

IN THE WAITANGI TRIBUNAL

Wai 2700
Wai 1477

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of the Mana Wāhine Kaupapa Inquiry
(Wai 2700)

AND

IN THE MATTER

of a claim by Esme Warati Sherwin, on behalf of herself, the late Emma Gibbs-Smith, and her whānau as members of Nga Whānau o Waitangi Horotutu me Taputaputa o Pahi, Ngāti Kawa, Ngāti Rāhiri, and Ngare Raumati

FIFTH AMENDED STATEMENT OF CLAIM FOR WAI 1477

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THE CLAIMANTS SAY:

THE PARTIES

1. The Claimants, claim by Esme Warati Sherwin, on behalf of herself, the late Emma Gibbs-Smith, and her whānau as members of Nga Whānau o Waitangi Horotutu me Taputaputa o Pahi, Ngāti Kawa, Ngāti Rāhiri, and Ngare Raumati are Maori pursuant to section 6(1) of the Treaty of Waitangi Act 1975 (“**Claimants**”).
2. The Crown is responsible for such Acts, or other statutory instruments, or policies or practices, or acts or omissions as set out in this claim by itself and/or through the Crown entities and agents.
3. The Claimants’ tupuna exercised te tino rangatiratanga over all of the rohe o Ngāti Kawa, Ngati Rāhiri, and Ngare Raumati.
4. The Claimants rohe is encapsulated in the wakaoriori na Kaiteke mo tana tamaiti:

Tama rangi huanga kore he kahawai kotiti,
A puhia koe nga hau o te rae,
A werohia koe e tea anu o Hikurangi,
E kai ki to kiri tohia iho koe ki te tohi kuare.....Na.

Nei koa taua te kiia mai nei,
Mo Whiorau ranei, mo Tapeka hoki,
E tika ana Tapeka he utu tangata hoki
Ina ia te kore ko to tūpuna ko Takaroa,
Takoto mai i roto o te Wharau
Ehara ko Mataiwhetu ka ea nga mate.....Na

Me maka atu koe ki a Mataa ma ra,
Ki a Maanu ma ra mo te whenua nei,
Mo te waka uta katoa e ki roto o Waipapa
E tae ra koe nga rake maanawa
I roto te Ihupuku, kit e iwi e.....I-i
Rukuhia e tama, te au ki Kororipo,
Ko te uto tena o tupuna e tama e,

Kiia mai nei ka ngaro Nga-Puhi
Waiho kia 3ākau3 he tukoki waka nui,
He tuturu whare nui ko Puhi-taniwha-rau
Tu ke mai ana nga puke it e uru
Kauria e tama te awa ki Hokianga
Kia whakahi koe ki Niua, ki Araiteuru
Tahuri o mata ki Panguru, ki Papata,
Tomokia e tama, te whare i a Te Tai
E tae ra koe e uia mai hoki,
Mau e ki atu ko te uri tena o Hiwhero e pepehatia iho
I mua ra e tama i a Takiri koi ora ana
Whakamau e tama nga kohu e tatao
I raro o Whaaro ki te iwi.....e-e

Whakarewa ina ra te kauri i te wao
Hoki mai whakamuri na runga mai koe
I Ngati-Tupoto i to matua hoki
Ia Whatiia e kia whakamaua mai koe ki te rākau
Kia riri ait e tama nei kia nguha ai ki te karo patu e tama e.

5. The boundaries of the claimants' rohe extends from Pouērua (Maunga, Pakaraka) to te Wharau Road (Kerikeri inlet road) to Motu Kokako (Cape Brett) to Opuā.
6. The Claimants marae are at Oromāhoe and Te Tii Waitangi.

