

**IN THE WAITANGI TRIBUNAL**

**WAI 2700  
WAI 2123**

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND  
IN THE MATTER OF**

Kaupapa Inquiry into claims concerning mana wahine (Wai 2700)

**AND  
IN THE MATTER OF**

A claim by Francis McLaughlin in relation to the individual members of the Notorious Chapter of the Mongrel Mob

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**AMENDED STATEMENT OF CLAIM**

**Dated this 19<sup>th</sup> day of August 2020**

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Waitangi Tribunal

**19 Aug 2020**

Ministry of Justice  
WELLINGTON

## **MAY IT PLEASE THE TRIBUNAL:**

### **Introduction**

1. This amended statement of claim is filed with respect to Wai 2123, a claim by Francis McLaughlin in relation to the individual members of the Notorious Chapter of the Mongrel Mob (herein referred to as "the Claimant").
2. The Claimant is Māori and claims that wahine Māori associates of the Notorious Chapter of the Mongrel Mob have been and remain prejudicially affected by the acts and omissions, policies and practices of the Crown which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi that have had and continue to have a detrimental impact on the mana of wahine Māori as a result of inequities faced by wāhine Māori members of gang whānau and their children.

### **Principles of the Treaty of Waitangi**

3. The Claimant adopts the findings made in Stage 1 of Te Paparahi o Te Raki Inquiry ("the Wai 1040 Inquiry") with respect to enduring Māori rangatiratanga, where the Tribunal states:<sup>1</sup>

Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories, rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the Rangatira did not surrender to the British the sole right to make and enforce law over Māori. it was up to the

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<sup>1</sup> Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at 527.

British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson's silence on this crucial matter means that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met.

## **Partnership**

4. Accordingly, Te Tiriti o Waitangi envisaged a partnership where rangatiratanga would continue to subsist alongside kawanatanga, enabling both the Crown and Rangatira to exercise mana over their own people (and interests) in accordance with their own tikanga.
5. A further cornerstone of the principle of partnership is the principle of mutual benefit or mutual advantage. In the Mangonui Sewerage Report, the Tribunal notes:<sup>2</sup>

The basic concept was that a place could be made for two people of vastly different cultures, of mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed...It is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.

6. The underlying premise is that both partners signed the Treaty expecting to benefit from the arrangement. This principle requires that "the needs of both cultures must be provided for and compromise may be needed in some cases to achieve this objective".<sup>3</sup>

## **Active Protection**

7. It is well-founded that the Crown's duty of active protection is central to the principles of the Treaty of Waitangi. The principle recognises that the Crown is no longer at liberty to merely "smooth the pillow of the dying race" or to sit on its hands and turn a blind eye to serious levels of harm

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<sup>2</sup> Waitangi Tribunal *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wai 17, 1988) at 4.

<sup>3</sup> Waitangi Tribunal, *Ngāwhā Geothermal Resource Report* (Wai 304, 1993) at 137.

suffered by Māori in breach of the principles of the Treaty of Waitangi. The notion that the principle encompasses an obligation upon the Crown to take proactive steps to ensure that Māori interests and taonga are protected was established by the Tribunal as early 1985 in the Manukau Report where it stated:<sup>4</sup>

The Treaty of Waitangi obliges the Crown not only to recognise the Māori interests specified in the Treaty but actively to protect them. The possessory guarantees of the second article must be read in conjunction with the preamble (where the Crown is “anxious to protect” the tribes against envisaged exigencies of emigration) and the third article where a “royal protection” is conferred. It follows that the omission to provide that protection is as much a breach of the treaty as a positive act that removes those rights.

8. The duty of active protection is not limited to the protection of proprietary interests but extends to the protection of Māori themselves:<sup>5</sup>

The Tribunal’s conception of the Māori interests to be protected go beyond property and encompass tribal authority, Māori cultural practices and Māori themselves, as groups and individuals. The Tribunal has endorsed a holistic reading of the Treaty and presents the principle of protection as a theme fundamental to the entire document, which is explicitly referenced in the Preamble and Article III, and which is not confined to Article II matters.

9. From a tikanga Māori perspective, nothing could be more sacrosanct than the life and wellbeing of wāhine. The Privy Council further noted that the duty of active protection requires vigorous action where a taonga is threatened, especially where its vulnerability can be traced to earlier breaches of the Treaty:<sup>6</sup>

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<sup>4</sup> Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukau claim* (Wai 8, 1989) at 79.

<sup>5</sup> Te Puni Kōkiri/Ministry of Māori Development *He tirohanga o kawa ki te Tiriti o Waitangi, the principles of the Treaty of Waitangi as expressed by the courts and the Waitangi Tribunal* Wellington 2001, at 95.

<sup>6</sup> *New Zealand Māori Council v Attorney General* [1994] 1 NZLR 513 (PC) [Broadcasting Assets case] at 517.

