

**IN THE WAITANGI TRIBUNAL**

**Wai 2575  
Wai 2894**

**IN THE MATTER**

**of the Treaty of Waitangi Act 1975**

**AND**

**IN THE MATTER**

**of the Health Services and Outcomes  
Kaupapa Inquiry (Wai 2575)**

**AND**

**IN THE MATTER**

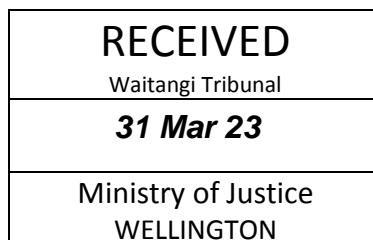
**of a claim by Malcolm Kingi on  
behalf of Ngaai Tahu oo Moohaka  
Waikare**

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**BRIEF OF EVIDENCE OF MALCOLM JAMES KINGI**

**Dated 29 March 2023**

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**Counsel Acting: S Roughton / S M Yogakumar / H J Fletcher**

## **MAY IT PLEASE THE TRIBUNAL**

### **INTRODUCTION**

1. My name is Malcolm James Kingi. I was born in 1961. I live in Greenmeadows, in Napier with my partner, Mere, who I met in 1980, and our daughter, Marie. Through my mother, Arapera Annabelle Huata, and my grandfather, Ngari Huka, I whakapapa to Tahupootiki, the eponymous ancestor of Ngaai Tahu oo Moohaka Waikare. I am Maaori.
2. I have worked as a shearer and a scrub cutter on the whenua Moohaka-Waikare and surrounding areas from the time I was 12 years old.
3. I bring this claim before the Waitangi Tribunal on behalf of myself and Ngaai Tahu oo Moohaka Waikare.

### **INJURIES**

#### **First Injury: 1996**

4. On 21 October 1996, I suffered a knee injury when a ram ran into my left knee while I was working as a sheep shearer. For the first month, the pain was so severe that I was unable to walk. I was forced to crawl around my house. Although this improved slightly, my knee was still so swollen and stiff that I had to use crutches for the next six months. Throughout this time, I was unable to bend my knee, leaving me incapable of even tying my own shoes.
5. My GP prescribed me panadene to deal with the pain. Panadene is one of the cheapest painkillers and while it worked for a time, eventually it was not strong enough. When I told my GP about this, he put me on a stronger painkiller.
6. Having inspected the injury, my GP advised me that I should look for a new profession where I would be sitting down, such as driving trucks or forklifts. Although I applied for many jobs in these areas, potential employers

immediately lost interest in hiring me once they heard about my knee injury or received my medical record. I was never recommended to train for administrative jobs, nor was I given advice on where I could get this training but continued to look for driving jobs for years. Given that I enjoyed shearing and was not trained to do anything else, I went back to what I knew. The next year, in April 1997, I returned to work as a shearer once the swelling had subsided. My GP had told me that I could still go back to work as a shearer, but that there was a strong chance that my knee may play up again. Although I was initially able to work without too much discomfort, I did eventually begin to feel pain in my knee again.

7. So, a couple months later, I had an Accident Compensation Corporation (“**ACC**”) consultation at Maraenui Medical Centre in Napier. Dr Denis Atkinson prescribed me anti-inflammatories and told me that my knee was likely to continue to deteriorate for the rest of my life. The anti-inflammatories did work, but they caused me headaches and upset my stomach. I have become reliant on these painkillers, as the pain has remained since 1996. Nowadays, I can even feel the pain while simply being seated. Dr Atkinson recommended that I try a profession which would place less pressure on my knee. Again, I tried looking for jobs in other professions, but no one would hire me because of my knee.
8. I tried to go back to shearing but my left knee gave out immediately. I went back to my GP who then concluded that I could not work anymore due to the injury. My GP recommended that I investigate new jobs which did not require me to lift heavy objects or bend and twist my knee. However, I faced the same problems as before. No one would hire me due to my lack of training and medical history. My GP did not give me any advice for how to get a new job or about joining training programmes. In the end, I got turned down from so many jobs, that he focused on trying to put me on sickness and disability benefits.
9. In September 1997, ACC approved my application to cover the cost of surgery to my left knee. So, I underwent a left knee arthroscopy and partial meniscectomy on 24 September 1997. After this surgery, I was deemed unfit for work for about two weeks. I went through about three to four months of

physiotherapy after this operation. During this time, I received a sickness benefit from ACC.

10. During this period, the only support I received on a day-to-day basis was from my partner, Mere. She was provided with no financial support or equipment, and simply had to come home and take care of me around her shifts as a teacher aide. My GP never provided us with any information about the support she could receive as a sole caregiver. The only financial advice I received was to go on the sickness benefit.
11. In October 1997, I had a post-surgery check up with Dr Atkinson. I was deemed fit to return to work two weeks from this date, but was informed that if I continued to shear, my knee injury would become a permanent disability. As I was unable to find any other work, I was forced to remain on the sickness benefit during this period.
12. Two months later, my right knee became strained, so I went back to ACC for a consultation in December 1997. At this consultation, I was deemed fit to return to work on 15 December 1997, 6 days after my consultation. However, by the time I was supposed to return to work, I made another appointment with the ACC doctor because I had pain in my right knee again. This appointment was with a retired GP who was working from his house. He assessed me by bending and twisting my knee, which was extremely painful. However, at the end he ruled that my injury was only an 8% disability, not 10%. This meant that I was unable to get ACC coverage. I talk about this in more detail later in my evidence.

