of undivided interests.

In respect of this part of this paper, namely the transfer of undivided interests under s 213, the Bills equivalent is cl 159. Subclause (3) states that "...no owner of an undivided interest in any Maori freehold land has the capacity to alienate that interest separately..." except as provided by subclauses (1) and (2). Subclause (2) allows an owner of an undivided interest to grant a mortgage to a State loan department. However, more importantly, under subclause (1), such an owner may alienate that

89 The definition in clause 4 is simply a replica of the current section 2 definition of alienation whereas clause 155 introduces an entirely new definition. Not only do they differ in substance, and therefore in the tests that are applicable, but also in their respective jurisdiction. The clause 4 definition applies only to Maori land while the definition in clause 155 extends to "any land..." Unfortunately the two definitions will create confusion when classifying a disposition of Maori land. Would the Court use clause 4 or clause 155? The obvious response to this question is to say that the Court would use clause 155 in Part IX while clause 4 would otherwise prevail. Unfortunately this does not resolve the difficulty. Let me illustrate this by assuming a hypothetical case involving a licence, of Maori freehold land, which does not affect the fee simple. Hence, although this would be an alienation under clause 155 it would not be so under clause 4. Assume further that the joint tenants of the land have agreed to grant this licence over their land. In this situation, the alienors would have the requisite capacity under clause 158 and would therefore effect the alienation by an instrument of alienation confirmed by the Court in accordance with Part X of the Bill. So far there are no problems. Part X of the Bill deals, inter alia, with the confirmation of an instrument of alienation of Maori freehold land. Bearing in mind that the definition in clause 155 applies only in Part IX, problems begin to appear because the appropriate definition clause for Part X is clause 4. However, on these facts there is no alienation, according to the test in clause 4, for the purposes of Part X.

Given these criticisms, I would submit that one of these clauses must be deleted. The current s 2 definition is ripe with interpretation problems. See Re Brown [1916] NZLR 580; Nuku v Phillips [1920] NZLR 446; The Proprietors of Hauhungaroa 2C Block v Attorney-General [1973] NZLR 389; Take Kerekere v Cameron (No 2) [1920] NZLR 416; Rowallan VIII, Board of Maori Affairs v W J Keneally and Sons [1985] 3 SIACMB 88. On that basis, I would recommend that clause 4 be deleted. I would further recommend that the definition in clause 155 be transferred to clause 4. This would also require the deletion of the opening sentence of clause 155, namely the words: [i]n this Part of this Act, unless the context otherwise requires..." For ease of reference, I would suggest that this is a more satisfactory option to retaining clause 155 in its present position.

90 "Block" in relation to any Maori freehold land means the whole parcel of land comprised and described in an instrument of title. Clause 155(2).
interest to any person who belongs to one or more of the preferred classes of alienee. Clause 155(2) sets out the preferred classes of alienee. These are:

(a) Children and remoter issue of the alienating owner.
(b) Whanaunga of the alienating owner who are associated in accordance with tikanga Maori with the land.
(c) Other owners of the land who are members of the hapu associated with the land.
(d) Trustees of persons referred to in any of paragraphs (a) to (c) of this subsection.
(e) Descendants of any former owner who was a member of the hapu associated with the land.

Therefore, under this Bill, an owner could alienate his or her undivided interest only to either a State loan department, or to a person who is a preferred alienee. The only other way would be by alienating the whole block under clause 158.

Subject to one exception, clause 159 introduces a special class of alienee which is defined in terms of the relationship of the persons to the alienating owner and to their membership of the particular hapu associated with the land. This restriction is similar to the s 213 limitation, except that there is more of an emphasis on membership to the particular hapu associated with the land.

In most cases the beneficial owners will also be a member of the hapu linked with the land, so that change will be of little effect, although it will have ramifications for those who transferred into the block when s 213 was less restrictive.

The Bill also appears to be far more embracing than the current law. For example, the Bill provides for all alienations to be to this restricted class. Therefore, a mortgage of an undivided interest, unless to a State Loan Department, could only be to a preferred alienee. By way of contrast, s 213 of the Act has jurisdiction only for the transfer of freehold interests. Currently a mortgage of an undivided interest would
need only to be noted in the Maori Land Court records and, therefore, is not subject to any restriction. The Bill's approach is consistent with the kaupapa and illustrates the commitment to retention by the kin group. Equally, it illustrates the Bill's policy continuity.

Clause 161 provides that the alienation of an undivided interest would be given effect to by a vesting order under Part X.\textsuperscript{91} For our purposes, clause 174 is the relevant clause. This follows largely along the lines of s 213. Clause 174 gives the Court jurisdiction to "...make a vesting order for the transfer of any Maori freehold land or any undivided interest in any such land...."\textsuperscript{92} Subclause 174(2) sets out who can make an application for such a vesting order. Of more interest is clause 174(3) which incorporates the confirmation requirements under clauses 153–165 and clause 169. These requirements are essentially similar to the current conditions of confirmation. However, clause 165 is an innovation. It states that:

...the Court may decline an application for confirmation if the Court is satisfied that the alienation would not be consistent with the objects of this Act, having regard to the following matters:

(a) In all cases:
   (i) The historical importance of the land to the alienating owners or any of them, and their historical connection with it.
   (ii) The nature of the land, including its location and zoning, and its suitability for utilisation by the owners or any of them.
   (iii) The question of whether or not the owners have had an adequate opportunity to give the proposed alienation proper consideration.
   (iv) The question of whether or not the owners have demonstrated a proper assessment and understanding of the present value and the future potential value of the land.

\textsuperscript{91} Under Part IX of the Bill the owner of an undivided interest could alienate that interest only by a vesting order under Part X. Clauses 174 and 174 are the clauses in Part X which provide for vesting orders. But clause 174 deals only with transfer and clause 175 deals only with a transfer from a person acting in a representative capacity to one entitled. How is a mortgage of an undivided interest to be effected? Part X does not take account of the fact that all alienations, not just transfers, are supposedly to be given effect by a vesting order.

\textsuperscript{92} Ibid, cl 174(1).
(v) The application by the owners of the principles of ahi ka.

(b) In the case of an alienation that is opposed by some of the owners
(i) The respective interests of the supporting and opposing owners
(ii) The size of the aggregate share of the land owned by the opposing owners compared to the size of the aggregate share owned by the supporting owners
(iii) The number of opposing owners compared to the number of supporting owners.

The full effect of this provision will depend on how the judges implement it, but the Court would be given very wide discretionary powers. This provision could be used to block almost any alienation. At present, Maori Land Court judges have a lot of latitude and this provision could prove to be a powerful tool.

