

WHĀNAU VERSES WHAKAPAPA IN THE MĀORI LAND COURT: A TRIBUTE TO NIN TOMAS

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I. Introduction

In May 1999 I began my solo Māori law academic career at the University of Otago at a time when many formidable Māori were working at the North Island law schools. There was of course Dr Nin Tomas but also others including the now Judge Craig Coxhead, Matiu Dickson, Andrew Erueti, the now Judge Caren Fox, the now Judge Stephanie Milroy, Ani Mikaere, Linda Te Aho, Pierre Tohe, Andrea Tunks, Kylee Quince and Leah Whiu. I had the good fortune of a wise Dean who at the time encouraged me to travel to meet with these Māori law academics, many of whom have had a large influence on my academic life. The Waikato Law School cemented these early relationships by hosting the most wonderful wananga for us at a marae in Raglan in mid 1999. We all introduced our research-in-progress. I distinctly remember nervously presenting on day two about the only topic I could think of: adoption and the Māori Land Court. The year prior, as a student of Māori Land Law and as a volunteer at the Ngāi Tahu Māori Law Centre, I had completed a legal opinion about whether a testator ought to be able to devise his Māori freehold land interests to his adopted *out* now adult child which was potentially contrary to the reading of ‘child’ in section 108(2)(a) of Te Ture Whenua Māori Act 1993/Māori Land Act 1993 (TTWMA). Section 108 restricts the testamentary freedom of owners of Māori freehold land. Owners can only devise their beneficial interests in Māori freehold land to persons within the permissible categories in section 108. Children is one such category. The issue was whether an adopted out child remains a child of the testator for the purposes of Māori land succession. The obvious stumbling block is section 16(2)(a) of the Adoption Act 1955 which creates a legal fiction that deems the adopted child “to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock”.

In this article, 15 years on, I wish to return to adoption in the Māori Land Court because of this start in my career but also because of interesting subsequent case law on this point including the fascinating decision: *Shirley Dawn Quinn v Robert Tawhiri*

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Coote.² In this December 2013 case, the Māori Land Court approved an application to cancel a succession order in respect of Titi Island blocks vested in the deceased's adopted *in* children. An order was made revesting the shares back into the siblings of the deceased. This case is poignant because it captures the difficult interplay between whānau and whakapapa, the decision-making to privilege one over the other and the relationship between TTWMA and the Adoption Act 1955. But also I want to take this opportunity to write about a Māori Land Court decision because it is within the arena of Māori land law that Dr Nin Tomas has had the most impact on me. Of course I admire all of her other work, especially her PhD,³ and her stellar creation of *Te Tai Haruru Journal of Māori Legal Writing*, but Nin Tomas was a significant giant in my eyes in the Māori land law arena.

II. Nin Tomas and Māori Land Law

In 2000 - my first year of teaching Laws 455 Māori Land Law at the University of Otago - Tomas published two articles in the Butterworths Conveyancing Bulletin:

- Nin Tomas “Jurisdiction Wars: Will the Māori Land Court Judges Please Lie Down” (2000) 9 BCB 33; and
- Nin Tomas “Me Rapu Koe Te Tikanga Hei Karo Mo Ngā Whenua: Seek the Best Way to Safeguard the Whenua” (2000) 9 BCB 49.

These two articles have influenced me greatly in my career. Right now, I can think of few other pieces of New Zealand legal writing that have had such a profound effect on me. These two articles gave me the confidence to critically analyse judicial decisions from a Māori perspective. Today, I still discuss these articles with my Laws 455 Māori Land Law students.

In these two articles, Tomas discussed two Court of Appeal cases, *Attorney-General v Māori Land Court*⁴ and *McGuire v Hastings District Council*,⁵ and argued that read together they illustrated “a clear intention by the Court of Appeal to restrict the

² *Shirley Dawn Quinn v Robert Tawhiri Coote* (2013) Chief Judge's MB 1018 (2013 CJ 1018).

³ Nin Tomas “Key Concepts of Tikanga Māori (Māori Custom Law) in Tai Tokerau Past and Present” (PhD Thesis, University of Auckland, 2006).

