Appendix: Statement of Tikanga

I TE KŌTI MANA NUI

IN THE SUPREME COURT OF NEW ZEALAND

SC 49/2019

BETWEEN	**PETER HUGH MCGREGOR ELLIS**
	Applicant
AND	**THE QUEEN**
	Respondent

STATEMENT OF TIKANGA OF SIR HIRINI MOKO MEAD AND PROFESSOR POU TEMARA

31 January 2020

We, SIR HIRINI MOKO MEAD, Professor, of Ngāti Awa (based in Wellington), and Pou Temara, Professor, of Tūhoe (based in Hamilton) say:

INTRODUCTION

Sir Hirini Moko Mead

1. My name is Hirini Moko Mead. I am of Ngāti Awa descent and acknowledge my whakapapa connections to Ngāti Tūwharetoa and to Tūhourangi.

2. I was the founding professor of Māori Studies at Victoria University of Wellington, the first department of Māori studies in the country. I was also closely involved in establishing, Te Whare Wānanga o Awanuiārangi, at

Whakatane.

3. I was the chief negotiator for the Ngāti Awa Treaty settlement claims, the Chairperson of Te Rūnanga o Ngāti Awa and have been the Chairperson of the Council of Te Whare Wānanga o Awanuiārangi since 2003.

4. I am a scholar of Māori language and culture and have written over 70 books, papers and articles including the book “Tikanga Māori: Living by Māori Values (2003)”.

5. I was appointed to the Waitangi Tribunal in 2003 and was made a Distinguished Companion of the New Zealand Order of Merit in 2007 for my services to Māori and to education.

Professor Pou Temara

6. My name is Pou Temara. I am of Tūhoe descent, and have been involved in the Māori world for my entire life. I am a native speaker of Māori and trained in tikanga Māori under the guidance of tohunga (experts) such as Hikawera Te Kurapa, Tamahou Tinimeene, John Rangihau of Tūhoe and Sir Hirini Mead of Ngāti Awa.

7. Until recently I worked with Dr Wharehuia Milroy and Sir Timoti Karetu as directors and teachers of Te Panekiretanga o te Reo Māori – the Institute of Excellence in the Māori Language – an institute that teaches excellence in the Māori language and tikanga under the auspices of Te Wānanga o Aotearoa.

8. I have held senior teaching posts at Victoria University, Te Whare Wānanga o Awanuiārangi and currently hold positions at The Ministry of Culture and Heritage as Chair of the Advisory Panel for the Repatriation of Māori Remains from overseas institutions (administered by Te Papa Tongarewa) and the University of Waikato where I am a Professor of reo and tikanga. I have been a member of the Waitangi Tribunal since 2008.

OVERVIEW

9. In early December 2019 we received an invitation from the Solicitor-General to attend a wānanga (meeting) of some tikanga experts in order that all Counsel involved in the Peter Ellis appeal to the Supreme Court (both the Crown and counsel for Mr Ellis) might jointly gain an understanding of the tikanga principles applicable to the question of continuance of an already granted application for leave to appeal.

10. We understand that Counsel have been asked by the Supreme Court to address:

    (a) whether tikanga might be relevant to any aspect of the Court's decision on whether the appeal should continue;
    (b) if so, which aspects of tikanga; and
    (c) if it is relevant, how tikanga should be taken into account.

11. The wānanga occurred on 10 and 11 of December 2019. The process adopted for this wānanga was:

    (a) Day one: the experts met to discuss the relevant tikanga and the place of tikanga in New Zealand law, supported by Māori lawyers. This day allowed for free exploration and discussion of the tikanga as a rōpū (group).

    (b) Day two: the experts, supported again by Māori lawyers, met with all Counsel to talk through and assist with their understanding of the tikanga issues in their case.

12. The other tikanga experts that were in attendance at various points over the two days included:

    (a) Te Ripowai Higgins;
    (b) Kura Moeahu;
    (c) Professor Rawinia Higgins;
    (d) Associate Professor Peter Adds;

(e) Che Wilson;
(f) Mohi Apou; and
(g) Tamahou Rowe.

13. Each of these people is well versed and considered to be eminent knowledge holders in the subject matter of tikanga Māori.

