IN THE SUPREME COURT OF THE TANGATA WHENUA IN AOTEAROA

CASE NUMBER TW/GONZ/NCN/April 2015

The Tangata Whenua as original	§	**CIVIL COMPLAINT**:
Landowners of Aotearoa, and	§	FRAUDULENT LAND
First Settlers;	§	CONVEYANCES;
Plaintiffs,	§	THEFT;
VERSUS	§	DECEPTIVE PRACTICES,
The Queen in right,	§	UNDER COLOUR OF LAW;
The Governor General,	§	MALICIOUS TORTS;
Government of New Zealand,	§	DEPRIVATION OF RIGHTS
Prime Minister John Key,	§	AND FUNDAMENTAL
The Cabinet of Prime Minister,	§	HUMAN RIGHTS
House of Representatives,	§	
The Chief Justice of New	§	
New Zealand,	§	
Defendants,	§	

INTRODUCTION

1. This Motion is impelled by the mandate of the **New Zealand Bill of Rights Act 1990, Public Act 109 No. 109 of 28 August 1990,** hereinafter "The Act," which asserts that the Act is designed "to affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights." To what extent the Defendants violated, breached, and broke The Act determines the contours of this Motion. *The Chronicle of the List of Atrocities and Grievances accompanies this Motion. See* **Appendix 1**.

According to the Bill of Rights, it applies only to acts done—

(a) by the legislative, executive, or judicial branches of the Government of New Zealand; or

(b) by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.

It is thus unequivocally clear that the Defendants acted in concert in pursuance of a common intent to deprive Tangata Whenua (People of the Land) of their basic and fundamental rights as guaranteed in The Act.

2. This Motion constitutes a consolidated action representing the claims and grievances of the Tangata Whenua against the Crown and the Government of New Zealand, its ministries, government departments, agencies and instrumentalities for wanton acts of fraud perpetrated against the TangataWhenua since the first Europeans set foot on these ancestral lands.

3. The injustices against the Tangata Whenua have not ceased since the first contact. It has got worse as if a master plan is being hatched to annihilate the Tangata Whenua who have traditionally enjoyed absolute and uninterrupted enjoyment of their ancestral lands since time immemorial while practicing the concept of communal property fortified in and under the doctrine of *usucapion* (Latin: ownership due to lengthened possession), one of the first principles of English common law that was imported wholesale into Aotearoa ("New Zealand").

4. It is undeniable that the government of New Zealand chooses not to utilize the word and concept of *usucapion* as it would be awkward and difficult to come to terms with the wanton fraud, under colour of law, to appropriate and alienate Tangata Whenua land without the consent and approval of the these original

landowners. The rule of law is the inexorable yardstick with which the 'Parliament of New Zealand" promulgated statutes that have been unconstitutionally and unconscionably enacted. These Fabian tactics at passing laws enable the government to plunder at will under the colour of law while non-payment of rates has resulted in confiscation of native land. Statutes take on chameleon-like characteristics as they struggle to sound fair and balanced and yet favor only the government of New Zealand. The Act, Part 2, Section 19 (freedom from discrimination) and Section 20 (Rights of minorities) have been patently breached.

5. This Tribunal is empowered to review all these grievances and to render an Order that will establish the rule of law and the role of justice in the civilized realms of traditional and customary law of the Ancients as guided by God the Creator. Part 2, Section 13 of The Act affirms and acknowledges "freedom of thought, conscience, and religion." The Tangata Whenua shall continue to maintain their God-given rights notwithstanding The Act. The Tangata Whenua's religion teaches and guides them to obey God and to disobey unjust man-made laws. This is unequivocally evident and abundantly clear in Exodus Chapter 2, Old Testament, Holy Bible.

ISSUES PRESENTED:

1. The Government of New Zealand is not recognized by the Tangata Whenua, and will not be recognized ever because consent of the Traditional Chiefs was never sought in conformity with and compliance of international law when the first European contact was established. Antiquated, anachronistic, and unjust laws should not put forth its soiled hands from its grave to guide the path and destiny of Tangata Whenua today.
2. The laws, rules and regulations of the Government of New Zealand are of no effect, worth, and value to traditional Tangata Whenua beliefs, customs, traditions and mores.
3. Tangata Whenua refuse to be acculturated and acclimated to Anglo-Saxon customs, traditions, mores, and beliefs.
4. The Tangata Whenua demand that the Government of New Zealand pass laws with all deliberate speed to relinquish their unlawful and fraudulent land claims on ancestral lands premised upon the Tangata Whenua. Laws relating to land rates and taxes, income taxes and other limitations and restrictions that affect the rights of the Tangata Whenua without consultation.
5. The 1835 Declaration of Independence by the Confederation of United Tribes is unequivocal in its vision, mission and

provision that they are to be left alone, treated as sovereigns, and that land issues are to be resolved by open dialogue between the parties. Instead, the government of New Zealand has passed laws, rules and regulations aimed at eroding, diminishing and totally eradicating Tanagata Whenua rights. That was, and is not the intent, content, extent, scope, scale, effect and impact of all the original Treaty signed between two sovereigns. The government of New Zealand seems to epitomize the adage that "power corrupts, and absolute power corrupts absolutely."