... if as is the case with the Māori language at the present time, a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations. This may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches of the Crown of its obligations and may extend to the situation where those breaches are due to legislative action.

### **Participation and Equity**

10. The obligations arising from partnership, and active protection give rise to the principle of participation and in particular, the principle that Māori are entitled to participate equitably alongside Pākehā from Crown policy and legislation. This requires the Crown to act fairly toward both Pākehā and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of participation and equity – in conjunction with the principles of partnership and active protection require that active measures be taken to restore the balance.

### **Crown Breaches of the Principles of the Treaty of Waitangi**

11. The Crown has failed in its obligation to take proactive steps to protect wahine Māori wahine Māori associates of the Notorious Chapter of the Mongrel Mob from inequitably high levels of harm and discrimination suffered as the culminating result of their being Māori, their being women, and their association with gangs with respect to:
  - a. Education
  - b. Employment
  - c. Housing
  - d. Health

- e. Criminalisation and imprisonment
  - f. Excessive use of force by officers of the state
  - g. Crimes against women and children resulting in serious harm and death
  - h. Mental illness, depression and suicide
  - i. Addictions and substance abuse
  - j. Abuse of wāhine Māori members of gang whānau and their children in state care
  - k. Systematic institutional bias and discrimination.
12. This is an inexhaustive list as disproportionately high numbers of gang whānau including wahine Māori gang associates are at the sharpest end of every socioeconomic indicator existing in New Zealand.
13. Compounding the situation is that many gang whānau disengage with the Crown's systems intended to address inequities, as a result of rampant racism and discrimination which they experience more acutely than any other section of society as a result of being Māori, as a result of being wahine and as a result of being associated with gangs.
14. Despite this, the Crown has done little to facilitate a system which enables and empowers wahine Māori within gangs to develop services for themselves and their children in accordance with the principle of tino rangatiratanga.
15. Instead the Crown turns a blind eye to the plight of wāhine Māori and children of gangs who are expected to fit within established Pākehā systems regardless of the discrimination, abuse, violence, and suffering which they face upon engaging within them.
16. Moreover, the Crown demonstrates a chronic apathy toward the more common outcome whereby wāhine Māori and children of gangs disengage with state services and suffer massive inequities across the board as a result.

17. To demonstrate these inequities and by means of example, the average life expectancy of a gang member in New Zealand is only 45 years.
18. The primary causes of death for gang whānau in New Zealand are preventable, including preventable illnesses and suicide.
19. Only 6 percent of gang whānau have a regular GP or are enrolled in a health service. This is despite that:
  - a. 72 percent of gang whānau have experienced trauma or distress that impacts their health.
  - b. Many gang whānau have an undiagnosed serious health condition that requires regular support and care.
  - c. Gang whānau suffer high levels of cancer across the matrix yet only a small number are registered for screening services.
  - d. 59 percent of gang whānau have stated issues with addiction yet only 3 percent are seeking support.
  - e. Only 1 in 19 gang wāhine seek midwifery support in the first trimester due to fears of stigma.
  - f. 81 percent of gang rangatahi have not had any sexual health education or advice yet are sexually active.

**Case study: Inequitable levels of violence resulting in serious harm and death**

20. New Zealand women experience the highest reported rate of intimate partner violence and the highest lifetime prevalence of sexual violence for any OECD country.
21. Of all New Zealand women anecdotal evidence suggests that wāhine Māori gang associates experience a disproportionately high level and frequency of violence.
22. Intimate partners commit the largest number of all interpersonal violent offences against adults in New Zealand. More than one in three (35.4%)

New Zealand women report having experienced physical and/or sexual intimate partner violence in their lifetime and almost one in four (23.8%) of all New Zealand women report having experienced sexual assault in their lifetime.

23. Women are 7-10 times more likely than men to be seriously injured by partner violence, and more likely to be killed by their partner or ex-partner.
24. Most incidents of violence go unreported. Just 20% of family violence and 9% of sexual violence is reported to police. The New Zealand Crime and Safety Survey (NZ CASS) is used to measure prevalence 'rates' of family and sexual violence, despite the government acknowledging that this significantly under-counts such violence and is therefore a poor measure.
25. Despite that 71% of incidents are not reported, a 2016 Crime Safety Survey focusing on domestic violence found that:<sup>7</sup>
  - a. Wāhine Māori are more than twice as likely to experience one or more coercive and controlling behaviours from a current partner and to be a victim of a violent interpersonal offence by an intimate partner.
  - b. 42% of "unique victims of serious offence" were Māori.
  - c. 29% of women and 39% of children using the Women's Refuge services are Māori whilst 37% of referrals to refuge for support were Māori.
  - d. 61% of children within the care of Oranga Tamariki were Māori.
  - e. 64% of children admitted to care and protection residences were Māori.
  - f. 46% of children with physical abuse findings were Māori.
  - g. 47% of all homicides in New Zealand are family related – 37 children died from abuse and neglect between 2009 to 2012, 16 of those were Māori children.