⁴ *Attorney-General v Māori Land Court* [1999] 1 NZLR 689 (CA).

⁵ *McGuire v Hastings District Council* [2000] 1 NZLR 679 (CA).

jurisdiction of the Māori Land Court”.⁶ She critiqued the Court of Appeal in these cases as taking a “selective approach”,⁷ “reinforcing their own monocultural supremacy”,⁸ and “reading down”,⁹ “routinely ignoring”¹⁰ and “completely ignor[ing]”¹¹ the intent of TTWMA.

In brief, at issue in *Attorney-General v Māori Land Court* was whether the Māori Land Court had jurisdiction to return a stretch of general land to original Māori owners pursuant to section 18(1)(i) of TTWMA based on an argument that the land was being held in a fiduciary capacity.¹² The facts here concerned a block of Māori freehold land at the end of the Ruakituri Road alongside the then known as Te Urewera National Park.¹³ The land was taken many decades earlier for roading purposes prior to the establishment of the national park. Later it was vested in fee simple as general land in the Wairoa District Council. The original Māori owners argued that the Council was holding the land in a fiduciary capacity and because the road was unlikely to go ahead (because the land abutted the national park), the Court should vest the land back to them. The Māori Land Court first heard this case.¹⁴ It decided that the Court does have jurisdiction to consider a fiduciary claim in regard to general land and the facts warranted the Court making an order vesting the land back in the original Māori owners. On judicial review, the High Court agreed that the Court had the jurisdiction but that the facts were not sufficient to warrant the vesting order because the Council had not made a final decision to not proceed with building the road.¹⁵ The Court of Appeal disagreed on the jurisdiction point. It held that even though s 18(1)(i) states that the Māori Land Court has jurisdiction to do this with “any specified land”, this phrase must mean any specified *Māori* land (that is, not general land).

⁶ Nin Tomas “Jurisdiction Wars: Will the Māori Land Court Judges Please Lie Down” (2000) 9 BCB 33 at 33.

⁷ At 35.

⁸ Nin Tomas “Me Rapu Koe Te Tikanga Hei Karo Mo Ngā Whenua: Seek the Best Way to Safeguard the Whenua” (2000) 9 BCB 49 at 55.

⁹ At 52 and 54.

¹⁰ At 52.

¹¹ At 55.

¹² Section 18(1)(i) reads that the Māori Land Court has jurisdiction to “determine for the purposes of any proceedings in the court or for any other purpose whether any specified land is or is not held by any person in a fiduciary capacity, and, where it is, to make any appropriate vesting order”.

¹³ Now simply Te Urewera, see Te Urewera Act 2014.

¹⁴ Māori Land Court, Tairāwhiti District, Appln 94546, 21 October 1996.

¹⁵ (1998) 3 NZ ConvC 192, 772.

In brief, at issue in *McGuire v Hastings District Council* was whether the Māori Land Court had jurisdiction under s 19(1)(a) of TTWMA to issue an injunction restraining a local authority from embarking on the designation processes under the Resource Management Act 1991 (RMA). The facts here concerned Māori freehold land that the Hastings District Council wanted to acquire for the purposes of creating a northern arterial link from Hastings and Havelock North to the Napier motorway. The Māori land owners protested the proposed land taking not by pursuing usual options under the RMA and in the Environment Court but under TTWMA and in the Māori Land Court. The owners argued that the Māori Land Court should issue an injunction order pursuant to s 19(1)(a) because the Council action constituted trespass and injury.¹⁶ The Māori Land Court issued an interim injunction order.¹⁷ On judicial review, the High Court¹⁸ and Court of Appeal held that the Māori Land Court does not have the necessary jurisdiction to do this. According to the High Court and the Court of Appeal, the Māori Land Court's specialist Māori land jurisdiction could not be stretched to consider laws of general application including the RMA that has its own tailor-made procedural safeguards for Māori. The High Court held that if it could be proven that the Hastings District Council had acted unlawfully, the correct approach was to appeal the decision to the Environment Court or seek a High Court review of the decision. The Privy Council also later agreed.¹⁹

