

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-485-235**

UNDER the Marine and Coastal Area  
(Takutai Moana) Act 2011

IN THE MATTER OF an application to access Court documents

On the papers:

Counsel: C Innes in person  
M Yogakumar for Ngāi Tahu o Mōhaka Waikare  
R N Smail for Ngāti Pāhauwera  
K M Anderson for Maungaharuru-Tangitū Trust  
B Lyall for Mana Ahuriri Trust  
S Cvitanovich for Seafood Industry Representatives  
G Melvin for Attorney-General

Minute: 23 September 2022

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**MINUTE (NO. 19) OF CHURCHMAN J  
(Access to Court documents)**

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[1] Craig Innes has applied to access documents from the file for Ngāi Tahu o Mōhaka Waikare's application under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act). Ngāi Tahu o Mōhaka Waikare's (Ngāi Tahu) application was heard in the *Re Ngāti Pāhauwera* hearings.<sup>1</sup>

[2] Mr Innes wishes to access the historical customary interests report, and summary completed by Dr Paul Husbands for Ngāi Tahu, in order to have his own copy of that report for future reference. He is willing to abide by any conditions set by the Court and has no intention of publishing the documents.

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<sup>1</sup> *Re Ngāti Pāhauwera* [2021] NZHC 3599.

[3] Mr Innes was the original historian contracted by Ngāi Tahu, preparing maps and gathering other primary source material. However, at the hearing, historical evidence for Ngāi Tahu was provided by Dr Husbands. Mr Innes has stated in correspondence with the registrar that “My interest in the specific report by Dr Paul Husbands is due to the belief that I had been engaged by [a] law firm to complete maps for inclusion in the report.”

[4] There appears to have been a dispute of some kind between Mr Innes and the counsel for Ngāi Tahu regarding materials prepared by Mr Innes, that may or may not have been included in Dr Husband’s report. In any event, the evidence for Stage One that was prepared by Mr Innes was ultimately withdrawn by Ngāi Tahu, in favour the evidence filed by Dr Husbands.

[5] The following parties who were involved in the Stage One hearing, have indicated that they will abide by the Court’s decision on this matter:

- (a) Ngāti Pāhauwera;
- (b) Seafood Industry Representatives;
- (c) Mana Ahuriri Trust;
- (d) Maungaharuru-Tangitū Trust; and
- (e) the Attorney-General;

[6] No response has been received from Ngāti Pārau, the Hawke’s Bay Regional Council or Pan Pac Forest Products Limited.

[7] Ms Yogakumar, on behalf of Ngāi Tahu, opposes the granting of access to Mr Innes, on the basis that Malcom Kingi, the named applicant for Ngāi Tahu, objects. No reasons have been provided to the Court as to the basis for that objection. It has not been suggested that the information is confidential, or that it is otherwise inappropriate for it to be disclosed to Mr Innes.

[8] Requests for access to Court documents are covered by the Senior Courts (Access to Court Documents) Rules 2017 (the Rules). Rule 11 entitles a person to seek access to a Court document by way of written request that:

- (a) identifies the person making the request, and their address;
- (b) sets out the particulars of the documents so as to enable the Registry to identify it;
- (c) gives reasons which set out the purpose for which access is sought; and
- (d) identifies any conditions that the person seeking access would be prepared to meet.

[9] Rule 12 sets out eight matters that the Court is required to consider, and there is no hierarchy between these principles.<sup>2</sup> These matters are similar to the list of relevant matters found in the former r 3.16 of the High Court Rules 2016, that was revoked as from 1 September 2017 by r 19(2) of the Rules. The factors relevant to a request for release of documentation include the need for the balancing of rights of confidentiality and privacy, with an entitlement to access Court records where there is a genuine need for that.<sup>3</sup>

[10] Mr Innes seeks evidence filed in pursuit of recognition orders under the Act. Applications under the Act represent a unique area of the law. Applicant groups are often concerned about presenting evidence as to tikanga or historical matters on the basis that they are too tapu to be put before the Court. For example, in relation to previous applications for access to documents in the present proceedings, the Maungaharuru-Tangitū Trust stated:

MTT is concerned with the lack of information about how their Māori cultural (tikanga) evidence is to be used or disseminated, and what input MTT and its evidence has in this process.

[11] Mr Innes application must also be assessed in light of this context.

[12] The factors contained in r 12 that are relevant to the present case are:

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<sup>2</sup> *Crimson Consulting Ltd v Berry* [2018] NZCA 460, [2019] NZAR 30 at [32].

<sup>3</sup> See *Re Livingstone v Livingstone and Martin v Martin* [2015] NZHC 2575.

- (a) the protection of confidentiality and privacy interests (r 12(d));
- (b) the principle of open justice (r 12(e)); and
- (c) the freedom to seek, receive, and impart information (r 12(f)).

[13] Having briefly reviewed the documents in question, it appears that they mostly contain historical information regarding Ngāi Tahu, particularly in terms of whakapapa, places of significance, Ngāi Tahu's relationship with the Crown, and Ngāi Tahu activism. Some portions of the information may be of a character that means that they should not be disclosed to Mr Innes. However, if that is the case, what that information is, and the reasons for needing to withhold it have not been identified by Ms Yogakumar.

[14] It appears that Mr Innes has a legitimate interest in obtaining the documents he seeks, for personal use. To my knowledge, there are no suppression orders that apply, and none of the other participants object to them being released. In the absence of reasons justifying withholding the information, and balancing the relevant matters contained in r 12, I am satisfied that it is appropriate to grant Mr Innes access to the documents, notwithstanding the nature of the information that is contained within them.

## **Result**

[15] I grant Mr Innes access to the brief of evidence prepared for Ngāi Tahu by Dr Paul Husbands, and its associated exhibits, on the condition that he does not publish any of the information contained within.

**Churchman J**