
MINUTE (NO. 26) OF CHURCHMAN J
[Evidence admissibility]

[1] This is a minute addressing the evidential issues raised in the memorandum of counsel dated 19 August 2020.

[2] The first issue relates to the evidence of witnesses that has been filed in this Court in these proceedings and the witnesses have subsequently passed away.

[3] Under s 105 of the Act, the Court has the ability to accept evidence that would not normally be admissible in the High Court pursuant to the High Court Rules.

[4] As I have earlier indicated to counsel in respect of such evidence, the Court regards it as admissible. Should it be challenged, in whole or in part, then the Court will have to assess what weight can be given to it, and one of the factors that will be of some moment will be whether or not that evidence has been challenged, and the nature of that challenge. So, the starting point for counsel should be that such evidence is admissible.

[5] In relation to the second issue, all evidence that was filed in the Māori Land Court (MLC) in this matter has automatically been transferred as part of the record that was transferred from the MLC to this Court and becomes part of the evidential base in these proceedings.

[6] A subpart of the query of counsel in relation to such evidence was whether or not it should be disregarded if the witness in question did not also appear for the hearing in this Court. The answer to that, again, depends on the nature of the evidence. If the evidence is contested, then any weight that can be given to it will be subject to consideration of the basis of the challenge. So, again, such evidence, on the face of things, is admissible but if there is a significant challenge to it, the Court may not be able to accord much by way of weight to it.

Churchman J