FIRST CAUSE OF ACTION: THE CROWN FAILURE TO ACTIVELY PROTECT THE KAITIAKI STATUS OF WĀHINE MĀORI

Material Facts

Facts Specific to the Claimants

7. The Claimants tīpuna lived and held mana whenua over whenua including:
 - a. Ngararatunua;
 - b. Ngatihine;

- c. Kaurinui;
 - d. Te Tii; and
 - e. Oromāhoe.
8. The Claimants' tīpuna never defused their ahi kaa on their whenua.
9. They Claimants remain as some of the few traditional Māori occupiers and original owners of these lands.
10. Prior to 1840, the Claimants wāhine tīpuna were involved and respected in decision-making including in respect of land and natural resources.
11. The Claimants have had a keen interest in environmental issues.
12. Prior to 1991, the Claimants' participation in resource management issues was not accommodated by legislation or policy. In particular:
- a. The Resource Management Act 1991 ("**RMA**") brought together in a single statute of most of the various pieces of statute law whereby the Crown exercised control and management over water and waterways.¹
 - b. A key difference between the RMA and the various statutes that it replaced is the provision made for tangata whenua involvement.²
13. The Claimants hapū has been involved in resource management matters in their rohe.
14. Resource management planning does not take proper account of Māori perspectives. Particulars of these facts include:
- a. Tangata whenua involvement in the RMA is not anywhere near a recognition of tino rangatiratanga (or full authority) for resources.³

¹ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry*, Wai 2200, #217 at 324.

² Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry*, Wai 2200, #217 at 324.

³ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry*, Wai 2200, #217 at 325.

- b. The RMA does not share Crown's delegated exclusive authority held by local authorities with tangata whenua.⁴
 - c. Under the RMA, the Claimants have had limited participation in resource management in their rohe.
 - d. Under the RMA, the Claimants still have to fight to be involved in resource management planning as it is not prescribed that Local Authorities must deal with the relevant local hapū or iwi.
 - e. The Claimants involvement in RMA matters is in the context of the Local Council seeking Māori views that align with the authority's agenda.
 - f. Where the Claimant's views diverge from the Local Council, their views are not considered; and
 - g. When land and resource management is not guided by the Claimants and other Māori perspectives, the natural resources in the Claimants rohe have been mismanaged.
15. Resource management planning does not take proper account of mana wāhine. Particulars of the lack of recognition of mana wāhine in the context of kaitiakitanga and the Crown's resource management in the Claimants rohe are as follows:
- a. The majority of individuals and organisations involved in resource management are either male or led by men.
 - b. Wāhine Māori are not recognised nor welcomed.
 - c. Wāhine Māori struggle to be heard.
 - d. Wāhine Māori are not supported; and
 - e. Wāhine Māori face bullying, intimidation, and bias.

⁴ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry*, Wai 2200, #217 at 325.

General Facts

16. Māori society embraces a worldview determined by whakapapa where people would reckon their kinship to each other by descent from a common ancestor.⁵
17. Descent from bilateral senior lines conferred senior status upon a person was ‘not confined to males.’⁶
18. There were women of pre-eminent rank that ‘personified mana over land and people in their communities and descent groups’.⁷
19. Such women were tapu and would make decisions that bound all their peoples, both male and female. They held chiefly rank and power and possessed mana.⁸
20. At least five women of rank signed the Treaty of Waitangi in 1840.⁹ Further, at least thirteen women¹⁰ have been identified as having signed Te Tiriti.¹¹
21. The concept of women as rangatira and/or whaikōrero was beyond the comprehension of the Crown. It, and its agents could only conceive of dealing with men: “Maori men were the ones with whom the colonisers negotiated, traded and treated”.¹²
22. The fact that Māori women have continuously asserted political influence from the earliest stages of European contact suggests that this was commonplace and was embedded in the culture and tikanga of the region.¹³

⁵ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

⁶ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

⁷ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130 – 131.

⁸ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 131

⁹ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

¹⁰ Takurua, Te Marama, Ana Hamu, Marama, Ereonora, Te Rangitopeora, Kahe Te Rau-o-te-Rangi, Pari, Te Kehu, Ngāraurekau, Rere-ō-Maki, Hoana Riutoto and Te Wairākau.

¹¹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 453.

