

In the Waitangi Tribunal**Wai 3300, Wai 3314, Wai 3330, Wai 3308,
Wai 3077, Wai 682, Wai 3309, Wai 2959,
Wai 3315, Wai 3324, Wai 3218, Wai 1194,
Wai 1212, Wai 3319****In the Matter****of the Treaty of Waitangi Act 1975****And in the Matter****Tomokia ngā tatau o Matangireia
– the Constitutional Kaupapa
Inquiry (Wai 3300)****And in the Matter****a claim by Ms Merepeka Raukawa-
Tait on behalf of her whānau, hapū,
iwi, whānau whānui and whāngai****And in the Matter****a claim by Dr Rapata Wiri on
behalf of his whānau, hapū, iwi,
whānau whānui and whāngai****And in the Matter****a claim by Nicola Dally-Paki on
behalf of her whānau, hapū, iwi,
whānau whānui and whāngai**

**MEMORANDUM OF COUNSEL FILING SUBMISSIONS FOR THE UPCOMING
HEARING TO DETERMINE URGENCY****DATED AT TOKOROA THIS 25th DAY OF MARCH 2024**



Counsel Acting: Ārama Ngāpō
NL Lawyers-Barristers & Solicitors
Tokoroa Office
58 Bonaly Street
PO Box 518,
Tokoroa, 3444
P 07 8867540
E arama@nll.co.nz
E waitangi@nll.co.nz

RECEIVED

Waitangi Tribunal

25 Mar 24Ministry of Justice
WELLINGTON

MEMORANDUM OF COUNSEL FILING SUBMISSIONS FOR THE UPCOMING HEARING TO DETERMINE URGENCY

May it please the Tribunal

1. We act for Ms Merepeka Raukawa-Tait, Dr Rapata Wiri, and Ms Nicola Dally-Paki. We file this Memorandum of Counsel with respect to the upcoming hearing on 8 April 2024.¹

Matters to Address at the Hearing.

2. In Her Honours Judge Fox’s Memorandum Directions dated 26 January², stated the purpose of the hearing on 8 April 2024 is to establish:

“whether there are sufficient grounds to grant the application for urgency and to direct an inquiry into whether Crown actions and policy developed to review legislative enactments, referring to the principles of the Treaty of Waitangi and/or progressing the Treaty Principles Bill are actions or policy in breach of the Treaty of Waitangi”.

3. We note her Honour Deputy Chairperson Judge Reeves grouped the applications into five themes which she identified as³:
 - a. Applications concerning the disestablishment of Te Aka Whai Ora;
 - b. Applications concerning the use of te reo Māori;
 - c. Applications concerning the proposed Treaty Principles Bill;
 - d. Applications concerning the repeal of s 7AA of the Oranga Tamariki Act 1989;
 - e. Applications concerning the repeal of the Smokefree Environments and Regulated Products Act 1990.

The Claimants

4. Merepeka Raukawa-Tait has been granted Interested Party status in Wai 3077 Urgent claim⁴, Wai 3307 Urgent claim⁵, Wai 3309 Urgent claim⁶,

¹ Wai 3300, #2.5.10 MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX, 26 January 2024 at [28].

² Wai 3300, #2.5.10 MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX, 26 January 2024 at [28].

³ Wai 3300, #2.5.10 MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX, 26 January 2024 at [6].

⁴ Wai 3077, #2.5.4 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 1 February 2024 at [10].

⁵ Wai 3077, 2.5.3(a) Appendix A: List of interested parties, 19 January 2024 at [7].

⁶ Wai 3309, 2.5.5(a) APPENDIX A: INTERESTED PARTIES, 15 February 2024 at [1].

Wai 1194/Wai1212 Urgent claim⁷, Wai 3315 and Wai 3324 Urgent claim⁸. On 23 January 2024, Judge Reeves in her Memorandum-Directions registered Ms Merepeka's claim in Wai 3300, Tomokia Ngā Tatau o Matangireia, the Constitutional Kaupapa Inquiry.⁹

5. Ms Merepeka Raukawa-Tait is a leading advocate for the rights of women and children and a strong public voice in the campaign to understand and prevent family violence. Ms Merepeka Raukawa-Tait has a long and distinguished history of public service, having served as a District Health Board member, City Councillor and in NGO leadership positions. Ms Merepeka Raukawa-Tait holds an MBA and has a wealth of experience in the fields of business, and management. Ms Raukawa-Tait is a social issues commentator and regular guest panellist on TV current affairs programmes, particularly around issues to do with Māori, health, welfare, and social justice.
6. Dr Rapata Wiri has also been granted Interested Party status in Wai 682 Urgent claim¹⁰, Wai 3077 Urgent claim¹¹, Wai 3308 Urgent claim¹², and Wai 1194/Wai1212 Urgent claim.¹³ On 11 March 2024, Judge Reeves in her Memorandum-Directions registered Dr Rapata's claim in Wai 3300, Tomokia Ngā Tatau o Matangireia, the Constitutional Kaupapa Inquiry.¹⁴
7. Dr Rapata is a Māori language expert - he has taught Māori language, culture, history and society at universities in New Zealand and Hawai'i for over twenty-five years. Dr Rapata's experience extends to being a historian and researcher for iwi in Treaty of Waitangi claims. In 2019, he established an online Te Reo Māori course. Dr Rapata previously held positions in the education sector, ranging from Kaiako, Researcher, Te Reo Māori, and Tikanga expert.
8. Ms Nicola Dally-Paki's Wai 3319¹⁵ claim is recognised by Appendix B to be relevant to the proposed Treaty Principles bill theme of this inquiry.¹⁶