Tomas had a lot to say about both of these Court of Appeal judgments. In regard to *Attorney-General v Māori Land Court*, Tomas said: "The Court of Appeal's approach to interpretation in this case is a superb example of the *maxim generalis specialibus non derogant* devouring itself".²⁰ This Latin maxim of legal interpretation means the provisions of a general statute must yield to those of a special one. She argued that "the Court of Appeal may be perpetuating the historical approach to legislation affecting Māori land that Parliament was attempting to escape".²¹ She argued this because,²²

¹⁶ Section 19(1)(a) reads that the Court may issue an injunction "against any person in respect of any actual or threatened trespass or other injury to any Māori freehold land, Māori reservation, or wahi tapu".

¹⁷ *Chadwick Family Trust & Karamu GB (Balance) v Hastings District Council* Māori Land Court, 29/4/1999, 156 Napier MB 242.

¹⁸ (1999) 5 ELRNZ 514; High Court Napier 3/9/1999, CP11/99.

¹⁹ *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC). Note, Tomas critiqued this Privy Council decision too: see Nin Tomas "Te Ture Whenua Māori Act and the Resource Management Act: *McGuire v Hastings District Council*" (2002) 10 BCB 22.

²⁰ Tomas "Jurisdiction Wars", above n 6, at 36.

²¹ At 36.

²² At 36.

In the past the New Zealand Courts have purposely ignored rights accruing to Māori in legislation. One of the most blatant examples is fisheries legislation under which the clear meaning of the words ‘nothing in this Act shall affect any Māori fishing rights’ (Fisheries Act 1983, s 77(2) and its antecedents which go back to 1877) was disregarded by the Courts for almost 100 years. Why? Because it went against the grain of general legislation concerning fisheries, general rights of individuals to fisheries, and piqued the prejudices of Pākehā Judges. Te Ture Whenua Māori Act goes further. It is an entire Act that has Māori values as its basis. As such, it moves away from the arena of the Torrens system and the underlying Pākehā law with which most Judges are familiar and comfortable, challenging them to step outside their legal comfort zone. And therein may lie the answer as to why the Court of Appeal so rigorously focused on status of land, rather than the need to protect Māori land interests, in their decision. It is tidier and far less troublesome to confine the jurisdiction of the Māori Land Court, than to have them meddling with land that is held under another system of land tenure. Hence status prevails over Māori land interests. Unfortunately, this may not be what Parliament intended.

And this paragraph too,²³

The Court of Appeal has ring-fenced the jurisdiction of the Māori Land Court under s 18(1)(i) to Māori freehold land and General land owned by Māori. Its decision is not challengeable unless one takes the long trek to London and the Privy Council. This is hardly likely as the cost of pursuing a case through the general Courts of New Zealand is already prohibitive for Māori. Ironically perhaps, cost is another reason why the Māori Land Court may be the better venue for hearing fiduciary claims brought by Māori. While one detects an underlying resistance in this case, to the Judges of the Māori Land Court venturing into the Torrens system arena via fiduciary investigations, perhaps the concern should more properly be in the other direction. It may be that the Judges of the general courts do not have sufficient knowledge and understanding of the Māori focus of Te Ture Whenua Māori Act to properly conduct the inquiry.

Tomas was equally scathing of the Court of Appeal’s decision in *McGuire v Hastings District Council*. She stated:²⁴

²³ AT 37.

²⁴ Tomas “Me Rapu Koe Te Tikanga Hei Karo Mo Nga Whenua”, above n 8, at 54.

This judgment is also heavily laced with monoculturalism in that the Judges seem to be unable to comprehend that ‘plain and ordinary meaning’ derived from a Pākehā common law context may not be determinative when dealing with an Act that has a Māori philosophical and language base. The goal seems to be simply to restrict the jurisdiction of the Māori Land Court and in that way avoid the issues of cultural interface raised when TTWMA comes into contact with any other statute.