¹² A. Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 132.

¹³ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 527.

23. Evidence shows that Māori women of mana had a ‘large share of power, status, control and obligations’¹⁴ whereas in the Pākehā world, power, status control and obligations were “reserved exclusively for males.”¹⁵
24. The mana of wāhine rangatira was evident in the early years of contact with Europeans.¹⁶
25. Mana was often passed down from wāhine tīpuna to male or female uri.¹⁷
26. Wāhine Māori played key roles within hapū and iwi.
27. Dispute resolution was one key function of women. Their important peace-making role is encapsulated by the phrase “rongo ā whare.”¹⁸
28. The vitally important tohunga role could be filled by both men and women.
29. There were many important female spiritual leaders who arose throughout the region in the nineteenth century.¹⁹
30. Wāhine tohunga and/or healers were respected and recognised in Māori society when European doctors at the time were almost exclusively male.²⁰
31. Wāhine rangatira, similar to their male counterparts, also took a share of the labour required in a communal economy.²¹
32. There is “unmistakable evidence that [Māori] women’s lives were richer and more varied”²² than Colonial and Pākehā scholarship indicates.
33. The significant changes that occurred during the post 1840 colonial period saw many officials “keen to render silent” the voices of Māori women.²³

¹⁴ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

¹⁵ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

¹⁶ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 242.

¹⁷ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 244.

¹⁸ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 258.

¹⁹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 261.

²⁰ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 264.

²¹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

²² Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 234.

²³ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 510.

34. There was palpable frustration amongst wāhine Māori “by the restrictions placed on them by the male dominated British society.”²⁴
35. As Colonial influence expanded, the potential for Māori men to begin ‘adopting the values’ of European males, with newly displayed attitudes of control over women grew.
36. The RMA does not explicitly protect wāhine kaitiaki rights.

Treaty Principles and Corresponding Crown Duties

37. In accordance with te Tiriti o Waitangi (“te Tiriti”) principle of partnership, the Crown is obliged to act in good faith, fairly, reasonably, and honourably towards Maori.²⁵
38. In accordance with the affirmation of tino rangatiratanga, the Crown needs to be willing to work through the structures Māori prefer, whether through iwi, hapū and whānau, or any other organisation.
39. In accordance with the principle of active protection, the Crown was obliged to actively develop systems with the utmost good faith²⁶ to ensure the interests of Māori are protected. The scope of active protection includes remedial actions against its causes to ameliorate the prejudice suffered.²⁷
40. In accordance with the principle of equity, Māori are entitled to all the rights and privileges of British subjects.²⁸

Breach

41. In breach of the Treaty principles of partnership, recognition of tino rangatiratanga, autonomy, equity and active protection, the Crown:
 - a. failed to actively protect the treaty rights of Māori women and provide for their political, social, economic, and cultural rights.

²⁴ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

²⁵ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (“Broadcasting Assets”); *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.

²⁶ *New Zealand Maori Council v Attorney General* [1987] 1 NZLR at 715.

²⁷ Waitangi Tribunal, *Tu Mai Te Rangi Report on Disproportionate Reoffending Rates*, 2017, Wai 2540, at 35.

²⁸ Waitangi Tribunal, *The Napier Hospital and Health Services Report*, 2001, Wai 692, at 64.

- b. diminished the autonomy of Māori to govern themselves and to determine their own internal political, economic, and social rights and objectives and to act collectively in accordance with those objectives.
- c. took away from Māori the option to exercise kaitiakitanga in the manner that they saw fit.
- d. failed to actively protect wāhine Māori mana and status; and
- e. failed to provide for equal opportunities for wāhine participation within the resource management sphere.

Prejudice

42. As a result of the above actions and omissions of the Crown, the Claimants have and continue to suffer the following prejudice:
- a. a lack of recognition as kaitiaki in the resource management arena;
 - b. degradation of mana;
 - c. emotional harm and humiliation;
 - d. mismanagement of the environment; and
 - e. loss of connection to natural resources including waterways, ngahere, and whenua.