⁷ Wai 1194, 2.11; Wai 1212, #2.2.10 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 5 February 2024 at [9].

⁸ Wai 3315, #2.5.5; Wai 3324, #2.5.4 TE WHAKATAUNGA MOO TE TONO OHORATA E PAA ANA KI TE SMOKEFREE ENVIRONMENTS AND REGULATED PRODUCTS (SMOKED TOBACCO) AMENDMENT ACT 2022 REPEAL, 28 February 2024 at [3].

⁹ Wai 3314, #2.1.1 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 23 January 2024.

¹⁰ Wai 682, #2.42 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 19 January 2024 at [5].

¹¹ Wai 3077, #2.5.4 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 1 February 2024 at [10].

¹² Wai 3308, #2.5.1 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 4 January 2024 at [11].

¹³ Wai 1194, 2.11; Wai 1212, #2.2.10 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 5 February 2024 at [9].

¹⁴ Wai 3330, #2.1.1 MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON, 11 March 2024.

¹⁵ Wai 3319, #2.1.1 MEMORANDUM-DIRECTIONS OF THE CHAIRPERSON, 31 January 2024.

¹⁶ Wai 3300, #2.5.10(a), APPENDIX C: Thematic applications for urgent hearing, 26 January 2024.

9. Ms Nicola Dally-Paki is is qualified Whānau Ora senior practitioner. She has worked in many fields including family violence prevention, homicide, housing, and in the justice sector. This has included work helping mothers be reunited with their children, which includes regular engagement with Oranga Tamariki. She has been an active member of her local community, as well as working with and for her whānau on numerous issues.
10. Counsel submits the Claimants we represent can provide expert evidence to assist the Tribunal in the five themes identified above. Ms Merepaka Raukawa-Tait is concerned the Crown will breach their Treaty obligations through the Coalition Agreements the Government has agreed to. Ms Merepaka Raukawa-Tait alleges that the Crown has already breached the principles of the Treaty of Waitangi. Dr Rapata Wiri is concerned that the Crown will breach its obligations to uphold Te Tiriti principles by introducing divisive policies that are intended to prejudice Māori. The actions of the Crown appear to only acknowledge the Treaty to exist in a shadowland where the Crown nearly always ends up having the final say.
11. We note the themes identified address a series of issues that are likely to prejudice Māori. The Crown submits there is no prejudice and it is premature to assess policy on the high-level set out in the applications.
12. We submit the Crown should not expect Māori to acquiesce in decisions made by the Crown that impact Māori especially if the Crown recognise their obligations towards Māori under te Tirit.

Crown's approach to sensitive information

13. The Crown has unilaterally decided to withhold salient information that could aid the Tribunal in its determination of the application for Urgency. The Crown contends the public interest needs to be balanced with the public interest in the Tribunal having the information it needs for its processes. Furthermore, the Crown relies on the principles that were discussed in *Datacom* litigation.¹⁷
14. Counsel submits that the Crown is incorrect in their interpretation of section 70 of the Evidence Act. Section 70 whereby it states that:

“A Judge may direct that a communication or information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the communication or information being disclosed in the proceeding is outweighed by the public interest in withholding the communication or information”.¹⁸
15. *Datacom* Litigation considered the public interest in non-disclosure must be balanced against the public interest in the effective administration of

¹⁷ *Dotcom v Attorney-General* [2019] NZCA 412, [2019] 3 NZLR 397.

¹⁸ Evidence Act 2006, s70(1).

justice, and the balancing is the Court's task.¹⁹ We note the Waitangi Tribunal is a commission of inquiry and section 4B of the Commissions of Inquiry Act 1908 states:

*The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.*²⁰

16. We submit the documents the Crown is withholding from the Tribunal are likely to be in the public domain in due time and they should be released in urgency.

Conclusion

17. To conclude, we seek that urgency is granted and an order for the release of the documents is made.

Dated 25th March 2024



Ārama Ngāpō
Counsel for Claimant

¹⁹ *Choudry v Attorney-General* [1999] 2 NZLR 582 (CA) [*Choudry (No 1)*] at [593].

²⁰ Commissions of Inquiry Act 1908, s4B(1).