14. Also in attendance at various points over the two days were representatives from Te Hunga Rōia Māori o Aotearoa, the Māori Law Society (Te Hunga Rōia Māori) including:

(a) Matanuku Mahuika;
(b) Horiana Irwin-Easthope;
(c) Māmari Stephens;
(d) Natalie Coates (counsel for Peter Ellis);
(e) Kingi Snelgar (counsel for Peter Ellis);
(f) Jason Gough (Senior Crown Counsel);
(g) Bernadette Arapere (Crown Counsel);
(h) Rhianna Morar (Crown Law Summer Clerk); and
(i) Marcia Murray (Crown Counsel).

15. Te Hunga Rōia Māori representatives were there both days to manaaki (care for) our group and assist in answering any legal questions that we had.

16. Further Counsel in attendance on Day 2 as described at paragraph 11(b) above included:

(a) Una Jagose QC (Solicitor General);
(b) Allanah Colley (Assistant Crown Counsel);
(c) Rob Harrison (counsel for Peter Ellis); and
(d) Sue Grey (counsel for Peter Ellis).

17. The culmination of this hui was a brief series of agreed statements that were assisted by an eminent group of knowledge holders of matauranga Māori. We have entitled this “Ngā Whakataunga a ngā Mātanga Tikanga

i Hui i Te Herenga Waka Marae, i Te Upoko o Te Ika (Ngā Whakataunga a ngā Mātanga Tikanga)".

18. The agreed series of statements speak to: the overall place of tikanga in Aotearoa; the intersection between tikanga and the state legal system; the nature of tikanga (and its associated principles); and the key tikanga principles relevant to this case.

19. These statements are as follows:

> ***Ngā Whakataunga a ngā Mātanga Tikanga***
>
> *Me whakauru ngā mātāpono o te tikanga Māori ki roto i ngā ture o te whenua.*
>
> *Tikanga Māori is the first law of Aotearoa.*
>
> *Tikanga Māori principles are part of the common law of Aotearoa.*
>
> *Decisions about mātāpono (principles) are always subject to variables such as concepts, practices, and values, as relevant to the circumstances.*

20. In relation to this particular case, the agreed statement is:

> *Mana tangata, and by implication, whakapapa and whanaungatanga, is impacted by the allegations of hara. Consequently, this continues after the death of the person.*
>
> *Tikanga requires further probing in these circumstances.*

21. To assist the parties and the Court we expand on these statements below and provide further comment on:

    (a) the nature of tikanga;

    (b) the intersection between tikanga and the common law; and

    (c) our statement of tikanga as applicable to the question of continuance.

THE NATURE OF TIKANGA

22. Tikanga is the first law of Aotearoa. It is the law that grew from and is

very much embedded in our whenua (land).

23. Tikanga Māori came to the shores of Aotearoa with our Māori ancestors, starting with Kupe and those on board the waka (canoe) Matahourua. In some traditions, tikanga merged with that already present. Tikanga operated effectively for around a millennia before Pākēha arrived.

24. Tikanga is the Māori "common law". It is a system of law that is used to provide predictability and are templates and frameworks to guide actions and outcomes.

25. The term 'tika' means 'to be right'. Tikanga Māori therefore means the right Māori way of doing things. It is what Māori consider is just and correct.

26. Tikanga Māori includes all of the values, standards, principles or norms that the Māori community subscribe to, to determine the appropriate conduct.

27. Tikanga is therefore comprised of both practice and principle. That is, it includes both the rules (what you should and should not do) as well as the principles that inform the practical operation and manifestation of the rule.

28. The customs or rules of tikanga are acknowledged when they are maintained by the people and are observed in fact.

29. Tikanga principles, concepts, practices and values include (but are not limited to):

    (a) manaakitanga and whanaungatanga;

    (b) mana;

    (c) tapu;

    (d) utu;

    (e) noa and ea;

(f) whakapapa; and

(g) kaitiakitanga.

30. These fundamental concepts are intertwined and cannot be defined in isolation or translated by a simple English word. They exist in an interconnected matrix. This will become evident in our description of the operation of these principles in the current context, below.