These two articles by Tomas contain strong coherent arguments with a principled challenge to the courts and Parliament to apply more justly the law. The effect of this writing on me is obvious. In one of my very first pieces of published work I followed Tomas’ lead and critiqued the Court of Appeal’s November 2002 decision in *Bruce v Edwards* as another example of the upper appeal courts curtailing the jurisdiction of the Māori Land Court.²⁵ I published this work in the same journal where Tomas had published her critiques of *Attorney-General v Māori Land Court* and *McGuire v Hastings District Council* - the Butterworths Conveyancing Bulletin.²⁶ My opening sentence in that article referenced these two Tomas articles. Without the foundation laid by Tomas, I doubt I would have had the confidence to write that article (and thus potentially much of my subsequent writing). She had identified a concerning theme in the decisions of the upper appeal courts and I merely reinforced her conclusions. The *Bruce v Edwards* case was an easy case to critique in the light of Tomas’ work.

I like to think that through the work of Tomas, the upper appeal courts were challenged to confront their biases. Many of the upper appeal court decisions since have read quite differently to these three abovementioned cases. *The Attorney-General v Ngati Apa* Court of Appeal decision in 2003 concerning the jurisdiction of the Māori Land Court to determine the status of whether specific stretches of foreshore and seabed were Māori customary land was an obvious circuit breaker.²⁷ Here the Court of Appeal agreed that the Māori Land Court did have the necessary jurisdiction. The Court of Appeal has since heard several cases concerning TTWMA and all demonstrate a comparatively stronger understanding of the Act including the special foundation of the preamble and sections 2 and 17 that reinforce the principles of retention

²⁵ *Bruce v Edwards* [2003] 1 NZLR 515.

²⁶ Jacinta Ruru “*Bruce v Edwards*: the Court of Appeal’s latest ruling on Māori land” (2003) 10 *BCB* 169.

²⁷ *Attorney-General v Ngati Apa* [2003] 3 NZLR 643.

and utilisation of Māori land.²⁸ Moreover, the recent Environment Court decision concerning the proposed taking of Patricia Grace's Māori freehold land pursuant to the Public Works Act 1981 for roading purposes is a strong contemporary example of the new respect for the importance of retaining Māori land in Māori ownership even in the other courts of first instance.²⁹ Tomas' work, I believe, has paved the way for more respectful judicial decisions concerning Māori land. I now wish to turn to a Māori Land Court decision that has interested me recently.

III. Shirley Dawn Quinn v Robert Tawhiri Coote

Shirley Dawn Quinn v Robert Tawhiri Coote is a Māori Land Court decision that concerned succession to beneficial interests in one of the Titi Islands, in particular, whether an adopted *in child* can succeed to such interests.³⁰ The Titi Islands consist of about 36 islands to the east, south and west of Rakiura Stewart Island. Preserved titi (muttonbirds/sooty shearwaters) are an important part of the Ngai Tahu economy and diet.³¹ In 1864, the Crown negotiated an agreement to purchase Stewart Island from Ngai Tahu and as part of this agreement reserved 21 of the surrounding islands exclusively for certain Ngai Tahu individuals and their descendants (known as the Beneficial Titi Islands). The remaining Titi Islands were returned to Te Runanga o Ngai Tahu ownership as part of the Ngai Tahu Claims Settlement Act 1998. Since 1909, the Māori Land Court has had exclusive jurisdiction to update the list of owners to the Beneficial Titi Islands with the most recent provision for this stated in s 6 of the Māori Purposes Act 1983.

Section 6(1) defines owners as:

in relation to the islands, means the persons found by the court to be beneficially entitled to the islands under and in accordance with the provisions of section 109 of the Māori Purposes Act 1931 and shown in the records of the court as being so entitled at the commencement of this section.

²⁸ For example, see *Clarke v Karaitiana* [2011] NZCA 154; *Kameta v Nicholas* [2012] NZCA 350, [2012] 3 NZLR 573; *Tito v Tito* [2012] NZCA 493; *Rameka v Hall* [2013] NZCA 203; *Naera v Fenwick* [2013] NZCA 353; *The Te Aute Trust Board v Hauraki* [2014] NZCA 532.