6. The Waitangi Tribunal discovered to their utter dismay and disdain that the Tangata Whenua did not cede, abrogate or surrender sovereignty to the government of New Zealand when the February 1840 Te Tiriti O Waitangi ("Treaty of Waitangi"). International law is unequivocal on this issue that treaties concluded between a settling power with native peoples are to be liberally construed in favour of the natives as they would have understood them at the material time when they were being negotiated. The parties to a treaty cannot be subjected to the vagaries of language translation, transliteration, interpretation, and the spins and twists of linguistics. Each has to identify, determine, evaluate and apply their thoughts into words or actions that signifies and

symbolizes agreement, understanding and acceptance of the terms of the document. Tangata Whenua believe that the original Treaty was an immigration document enabling the British Navy to disembark and commence commercial operations. Why would the Tangata Whenua allow aliens upon their soil if the ultimate plan was one of cession and surrender of sovereignty? What if 300,000 Tangata Whenua had arrived in warships at Plymouth, England, to settle and claim tribal sovereignty over England? The Englishman's home is his castle, and he rather spill blood than give up his castle. The Tangata Whenua, as a people, are mighty proud of their heritage and their land and soil. They will not sit idle as these injustices multiply with ferocity with the unleashing of legislative imperatives using the colour of law to give credibility to the wanton theft of our ancestral lands. Tangata Whenua will fight back by all means necessary.

7. The government of New Zealand, public and private corporations must cease and desist using native and cultural symbols, logos, insignias and other representations of the Tangata Whenua as we wish to enjoy a marked and distinct separatism from the Anglo-Saxon race. Prior permission and

consent must be sought hereafter for the use of these talismanic rights that have deep spiritual value.

8. Plaintiff's rights emanate from ancient principles of the Defendants' common law traditions where **custom is held as law** – *consuetudo est pro lege servatur*. This first principle of law enunciated in Defendants law books are violated and breached with reckless disregard for the rule of law. The rights of Plaintiffs were ignored with impunity and abject hypocrisy. New laws enacted by the Defendants are not supposed to be construed as a right to interfere with vested rights as enjoyed by Plaintiff. This is expressed in Latin as *debet non praeteritus*. Another first principle of law stipulated by the Plaintiff in its law books for all to abide by and adhere to. A Norman law which gained traction from the Magna Charta of 1215 mandates that *exterus non habet terras* (foreigners and aliens hold no lands); and the law of a certain territory may be safely disregarded outside that territory (*extra territorium jus dicenti impune non paretur)*. When the Defendants chose to invalidate its own laws by abject disobedience, it is nothing but a self-inflicted wound that fails to heal. This Claim by Plaintiffs will cleanse that festering wound when justice cries out from the annals of

neglected history.

APPLICABLE LAW AND ARGUMENT

The Act is a valid law passed by Parliament. If its observance is strictly to be recognized in its breach, it is a matter of utmost urgency to set the scales of justice right.

The rights of the Tangata Whenua have been injudiously, maliciously, acrimoniously, unjustly and unconscionably violated bythe Defendants in direct violation and breach of Part 2, Section 27 of The Act which provides thus:

Right to justice

> *(1)Every person has the right to the observance of the principles of **natural justice** by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.*
>
> *(2)Every person whose rights, obligations, or interests **protected or recognised by law** have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination.*
>
> *(3)Every person has the right to bring civil proceedings against, and to defend civil proceedings brought by, the Crown, and to have those proceedings heard, according to law, in the same way as civil proceedings between individuals.*

Part 3, Section 28 of The Act provides thus:

Other rights and freedoms not affected

- *An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom* ***is not included*** *in this Bill of Rights or is included only in part.*

The Act is very unambiguous in that land rights not mentioned or enumerated therein are nnot to be dismissed or ignored as irreleveant to a claim by Tangata Whenua especially aboriginal titles that have been totally subsumed by other Acts of Parliament in direct breach of the provisions of The Act.