Relief

43. As a result of the foregoing breaches, the Claimants seek the following relief:
- a. A finding that this cause of action is well-founded.
 - b. A finding that the Crown breached its duties of partnership, active protection, equality, and good faith that it owed to the Claimants.
 - c. A recommendation that the Crown make a sincere and public apology to the Claimants for:

- i. Their actions and omissions in not protecting the mana of wahine Maori;
 - ii. The lack of a genuine voice in consultation over decisions around land and the environment;
 - iii. Their inability to hold the kaitiaki status that many women held over their tribal lands prior to 1840;
 - iv. The enforcement of British/western/colonial ideology at the expense of tikanga.
- d. A recommendation that the Crown implement a policy that recognises kaitiaki status and legislates a mandatory engagement process with hapū by local Authority's in respect of resource management matters.
 - e. Such other recommendations that the Tribunal determines as appropriate in the circumstances.

SECOND CAUSE OF ACTION: THE FAILURE TO PROVIDE ADEQUATE EDUCATION TO WĀHINE MĀORI

Material Facts

Facts Specific to the Claimants

44. The Claimants, and in particular the named claimant, Ms Sherwin has experienced systemic and interpersonal racism and bias within the education system. Particulars of the racism experienced include:
- a. Ms Sherwin and other Māori students were assumed to be troublemakers;
 - b. Few teachers saw Ms Sherwin and other Māori students for their potential; and
 - c. Few teachers gave Ms Sherwin and other Māori students the care and attention they needed to succeed.

45. Ms Sherwin and other Maori students experienced a lack of confidence which exacerbated the effect of racism and unconscious bias.

Limited avenues for further education

46. Ms Sherwin and her peers received very little extramural help to support them in furthering their education.
47. Ms Sherwin obtained a scholarship through Māori Affairs.
48. Māori Affairs was one of the few avenues for wāhine Māori students to further their education.
49. The Māori Affairs scholarship was removed in the early 1990s.

Culturally responsive education

50. Ms Sherwin has 7 years' experience tutoring sustainable land practices at North Tec.
51. Ms Sherwin's classroom incorporates mana wāhine perspectives and as a result has the highest raised literacy rates in the North Island.
52. Crown education policy does not adequately incorporate te ao Māori and mana wāhine perspectives.
53. Wāhine Māori students are not given the support they need to learn in a way that is culturally responsive.

General Facts

54. Within te ao Māori, mana wāhine perspectives are fundamental to the maintenance and development of mātauranga Māori.²⁹
55. Wāhine Māori were traditionally transmitters of knowledge through waiata, whakataukī and haka. As primary care givers, they also have a role to deliver this knowledge to the next generation.³⁰

²⁹ T Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 67-68.

³⁰ P Ruwhiu, *Ka haere tonu te mana o ngā wahine Māori: Māori women as protectors of te ao Māori knowledge* (Massey University, 2009), at 20.

56. Policies of colonisation and assimilation have devalued traditional Māori education and practices and have undermined 'and corrupt[ed] indigenous knowledge by selective education and relentless cultural imperialism'.³¹
57. The Crown's imposition of a school system founded on Western ideology has impeded the education of wāhine Māori as early education systems restricted female vocation to the domestic sphere.³²
58. The Crown-imposed school curriculum in the 1870s was aimed at training Māori girls to be proficient in cooking, cleaning, and needlework, to align with Western conceptions of gender roles.³³
59. Māori girls were considered to be destined for motherhood and the 'rescue' of their 'race'. To this end, the curriculum forced them to focus on domestic skills.³⁴
60. The Crown, through its missionaries, targeted wāhine Māori with these education policies in order to further its colonisation agenda.³⁵
61. The Crown ensured through various education policies that Māori girls were channelled into what it deemed to be 'suitable' occupations for women.
62. The provision of continuation scholarships to enable Māori girls to receive nursing training, which emerged from the Conference of Old Boys at Te Aute College in February 1897, is an example of such prejudicial education policies.
63. Māori girls from Hukarere College were able to attend a 12-month nursing course at Napier Hospital to specialise in nursing theory and practice, bandaging and changing dressings, as well as classes in cooking for invalids.
64. Eventually they were allowed to train as registered nurses as this was seen as an appropriate profession for women to enter into, however this came

³¹ T Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 76-77.