²⁹ *Grace v Minister for Land Information* [2014] NZEnvC 82. See also the related Māori Land Court decision: *Grace – Ngarara West A25B2A* (2014) 317 Aotea MB 268 (317 AOT 268).

³⁰ Above n 2.

³¹ Michael Stevens "An intimate knowledge of 'Māori and mutton-bird': Big Nana's story" (2013) 14 JNZS 106-121. See also: Atholl Anderson, Judith Binney, and Aroha Harris *Tangata Whenua: An Illustrated History* (Bridget Williams Books, Wellington, 2014).

Section 6(3) reads:

The islands shall hereafter be deemed to be Māori freehold land under and for the purposes of the principal Act, and, subject to the succeeding provisions of this section, the provisions of that Act shall apply accordingly”.

The principal Act then meant the predecessor to TTWMA, the Māori Affairs Act 1953. It now means the TTWMA.

Section 6(4) reads:

The court shall continue to have exclusive jurisdiction to determine relative interests and succession to such interests of deceased owners and appoint trustees for persons under disability in respect of the beneficial ownership of the islands; and in determining any such succession the court may exercise its jurisdiction in the same manner as it did before the commencement of this section, notwithstanding any of the provisions of the principal Act relating to succession on intestacy to undivided beneficial freehold interests in common in Māori freehold land.

Another relevant statute is the Titi (Muttonbird) Islands Regulations 1978. These Regulations explicitly restrict non-Rakiura Māori from entering the Titi Islands without permission from the Rakiura Titi Committee.³² *Rakiura Māori* are defined to mean a person who is a member of the Ngai Tahu Tribe or Ngatimamoe Tribe and is a descendant of the original Māori owners of Stewart Island.³³ Thus, only those who have a beneficial interest are permitted to enter the Titi Islands. The Regulations do make an exception for children and grandchildren of beneficial owners. They can accompany the beneficiary to his/her island and even go unaccompanied provided their parent/grandparent has authorized this in writing.³⁴

The facts of this case concern Shirley Quinn who died leaving a will devising her interests in three Titi Islands to her three legally adopted in children. On the 5th June 2008, the Māori Land Court issued a succession order in favour of these three adopted children in reliance on the Adoption Act 1955.³⁵ That is, as stated at the outset of this article, s

³² See Titi (Muttonbird) Islands Regulations 1978, reg (3)(1).

³³ Reg 2.

³⁴ Regs 3(3) and (4).

³⁵ At 124 South Island MB 224-228.

16(2)(a) of the Adoption Act creates the legal fiction that deems the adopted child to be the child of the adoptive parent as if the child had been born to that parent. Thus, the legal interpretation of ‘child’ in New Zealand’s legislation is to include adopted in children. But is this correct in the context of Māori freehold land, and specifically Titi Islands, when blood connection to the lands is significant?

Following this Māori Land Court decision, Robert Tawhiri Coote wrote to the Court in his capacity as Chairperson of the Raikura Titi Committee expressing his concern that the Court was making orders in favour of adopted in persons who were not connected to Rakiura Māori by bloodline. A Māori Court Judicial Conference was called under s 67 of TTWMA to consider this issue. On 7 August 2009, Judge Carter presided over the Judicial Conference and produced a 39-paragraph report that the Chief Judge relied on in deciding this later case in 2013.

Mr Coote’s position was that only persons of blood descent in fact should be entitled to succeed to beneficial interests in Titi Islands. His argument meant that the Adoption Act 1955 fiction should not apply in the special circumstances of the Titi Islands. He claimed that he had been adversely affected by the succession order because the Māori Land Court in 2008 had not considered:³⁶

- the customs (“tikanga”) of the Beneficial Titi Islands;
- the Titi (Muttonbird) Notice 2005;
- the Titi (Muttonbird) Regulations 1978;
- section 48(d) of the Conservation Act 1987;
- the implicit intent of the reservation of 21 Titi Islands within the Deed of Cession of Stewart Island; and
- the intent of s 6(4) of the Māori Purposes Act 1983.

