OFFICIAL

WAITANGI TRIBUNAL

Wai 1464
Wai 1546
Wai 682
Wai 49
Wai 3503

CONCERNING the Treaty of Waitangi Act 1975

AND an application for an urgent inquiry by Te Kapotai and Ngāti Pare claim (Wai 1464)

AND an application for an urgent inquiry by the Waikare Inlet claim (Wai 1546)

AND an application for an urgent inquiry by the Ngāti Hine Lands, Forests and Resources claim (Wai 682)

AND an application for an urgent inquiry by the Taumarere River and Te Moana O Pikopiko-I-Whiti claim (Wai 49)

AND an application for an urgent inquiry by the Education (New Zealand Educational Institute) claim (Wai 3503)

MEMORANDUM-DIRECTIONS OF CHAIRPERSON CHIEF JUDGE DR C L FOX ADDRESSING SUBMISSIONS ON THE DISCLOSURES OF A PANEL MEMBER

17 December 2025

Determining a potential conflict of interest

Procedural history

1. On 19 November 2025, the Tribunal received a joint application for an urgent inquiry, filed by Tukau Law on behalf of Te Kapotai and Ngāti Pare hapu (Wai 1464) / the Waikare Inlet (Wai 1546) claims and the Ngāti Hine Lands, Forests and Resources (Wai 682) and Taumarere River and Te Moana o Pikopiko-i-Whiti (Wai 49) claims (Wai 1464, #3.1.17).

2. On 3 December 2025, the Tribunal received another application for urgent inquiry, filed by Annette Sykes & Co. on behalf of the Education (New Zealand Educational Institute) (Wai 3503) claim (Wai 3503, #3.1.2 & #3.1.3).

3. Both applications concern the recent amendments to the Education and Training Act 2020, and the reset of the New Zealand Curriculum - Te Mātaiaho (Wai 1464, #1.1.1(z) & Wai 3503, #1.1.1(a)).

4. On 5 December 2025, Judge Rachel Mullins, a judge of the Māori Land Court, was appointed as the presiding officer to the panel to determine both urgent applications, alongside Dr Paul Hamer, Kevin Prime, Gerrard Albert, and Derek Fox as members to this panel (Wai 1464, #2.5.2).

5. In this memorandum-direction, Mr Prime made the following disclosures to parties in this inquiry (Wai 1464, #2.5.2 at [9] – [10]):

    (a) Mr Prime was the Chairman of the Board of Governors for the Bay of Islands College from 1983 – 2003; and

    (b) Mr Prime was previously a named claimant of the Ngāti Hine Lands, Forests and Resources (Wai 682) claim, though he has not actively participated in the Wai 682 claim for several years, and has not been a named claimant since May 2023 (Wai 682, #2.30).

6. Consequently, I directed that any parties who had issue with the appointment of Mr Prime to this panel in light of these disclosures, was to file submissions no later than 12 December 2025.

7. The Tribunal received only submissions of the Crown regarding the disclosures of Mr Prime (Wai 1464, #3.1.26).

Submissions received

8. On 9 December 2025, the Tribunal received a memorandum of counsel for the Crown, in summary the Crown submit (Wai 1464, #3.1.26 at [4] – [6]):

    (a) its acknowledgement that it is a matter for the Tribunal to regulate its own proceedings, including panel appointments;

    (b) Mr Prime's past experience as Chairman of the school board will hold him in 'good stead' to perform his functions as a panel member; and

(c) the Tribunal should record its consideration and application of the principles articulated in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd.*[1]

Law

9. The Tribunal in the past, when determining whether the disclosures of a presiding officer or panel member of the Tribunal qualify as a perceived or apparent conflict of interest, has adopted the common law test for apparent bias articulated in the *Saxmere* case.[2]

10. There are two-steps when considering whether a potential perceived conflict of interest exists:

    (a) what are the circumstances relevant to the possible need for recusal because of apparent bias?

    (b) whether those circumstances lead to a reasonable apprehension where the judge may not be impartial.