³² M Dickson, *Māori Women and Education. Whakatauāki: "He mana te Matauranga – Knowledge is Power"* (Yearbook of New Zealand Jurisprudence, Vol 104, 2005), at 114.

³³ M.Gemmell, *A History of Marginalisation: Māori Women* (Victoria University, 2013), at 49.

³⁴ A Else, *Gender inequalities: Education* (Te Ara: the Encyclopaedia of New Zealand), accessed at <http://www.TeAra.govt.nz/en/gender-inequalities/page-5>.

³⁵ K Jenkins and KM Matthews, *Knowing their place: the political socialisation of Maori women in New Zealand through schooling policy and practice, 1867-1969* (Women's History Review, Vol 7, 1998), at 89 and 90.

with strings attached. Newly trained graduates were required to return to work in their communities, which meant that they were locked into a predetermined vocational and locational path.³⁶

65. As a result of these policies, wahine Māori are less able than non-Māori women to enter into roles of paid employment.³⁷
66. Wāhine Māori therefore spend more time than women of other ethnicities caring for their household in addition to engaging in voluntary, unpaid community work.

Disparity of Māori Education Achievement

67. Many kōtiro Māori struggle to achieve academic success at secondary school, and do not stay in school as long as their non-Māori peers.³⁸
68. Kōtiro Māori are often perceived by teachers as less intelligent, resulting in being streamed into lower academic classes that concentrate on placing students in work experience rather than teaching standard curricular.³⁹
69. This form of discrimination leads to limited employment opportunities which relates to low levels of income and unemployment:⁴⁰
 - a. In 2006, 36 percent of wāhine Māori had no formal qualification;⁴¹
 - b. Additionally, 29 percent of wāhine Māori stated that a post-school qualification (up to NZQF Level 10) was their highest qualification;⁴²
 - c. In 2010, 34 percent of all female students who left school in Year 10 were Māori.⁴³

³⁶ K Jenkins and KM Matthews, *Knowing their place: the political socialisation of Maori women in New Zealand through schooling policy and practice, 1867-1969* (Women's History Review, Vol 7, 1998), at 96.

³⁷ Ministry of Women, *New Zealand Women: Māori Women* (2016), accessed at <<http://women.govt.nz/about/new-zealand-women/m%C4%81ori-women>>.

³⁸ R McLaren, *Agents of retention and achievement of Māori girls at secondary school* (Massey University, 2010), at 3.

³⁹ T Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

⁴⁰ T Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

⁴¹ Statistics New Zealand, *QuickStats About Māori* (Statistics New Zealand, 2006), at 6.

⁴² Statistics New Zealand, *QuickStats About Māori* (Statistics New Zealand, 2006), at 6.

⁴³ Controller and Auditor-General, *Education for Māori: Context for our proposed audit work until 2017* (Office of the Auditor-General, 2012), at 21.

Limited Educational Achievement

70. As a result of colonisation and the Crown's education policy, there is now a socio-economic crisis where wāhine Māori are viewed by others and themselves as being 'at the bottom of the heap',⁴⁴ reducing the number of rangatahi wāhine who pursue tertiary education and a career.⁴⁵
71. Barriers such as poor finances, and lack of access to resources negatively impact educational outcomes for wāhine Māori.⁴⁶
72. The educational achievement gap between Māori and non-Māori severely impacts future employment opportunities for wāhine Māori.⁴⁷
73. The Education Act 1989 ("the Act") avoids establishing Treaty-based rights in education, despite its recognition of Māori having special needs and aspirations in the education sector.⁴⁸
74. The Act stipulates that 'it is the duty of the council of an institution' to acknowledge Treaty principles, removing the onus from external and internal bodies, or an individual engaged with a tertiary institute, to consider the Treaty in its or their actions.⁴⁹
75. The Crown has failed to provide effective initiatives or programmes where wāhine Māori are encouraged or feel comfortable to seek opportunities of further study or employment.
76. Additionally, wāhine Māori struggle to achieve positions where they can influence decision-making, preventing them from spreading knowledge within their whānau and communities.