Mr Coote argued that the Adoption Act 1955,³⁷

cannot impact on succession to the Titi Islands due to the Māori Purposes Act 1983 specifying that the law to be applied to successions to the Titi Islands is that in force prior to 1 April 1954. The Adoption Act 1955 did not exist prior to that date and while some provisions of the Adoption Act can act retrospectively they were not existing law prior to 1 April 1954 and therefore could not be applied.

³⁶ *Shirley Dawn Quinn v Robert Tawhiri Coote*, above n 163, at [2].

³⁷ At [7(i)].

Judge Carter’s report is reproduced in full in the Chief Judge’s 6 December 2013 judgment.³⁸ Judge Carter’s report considered all this law in detail. Judge Carter concluded,³⁹

In relation to the Titi (Muttonbird) Island Regulations 1978 which defines that a beneficiary to those islands means a Rakiura Māori who holds a succession order from the Māori Land Court entitled them to a beneficial interest in any beneficial island. A Rakiura Māori is further defined as a member of the Ngai Tahu tribe or Ngatimamoe tribe who is a descendant of the original Māori owners of Stewart Island. Therefore only those connected to the bloodline of original owners are entitled to birding rights and those legally adopted persons with no blood connection are not.

In regard to jurisdiction, the Court stated that pursuant to s 44 of TTWMA the Chief Judge may cancel or amend an order made by the Court if satisfied that the order was erroneous in fact or in law.⁴⁰ Section 45 permits an applicant who has been adversely affected by an order to ask the Court to exercise these special powers. The Court cited earlier judgments that held that the Chief Judge “must exercise his jurisdiction by applying the civil standard of proof of the balance of probabilities”⁴¹ and added,⁴²

Section 45 is a unique section amongst the Courts of New Zealand. It was evidently felt that, as a titles Court, the principle of indefeasibility was extremely important and consequently orders should not be easy to overturn.

The Court stated the issue as “whether the Court was in error when it found that adopted children with no blood connection to the Titi Islands were entitled to succeed”.⁴³ The Court stated that if this issue was simply one concerning *Māori* freehold land then adopted children with no blood connection *are* entitled to succeed pursuant to TTWMA because of the operation of the Adoption Act 1955.⁴⁴ But does it matter that the lands are Titi Islands? Is the law relating to Titi Islands interests distinct

³⁸ At [4].

³⁹ At [21].

⁴⁰ At [10].

⁴¹ At [12].

⁴² At [14].

⁴³ At [17].

⁴⁴ At [18].

from the general laws set out in TTWMA?⁴⁵

Yes, answered the Court,⁴⁶

Having considered the report from Judge Carter and the laws controlling muttonbirding and successions to the Titi Islands, there is a clear synergy in objectives between them. That is to enable the benefits of birding rights and succession to interests in Titi Islands to be enjoyed by blood descendants of Rakiura Māori who were the original owners of the Titi Islands.

And,⁴⁷

Further, I agree with Judge Carter that the legislation is clear that the Adoption Act 1955 does not apply to Titi Islands successions, and that the entitlement to Titi Islands interests is determined by the Native Land Act 1931 which ensures that entitlement is to be determined in accordance with Native Custom. That is, only persons who are blood descendants of Rakiura Māori who were the original owners of the Titi Islands are persons entitled to succeed.

The Court thus cancelled the succession orders to Shirley Quinn's adopted children and vested them equally in her eight siblings.

The rights of adopted children to Māori freehold land interests have always been controversial. The High Court held in November 2008 that a person adopted *out* could not make a claim against his or her birth parent's estate in terms of s 3(1) of the Family Protection Act 1955 because the adopted out child does not constitute a child of the birth parent.⁴⁸ But the Māori Land Court held in October 2012 that a person adopted *out* could succeed to Māori freehold land interests devised to him or her in a will written by a member of the birth family (in this case the birth grandfather) under s 108 of TTWMA. The Court accepted this not because the person could claim to be a grandchild of the testator (as required by s 108(2)(a)) but because the person in this case was related by blood and a member of the hapū associated with the land (as

⁴⁵ At [19].