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<sup>7</sup> *Understanding family violence: Māori in Aotearoa New Zealand*, Te Puni Kōkiri/Ministry of Māori Development Wellington June 2013.



number of women killed by partners or ex-partners; and to monitor the effectiveness of legislation, policy and practice relating to all forms of violence against women and girls.

- c. Perhaps as a result of a failure to adequately monitor levels of harm suffered by wāhine Māori, the Crown has failed to provide adequate assistance and protection to women victims of violence, including wāhine Māori, by ensuring for example that they receive the necessary legal and psychosocial services.
- d. The Crown fails to adequately fund services providing support to victims of family violence. The family violence response sector relies on fund-raising and volunteers to keep services open. More than 50% of the Women's Refuge workforce are volunteers. This is despite that Help-seeking attempts by women have been steadily increasing for many years including reports to police, notifications to Child, Youth and Family, crisis line calls and women and children accessing Women's Refuge.
- e. At an overt level the breaches include a procurement and funding system which openly discriminates against Gang service providers such as the education and health services provided by Ms Kururangi which are not eligible for funding. All staff on these programmes are forced to work voluntarily using their Ministry for Social Development benefits to provide the resources necessary to help gang whānau.
- f. Funding for responding to the needs of specific groups of women who are more likely to be targeted for violence such as wāhine Māori has not been forthcoming, despite many years of advocacy.
- g. Despite recent promises to increase funding, services are still unable to keep up with the demand for help.
- h. There is a question as to whether Crown funding is going to the right services, because of the government's focus on criminal justice reform and crisis services, when partner, family and sexual violence are all complex social issues which are heavily under-reported.

- i. Government reports have noted that investment in primary prevention and early intervention would contribute to real change in rates of violence. Yet less than 10% of the government spend on family violence goes to reducing family violence, and just 1.5% goes to primary prevention.
- j. In addition, the Crown is failing to provide adequate criminal justice responses to women experiencing violence. Reports demonstrate that Court processes fail women experiencing violence, with inconsistent decisions around bail and bail conditions, protective orders and sentencing. Of particular concern is the plea-bargaining down from murder to manslaughter in exchange for guilty pleas (as seen in some high-profile deaths from partner violence).
- k. While specific legislative changes would help, there remains issues of how legislation is implemented. A lack of consistency of training across all levels of violence against women results in protective legislative measures not being fully implemented (e.g. judges in sexual violence cases allowing the victim's sexual history to be introduced, despite legislative protections in place). There is no monitoring of the training provided and therefore no way to improve outcomes for women experiencing violence.
- l. There is a need for the Crown to strengthen training for the police, public prosecutors, the judiciary and other relevant government bodies on domestic and sexual violence.

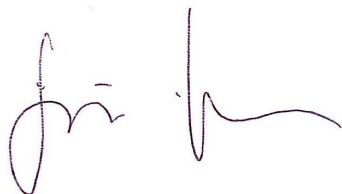
### **Recommendations Sought**

30. In these circumstances, the Claimant seeks the following findings:
- (a) That the Crown has and continues to breach its obligations of active protection towards wahine Māori associates of the Notorious Chapter of the Mongrel Mob by failing to adequately protect the Claimants in the respect set out above.
  - (b) That the government should engage in consultation with wahine Māori associates of the Notorious Chapter of the Mongrel Mob

alongside other claimants in order to formulate more appropriate policies to meet their specific needs in this regard.

- (c) That the government significantly expand supported advocacy options for wahine Māori associates of the Notorious Chapter of the Mongrel Mob who suffer the acute impacts of inter-generational trauma caused by colonisation in a manner unseen by any other sector of society.
- (d) Improved potential for wahine Māori associates of the Notorious Chapter of the Mongrel Mob to seek and maintain meaningful support through individual and whānau led programmes created by and for Priority Whānau.
- (e) Improved potential for better and more sustainable project and event development led by and for wahine Māori associates of the Notorious Chapter of the Mongrel Mob.
- (f) Improved whānau well-being through programmes developed and provided by wahine Māori associates of the Notorious Chapter of the Mongrel Mob to support their own whānau well-being.
- (g) The development of policies to enable freedom from all forms of discrimination experienced by wahine Māori associates of the Notorious Chapter of the Mongrel Mob.

DATED this 19<sup>th</sup> day of August 2020



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T Te Whenua/Michael Sharp  
Claimant Counsel

**THIS STATEMENT OF CLAIM** is filed by Tania Te Whenua, Solicitor for the Claimant. Documents for service on the Applicant may be:

- (a) Posted to their solicitor at PO Box 12094, ROTORUA 3045.
- (b) Emailed to counsel at [tania@tewhenua.maori.nz](mailto:tania@tewhenua.maori.nz); and [michael@michaelsharp.co.nz](mailto:michael@michaelsharp.co.nz).