⁴⁴ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 72.

⁴⁵ T. Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

⁴⁶ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 74.

⁴⁷ Education Counts, *Tertiary Education* (2018), accessed at <https://www.educationcounts.govt.nz/topics/31351/nga-haeata-matauranga-annual-report-on-maori-education/focus-area-4>.

⁴⁸ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 81.

⁴⁹ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 81.

Education and Leadership Roles

77. Pre-colonisation, Māori women could be tohunga and often held chiefly roles. They participated in conversations regarding tribal warfare and were instigators and peacemakers during war.
78. Wāhine Māori were also traditionally seen as political leaders.⁵⁰
79. The Crown's imposition of settler values on Māori communities, and the failure of the Crown to preserve the prevalence of wāhine Māori in leadership roles, has led to circumstances and policies which marginalise wāhine Māori. This places obstacles between wāhine Māori and positions of leadership.
80. The failure of the Crown to provide for the study of rangatira wāhine in school curriculums fails to inspire these wāhine to pursue higher education. Limited education prevents wāhine Māori from fully participating in education decision-making processes and academic curriculum.⁵¹
81. The United Nations entity for Gender Equality and the Empowerment of Women has stated that education is fundamental to the capability of women to participate in decision-making processes.⁵²
82. Only 7% of roles on state sector boards and committees are held by wāhine Māori.⁵³
83. The Crown has failed to recognise that wāhine Māori participation at all levels of decision-making is important to empower an increasingly young Māori population, as wāhine have the ability to validate Māori customs and ideologies within a community setting.⁵⁴
84. Māori achievement is improved by culturally responsive educational programmes which support the development of te reo Māori, tikanga, and

⁵⁰ M Gemmell, *A History of Marginalisation: Māori Women* (Victoria University of Wellington, 2013), at 26, accessed at <<https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/3065/thesis.pdf?sequence=2>>.

⁵¹ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 69-70.

⁵² T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 83.

⁵³ Ministry of Women's Affairs, *Māori Women on Boards* (Ministry of Women's Affairs, 2009), at 1.

⁵⁴ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 83.

promotes whakawhanaungatanga.⁵⁵ The Crown is aware of this yet neglects to make effective change.

Negative Statistics in Māori Woman's Education

85. In today's world most, if not all, Māori women 'participate in the modern Pakeha structured society.'⁵⁶
86. However, many Māori women 'betray a colonization of the mind'⁵⁷ and an acceptance of 'the proletarianization of their men...themselves and their close relatives.'⁵⁸
87. Māori women remain an at-risk group in New Zealand society as the post-colonial hangover for wahine endures.
88. The statistics bear this out.⁵⁹
89. Māori women have the lowest rate of 18-year-olds with NCEA level 2 or above at 69.6%.
90. Only 32% of Māori have an NZQF qualification above level four. This is the second lowest amongst ethnic groups in New Zealand.
91. Early Crown policy around education laid the foundations for the poor educational results seen in the modern day.
92. Crown failures to provide for Māori culture and language, suppression of Te Reo Māori, a lack of equal education opportunities and an early emphasis on manual instruction are all contributing factors.
93. A common view in the 19th century was that 'certain people or groups, including non-European races and women were not suited to too much mental exertion...and were more suited to practical activities.'⁶⁰

⁵⁵ Ministry of Education, *Tertiary Education Strategy 2014-2019* (Ministry of Education and the Ministry of Business, Innovation and Employment, 2014), at 13.

⁵⁶ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 233.