31. The values and principles that underlie tikanga are common among Māori. They are universally accepted and are a constant. The practice and the manifestation of these principles in particular contexts can vary between different iwi, hapū and whānau.

32. Tikanga has a flexible dimension to it. Like all law, it is not static and can evolve over time and adapt to new situations. Tikanga has, for example, developed as a consequence of European contact including the influence of Christianity. This can be clearly seen in the creation of faiths such as the Ringatū and Rātana churches.

33. Importantly, however, when a new matter or issue arises for resolution, recourse is always had to the fundamental principles that underlie tikanga as well as drawing on historical precedent and how tikanga has been recognised in similar situations.

34. Unlike legislation, tikanga is not compiled in a tidy collection of written books. Although there is increasing published material on tikanga, it is lived and exists as unwritten conventions.

35. Knowledge of tikanga is passed down through sources such as: wānanga (institutions of learning), whaikōrero (oratory); karanga (call); waiata (songs); mōteatea (traditional chant or lament); whakapapa recitations (genealogy) whakatauākī (proverbial sayings) and pūrākau (stories). It is also learnt through exposure to its practice in everyday life.

36. The foundational notions of tikanga are widely known. However, some tikanga might be tapu (sacred) and kept confined to certain expert

people. For example, certain karakia (ritual incantations) would be only used by a small group of experts who have the appropriate training, expertise and standing.

37. Given the nature of tikanga, being law that is comprised of principle and the custom and practice of people, we consider that the convening of this hui and forum of tikanga experts to be an appropriate way of determining the relevant tikanga that applies to an issue at hand.

Impact of colonisation on Tikanga Māori and Tikanga Today

38. We note that tikanga and Māori society more generally, have been subject to the devastating impact of colonisation on its institutions and practices. This has meant that for many Māori they have become alienated from their lands, culture and are unfamiliar with tikanga.

39. Whare wānanga and marae have been a key institute to ensure the survival of tikanga Māori. They remain an important Māori cultural space for gatherings such as birthdays, weddings, meetings, funerals and schooling. Marae remain the central community space within Māori society today.

40. Despite the impact of colonisation, tikanga has always existed as a framework for regulating behaviour, is undergoing revitalisation, and continues to play a valued and relevant role today for both Māori and non-Māori.

41. New Zealand society today is increasingly infused with tikanga, both practice and principle. This can be seen not only at a state legal system level (such as the now many legislative references to tikanga) but also at the grass-roots community level.

42. For example, it is becoming increasingly common for people to introduce themselves in formal settings with references to the collectives to which they belong and the significant geographical features that they associate with. This is a Māori practice based on the principles of whakapapa and

whanaungatanga (explained further below).

43. The practice of rāhui is also now widely understood and generally adhered to by the broader community when they are placed. A rāhui is a means of prohibiting specific human activity from occurring through the use of tapu (making something sacred). Two common types of rāhui are:

    (a) environmental rāhui; and

    (b) death related rāhui.

44. An example of an environmental rāhui is in late 2017, in response to the threat of kauri dieback disease, Te Kawerau ā Maki laid a rāhui over the Waitākere forest to prevent human access. This was unilaterally imposed in response to perceived central and local government inaction, to ensure the risks to kauri were mitigated until effective and appropriate research, planning and remedial work was completed.

45. The rāhui on the Waitakere ranges was generally respected and followed by the entire community. This was for a variety of reasons including the practice of rāhui becomingly increasingly known and the rangatiratanga (authority) or the iwi being respected. However, it was also because the *principles* behind the rāhui of kaitiakitanga (guardianship) and environmental protection was clearly conveyed and supported by the community. Kaitiakitanga was an ethic and principle that people could understand and that resonated.

46. A recent example of a death-related rāhui is the response to the eruption of Whakaari (White Island) on 9 December 2019. The eruption resulted in the death of at least 18 people, including two people whose tūpāpaku (bodies) have not been recovered and are believed to be in the moana (ocean).[322] A number of iwi, including Ngāti Awa, initially placed a total ban on all maritime activities in the ocean (including swimming), this was then later changed to a ban only on fishing and the gathering of seafood.