11. That test therefore requires ascertainment of, first, what may lead a fair-minded lay observer to reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. Secondly, whether there is a logical and sufficient connection between those circumstances and that apprehension.

12. Further, to guide this consideration, the Tribunal has also looked to the High Court recusal guidelines, which state:[3]

> **1. General principles**
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> 1.1 A judge has an obligation to sit on any case allocated to him or her unless grounds for recusal exist.
>
> 1.2 A judge should recuse him or herself if, in the circumstances, a fair-minded, fully informed observer would have a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.
>
> 1.3 The standard for recusal is one of "real and not remote possibility", rather than probability.
>
> 1.4 The test is a two-stage one. The judge must consider
>
> 1.4.1 First, what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits; and
>
> 1.4.2 Second, whether there is a "logical and sufficient connection" between those circumstances and that apprehension.
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> 1.5 The question of recusal is for the judge hearing the case. Some of the matters the judge should consider are:
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> 1.5.1 A judge should apply the above principles firmly and fairly and not accede too readily to suggestions of bias.

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[1] *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122.
[2] Wai 58, #2.34.
[3] Chief High Court Judge – Te Kaiwhakawā Matua, 'High Court recusal guidelines' (12 June 2017): High Court recusal guidelines — Courts of New Zealand.

1.5.2 A judge should be mindful of the burden that passes to other judges if the judge recuses him or herself unnecessarily.

1.5.3. A judge is not required to recuse him or herself merely because the issues involved in a case are in some indirect way related to the judge's personal experience or that the judge has previously dealt with the case.

[…]

1.5.5 If, after considering all relevant circumstances, there is doubt about whether there may properly be an appearance of bias, it may be prudent for the judge to decline to sit in that case.

1.6 Conflicts of interest can arise in a number of different situations. A judge should be alert to any appearance of bias arising out of connections with litigants, their legal advisors or witnesses.

[…]

3. Recusal arising from legal practice

3.1 A judge should recuse himself or herself if he or she served as a legal advisor in respect of the matter in issue when in practice.

3.2 If the matter in issue was dealt with by the firm at a time when the judge was a member of the firm, the judge may need to consider recusal even if the judge had no personal involvement in providing advice about it if the Judge obtained relevant knowledge about the matter in issue or had formed a view of the parties.

Discussion

13. Mr Prime's involvement regarding the Wai 682 claim has been addressed in the past, in a similar application before the Tribunal. I determine that the same considerations apply here.

14. Mr Prime has not been involved as an active claimant in the Wai 682 claim since before his removal in May 2023, and has sat on several panels in determination of issues that the Wai 682 claim has bought.[4]

15. Further, as submitted by the Crown, there are no perceived issues regarding his previous appointment as Chairman of the Board of Governors of the Bay of Islands College, and I agree this in fact will assist in his performance as a member when determining these applications.

16. Therefore, I do not consider that there could be a reasonable apprehension that Mr Prime would exercise his role as a member and decide the claims before the Tribunal other than on merit. There is no logical and sufficient connection between his previous work on the Wai 682 claim, and his current role as a member of the Tribunal hearing the urgent application to qualify as a perceived conflict of interest or apparent bias.

17. I confirm Kevin Prime remains appointed to the panel to determine the urgent applications.

[4] Wai 3325, The Climate Change Priority Inquiry; Wai 3310, The Education Services and Outcomes Kaupapa Inquiry; and Wai 3365, Māori Wards and Constituencies Urgent Inquiry.

The Registrar is to send a copy of this direction to counsel for the applicants, Crown counsel and those on the notification list for:

- Wai 1464, Te Kapotai and Ngati Pare claim;
- Wai 1546, the Waikare Inlet claim;
- Wai 682, the Ngāti Hine Lands, Forests and Resources claim;
- Wai 49, the Taumarere River and Te Moana O Pikopiko-I-Whiti claim; and
- Wai 3503, the Education (New Zealand Educational Institute) claim.

DATED at Wellington this 17th day of December 2025

Chief Judge Dr C L Fox
Chairperson
WAITANGI TRIBUNAL