Subclause 174(4) is similar to s 213(7). It maintains that any arrangement, though written and executed, is not deemed to constitute an enforceable contract. This allows the Court to check if any previous arrangement or agreement still exists at the date of the hearing. Although at the time of the hearing one of the parties to the transfer has died, the Court may still make the order if it is satisfied that proper agreement had been reached before the death of that party.93 Subclause 174(5) is similar to s 213(5) except that under clause 174(5) the Court cannot make a vesting order until the money has been paid to the Maori Trustee.94 At present, under s 213(5) this was necessary only when the consideration exceeded $100. When small amounts are involved, as they usually are for the transfer of undivided interests, one may question the need for this extension. In such cases the Maori Trustee's role is often somewhat perfunctory and therefore unnecessary. In this respect also, clause 170(2)(a) becomes relevant. Clause 170(1) states that "...all proceeds derived from the alienation of any interest in Maori land shall be paid to the Maori Trustee...".

93 Ibid, cl 174(7).
94 "...or to a court-appointed agent or trustees appointed under this ... [Bill] ...".
However, clause 170(2)(a) states that "...[n]othing in this section shall apply to the proceeds of any alienation that—(a) is effected by a vesting order under this part of this ...[Bill]...". So, on the one hand, clause 174(5) requires payment of the consideration for the transfer to the Maori Trustee while, on the other hand, clause 170(2)(a) exempts vesting orders from this requirement. This is a contradiction which exists with the law as presently framed and is not resolved by this Bill.

In contrast to clause 174(5), clauses 174(6) and (7) relax the law. It would require only donors who gift land whose value exceeds $100 to attend Court in person. The law currently requires such where the value of the land exceeds $100, although the Court's policy is to require all donors to attend the hearing irrespective of the value of the land. For the reasons outlined in the discussion of this point I suggested that this was a wise approach. Certainly people involved are inconvenienced but it acts as a sensible safeguard. Such a policy would be consistent with the kaupapa of this Bill. I would submit that a more appropriate provision would be a discretionary power along the lines of the current court policy. The Court is competent enough to exercise a general discretion as it presently does.

Subclause 174(8) states that "...[a] person entitled to a beneficial interest in the land, or who will be entitled to such an interest if the order is made..." is entitled to be heard on the application, whether they are a party to the arrangement or not. Presumably this also extends to those who have a beneficial interest in the land.

The Bill, then, aims to ensure that undivided interests can be alienated to the preferred alienees only through court vesting orders, such alienations not being limited to transfers. There is a clear commitment to retention of undivided interests to the kin group. In contrast, the Maori Affairs legislation is only partially committed to this. The Bill, however, ensures that all alienations, not just transfers, are restricted to the kin associated with the land. As we shall see, to reinforce this, the other methods of the Bill complement clause 158.
The other side of the current law is that through the use of vesting orders, the Act attempts to encourage amalgamation of undivided interests and thereby promote use of the land. The Bill does not appear to favour this approach. Amalgamation tends to involve loss of land interests by those customarily entitled. This is contrary to the kaupapa. Land use is quite secondary to retention by the kin. One gets the impression that the Bill sees the solution to land use through more traditional methods such as whanau trusts, or putea trusts. Clause 174 is not limited to the transfer of undivided interests but extends to the transfer of whole blocks. With this in mind, it is difficult to conclude whether clause 174 vesting orders are meant to serve the same function as s 213 vesting orders. Given the extension in clause 174, and the objectives of both the kaupapa and the Bill, it seems that clause 174 is not aimed at promoting amalgamation of undivided interests to the extent that s 213 does. No doubt the vesting order process would be cheaper than having an instrument of transfer confirmed under Part X of the Bill, but this would merely be a reflection of the type of interests that can be alienated under clause 174.

Notwithstanding some technical matters, the essence of this Bill is worthy of recommendation. Its strength is its policy basis, although there are other favourable points. For one, it is a lot easier to refer to different parts, unlike the current law. Its language is also a lot simpler and more straightforward. These are two features of the current law that cause considerable problems for practitioners. The Bill, then, provides some of the answers to current criticisms of the law.

95 Cl 230-239. This aspect of the Bill was largely inspired by the submissions of Judge Durie (as he then was) to the Royal Commission on the Maori Land Court (1978). Durie argued strongly for the recommunitisation of Maori land ownership, with such trusts as the answer to usage of the land.
5. PART XIX

(a) Current Law

As indicated earlier, “where land is owned by 10 or fewer, the transfer of any substantial individual interest is more appropriately to be completed by a memorandum of transfer to be confirmed by the Court.”96 That is a part XIX alienation.

Essentially a Part XIX alienation is simply a confirmation under s 225 by the Maori Land Court of an instrument, usually an agreement for sale and purchase and/or a memorandum of transfer, of alienation.97 However, only alienations by way of transfer98 by a Maori require confirmation.99 In cases where the alienation is not by way of transfer, such as a lease, licence, profit and the like or is a transfer executed by a European the instrument merely requires endorsement by the Registrar.100

Unless and until it is endorsed, an instrument has no force or effect. On the other hand the act of noting does not bestow ‘legal efficacy’101 on an instrument. In Pihema v Pehikino Bisson J stated that:102

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96 In Re Tikouma 3B2, supra.
97 Section 222 of the Act (as substituted) provides for the method of execution of an instrument of alienation of Maori land of transfer by a Maori. Section 2 of the Contracts Enforcement Act 1956 applies to alienations not by way of transfer or the transfers effected by Europeans. See s 2(3)(b) of the Contracts Enforcement Act 1956.
98 “…‘alienation by way of transfer’ includes any agreement to alienate by way of transfer.” Section 224(3) Maori Affairs Act 1953 (as added).
99 Maori Affairs Act 1953, s 224(1). Section 224 begins: “Except as may be otherwise expressly provided in this or any other Act...”. There are various exceptions: (i) instruments of alienation executed by the Maori Trustee as trustee or as agent for the owners or in any other capacity except as Part X trustee; (ii) Alienations under s 39 of the Maori Trustee Act 1953; (iii) Instruments of alienation executed by trustees under a s 439 trust; (iv) Mortgage or charge of Maori land in favour of a Maori Trust Board under s 38 of the Maori Trust Board Act 1955. NB: Under the Maori Affairs Act mortgages need not be confirmed; (v) Settlement of Maori land as a joint family home under s 25 of the Joint Family Homes Act 1964.
100 Maori Affairs Act 1953, s 233.
101 To use the words of counsel in Pihema v Pehikino [1984] 1 NZLR 625.
102 Ibid, 628 and 629.
Unless and until so endorsed, no lease has any force or effect—but when endorsed the force and effect of the lease must be determined in accordance with the law.... Just as this lease, after due noting and endorsement, may be challenged as being in breach of trust so may a lease when noted and endorsed be challenged as unenforceable, void or voidable for any number of reasons....

This is undoubtedly correct as an otherwise invalid instrument (say, for example, an agreement for sale and purchase or a memorandum of transfer executed by the trustees of a s 438 trust where either the trust order prohibits the trustees from selling the land or, if the trust order contains a power of sale but the instrument is incorrectly executed) would not be made legally valid simply because the instrument is noted in the Maori Land Court records and has a memorial endorsed thereon. In Pi hema v Pehikina, supra, the registrar refused to endorse a lease produced to him because he knew it contravened a s 438 trust order. Commenting on the scope of the Registrar's duty under s 233, Bisson J concluded that:103

...the Registrar...must be satisfied that the instrument produced to him is, on the face of it, an “alienation” of Maori freehold land which is not required under Part XIX of the Act to be confirmed by the Court. But, being so satisfied, it is then his duty under s 233(1) to note the instrument in the record.... The Act has imposed no duty on the Registrar beyond the words of the section.... To require the Registrar to do more would create the difficulty of where to draw the line.