[322] This is the official death toll as of 16 January 2020.

47. Even though the Eastern Bay of Plenty is a strong beach and ocean based community, people overwhelmingly respected the rāhui. This is the case despite the rāhui having a negative commercial and fiscal impact on businesses and affecting usual pre-Christmas and holiday ocean activities. Similar to the Waitakere ranges, this was at least in part because people broadly understood and agreed with the principles underlying the rāhui including respect for the mana and tapu of the deceased that had not been recovered and returned to their whānau (families).

48. It is important to understand that tikanga in practice and in principle still exists and is relevant not only for Māori that clearly subscribe to and live in accordance with tikanga, but that it is also increasingly infused within Aotearoa/New Zealand more broadly.

THE INTERSECTION BETWEEN TIKANGA AND THE COMMON LAW

49. We understand that the intersection between tikanga and the common law is one of the legal questions before the Court in this case.

50. At our hui we spent a significant amount of time discussing the broader philosophical question of whether, as Māori, we consider it to be appropriate for tikanga to be among the sources of the common law of New Zealand.

51. There was some caution expressed about this and the unintended consequences that might arise in Courts being able to draw on tikanga in making decisions. In particular, there was a fear that tikanga Māori might be misappropriated and wrongly applied in the court system.

52. The ultimate group consensus, however, was that:

    (a) we affirm that tikanga was the first law of Aotearoa and is a source and form of law;

    (b) we are confident that tikanga has survived to date and will always continue to inform and regulate Māori behaviour. Some tikanga will

also serve to regulate non-Māori behaviour (as discussed in the case of rāhui above). We acknowledge this to be so, and that some elements of tikanga are recognised, protected, or sometimes side-lined by the state legal system before the Courts;

(c) we support tikanga as one of the many sources of the New Zealand common law which informs the common law's development and evolution;

(d) we support the proposition that tikanga principles should embed and influence the general development of applicable legal principle in Aotearoa, that is, we think the common law should not only draw on principles and precedent from the English legal tradition but also more generally be able to draw from tikanga principles;

(e) we therefore support the notion that, where appropriate, tikanga principles as accepted by the common law should apply to all people; and

(f) we consider Courts must still, when tikanga comes before Courts, use processes and practice that encourage the preservation of the integrity of tikanga.

53. On this last point, by way of example, the Court can: call for tikanga experts to provide a statement of tikanga; encourage judicial training on tikanga and its application in judicial proceedings; and permit Te Hunga Rōia Māori to intervene and make submissions when there is a question of tikanga Māori.

54. In our view, there are three propositions that result from our consensus:

(a) As is currently the case, tikanga Māori comprising a set of laws, obligations and practices that can be recognised and protected by the common law, with sufficient evidence. Sometimes the common law may refuse to recognise tikanga Māori.

(b) Whānau, hapū and iwi continue to exercise tikanga Māori, a distinct

set of laws, obligations and practices, when and as appropriate and possible, and regardless of the state legal system, including the Courts. Sometimes people who are not Māori will follow and respect some tikanga Māori. It is therefore appropriate to consider tikanga Māori as a unique source of New Zealand common law.

(c) It is possible to identify broader tikanga principles derived from the laws, obligations and practices of tikanga Māori that can both form part of the common law in New Zealand and influence it. At the same time, it remains necessary that the specific laws, obligations and practices can also continue to be recognised by and protected by the common law.

TIKANGA AND CONTINUANCE

55. We were specifically asked to discuss how tikanga principles apply to the question of whether an appeal should continue after death. In doing this we took care not to consider the substantive merit of the appeal.

56. As set out above, the relevant part of Ngā Whakataunga a ngā Mātanga Tikanga is:

> *Mana tangata and by implication, whakapapa and whanaungatanga, are impacted by the allegations of hara. Consequently, this continues after the death of the person.*
>
> *Tikanga requires further probing.*

57. The following concepts, principles and values are relevant to this case:

(a) hara;

(b) mana;

(c) whakapapa;

(d) whanaungatanga; and

(e) ea.

58. We reiterate that although we discuss each of these concepts in turn, they are inextricably interconnected and cannot be understood fully in isolation.