1. New Zealand was the second jurisdiction in the world to recognize aboriginal title, but a slew of extinguishing legislation (beginning with the New Zealand land confiscations) has left the Tangata Whenua with little to claim except for river beds, lake beds, and the foreshore and seabed. The grand design and master plan was to deprive the Tangata Whenua from surviving as a race by keeping them away from successful economic and sustenance pursuits without government aid and assistance.

2. In 1847, in a decision that was not appealed to the Privy Council, the Supreme Court of the colony of New Zealand recognized aboriginal title in *R. v Symonds* (1847) NZPCC

387. The decision was based on common law and the Treaty of Waitangi (1840).Chapman J went farther than any judge—before or since—**in declaring that aboriginal title "cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers (*Id.* at 390**). "*Whatever may be the opinion of jurists as to the strength or weakness of the Native title, whatsoever may have been the past vague notions of the Natives of their country, whatever may be their present clearer and still growing conception of their dominion over land, it* ***cannot be too solemnly asserted that it is entitled to be respected, that it cannot be extinguished*** *(at least in times of peace) otherwise than by the free consent of the native occupiers." (NZPCC 388)*

His colleague on the bench Justice Martin, similarly ruled that the Crown's title to land within the colony was subject to the aboriginal rights of Tangata Whenua which could only be removed through voluntary act by the native owners (at page 395 of *R v Symonds*). And yet, Defendants chose not follow their own laws and decrees and findings of their own courts. This is pure hubris and hypocrisy. It may have been held thus in 1847, but theft is theft even in 2015. When such criminal activity goes unpunished, it is deemed acceptable behavior and conduct, and the attendant danger of becoming public policy as ratified by the Defendant to the detriment of the Plaintiff.

The doctrine of the separation of powers was invoked when the New Zealand Parliament responded with the Maori Lands Act 1862 and the Native Rights Act 1865 which established the Native Land Court (today the Māori Land Court) to hear aboriginal title claims, and—if proven—convert them into freehold interests that could be sold to Pākehā. That court created the "1840 rule," which converted Māori interests into fee simple if they were sufficiently in existence in 1840, or else disregarded them. *Oakura* (1866)(unreported) (CJ Fenton); *Kauwaeranga* (1870) (unreported). The right of ownership of land due to lengthened possession (Latin: *usucapion*) is an English common law doctrine that cannot be denied as incorporated into the Defendant's jurisprudence deemed and ordained as a first principle of law. Another first principle of law under the Defendant's jurisprudence stipulates that "usucapion was instituted so that there would be an end to lawsuits" – *usuacpio constitutia est ut aliquis litium finis esset*. Tangata Whenua have been unjustly, unconscionable andunceremoniously denied their rights to tribal lands even if the Torrens system was introduced into law and practice.

3. William Blackstone's *Commentaries on the Laws of England* which were imported into New Zealand declares the same first principles in Latin: *adversus extraneous vitiosa possession*

prodesse solet - prior possession is good title of ownership against all who cannot show a better title. This Court is of the opinion that Tangata Whenua have always enjoyed the right of prior possession. These first principles are extracted from international law often cited and quoted as civilized law.

Qui prior est tempore potior est jure – he has better title who was first in point of time. Another first principle of law that recognizes, validates and acknowledges Tangata Whenua rights to land and soil, and yet the Defendants chose to ignore their own laws that were enacted. This Court is of the opinion that you cannot have law without order. It is order first and then law. Once these two elements coalesce, there is justice which separates the chaff from the wheat – the truth from fiction; the right from wrong.

4. *Symonds* remained the guiding principle (*Re Lundon and Whitaker Claims Act 1871* (1872) NZPCC 387, until *Wi Parata v the Bishop of Wellington* (1877) 3 N.Z. Jur. (N.S.) 72. *Wi Parata* **undid** *Symonds*, advocating the doctrine of *terra nullius* and declaring the Treaty of Waitangi unenforceable. *Mabo v. Queensland (N*o.2) **undid** terra nullius by overruling *Milirrpum v. Nabalco Pty Ltd* (1971). First principles of law were ignored and summarily vacated with reckless disregard for the truth and the rule of law. *Wi Parata* represents the antithesis of what is always

fair and good – called justice , expressed as a Latin first principle: *Id quod semper aequum ac bonum est ius dicitur.*

The Privy Council **disagreed** in *Nireaha Tamaki v. Baker* (1901) A.C. 561and other rulings (*Te Teira Ta Paea v. Te Roera Tareha* [1902] A.C. 56 and *Wallis v. Solicitor-General for New Zealand [1903] A.C. 173,* but courts in New Zealand continued to hand down decisions materially similar to *Wi Parata, e.g. Hohepa Wi Neera* (1902) 21 NZLR 655. Comfort, solace and safety was to be found in the doctrine of *stare decisis* as the preferred currency of the realm – not fairness and true justice.