⁴⁶ At [22].

⁴⁷ At [23].

⁴⁸ See *Sainsbury v Graham* HC Whanganui CIV 2008-483-000068, 28 November 2008, Justice Wild, discussed in (2009) March Māori LR 7.

required by s 108(2)(c)).⁴⁹ Thus *Hovell* has limited the Adoption Act fiction to only severing the relationship between the birth child and the birth parent (the whānau) but not severing in fact the blood relationship (the whakapapa).

On 8 October 2013, the Māori Land Court again reinforced this precedent set in *Hovell* that blood children named in a will can succeed to Māori freehold land interests held by the blood parent via s 108(2)(c).⁵⁰ In this case, the Court emphasised that s 16(2)(e) of the Adoption Act 1955, which reads “subject to the Citizenship Act 1977, the adoption order shall not affect the race, nationality, or citizenship of the adopted child”, aligns with s 108(2)(c) of TFWMA. The Court stated:⁵¹ “[i]n simple terms neither s 16(2)(e) Adoption Act 1955 nor s 108(2)(c) Te Ture Whenua Māori Act 1993 sever a person’s blood connection to the land.”

Shirley Dawn Quinn v Robert Tawhiri Coote extends this jurisprudence to emphasising whakapapa but this time within the context of adopted *in* children and the Titi Islands. This case holds that the Adoption Act 1955 fiction captured in s 16(2)(a) does not apply in regard to succession to the Titi Islands because other law specific to the Titi Islands gives prominence to whakapapa and legal adoptions ought not to muddy this – or in other words, a child may be a child in law but not in fact. Read together these cases reinforce a growing precedent set by the Māori Land Court that the importance of blood relationships with Māori land is fundamental to a point where, if pushed, whakapapa will be prioritised over whānau. This decision certainly limits the rights of adopted children into a whānau with Titi Island interests. While their adopted parent with the blood link to the Titi Islands is alive they will be able to enter the Titi Islands and take birds. But once that parent dies, will these children (and their children) be able to continue to enjoy access to these Islands? Perhaps only with permission from the Rakiura Titi Committee.

IV. Conclusion

The *Shirley* case demonstrates the new forcefulness of the Māori Land Court in confidently making hard decisions about Māori land. It is representative of a new era where the Māori Land Court and the Māori Appellate Court are judicially recognised as having the expertise and standing to decide legal issues concerning Māori land and

⁴⁹ *Estate of Ross Glencairn Hovell* (2012) 25 Tairawhiti MB 258 (25 TRW 258), discussed in (2012) October Māori LR 15.

⁵⁰ See *Paul Anderson v Anna Anderson* (2013) Chief Judge’s MB 783 (2013 CJ 783).

⁵¹ At [21].

related tikanga Māori issues. As the Court of Appeal recently stressed in regard to the Māori Appellate Court, it is specialist court with “collective knowledge of tikanga or Māori customary values and practices”.⁵² The work of Nin Tomas is in part a testament to this new respectful era.

The loss of Nin Tomas to the small Māori legal academic community is immense. We have lost our fearsome writer but too we have lost our dear irreplaceable mentor. To Nin, thank you for all of your treasured work and friendship. You certainly made opportunities for me in my career and instilled in me much confidence and belief that I was doing right. You examined my LLM thesis. You gave me lead roles in your cherished Te Tai Haruru. You always had time to meet with me for coffee when visiting Auckland. You came to my “*In Good Faith*” conference marking the 20th anniversary of the *Lands* case in the middle of an icy Dunedin winter (and even though you left early, because it was so cold!, I have captured moments of your presence in your bright red coat). I wish I had told Nin that I treasured her work. Perhaps she knew anyway. Hopefully. She certainly remained a mentor until the end of her life. I received my last email from her in late January 2014 where we discussed what content we were going to include in our Māori land law course materials for the upcoming teaching semester. We talked about work life balance, stress and health too. She signed that last email ‘lots of love’. My love to you too Nin.

⁵² *Kameta v Nicholas*, above n 28, at [9].