The intention of the legislature, in s 233(1), is to provide a place of record for those alienations that do not go before the Court for confirmation and to ensure that such a record is available and complete.104

103 Ibid 629.
104 Ibid 629.
An additional copy of the instrument must also be produced to the Registrar, under s 233, for transmission by the Registrar to the Maori Trustee for the recovery of the proceeds of alienation.\footnote{Maori Affairs Act 1953, s 233(2).} Generally speaking, all proceeds derived from any alienation of Maori land must be paid to the Maori Trustee.\footnote{Ibid, s 231. Note the exceptions contained therein.} The Maori Trustee's role is to collect in the purchase money, clear the title according to the order of confirmation—for example, pay outstanding rates—and to distribute the money to the persons entitled.\footnote{Ibid, s 231(3).} For these services the Maori Trustee charges, in accordance with s 48 of the Maori Trustee Act 1953, 7.5% commission. In some instances this can be a little excessive—for example, where both the transferor and the transferee are present in Court and are willing and able to complete the transaction.

Alienations that require confirmation must have an application for confirmation made within three months of execution\footnote{Ibid, s 225(1). Unless the land is situate in the Chatham Islands where the time limit is extended by 1 month.} of the instrument, although the Court has a discretion to accept applications out of time.\footnote{Maori Affairs Act 1953, s 225. Note s 225(3) which makes provision for instruments executed by different alienors at different times.} Whether or not the Court exercises its discretion is a matter of fact with the onus upon the proposed alienee to justify the exercise of the discretion. It appears that an important, though not determinative, consideration is the support, or otherwise, of the alienor.\footnote{In Re Matakana IB2D1 Tukaki and Porau [1980] 16 Waikato-Maniopoto ACMB 94 per Judge Durie 3; per Deputy Chief Judge Smith 3; per Judge Russell 3.} Other relevant factors are the length of the delay, the cause of the delay, the detriment, if any, caused by the delay, whether finance is still available and, if paid, paid to the Maori Trustee and whether the instrument is, in all other respects, in accordance with the law. In Re Matakana IB2D1 Tukaki and Porau,\footnote{Idem.} the Maori Appellate Court dismissed an appeal
from the lower court's refusal to confirm an application made in 1979 where the transfer was executed in 1972. Here the purchaser had acted in good faith throughout and, as well as paying the purchase price to the vendor, had paid a further sum to induce the vendor to sign a second memorandum of transfer, after the first had been misplaced. Unfortunately, the vendor died before the hearing but there was evidence to show that, prior to death, the vendor had been a willing seller. The purchaser's solicitors were lax in bringing the application for confirmation, probably anticipating a status declaration under Part 1 of the Maori Affairs Amendment Act 1967. Although mindful of the need for alienees to receive independent legal advice or the advice of the Court—neither of which occurred here—I would submit that the decision is unsatisfactory. Section 227 and the concept of alienation are, per se, safeguards to protect Maori owners from bad bargains, not avenues to allow them to escape liability from bargains made in good faith and for value. Had the Court utilised its powers under s 229 of the Act, and modified the terms of the alienation by increasing the consideration to a price equal to the full value of the land at the date of the hearing then, so long as the Court satisfied itself of the requirements of s 227, a fair result would have been reached. The Court should have offered to confirm subject to the consideration being increased and being paid to the Maori Trustee.

Assuming an application for confirmation is made within the time limit, or if made out of time the Court has exercised its discretion, then the Court must consider the

112 Rowe v Cleary unreported, High Court, Palmerston North, 26 November 1979, A 41/78 Quilliam J, illustrates that a failure to seek confirmation may lead to a claim for damages against a solicitor for negligence.

113 Part 1 of the 1967 amendment provided for the change of status of Maori land into General land, of “...Maori freehold land beneficially owned by not more than four persons for a legal and beneficial estate in fee simple”. Maori Affairs Amendment Act 1967, s 3. The status declaration provisions contained in Part 1 were repealed by the Maori Purposes Act (No 2) 1973, s 13(3). The Maori Affairs Amendment Act 1974, s 68, attempts to mitigate the effects of Part 1 by re-establishing as Maori land those parcels affected by Part 1. But the Court has jurisdiction(i) only if an application is made by the owners; and (ii) only if the land is owned by the person(s) who owned it at the date of the issue.

114 Deputy Chief Judge Smith did hint at this course of action.

115 The sums previously paid to the vendor would need to be recovered in another action.
matters outlined in s 227 before confirming an instrument. Section 227 sets out five matters:

(a) That the instrument of alienation has been executed and attested in the manner required by the Act; and

(b) That the alienation is not in breach of any trust to which the land is subject;\(^{116}\)

(c) That the alienation, if completed, would not result in an undue aggregation of farm land; here the Court has recourse to the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 to determine whether the land is farmland and, if so, must consider the matters outlined in s 31 of that Act. Only the Crown and the proposed alienee may be heard on the issue of undue aggregation.\(^{117}\)

(d) That the value of any millable timber, minerals, or other valuable thing in or upon the land has been properly taken into account in assessing the consideration payable; and

(e) That having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration, if any, is adequate.

Practitioners should be warned that it is well settled in both law and practice that, upon application for confirmation, adequacy is determined not at the date of execution, nor even at the time of the application, but at the date of hearing.\(^{118}\) A failure to lodge, or undue delay in lodging, applications for confirmation can result in unnecessary cost, by way of increase in purchase price, to the proposed alienee. A vivid illustration of

\(^{116}\) Toki v Maori Land Court and Ors unreported, Auckland, 29 July 1981, A 293/81 Holland J. At the confirmation hearing the objector maintained, inter alia, that past vesting orders were wrong and that the land was held by certain predecessors in title not for themselves but in trust to prevent alienation. The Court held that, be that as it may, if the trust is not apparent on the face of the orders, the Court cannot consider that there might be a trust.

\(^{117}\) In Re Tuangare, Swinton v Barker (1961) 4 Rotorua ACMB 377 (a former lessee); Toki v Maori Land Court and ors (1981), supra n 35 (a neighbour); In Mangawhero 2 Beattie v Hayes (1969) 12 Whanganui ACMB 312 (former lessee).

\(^{118}\) Re Matakania, supra, per Judge Durie 5; per Deputy Chief Judge Smith 3.
the problems and extra costs that can result from delays, is *Re Pakikaikutu 2B1.*\(^{119}\)

In 1960 W instructed his solicitor to arrange for the sale of Maori land owned by him to G for the sum of £400. The solicitor prepared an agreement for sale and purchase, obtained G's signature and collected the purchase price. G, believing the solicitor, who was acting for both parties, had completed the purchase, erected improvements on the land. An application for confirmation was received in 1963.