⁵⁷ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

⁵⁸ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

⁵⁹ The following statistical statements based on statistics viewed at www.stats.govt.nz.

⁶⁰ Barrington, JM, *Northern Language, Culture and Education*, 2005, Wai 1040, #A2, at 200.

94. This view survived throughout much of the twentieth century in certain influential sectors of New Zealand society.
95. The Crown has much to do to address these negative statistics and so far, has failed to do so adequately.

Treaty Principles and Corresponding Crown Duties

96. In accordance with the principle of partnership, the Crown is obliged to act in good faith, fairly, reasonably, and honourably towards Maori.⁶¹
97. In accordance with the principle of active protection, the Crown is obliged to actively develop systems with the utmost good faith⁶² to ensure the interests of Māori are protected. Therefore, the Crown is obliged to ensure that within the Education system, the interests of Māori are protected.
98. The scope of active protection includes remedial actions against its causes to ameliorate the prejudice suffered.⁶³

Breach

99. In breach of the Treaty principles of partnership and active protection, the Crown:
 - a. failed to provide adequate educational opportunities for wāhine Māori.
 - b. failed to actively protect the treaty rights of Māori women and provide for their right to education.
 - c. diminished the autonomy of Māori to govern themselves and to determine their own internal political, economic, and social rights and objectives and to act collectively in accordance with those objectives.
 - d. took away from Māori the option to maintain their traditional culture or to assimilate into the colonising culture.

⁶¹ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (“Broadcasting Assets”); *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641.

⁶² *New Zealand Maori Council v Attorney General* [1987] 1 NZLR at 715.

⁶³ Waitangi Tribunal, *Tu Mai Te Rangi Report on Disproportionate Reoffending Rates*, 2017, Wai 2540, at 35.

- e. failed to actively protect wāhine Māori mana and status.

Prejudice

100. As a result of the above actions and omissions of the Crown, the Claimants have and continue to suffer the following prejudice:
- a. they have experienced discrimination and unequal treatment.
 - b. they have been patronised and treated with contempt.
 - c. they have not received equal treatment in the education sector.
 - d. employment opportunities were diminished; and
 - e. a diminution of mana, and harm and humiliation.

Relief

101. The relief sought is as follows:
- a. A finding that the claim is well-founded.
 - b. A finding that the Crown breached its duties of partnership, active protection, equality, and good faith that it owed to the Claimants.
 - c. A recommendation that the Crown make a sincere and public apology to the Claimants for:
 - i. Negative social and educational outcomes for Māori women.
 - ii. Its failure to provide adequate educational opportunities for wāhine Māori, resulting in reduced employment and income opportunities.
 - d. A recommendation that the Ministry of Education implement a policy of non-discrimination and training to mitigate against unconscious bias.

- e. A recommendation that the Ministry of Education implements policies to incorporate te ao Māori and tikanga Māori in all courses and curriculum.
- f. A recommendation that the Crown fund equal opportunities for Māori wāhine.
- g. A recommendation that the Crown funds a special wahine Māori youth training programme.
- h. A recommendation that the Ministry of Education incorporates and funds for all business and management diplomas and degrees a foundational study course on the Treaty of Waitangi, and the social impacts of colonisation on Māori, and unconscious bias.
- i. Such other recommendations that the Tribunal determines as appropriate in the circumstances.

Dated at **TAMAKI MAKAU** this **28th** day of **July 2021**



Stephanie Roughton/Katherine Alty
Counsel Acting

This Statement of Claim is filed by **KATHERINE ALTY**, Solicitor for the Claimants, of the firm **Tamaki Legal Limited**. The address for service of the Claimants is at the office of Tamaki Legal Ltd, Barristers and Solicitors, Level 2, 15 Osterley Way, Manukau, Auckland. Documents for service on the Claimants may be left at that address for service or may be:

- (a) Posted to the Solicitor at PO Box 75-517, Manurewa, Auckland 2243; or
- (b) Emailed to the solicitors at katherine@tamakilegal.com.