

How The Public Interest Journalism Fund Website Breaks NZ's Constitution

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Some time ago I began to notice in the main stream media (MSM) and government NZ media, a large proportion of stories were focused on the culture and activities of a particular ethnic group. I keep an eye on a range of NZ blogs, and noted that the government had established the Public Interest Journalism Fund (PIJF), an allocation of \$55M to NZonAir, in addition to the normal funding activities it administered. The MSM was experiencing declining client participation rates and associated incomes. As the spin justifying the fund went, "a healthy media was vital for a healthy democracy". However, the focus of the fund was not to strengthen democracy but to establish a strong cultural ethnic bias in favour of one group.

New Zealand has of the order of 160 ethnic groups, and I observed few ethnicity related reports other than for the favoured group. I began to wonder why that was. I dug a little and found the funding requirements on the NZonAir web pages. As part of these there was a document entitled "Te Tiriti Framework for News Media" (Framework), with a bold red front page. Delving into the document I did see "red", with the surprising declaration that sovereignty was not ceded to the Crown by Maori at Waitangi in 1840! In more detail we see on page 5 of the Framework:

"As tangata whenua o Aotearoa, Māori have never ceded sovereignty to Britain or any other State. He Whakaputanga/Declaration of Independence (1835) and te Tiriti o Waitangi (1840) asserted and continue to assert Māori sovereignty, and were signed by hapū and the Crown. Te Tiriti carries rights and obligations for both parties, with implications for social justice. Despite te Tiriti, colonial constitutional practices have entrenched Pākehā systems of governance that continue today. This means our society has a foundation of institutional racism, where organisations, agencies and institutions continue to benefit Pākehā, and routinely produce policies and practices that result in avoidable inequalities between Pākehā and Māori."

This statement was deeply troubling. Not because it was the opinion of some individual or group, but because it was published by NZonAir, a government agency, funded by the Crown which supported its activities. It was highly likely to be read carefully by applicants from the MSM who needed PIJF funding. To be successful the applicants would want to show they were following all of the NZonAir guidance, including that laid out in the "Framework".

That it would be believed that sovereignty was not ceded in 1840 defies belief. It would call into question the validity of our very existence as a nation state, with every consequence deriving from that most favoured position. Remember there are 5000 or so indigenous peoples, but less than 200 nation states, namely full members of the United Nations. The path to nationhood has been a long one. To recall the timeline of constitutional events:

In the 22nd century, separate Maori tribes discovered and settled in NZ. In 1642, Abel Tasman discovered and named New Zealand.

1840 NZ becomes a colony of the British Empire, at first a dependency of NSW, and later in 1840 a separate colony.

1852 The British parliament passes the NZ Constitution Act, establishing a democratically elected House of Representatives and an appointed Legislative Council to advise the Governor who was appointed by the Crown.

1856 NZ became self-governing in most matters other than foreign policy. “Native policy” was passed to the NZ government in the 1860’s.

1906 NZ became a Dominion of the British Empire.

1935 NZ became responsible for all of its foreign relations. This right was formally claimed by the government.

1945 NZ became a founding member of the United Nations. It was also a member of the first set of non-permanent members of the Security Council.

1946 NZ adopted the Statute of Westminster, wherein the NZ parliament had the exclusive power to make laws for the country.

2003 The right of appeal from NZ courts to the Privy Council of Great Britain was removed.

We can only guess what might have transpired if the Treaty had not been agreed in 1840, that sovereignty had not been ceded and that NZ had not developed in the manner laid out in the above timeline. In the 1800’s there were four main colonizing powers – Britain, France, Germany and Russia. If Maori had resisted becoming a colony of any nation, then it is very likely that inter-tribal warfare would have continued. International trade and primitive sanitation, would have resulted in old-world diseases propagating through the population. Without the advent of European settlers, the uptake of new technologies would have been slow. Overall the outlook for the Māori would have been bleak – recall the musket wars of the 1830’s resulted in an estimated 40,000 deaths.

Of course, all of this is quite hypothetical. But it does underline a few of the significant advantages which have accrued for both the original and new settlers.

Faced with the enormity of a government agency intimating that the MSM suggest by implication to their clients that the authority of the NZ government was invalid, defying common sense, I thought the government might have a view on this sort of outlandish suggestion. I wrote to the then Prime Minister making a formal complaint with no result. I then wrote to NZonAir setting out a complaint, which was in brief:

“whatever wording (of the Treaty) you accept or principles you want to infer, in this important official communication the public and media are being misled as to the legitimacy of the government of New Zealand to govern, and the very constitutional foundation of our nation state and all that implies.”

On 9th July 2022 I received a reply signed “Complaints admin”:

The *Te Tiriti Framework for News Media* is clearly identified on our website as having been developed by Kupu Taea. The resource was developed as a response to requests from media for assistance in understanding how they might develop their own Te Tiriti strategies. It is not NZ On Air’s document, nor is it mandatory for any applicants to use it as a resource.

As an autonomous crown entity we are not directed by any Minister on matters of content, but may receive general direction via an annual Letter of Expectations.

“We are also directed by the Broadcasting Act to ‘reflect and develop New Zealand identity and culture’ and specifically to promote ‘Māori language and Māori culture , and to consult with ‘representatives of Māori interests.’ In our view, commissioning experts Kupu Taea (an Auckland-based Māori and Pākehā media research group) to create the Te Tiriti framework document delivers to these requirements of the Broadcasting Act.

While we appreciate you have strongly held views on this matter we will not be removing this publication from our website.

If you are unhappy with this response you can ask for the matter to be referred to the Senior Leadership Team, where at least one member of the SLT will review the matter raised and the response given and come back to you with any further response deemed appropriate.”

Having received this type of reply I decided that formal complaints were a waste of time and energy, because NZonAir were not acting as a Crown Agency, but a voice for a particular ethnic group. I am confident the Broadcasting Act does not have that in mind. The bill of rights act gives us freedom of expression which certainly applies to the MSM, and which certainly trumps the Broadcasting act. However, legal action is well beyond my resources, and anyway, bringing this government sponsored statement to the attention of readers, for the time being, is a better way forward.

Finally, there are strict requirements for successful applications to the PIJF, which makes avoiding the introduction of bias impossible if they are to receive funding. The recipients of grants must “actively promote the principles of partnership, participation and active protection under Te Tiriti O Waitangi.” How this is consistent with the Bill of Rights Act 1990, which guarantees freedom of expression, beggars belief, especially since the idea of “partnership” is strongly contested and did not exist until activist judges on the court of appeal used it in a particular way in a particular context, never intending it to become part of our “constitutional arrangements.” Practically all of the NZ MSM outlets have taken support from the PIJF, some receiving substantial sums. Although the fund is now closed, NZonAir has stated it is prepared to take funding away from any outlet which does not adhere to grant objectives or NZonAir requirements, so the controlling effect of the PIJF will persist until the 2023 election and beyond.

Each political party should be asked to give an opinion as to value or otherwise of the PIJF and how it is being administered. They should state what they would do about it, should they be in a position to make changes following the October 2023 election.