<table>
<thead>
<tr>
<th>Year</th>
<th>Valuation</th>
<th>1960</th>
<th>1963</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unimproved value</td>
<td>350</td>
<td>750</td>
</tr>
<tr>
<td></td>
<td>Value of improvements</td>
<td>—</td>
<td>720</td>
</tr>
<tr>
<td></td>
<td>Capital value</td>
<td>350</td>
<td>1470</td>
</tr>
</tbody>
</table>

The Maori Land Court confirmed the agreement subject to the consideration being increased to £1,470. It was left to the Maori Appellate Court to reduce that sum to £750 but had the agreement been confirmed in 1960 when initially executed, G would have paid only £400. Given the consequences\(^{120}\) of failing to lodge confirmation applications in time, it is perhaps unfortunate that most solicitors are uninformed on the subject of Maori land law.

For the purposes of assessing adequacy of consideration, under s 227(1)(e), the applicant is required, in accordance with s 228 of the Act and Rule 94(5) of the Maori Land Court Rules, unless exempted, to procure and pay for a Special Government Valuation.\(^{121}\) This valuation serves as a guide\(^{122}\) which the Court can use in conjunction with other valuation tools, such as its own knowledge of values in the

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119 Tokerau 1 ACMB 256.
120 See also *Rowe v Cleary*, supra.
121 *Matakaana*, supra per Judge Durie at 4: “Section 228 requires that the application for confirmation be accompanied by a Special Government Valuation and that has usually been taken to mean an up-to-date Special Government Valuation.”
122 Maori Affairs Act 1953, s 228(2).
If the Court considers an amount to be inadequate it need not determine a proper value but may simply refuse confirmation, notwithstanding that a proper value is assessable on the valuation evidence adduced, although the Court must state its reason(s) for declining confirmation.

When assessing adequacy the Court can have regard to the relationship of the parties and to any special circumstances. Note that s 227(1)(e) employs the word "special" to qualify the succeeding word "circumstances". The section, then, envisages circumstances that take the case outside the ordinary. In *Re Pakikaikutu* 2B1, supra, Chief Judge Jeune stated that:

> In our opinion what the legislature has said to the Maori Land Court in s 227(1)...[(e)]...is simply that if the parties are related or if there are circumstances in this case which are outside the general run of transactions and which should in fairness be taken into account you may confirm at a consideration lower than that at which you would normally confirm.

The Appellate Court in *Re Pakikaikutu* 2B1, supra, considered the facts of that case constituted "special circumstances" justifying the reduction of the consideration to £750.

The Court has jurisdiction to modify an instrument presented for confirmation.

Section 229 provides that:

> If on the hearing of an application for confirmation it appears to the Court that some modification in favour of the Maori owners should in justice be made [by way of an increase in the amount payable as purchase money], the Court may, with the consent of the alienee, modify the terms of the alienation....

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126 Supra, 259.
127 Maori Affairs Act 1953, s 229 (as amended).
Section 229 clearly empowers the Court to modify by way of an increase in the amount payable as purchase money but an issue arises as to whether, by inference, it prevents the Court from imposing other conditions.

The history of s 229 reveals that this issue has been the source of some interpretation difficulties. Originally s 88 of the Native Land Amendment Act 1913 provided that:

...[if]...it appears to...the Maori Land Board...that some modification ought in justice to be made in the terms of such alienation in favour of the native owner alienating (whether such modification be an increase of the amount payable by way of rent, or purchase-money, or interest, or otherwise howsoever)....

This was interpreted by Hosking J in Sarten v Aotea District Maori Land Board [1922] NZLR 586 to mean that:128

...[t]he modification proposed may relate not merely to the adequacy of the purchase money in the case of a sale, but as to whether it is sufficiently secured and, it may be, other points as well. In the case of a lease the conditions of the lease are an important matter apart from the adequacy of the rent. The expression “terms of such alienation” and the words “or otherwise howsoever” are quite comprehensive enough to warrant a shortening of the period of the lease or a modification of covenants by striking out or altering them or by adding to them, in order to remove the injustice apparent....

Certainly the phrase “…that some modification ought in justice to be made in the terms of such alienation…”[emphasis added] indicates that the legislature may have intended the Court’s jurisdiction to be as wide as Hosking J suggests. But, this phrase must be qualified and limited by the succeeding phrase “…whether the modification be an increase of the amount payable by way of rent or purchase-money, or interest, or

128 At 588.
otherwise howsoever.” The last phrase may have been included merely for illustrative reasons but my submission is that its effect is not as simplistic. Equally, it is important to bear in mind that, by the *ejusdem generis* rule, the words “...or otherwise howsoever...” appear to be limited to forms of consideration. That is, it covers dispositions within the definition of alienation, for which the terms “purchase-money”, “interest” and “rent” are not applicable. As well as a transfer or sale or mortgage or a lease the definition of alienation also covers a “licence, easement, profit, encumbrance, trust...or other disposition...”. Thus the words “otherwise howsoever” could be included simply to describe forms of consideration that apply to these latter dispositions which are not purchase money, interest or rent. For these reasons I would submit that the decision in Sarten is inconsistent with the wording of s 88.

The wording of the original s 229 of the Maori Affairs Act 1953 was substantially similar to that of s 88 of the Native Land Amendment Act 1913 except that the phrase “...whether by way of an increase of the amount payable as purchase money, or interest, or rent or otherwise howsoever...” was embodied in brackets. If this change was intended to indicate that the phrase was not a limitation on the Court's power to modify the terms of alienation but was simply illustrative then the best approach would have been to leave the phrase out. If, on the other hand, the phrase was intended as a limitation then this could have been made a lot clearer.

Now the phrase has been repealed in part to include only a modification “...by way of an increase in the amount payable as purchase money...”. But this change merely reflects the reduction of the Court's jurisdiction whereby only alienations by way of transfer require confirmation. Hence the former words “rent”, “interest” and “other dispositions” became superfluous. The 1967 amendment also deleted the brackets. Why? Whatever the reasoning the wording of s 229 as currently framed clearly limits the court's power to modify simply to an increase in the purchase money.
This is unnecessarily restrictive. For example, in an agreement for sale and purchase the Court could not modify, if required, the date of settlement. The Court would need to find some other authority for such an alteration.

Section 34(8A) provides generally that "...[a]ny order may be made subject to the performance of conditions within such time as may be limited in that behalf in the order...." One complication is that Part XIX does not refer to or imply any power to impose conditions whereas the equivalent confirmation provisions in Part XXIII expressly refer to such. Section 318A grants to the Court the power to modify similar to s 229. However, s 319(2) indicates that the Court here has power to both impose conditions. Is the Court devoid of this jurisdiction under Part XIX? There is no clear answer. If the answer is no, then an improperly executed and attested instrument, presented for confirmation, could not be confirmed subject to correction. The Court would be forced to refuse confirmation. This would cause inconvenience to the parties who must then re-apply and wait for the next Court sitting. If there is a separate power to impose conditions under Part XIX then the subtle issue arises of what is a condition as opposed to a modification?