Hara

59. The concept of "hara" at a simplified level means: the transgression of tapu; the commission of a wrong; and the violation of tikanga resulting in an imbalance. This requires a restoration of balance or the achieving of a state of "ea".

60. We consider it is useful to start with an example that illustrates this. The following example is from Tūhoe, Ruatāhuna.

> *One day a kuia (elderly woman) went and visited a family.*
>
> *When the kuia got to the home, the dog of the family that she was visting attacked her. The dog drew blood from her leg and tore her flesh.*
>
> *The owners of the dog rushed outside, took the dog away and then tended to the injuries of the kuia.*
>
> *It was a hara on behalf of the dog owners for the dog to have attacked the kuia. The shedding of blood is significant as it meant there was a transgression of tapu (as blood is sacred). The offence also resulted in mana became imbalanced.*
>
> *The owners of the dog knew that they had committed a hara and that there had been a breach of tikanga.*
>
> *In response, they went to their waka huia (treasure box) and brought out a pounamu (greenstone) that had significant value. They gave this to the kuia as compensation for the hara.*
>
> *The kuia had every right to impose a muru (ritual plundering and restorative justice process that entails the redistribution of wealth). However, she accepted the pounamu as payment for the wrong that had been committed.*
>
> *This meant that the issue became ea (satisfied, settled, mana rebalanced).*

61. This shows the successful resolution of a hara. A hara was committed by the dog biting the kuia and action was required to address the hara and achieve a state of ea. The notion of ea indicates the successful

closing of a sequence and the restoration of relationships, or the securing of a peaceful outcome.

62. The relevance of this story to the case of Mr Ellis is that the appeal, as currently granted by the Supreme Court, is unresolved and a state of ea has not been achieved. Further, it is unclear where the hara sits. It may be that the hara was the offending against the victims or it could be the conviction of an innocent man. The tikanga position does not pre-determine an outcome on this point.

63. In terms of the question of continuance, because the Court has already granted leave for Mr Ellis to appeal, the process of addressing a hara is already underway and a further hara may be committed if the matter is not resolved or brought to a conclusion.

64. These hara affect both Mr Ellis and his family and the victims and their families. Where an imbalance still exists as seems to be the case here, where possible, the hara needs to be further addressed to achieve ea. Achieving ea is needed for both Mr Ellis and the victims.

65. The tikanga position therefore supports the idea of further probing and examination and action with a view that this may assist in resolving the matter and getting to a state of ea.

66. This is particularly the case because under tikanga, disputes or the requirement for resolution are not impacted by the death of an individual (either an offender or a victim). Rather, the hara remains and is carried onto the next generation.

67. In this case, even though Mr Ellis has died, any hara that exists does not die with him.

Intergenerational impact of hara

68. A contemporary example that illustrates this intergenerational need for a state of ea to be reached is the Rua Kēnana Pardon Act 2019 (the **Act**) that was granted Royal Assent by the Governor General in a ceremony

at Maungapōhatu on 21 December 2019.

69. The reo Māori (Māori language) title for the Act is: “Te Ture kia Unuhia te Hara kai Runga i a Rua Kēnana.” Literally translated this means “the Law that discharges the hara that was inflicted upon Rua Kēnana”.

70. Rua Kēnana was a Tūhoe Prophet that in about 1906 established the “New Jerusalem” in the Urewera and led the Iharaira (Isralite) faith. Rua Kēnana was convicted of “moral resistance” to an attempted arrest and served 18 months in prison. The Iharaira faith went into a serious decline after the events arising from Rua’s arrest. These events have been a source of grievance since they occurred.

71. The Crown in s 7(2) of the Act acknowledges that:

    (a) the arrest, detention, conviction and sentence of Rua Kēnana caused lasting damage to his character, mana, and reputation and to the character, mana and reputation of Ngā Toenga o Ngā Tamariki a Iharaira (the remnants of the children of Israel); and

    (b) Ngā Toenga o Ngā Tamariki a Iharaira, including the descendants of Rua Kēnana, have suffered deep hurt, shame, and stigma as a result of the Maungapōhatu invasion.