The Privy Council was understandably aroused by the first principle symbolized in *Symonds* expressed in Latin as *electa una via, non datur recursus ad aliam* – once you pick a path, it is unwise to go to another. New Zealand courts were prepared to pick random paths based on personal judicial choices with a cavalier disposition.

5. The Coal Mines Amendment Act 1903 - *Witrong v. Blany* (1608) Davis 28 (conquest of Ireland) and the Native Land Act 1909 declared aboriginal title unenforceable against the Crown. Eventually, the Privy Council acquiesced to the view that the Treaty was non-justiciable - *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] A.C. 308**.** The executive allows the legislature to venture on a frolic of its own when the Native

Land Act of 1909 assumed millstone around the neck proportions for the Tangata Whenua. The "independent" judiciary became pliant and decided to favor the Crown to the utter detriment of the Tangata Whenua and the rule of law.

Favorable court decisions turned aboriginal title litigation towards the lake beds- *Tamihana Korokai v Solicitor-General* (1912) 32 NZLR 321, *Re Lake Omapere* (1929) 11 Bay of Islands MB 253; but the tangata Whenua were unsuccessful in claiming the rivers - *Re Lake Omapere* (1929) 11 Bay of Islands MB 253; the beaches - *In Re Ninety-Mile Beach* [1963]; and customary fishing rights on the foreshore - *Keepa v. Inspector of Fisheries; consolidated with Wiki v. Inspector of Fisheries*[1965] NZLR 322. "Stave them off, starve them, stall them, stop them" seems to be the Defendants general attitude toward the Tanagat Whenua.

The Limitation Act 1950 established a 12 year statute of limitations for aboriginal title claims (6 years for damages), and the Maori Affairs Act 1953 **prevented** the enforcement of customary tenure against the Crown. The Treaty of Waitangi Act 1975 created the Waitangi Tribunal to issue non-binding decisions, concerning alleged breaches of the Treaty, and facilitate settlements.

6. *Te Weehi v Regional Fisheries Office* (1986) was the first modern case to recognize an aboriginal title claim in a New Zealand court since *Wi Parata*, granting non-exclusive customary fishing rights - *Te Weehi v Regional Fisheries Office* (1986) 1 NZLR 682.

The Court cited the writings of Dr Paul McHugh and indicated that whilst the Treaty of Waitangi confirmed those property rights, their legal foundation was the common law principle of continuity. The Crown did not appeal *Te Weehi* which was regarded as the motivation for Crown settlement of the sea fisheries claims (1992). Subsequent cases began meanwhile – and apart from the common law doctrine – to rehabilitate the Treaty of Waitangi, declaring it the "fabric of New Zealand society" and thus relevant even to legislation of general applicability - *Huakina Development Trust v Waikato Valley Authority [1987] 2 NZLR 188.*

7. *New Zealand Maori Council v Attorney-General* held that the government owed a duty analogous to a fiduciary duty toward the Māori - *New Zealand Maori Council v Attorney-General* (1987) 1 NZLR 641; *New Zealand Maori Council v. Attorney-General* (2007) NZCA 269.

This cleared the way for a variety of Treaty-based non-land Tangata Whenua customary rights - *Tainui Maori Trust Board v*

Attorney-General [1989] 2 NZLR 513 (coal); *Te Runanganui o Te Ika Whenua Inc Society v Attorney-General* [1990] 2 NZLR 641 (fishing rights); *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (whale watching).

By this time the Waitangi Tribunal in its *Muriwhenua Fishing Report* (1988) was describing Treaty-based and common law aboriginal title derived rights as complementary and having an 'aura' of their own.

8. Circa the Te Ture Whenua Māori Act 1993, less than 5% of New Zealand was held as Tangata Whenua customary land. In 2002, the Privy Council confirmed that the Maori Land Court, which does not have judicial review jurisdiction, was the exclusive forum for territorial aboriginal title claims (i.e. those equivalent to a customary title claim) - *McGuire v Hastings District Council* [2000] UKPC 43; [2002] 2 NZLR 577. If sovereignty means anything in the English common law doctrines of usage, it means the Tangata Whenua needs to adjudicate its own personal, private and public affairs in its own unique tribal court systems.