(b) Discussion

As this procedure applies to only Maori freehold land which has less than ten owners, fragmentation is not a major concern. Further, given the relatively small number of owners, the land is most likely to be used. If there is a concern it should be to ensure that the land remains, as much as possible, Maori land and, further, that it remains in Maori ownership. The tendency with Maori land that has only a small number of owners is to view the land as tantamount to General land. For instance, McHugh\textsuperscript{129} writes:

\textsuperscript{129} McHugh, "Man Perishes But the Land Remains, the alienation of Maori Land under the Maori Affairs Act 1953", VUWLR 10 1979–80 153 at 154.
In recent times various Maori organisations have expressed concern at the continuing alienation of Maori land. This fear mainly extends to the alienation of Maori land under multiple ownership for it is with this land that the cultural and communal value of land arises. For instance there was relatively little controversy over Part I of the 1967 Maori Affairs Amendment Act which changed the status of Maori land owned by four persons or less to that of "General land", formerly known as "European land". The Maori accepted, for the most part, that the land affected by Part 1 was being used by their people in the pakeha way and hence no cultural significance attached to this land.

With respect it is difficult to accept that, in every case, the land, whose status was altered under Part I of the 1967 Amendment, had no cultural or communal significance. All Maori land, unless declared Maori land under s 433A of the Act or exchanged land under s 187, must have originally come from a multiply-owned block. Its origin must have been in tribal land. It is simply artificial to use the number of owners as a proxy for cultural attachment to the land.130 Irrespective of the number of owners, the land is Maori land.

For example, an owner in a block of land which has 2,000 other owners may have sufficient interests to warrant partition. If he or she partitions out then we have a block of Maori freehold land owned by one person. According to McHugh's theory we now have a block which is of less cultural significance than the block with 2,000 owners. Assume now that the sole owner dies intestate leaving twelve successors. Because of this, has the land recaptured its cultural significance? It is entirely arbitrary to view cultural importance merely by reference to the number of owners. Irrespective of the number of owners, the land is Maori land.

130 If owners do not identify the land as Maori land, they have the option of applying under s 433 for a status declaration determining the land General land.
On similar reasoning it is important that Maori land within the jurisdiction of Part XIX be viewed on an equal basis to land that has more than ten owners. Unfortunately the Act appears to place less of a premium on land which has less than ten owners. On the one hand, section 213 limits transfers of undivided interests to a defined class of alienees while, on the other hand, owners in common of land with less than ten owners can transfer undivided interests unrestricted. This makes the limitation in s 213 somewhat illusory as strangers can receive undivided interests under Part XIX.

Where a block of land is owned by more than ten persons then an owner could alienate by either a s 213 vesting order or a Part XXIII resolution of assembled owners. Part XXIII is primarily intended for alienations of the whole block but there are no words which would prohibit a person presenting a resolution to buy an undivided interest. Although I doubt whether such a resolution was envisaged by the legislature when creating the Part XXIII procedure. It seems clear that they were more concerned with alienations of the whole block rather than undivided interests. I submit that the right to present such a resolution has evolved more by default than design. However, once a resolution has been presented to the Court it then has a discretion to summon a meeting of owners. Such a transfer would very rarely warrant the expense and inconvenience that a part XXIII meeting would involve. Normally one would expect the Court to refuse to summon the meeting. If the Court did decide to summon a meeting there would then be a problem fulfilling quorum requirements provided for in s 309. This requires three individuals who are entitled to vote, to be present during the whole time of the meeting and, for the transfer of an undivided interest, it further requires that a quorum consist of owners (not being less in number

131 s 215 Maori Affairs Act 1953.
133 Maori Land Court policy is to advise the public that the Court cannot give effect to such a mode of transfer but support for this view is not borne out in the legislation. That, notwithstanding, this policy is undoubtedly correct given the practical obstacles.
than ten or one-quarter of the total number of owners, whether dead or alive, whichever is less) together owning not less than 40 percent of the beneficial freehold interest in the land. These requirements may be difficult to fulfil as owners generally are apathetic about attending meetings that do not directly involve monetary gain or loss to them personally. So, although it is theoretically possible to transfer undivided interests under Part XXIII without restriction, it is effectively precluded by the conditions attaching to the procedure. However, I repeat that I believe that this right exists by default rather than design.

The result is, that in a block which has less than ten owners, undivided interests can be transferred to a specially defined class of alienees while similar interests can be transferred to anyone under Part XIX. In a block which has more than ten owners, owners are effectively limited to s 213. The Act then places a priority on land which has more than ten owners. This land appears to be viewed as more “Maori” than land with fewer owners. This is unsatisfactory. The significance of the number ten is certainly not a cultural one. I suspect it has its origin in the 1862 Native Land Act which allowed only ten owners to be placed on a certificate of title. There is no doubting that that number was selected on a purely arbitrary basis. Whatever the reason for this limitation, it is difficult to rationalise. The use of the number of owners as a proxy for cultural attachment is artificial and should be discontinued.

The main criticism of Part XIX, then, is the tendency to belittle the importance of land within its jurisdiction to Maoridom. If, as Maoridom claims, land is culturally important, then such land should be afforded the same status as other Maori land. With partition becoming more common, Part XIX consequently assumes greater significance. I would submit that the policy inherent in Part XIX is inconsistent with other parts of the Act, notably s 213, and requires reform to ensure consistency.

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134 Part XXIII, meetings of owners, are summoned by the Registrar at the Court’s discretion.
(c) Proposed Reform

As mentioned earlier, to alienate under the Maori Affairs Bill an owner has to have capacity. Capacity to alienate is covered by clauses 158 and 159. On the basis of these, an owner can only alienate his or her undivided interest under clause 159 to a person who belongs to the class of preferred alienees. We have already examined this. Owners could also collectively alienate the whole block under clause 158. This states that:

...[t]he owners in common of a block of Maori freehold land have the capacity to alienate the land—
(i) By agreement of all the owners; or
(ii) Pursuant to a resolution carried at a meeting of assembled owners held under and in accordance with Part XI of this Act.136

No distinction is made between the number of owners. The current arbitrary delineation between land which has less than ten owners and land which has ten or more owners would be eliminated. As suggested in the last part, this distinction exists for the wrong reasons and should be repealed.

The Bill further provides that, if the owners alienate by transfer or lease, then such owners shall give the right of first refusal to prospective purchasers or lessees who belong to one or more of the preferred classes of alienee.137 This is an attempt to balance the two competing principles of retention by the kin group and recognition of the European ideals of individual ownership, namely, the right to alienate. This scheme finds an acceptable balance. It allows owners to alienate but ensures that the kin group have the first opportunity to buy or lease.

136 Clause 158(1)(a) and (b). The sole owner of a block of Maori freehold land and the joint tenants also have capacity to alienate in this manner. Presumably, however, joint tenants can only alienate by agreement. To call a meeting of assembled owners under Part XI requires at least three persons who are entitled to vote to be present (clause 189(1)).