72. The Crown unreservedly apologises for:[323]

    (a) the lasting damage to the character, mana, and reputation of Rua Kēnana, his uri (descendants), and Ngā Toenga o Ngā Tamariki a Iharaira; and

    (b) the deep hurt, shame, and stigma suffered by them as a result of the invasion of Maungapōhatu.

73. The law pardons Rua Kēnana for the conviction he sustained for moral resistance.[324] The pardon specifically states that:

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[323] See s 8 of the Act.
[324] See s 9 of the Act.

The restoration of the character, mana, and reputation of Rua Kēnana, his uri, and Ngā Toenga o Ngā Tamariki o Iharaira Faith is declared.

74. This example shows:

(a) a hara was committed (by the Crown) against Rua Kēnana;

(b) this impacted not only the mana of Rua Kēnana himself but also had an impact on the mana of his descendants; and

(c) despite the death of Rua Kenana, a state of ea still needed to be reached many years later (hence the reason for the pardon and restoration of mana to the individual and his descendants).

75. There are examples rife throughout Māori history where a hara has been committed and the requirement for resolution has been passed down through the generations.

Mana

76. “Mana” is one of the fundamental principles of tikanga. Words that have been used to convey the principle of mana include: power, presence, authority, prestige, reputation, influence and control.

77. The concept of mana is complex and there are different types of mana.

78. Two key forms of mana are:

(a) Mana tuku iho: this is mana inherited from ancestors. Under tikanga, everyone is born with mana by virtue of having a whakapapa (genealogy) and being born into a collective whether that be a whānau (family), hapū (sub-tribe) or iwi (tribe); and

(b) Mana tangata: this is mana that is derived from actions or ability.

79. Mana is one of the most valuable and important things a person can have.

80. Mana can be gained and lost depending on actions. For example, gaining particular skills or ability may increase mana, whereas, the commission of a hara will mean a corresponding loss of mana.

81. We note that an allegation of a hara alone can result in the loss of mana.

82. Mana applies at both an individual and collective level, and the application of mana at either level can affect the other. This is because of the concept of whakapapa and the associated principle of whanaungatanga (described further below). A hara therefore does not occur against the individual only but can impact the whānau, the wider hapū and even iwi.

83. In the example of the kuia attacked by the dog, the wider whānau of the kuia were entitled participants were the hara not resolved. This is because their mana was also affected by the hara.

84. In the example of Rua Kēnana, the mana (as well as character and reputation) of his descendants was expressly acknowledged to have been impacted by the hara that occurred to Rua Kēnana by the Crown.

85. Mana does not cease when an individual dies. This is why, long after his death, it was seen as being important to restore the mana of Rua Kēnana and his descendants. It is also why Māori make claims of association and right over the deceased (as seen in the well-known case of Mr Takamore). The process of a collective claiming a body is to enhance the mana of the deceased.

86. Further, it is common practice for Māori to reference the mana of significant ancestors such as Rahiri of the Ngāpuhi iwi or Sir Apirana Ngata of Ngāti Porou. Ways to honour the mana of those that have passed include the handing down of names to descendants and recitation of whakapapa to highlight the connection to the revered individual.

87. The concept of mana is grounded in tikanga and te ao Māori. However,

because tikanga is the framework by which Māori see the whole world, these concepts apply beyond those that subscribe to and practice tikanga. Also, the concept of mana has infused Aotearoa as a whole.

88. For example, it is well accepted that people such as Jacinda Ardern, Richie McCaw and the Rt Hon Dame Sian Elias all have a form of mana because of their achievements, ability and positions they have held. Through Māori eyes, everyone has a form of mana.

89. In the context of this case:

    (a) Mr Ellis as an individual has mana;

    (b) the mana of Mr Ellis and his broader whānau (through the concepts of whakapapa and whanaungatanga explained further below) were affected by the allegation of offending;

    (c) this mana did not cease when he died; and

    (d) the victims and their whānau also have mana.

Whakapapa

90. Whakapapa is often translated as genealogy. The meaning of whakapapa is to 'lay one thing upon another.' In this case to lay one generation upon the next.

