

UTTING LAW

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The Members

Te Ātiawa o Te Waka-a-Māui Trust

Re: Response of Trustees in Reply to Panui of Glenice Paine

We have been instructed to act by the Trust Board of Te Ātiawa o Te Waka-a-Māui Trust regarding the suspension of Mrs Glenice Paine as a trustee. Assisting us with the work, as directed by the Board, are Ms. Mireama Houra and Mr. Chris Tennet. At this stage we are yet to receive the full file. However, based on what we have currently received, we have provided some preliminary advice to the Board.

We have been instructed to advise the Members of the Te Ātiawa o Te Waka-a-Māui Trust about the Board's current position and the direction the Board intends to take regarding the suspension issue.

After discussion it was decided that it was appropriate, as part of the voting pack previously sent out to the Members, that the Board provide a brief note of the issues regarding the recent suspension of the trustee Mrs. Glenice Paine from the Trust board.

What was provided to the Members was intentionally brief, on the basis that the matter could be raised and properly discussed at the forth-coming Annual General Meeting. However, Mrs. Paine in her election profile has raised issues which the Board feels compelled to respond, particularly as many Members are either voting online or via postal voting and will not attend the AGM.

The Board originally issued their statement, following legal advice, that under section 7(a) of the Trust Deed they have an obligation to advise its Members and also have an obligation to report on their own performance.

Mrs. Paine in her panui stated that:

“[P]rior to the 2016 AGM, I was pushed aside as Chair, being replaced by Harvey Ruru who has acted in that role to this day. Harvey was apparently subsequently confirmed as Chairperson at a meeting later in the year, a meeting that I was excluded from. At the same meeting Ron Riwaka was appointed as Deputy Chair.

The Board notes that this is incorrect. Mrs. Paine's position as chair was set aside until the completion of a full investigation of an employment complaint. Subsequent events gave rise to the concern that Mrs. Paine was at risk of bringing the Trust into disrepute, both in terms of breaching its obligation as a good employer (through her interference with the performance of the General Manager”), and also through preventing the Trust from functioning properly.

Consequently, based on legal advice from another solicitor, on 29 June 2017 the Board took steps to suspend Mrs. Paine as a trustee. This was in order to restore the effective performance of the trust.

Since Mrs. Paine was suspended other matters of concern have arisen regarding Mrs. Paine's fiduciary obligations to the Trust and the Board are currently considering these matters further.

Mrs. Paine challenged the legality of the suspension and the matter went to arbitration. The decision of the arbitrator is that the suspension of Mrs. Paine was not possible in terms of the trust deed. However, there is no ruling on whether Mrs. Paine was, through her conduct as a trustee, at risk of bringing the Trust in disrepute.

Consequently, the Board has instructed us to obtain the legal file and proceed with an appeal of the arbitration decision and costs and simultaneously make an application in the High Court under s51 of the Trustee Act 1956 to remove Mrs. Paine as a Trustee. The Board is aware of the costs which have been incurred to date. If the costs could have been avoided, they would have been. The Board has always acted in the best interests of the Trust throughout this issue. However, in order to reassure the Members, an application under s66 of the Trustee Act, which will permit the Court to provide guidance to the Trust to ensure that the appeal and application under s51 are not frivolous and need to be undertaken.

Yours sincerely

A handwritten signature in black ink, appearing to read 'm. utting', written over a horizontal line.

Mark Utting

Principal

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