137 The use of the word "owners" suggests that this provision would not apply to solely owned Maori freehold land. Given the kaupapa of this Bill, I suspect that it is meant to. Therefore, this clause should be amended to read "...owner or owners".
Such alienations are to be effected in accordance with clause 161. Clause 161(2) states that:

...[n]o other interest in any Maori freehold land may be alienated otherwise than by—
(a) An instrument of alienation...confirmed...under Part X....

Therefore, if all the owners agree to sell, then a memorandum of transfer would need to be confirmed under Part X. If, however, a resolution to sell is passed at a meeting of assembled owners, then clause 197 requires the resolution to be confirmed under Part X. Apart from clause 165, the confirmation clauses are similar to confirmation sections of the Act. One criticism of clause 161(2) is that it is placed in a section titled "Manner of alienation of undivided interests". For those unfamiliar with the Bill this heading may cause confusion for those looking to alienate the whole block. Indeed these people may not discover that clause 161(2) deals with alienations of a whole block. For this reason I suggest that clause 161(2) should be a separate provision with an appropriate heading.

If this Bill becomes law it would extend the jurisdiction of the Court. Currently only alienations by way of transfer require confirmation. This Bill requires all alienations, not just transfers, to be confirmed. This extension provides additional safeguards but also places additional burdens on an already overworked Court.

Despite this, generally, the reforms proposed by this Bill are meritorious and worthy of recommendation. This paper has revealed some anomalies with the Maori Affairs legislation and this Bill would remedy many of these. Certainly there are some technical points that require attention, but these should not detract from the Bill as a whole. Because there is a consistent policy basis, the various methods of the Bill complement each other. The Bill is, for the most part, much easier to follow and does not involve the reader piecing together a vast body of complex provisions, as is presently the case. Consequently I would support, subject to the qualifications indicated, the enactment of this Bill.
6. CONCLUSION

At the outset I indicated that the motivation for this paper was to provide guidance to practitioners who are advising in Maori land matters. The need for this type of material has in my opinion gone beyond urgent. Throughout my life I have listened to the difficulties and frustrations felt by my family over practitioners and their handling of our Maori land interests. It is these experiences which make me patently aware of the level of urgency that exists for assistance. With that in mind I feel confident that this paper will provide practitioners dealing with s 213 and Part XIX with the appropriate guidance.

Substantively both the s 213 and Part XIX procedures are in themselves operating satisfactorily, notwithstanding the logistical criticisms noted in the respective parts of this paper. Most concern rests with the conceptual inconsistencies which exist between various procedures throughout the legislation. These are the results of continual legislative fiddling of the Maori Affairs legislation which has destroyed the Act's political continuity. The law needs to be reviewed to rationalise the direction of Maori land holding. To this end, I submit that the Bill will achieve this. Certainly the Bill is not free from objection, but it is a vast improvement on the current law. Unfortunately, given the history of the Bill, one would expect that this Bill will remain a hollow document, despite the Minister's promises of enactment. Given that this Bill was almost a decade in the making, any major change to the current law remains but a mere hope. Meanwhile, those concerned must continue to deal with the currently complex Maori Affairs legislation. To those persons I offer this paper which I hope will be of assistance.

No reira, kia kaha.
Selected Bibliography

TEXTS


Smith N. *Native Custom Affecting Land and the Maori People and Us*. Wellington, 1942.


ARTICLES


Feist, “Maori Land” (1982) 1 BCB9, 22.


Feist, “Wills and Succession” (1983) 1 BCB 83.

Feist, “Alienation by a Sole Owner” (1983) 1 BCB 56.

Feist, “Alienation by Multiple Owners” (1983) 1 BCB 71.

Feist, “Sales, Leases and Other Alienations” (1982) 1 BCB 47.
Appendices
Map 2. North Island: major tribal boundaries in nineteenth and twentieth centuries. Virtually the whole of the South Island has been occupied by only one major tribe, Ngai Tahu.
CROWN LANDS ACQUIRED FROM NGAI TAHU

KEY

Boundaries of Crown Land Blocks Acquired from Ngai Tahu, with dates and prices (£1 : $2)

0 50 100 Kilometres
## Te Waipounamu District (Christchurch)

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<th>Court</th>
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<tr>
<td>Christchurch</td>
<td>Tue 21 Jan 1986</td>
<td>6 Dec 1985</td>
</tr>
<tr>
<td>Waitangi, Chatham Is</td>
<td>Tue 28 Jan 1986</td>
<td>13 Dec 1985</td>
</tr>
<tr>
<td>Dunedin</td>
<td>Mon 24 Mar 1986</td>
<td>21 Feb 1986</td>
</tr>
<tr>
<td>Invercargill</td>
<td>Wed 26 Mar 1986</td>
<td>21 Feb 1986</td>
</tr>
<tr>
<td>Picton</td>
<td>Tue 6 May 1986</td>
<td>4 Apr 1986</td>
</tr>
<tr>
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<td>Tue 3 Jun 1986</td>
<td>2 May 1986</td>
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<tr>
<td>Picton</td>
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<td>17 Oct 1986</td>
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Combined Panui will issue for Dunedin and Invercargill sitting. Invercargill sittings commence at 10 am on opening day.

*Court may adjourn to Hokitika on a date to be notified in the Panui.*
**SCHEDULE OF OWNERSHIP ORDERS**

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<th>No.</th>
<th>Name</th>
<th>Sex</th>
<th>Shares</th>
</tr>
</thead>
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<tr>
<td>2.</td>
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</tr>
<tr>
<td></td>
<td>i) Lisa Ellen Fowler f.a.</td>
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<tr>
<td></td>
<td>ii) Aaron Henry Fowler m.b. 1966, equally</td>
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<td>FOWLER: Matson George</td>
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**Block:** Otakou M R 17 Sub 2  
**Area:** 481 m²  
**Share:** 0.13125  
**Title:** CT 2D/994  
**File:** Otago 18/26  
**Map:** O164, T17, I44 J44
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Total Shares 0.13125
List of Owners as at 30.11.84

Recompiled by: R Parata
Checked by: B Karaitiana
Typed by: C J Ellis
# SCHEDULE OF OWNERSHIP ORDERS

**TITLE:**

**BLOCK:** Otaheiti Block 17 Sub 2

**AREA:** 481.25 m²

**SHARES:** 0.13125

(The orders themselves should be referred to for search purposes)

## List No. Owners Sex and Age Shares in Block

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<th>List No.</th>
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<th>Age</th>
<th>Ratio</th>
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## Deceased or Hune Karaitiana

**TRANSFEROR**

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<th>List No.</th>
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<th>Ratio</th>
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<td></td>
<td></td>
<td></td>
<td>0.00146</td>
</tr>
<tr>
<td></td>
<td><strong>Ref. Ref. M.B.</strong></td>
<td><strong>7/12</strong></td>
<td><strong>To</strong></td>
<td><strong>0.00146</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List No.</th>
<th>Owners</th>
<th>Sex</th>
<th>Age</th>
<th>Ratio</th>
<th>Shares in Block</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td><strong>Hune Karaitiana</strong></td>
<td>f</td>
<td></td>
<td>1/3</td>
<td>0.00146</td>
</tr>
<tr>
<td></td>
<td>Administrators of the estate:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mel. Kemp and</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Campbell. West-Watson. Karaitiana</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ENTERED BY:** 21/31/83