91. Māori place great importance on genealogy and kinship relationships and the concept of whakapapa is central to being Māori and to identity. The world and everyone in it is part of a huge interlocking family tree.

92. Whakapapa and knowledge of relationships between people is pivotal to the Māori world and tikanga Māori. Whakapapa is a prized form of knowledge and great effort is made to preserve memory of it.

93. It is through whakapapa that kinship ties are cemented and mana is inherited and intimately connected. As described above, mana is not just an individual prerogative but it is connected by whakapapa to broader

collectives. When mana increases or decreases by actions – the whakapapa collectives (whānau, hapu and iwi) are correspondingly affected.

94. Whakapapa also creates responsibilities of manaaki (care and nurturing) within the whānau. Like all these concepts, that are inextricably linked, whakapapa is closely linked to the concept of whanaungatanga.

95. As applied to this case, through whakapapa, the whānau of Mr Ellis and the families of the victims are also impacted by the alleged hara committed by him. Responsibility falls on both families to restore any mana that may have been lost.

Whanaungatanga

96. Whanaungatanga focuses upon the maintenance of properly tended relationships. The concept of whanaungatanga is fundamental and is the glue that holds the Māori world together. It creates rights and responsibilities within and between whānau and reflects the importance of community.

97. Whanaungatanga reminds a person that they exist as part of a matrix and web of relationships and collectives. The whanaungatanga principle goes beyond just whakapapa and includes non-kin persons who become like kin through shared experiences.

98. Whanaungatanga means that when a hara is committed it not only impacts the individuals involved, both offender(s) and victim(s), but also the broader collectives of these individuals including whānau (family), hapū (sub-tribe) and iwi (tribe).

99. It means that a community is always responsible for their wrongdoers because they are kin. It also means that a community is impacted as victims when offending occurs.

100. In the context of this case, the wider whānau of Peter Ellis would also feel the impact of the hara as do the whānau of the victims.

Ea

101. The notion of ea indicates the successful closing of a sequence and the restoration of relationships, or the securing of a peaceful outcome.

102. In the example of the dog attack above, getting to a state of ea was relatively easy. The guilt or the offending hara was admitted, action was taken by the offending party, that action was accepted as restoring balance and so a state of ea is achieved. All parties were satisfied with the result.

103. We note that a state of ea can still be reached even when one or both parties involved in an incident remain disgruntled with an outcome.

104. For example, in an internal hapū dispute, the process for achieving a state of ea might be for the rangatira (chief) to pronounce what the outcome should be. Once the rangatira has pronounced the course of action, even if one party is still unhappy and does not consider that the result "fair" the matter can still be "ea". That is, it has been put to bed and resolved.

105. As applied to the Peter Ellis case, the fact that the Supreme Court granted a hearing means that the door was opened to a process to continue to probe the hara with a view to achieving a state of "ea".

Conclusion on tikanga principles:

106. As applied to the question of the relevance of tikanga Māori to this case:

    (a) Tikanga Māori is the first law of Aotearoa. Not only does it mean that Māori have particular rights and interests but it represents common values, processes and principles that are of relevance to wider Aotearoa.

    (b) A fundamental part of tikanga is ensuring balance and making things correct. If uncorrected, the hara remains and is passed onto the next generation until it is corrected or a resolution found.

(c) The mana of a person and the associated collectives to which they belong continues when someone dies. Like the example of Rua Kēnana, it turns on the descendants and whānau to restore mana where a hara is committed.

(d) Hara or wrongs can be done to non-Māori and the mana of non-Māori and their whānau can be impacted by those wrongs. These are tikanga principles that resonate broadly.

(e) These tikanga principles can usefully be drawn on in this case as informing the general development of the common law position on continuance that applies to everyone.

(f) Tikanga requires that there is further probing.

107. Ultimately, we conclude that because a process to come to a final legal position on this issue has commenced, tikanga requires “me haere tonu” (the case should continue), but we have no position on how the case should continue or the point at which it properly should conclude. That is for the rangatira, in this situation the Court, to decide in accordance with its own principles and rules. Our main point is that, in accordance with tikanga, death itself does not close the door.

Support

108. All the tikanga experts that attended the hui on 10 and 11th of December 2019 support this statement.