9. In 2003, *Attorney-General v Ngati Apa* overruled *In re Ninety Mile Beach* and *Wi Parata*, declaring that Tangata Whenua could bring claims to the foreshore in Land Court. *Attorney-General v*

Ngati Apa [2002] 2 NZLR 661; *Attorney-General v Ngati Apa* [2003] 3 NZLR 643.

The Court also indicated that customary aboriginal title interests (non-territorial) might also remain around the coastline.
The Foreshore and Seabed Act 2004 extinguished those rights before any lower court could hear a claim to either territorial customary title (the Maori Land Court) or non-territorial customary rights (the High Court's inherent common law jurisdiction). That legislation has been condemned by the Committee on the Elimination of Racial Discrimination. The 2004 Act was repealed with the passage of the Marine and Coastal Area (Takutai Moana) Act 2011.

10. Plaintiff has been denied the receipt of property taxes based on tribal lands and soils which are owned outright by the Plaintiff since time immemorial.

11. Defendants have unjustly paid no rents for the use of Tribal lands for the construction of roads and highways; airports; hospitals; houses; golf courses; government and commercial buildings; etc. This is patently and purely theft that cannot go unpunished.

12. Plaintiff has been subjected to harsh and unjust laws with utter disrespect to tribal laws which have their beginnings in antiquity. All court judgments issued by the Defendants' courts are hereby deemed illegal and unlawful as are their parliamentary laws that exhibit no respect, reverence and regard for Plaintiff's tribal laws.

13. Defendants have jeopardized the Plaintiff's safety and security by signing military treaties with other countries, especially the United States which has been targeted by terror groups. This irresponsible act has placed Aotearoa and the Plaintiff on high alert. The Australian New Zealand United States (ANZUS) Pact is one such affront to Plaintiff's efforts to sustain and maintain true tribal sovereignty.

14. Plaintiffs have been subjected to unjust and unconscionable laws to apply for land titles, birth certificates, death certificates, driver licenses, passports, business licenses, probate laws, and such other unlawful government practices and activities which can gain no traction in tribal affairs and tribal laws.

15. Part I, Section 7 of The Act empowers the Attorney-General of New Zealand to report to Parliament if any Bill or proposed legislation is not on all fours with The Act. It is manifestly evident

that the Attorney-General has failed in his duties to prevent the passage of laws that are detrimental and disadvantageous to the Tangata Whenua. The Attorney-General has thus confronted with malfeasance, misfeasance and nonfeasance.;

Part 1, Section 7: Attorney-General to report to Parliament where Bill appears to be inconsistent with Bill of Rights

- *Where any Bill is introduced into the House of Representatives, the Attorney-General shall,—*
    - *(a)in the case of a Government Bill, on the introduction of that Bill; or*
    - *(b)in any other case, as soon as practicable after the introduction of the Bill,—*

bring to the attention of the House of Representatives any provision in the Bill that appears to be inconsistent with any of the rights and freedoms contained in this Bill of Rights.

RELIEF SOUGHT

1. Defendants be subjected to a fine of **five trillion dollars for each infraction, for each violation, for each act of disobedience to the rule of law; for each promulgation of each law that deprived the Tangata Whenua of ther Cretor-given rights** as compensatory, aggravated, general, exemplary and special damages. Tangata Auditors have been ordered to quantify these claims in Addendum 1 of this Order To Show Cause which will trigger a Default Judgment and Writ of Execution to enforce this Tribal Court Order.

2. Defendants to immediately cease and desist from making,

implementing, or enforcing any of its laws that affect, impede, obstruct and hinder rights of the Tangata Whenua.

3. Defendants to issue a public apology to the Tangata Whenua for all the past and present transgressions to be broadcast in major media outlets.

4. Defendants to pass new laws in its Parliament to leave and let Tangata Whenua alone to manage and regulate their own affairs.

5. The Tangata Whenua will cease to use any and all government of New Zealand issued birth certificates, driver licenses, travel documents and passports, land titles and such other documents.

SO ORDERED BY THE JUDICIAL AND COUNCIL OF TRIBAL CHIEFS AND ELDERS.

Judge Silver Cloud Musafir (Navin-Chandra Naidu)

- Chief Justice, United Cherokee Republic of North America, Georgia; Mun-Barefaan Yamassee; Washitaw de Dougdamoundyah
- Judge Member #01798766, American Bar Association
- Member #1040751, International Bar Association
- Member # IIBA/NCN/1948, International Indigenous Bar Association, Paris, France.
- Permanent Representative, Native American Association of Nations, United Nations
- Member, National American Indian Court Judges Association