**CHECKED BY:** 21/31/83
**SCHEDULE OF OWNERSHIP ORDERS**

**TITLE:**

**BLOCK:** Sub 2

**AREA:** 4.81 m²

**SHARES:** 0.13125

(The orders themselves should be referred to for search purposes)

<table>
<thead>
<tr>
<th>List No.</th>
<th>Owners</th>
<th>Sex and Age</th>
<th>Ratio</th>
<th>Shares</th>
<th>Already Owned</th>
<th>Now Acquired</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>46</td>
<td>Mere Kemp</td>
<td>F, Sold</td>
<td>37</td>
<td>0.00146</td>
<td>0.00146</td>
<td>0.00292</td>
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<tr>
<td>19</td>
<td>Sony</td>
<td>F</td>
<td></td>
<td>0.00438</td>
<td>0.00438</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Milani</td>
<td>M</td>
<td></td>
<td>0.00121</td>
<td>0.00121</td>
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</table>
NAME OF BLOCK: N.K. Section 17 Sub. 2

N.B. - The order or title notice should be referred to for search purposes.

<table>
<thead>
<tr>
<th>Nature of Order or Instrument</th>
<th>Date</th>
<th>Checked</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Order 438/53 both in Robert Leggat Karaitiana, 3/6/1958</td>
<td>7/6/58</td>
<td>S/NB 372</td>
<td></td>
</tr>
<tr>
<td>Karaitiana and Makaroka Te Huki, both to hold in trust for owners, and trustees &amp; owners jointly.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order contained in said section 48/58.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To summon a Judge for signature 8/9/58</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In re Mr N. Hall 11/6/21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Order under Sec. 443/53 realising trustee Makaroka Te Huki, deceased, by Henrietta Wharewini Wallace 11/12/63</td>
<td>7/10/68</td>
<td>S/NB 64/14</td>
<td></td>
</tr>
<tr>
<td>Order under Section 435/53 - Otene Kuku George Karaitiana, as trustee, in place of Robert Leggat Karaitiana, deceased, the land to be vested as shown in the schedule. Upon and subject to existing trusts. Schedule: 1. Taituki Karaitiana m.o. 2. Henrietta Wharewini Wallace f.o. 3. Otene Kuku George Karaitiana m.o.</td>
<td>5 Aug 57</td>
<td>S/NB 51/46</td>
<td></td>
</tr>
</tbody>
</table>

SPECIAL ROLL VALUATION DATED 11/11/71

CV 1150 LV 250 V1900

U-0- 19.00

ORDER Sec. 20/4/53 Determine the land to be made freehold land.

20.9.1983 S.I.M.B.

54/178-22
MEMORIAL SCHEDULE

NAME OF BLOCK: OTAKOU M.R. 17 Sub 2

N.B.—The order or title notice should be referred to for search purposes.

<table>
<thead>
<tr>
<th>Nature of Order or Instrument</th>
<th>Date</th>
<th>Checked by</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>SPECIAL/ROLL VALUATION DATED 1/7/76</td>
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<td></td>
</tr>
<tr>
<td>CV2300</td>
<td>LV500</td>
<td>VI2300</td>
<td>481 m²</td>
</tr>
</tbody>
</table>

...pursuant to the provisions of section 438(3)(b) of the Maori Affairs Act 1953 that the terms of the trust be varied by conferring upon the trustees the following additional powers:

a. To engage and retain from time to time solicitors, accountants and other persons whose special qualifications may be of assistance to the trustees, including a trustee company, for the purpose of collecting and distributing rentals, keeping books of account and generally assisting with the management of the trust property:

b. For the purpose of alienating the land to subdivide the same with power to vest any parts thereof as reserves and to dedicate any parts thereof for roads:

c. To institute and prosecute proceedings in the High Court or any other Court as may be appropriate for the purpose of establishing ownership of improvements on the lands or for any other purpose incidental to the administration of the trusts.

AND WHEREAS it is expedient that new trustees be appointed it is hereby ordered pursuant to the provisions of section 438(3)(a) of the Maori Affairs Act 1953, that:—

Taituha Hape Karaitiana m.a.
Henrietta Wharewiti Wallace f.a.
Paul Robert Leggat Karaitiana m.a.

be and are hereby appointed with effect from 1 April 1980 as trustees in place of all existing trustees.
Section 17. Subdivision 2
Block B
Otakou Maori Reserve

Scale: 50 links to an inch
C.T. 299/234 Ltd
PARTITION ORDER

The Maori Affairs Act 1953
Section 17

In the Maori Land Court of New Zealand, South Island District.

In the matter of the partition of the land known as OTAKOU M.R. SEC. 17 Block heretofore held under Partition Order dated the 24th day of July 1941.

At a sitting of the Court held at Christchurch on the 30th day of August 1962 before Geoffrey John JEUNE, Esquire, Judge.

It is, as part of the said partition, hereby ordered and declared that the several persons whose names appear in the first column of the Schedule endorsed hereon or annexed hereto, and therein numbered one to twenty-three (1-23) both inclusive, are the owners, in the relative shares or proportions set out in the second column of the said Schedule, of that part of the said land containing 1941 perches named by the Court

OTAKOU M.R. 17 SUB. 2

and which part is particularly delineated on the plan attached hereto.

As witness the hand of the Judge and the seal of the Court.

Fee charged:

[Signature]
Judge.
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sex and (f'f Minor') Age</th>
<th>Relative Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Edward Renata Fowler</td>
<td>m.a.</td>
<td>.00108</td>
</tr>
<tr>
<td>2.</td>
<td>George Helwan Fowler</td>
<td>m.63</td>
<td>.00108</td>
</tr>
<tr>
<td>3.</td>
<td>Henrietta Wharewiwi Wallace</td>
<td>f.a.</td>
<td>.02187</td>
</tr>
<tr>
<td>4.</td>
<td>Henrietta te Whe Fowler</td>
<td>f.a.</td>
<td>.00108</td>
</tr>
<tr>
<td>5.</td>
<td>Henry Tawhiri Matea Fowler</td>
<td>m.a.</td>
<td>.00108</td>
</tr>
<tr>
<td>6.</td>
<td>Hinemoana Karaitiana</td>
<td>f.a.</td>
<td>.00437</td>
</tr>
<tr>
<td>7.</td>
<td>Huprini (Jack) Karaitiana</td>
<td>m.a.</td>
<td>.00438</td>
</tr>
<tr>
<td>8.</td>
<td>Kaahu Karaitiana</td>
<td>m.a.</td>
<td>.00438</td>
</tr>
<tr>
<td>9.</td>
<td>Makaretia te Uruti Pohio</td>
<td>f.a.</td>
<td>.01215</td>
</tr>
<tr>
<td>10.</td>
<td>Margaret Puai Fowler</td>
<td>f.a.</td>
<td>.00108</td>
</tr>
<tr>
<td>11.</td>
<td>Mary Howard Williams</td>
<td>f.a.</td>
<td>.00219</td>
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<tr>
<td>12.</td>
<td>Matiria Clarke</td>
<td>f.a.</td>
<td>.00219</td>
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<tr>
<td>13.</td>
<td>Matson George Fowler</td>
<td>m.a.</td>
<td>.00108</td>
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<tr>
<td>14.</td>
<td>Maureen Roimata Fowler</td>
<td>f.a.</td>
<td>.00108</td>
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<tr>
<td>15.</td>
<td>Meri Heni Pitama</td>
<td>f.a.</td>
<td>.00438</td>
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<tr>
<td>16.</td>
<td>Phillip George Karaitiana</td>
<td>m.a.</td>
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<td>17.</td>
<td>Rita Stepheni Kipa</td>
<td>f.a.</td>
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<td>18.</td>
<td>Robert Leggett Karaitiana</td>
<td>m.a.</td>
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<tr>
<td>19.</td>
<td>Robinson Hugh Fowler</td>
<td>m.a.</td>
<td>.00108</td>
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<tr>
<td>20.</td>
<td>Taituha Karaitiana</td>
<td>m.a.</td>
<td>.00438</td>
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<td>21.</td>
<td>Walter Momo Fowler</td>
<td>m.a.</td>
<td>.00108</td>
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<td>22.</td>
<td>Te Whe Ariki Karaitiana</td>
<td>f.a.</td>
<td>.00219</td>
</tr>
<tr>
<td>23.</td>
<td>William King Karaitiana</td>
<td>m.a.</td>
<td>.00438</td>
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Total Relative Interest: .13125
<table>
<thead>
<tr>
<th>Name of Block</th>
<th>Description</th>
<th>Government Valuation</th>
<th>Valuation, Other Assets</th>
<th>Details of Allotments and Encumbrances</th>
<th>Derivation of Interest</th>
<th>Total Share in Block</th>
<th>Value of Interest of Deceased</th>
<th>Accumulated Rent</th>
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</thead>
<tbody>
<tr>
<td>Oriea 12D</td>
<td>INCORPORATED</td>
<td>C.V. 17,000</td>
<td></td>
<td>Subject to Pt xxiv/53</td>
<td>Merearea Te Ngako or Ormond 1/3 Succor to Mere Te Ngako 15, 107/300 / 1886-74 18 86-8 180 00 on U.V.</td>
<td>283 000</td>
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<tr>
<td></td>
<td>GENERAL</td>
<td>U.V. or</td>
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<td></td>
<td>MAORI LAND</td>
<td>L.V. 9,200</td>
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<td>Ngamotu 10</td>
<td>INCORPORATED</td>
<td>C.V. 13,000</td>
<td></td>
<td>Order Sec A 39/53 vesting in Maori Trustee as Trustee leased to J. Pearce 21 yrs from 21-2-72</td>
<td>Merearea Onana or Merearea Te Ngako or Ormond</td>
<td>45 000</td>
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<td></td>
<td>GENERAL</td>
<td>U.V. or</td>
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<td>MAORI LAND</td>
<td>L.V. 12,000</td>
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<td>Ngamotu 21</td>
<td>INCORPORATED</td>
<td>C.V. 2700</td>
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<td>Nil</td>
<td>Merearea Onana 1/72 Succor to Arapera Matuati Wr 35/196 of 13-8-1924 1 007 1/19 on CV.</td>
<td>9 500</td>
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<tr>
<td></td>
<td>GENERAL</td>
<td>U.V. or</td>
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<tr>
<td></td>
<td>MAORI LAND</td>
<td>L.V. 2400</td>
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<td>IMP. 300</td>
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<td>Whangawahi 186C1B</td>
<td>INCORPORATED</td>
<td>C.V. 5300</td>
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<td>Subject to PXXIV/53 Development leased to J. P. King for 21 yrs from 1-1-1963</td>
<td>Merearea Wairau 1/3 Succor to Heke Taumira Memo of Transfer Rotorua ciated 16-5-1973 1 33 80 1 76 15 on CV.</td>
<td>4 01 50</td>
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<td>U.V. or</td>
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<td>MAORI LAND</td>
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<td>IMP. 500</td>
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<td>Mongatane Trust Estate</td>
<td>INCORPORATED</td>
<td>C.V. 205000</td>
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<td>Vested in Trustees Sec A 59/53 Subject to PXXIV/53</td>
<td>Merearea Te Ngako or Ormond 1/3 Succor to Rangi Te Wai E.C.M.B. 2/65 &amp; 64. 53 135 0000</td>
<td>1 44 48</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>GENERAL</td>
<td>U.V. or</td>
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<td></td>
<td>MAORI LAND</td>
<td>L.V. 165000</td>
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<td><em>5510/5159</em></td>
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<td>GENERAL</td>
<td>U.V. or</td>
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<td>MAORI LAND</td>
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</table>

Values computed by M. Brown 23/4/81.
SCHEDULE

RR. 5 (2), 8 (2)
NEW FORMS INSERTED AND SUBSTITUTED IN THE FIRST SCHEDULE TO THE PRINCIPAL RULES

Form 157

R. 93 (1)
APPLICATION FOR VESTING ORDER

The Maori Affairs Act 1953, Section 213

In the Maori Land Court of New Zealand,

.................................................. District

................................................. Block.

I, ........................................, hereby apply for a vesting order under section 213 of the Maori Affairs Act 1953, vesting ................................ shares owned by me out of the total of ................................ shares in the above-mentioned block in ................................ of .................................

The shares to be transferred are at present held by me as the beneficial owner (or executor) (or administrator) (or [state other capacity in which shares are held] ................................) and the vesting order is sought to give effect to the agreement endorsed hereon or annexed hereto (or [state purpose e.g. to transfer shares to persons beneficially entitled] ................................)

Dated the ................................ day of ................................ 19..........

Fee: $2.

Applicant: ........................................
Address: ........................................

Form 158

R. 93 (8)
VESTING ORDER

The Maori Affairs Act 1953, Section 213 (1) [or (5)]

In the Maori Land Court of New Zealand,

.................................................. District

................................................. Block.

At a sitting of the Court held at ................................ on the ................................ day of ................................ 19............. before ................................, Esquire, Judge.

Whereas ........................................, of ........................................ (hereinafter referred to as “the transferor”) is the owner of an interest in the Maori freehold land known as ................................, being an undivided share amounting to ................................, shares out of a total of ................................ shares in the legal (or equitable) estate in fee simple in the said land:

And whereas an arrangement (or agreement) has been entered into between the transferor and ........................................, of ........................................ (hereinafter referred to as “the transferee”) for the transfer by the transferor to the transferee of ................................ of the said shares of the transferor, being the whole (or part) of the said undivided share, by way of gift (or in consideration of the payment by the transferee to the transferor of the sum of $ ................................):