### **Between 1997 and 2002**

13. Between 1997 and 2002, my knees did not improve. If one didn't swell up, the other did. It would then take about 6 months until the swelling went down. I continued to use anti-inflammatory pills during this period, but I suffered side effects including headaches and an upset stomach. When I mentioned this to my GP, he said there should be no side effects associated with the pain killers and didn't provide me with another solution. I had no choice but to stop using the pills because I couldn't cope with the side effect. My GP

eventually offered different medication for when I was in severe pain. These pills seemed to work and did not have any side-effects.

14. I continued applying for jobs without success until I finally got a job at the local freezing works. I was there for 10 months, but the shifts lasted 12 hours and I was required to stand on hard concrete floors. This placed more pressure on both of my injured knees. When I told my GP about this job, he once again recommended that I find a job where I was able to sit down. I wasn't able to find a job, so I continued shearing on and off.

### **2002 – 2004 Injury**

15. In September 2002, a charging ram hit my right knee. They could not operate on my right knee until the swelling went down. So, I had to wait six months for my surgery. During this time, I was unable to return to shearing and could not find any work. My GP and the ACC doctors told me to undertake training or education for new jobs but did not provide any information or pathways on how to do so. So, I remained on the sickness benefit. Once the swelling had finally gone down, I had a surgery on my right knee in March 2003. The cost of this surgery was covered by ACC.
16. My ACC medical certificate declared I was unable to return to work for 10 days post-surgery.
17. Despite this surgery, an X-Ray four days later showed small loose bone fragments and that, due to the lack of cartilage in my knees, my bones had rubbed against each other and filed down too much. So, in June 2003, ACC approved an elective surgery to my right knee. I underwent an additional surgery in August 2003 to get rid of the loose bone fragments.
18. Once the swelling had sufficiently reduced in mid-2004, I had to go back to work as Mere was only working 10 hours a week. I tried to look for other jobs, but once again found that there was no interest in hiring me with my two bad knees. This led to me returning to shearing once more and I continued to endure injuries to my knees.

19. In December 2004, I twisted my knee the wrong way while shearing. That same month, ACC agreed to cover the surgeries and bills related to the injury that I suffered on 6 December 2004. Up until this, we had covered the costs relating to my injury ourselves, which was only possible through great sacrifice.
20. In 2018, my GP of 20 years deemed me permanently disabled and I received a disability certificate on 29 October 2018. This is **attached** to my brief of evidence as exhibit 'A'.

### **ISSUES WITH ACC**

21. In June 2004, I applied for a lump sum compensation from ACC. They required an impairment assessment to see if I was eligible. In August 2004, ACC conducted an assessment to determine my level of impairment. On assessment, my impairment rating was 8%. The threshold to be permanently impaired is 10%. However, it was noted on the ACC assessment document that my impairment was permanent. Despite this, in September 2004, my application was declined on the basis that my condition hadn't changed in the last 12 months, since my last assessment. This made no sense, as my pain had continued to increase due to the swelling and additional injuries caused by shearing from mid-2004 onwards.
22. In December 2004, my lawyer helped me with an ACC complaint where my review application was handed over to the Dispute Resolution Services in Auckland. As a result, ACC agreed to have different doctor carry out an assessment on my knee, but this required me to travel and stay in Wellington, which I could not afford. Despite my requests, ACC did not offer to assist with the costs of travel or accommodation. Because I couldn't afford it, I couldn't have my knee reassessed.
23. Additionally, I never received any advice from ACC on how to recover from my multiple surgeries so that I could return to work. They didn't provide me with knowledge on services to help me with this recovery either.

## **ISSUES WITH THE DISABILITY SUPPORT SERVICES**

24. As I have mentioned, because of my accidents, I wasn't able to continue working in shearing and even when I did try, my knee gave out on me straight away.
25. Through Work and Income New Zealand ("**WINZ**"), I was able to have some of my medical expenses reduced. To get payments from WINZ, I had to present all my medical costs and doctors' visits to WINZ every 6 months. WINZ would then assess my benefit again and provide me with some funds if they saw fit. At first WINZ covered GP visits, but once I began to get a little bit better, they stopped doing so. After this, the benefit was minimal, providing only about \$5 or \$6 per week. This was not enough to cover all my bills.
26. I tried to request more funds and told WINZ that this was not enough to cover my various bills. However, I was told that this was all I was eligible to receive. I didn't want to kick up a fuss, so just accepted what I was given.
27. Through ACC, I was also able to receive some payments. ACC funds covered surgeries, physiotherapy appointments and GP visits, but they did not include pharmacy prescription bills. Again, once the swelling reduced, ACC stopped funding me.
28. Because I had a disability, I thought I would get this assessment to help me and my family, and to help me maintain my independence but, no needs assessment was offered to me, and I was not referred to any needs assessment centres in Hawkes Bay.

## **RURAL MAAORI**

29. While I was going through my injuries and surgeries, I lived in Maraenui which is about 4 km from Napier.
30. Some of my surgeries and post operation consultations were at Royston Hospital which was 20 km from where I lived. The rest of my surgeries were

at a private hospital in Napier which was about 4 km from where I lived. For all my surgeries and appointments, I had to drive myself to the hospitals. I was told that I should not be doing this, but Mere was unable to drive. When I asked what my options were, I was told I would need to pay for an ambulance. I couldn't afford that. Today, this costs \$200, which is why I chose to crawl to and from my car and drive myself instead.

## **CAREGIVERS**

31. My wife Mere is my caregiver. She works as a teacher aide earning about \$34,000 per annum. She received no training on how to look after someone with a disability. WINZ informed us that Mere is entitled to receive a caregiver's stipend of \$50 per day but told us that there would be secondary tax on that funding. After tax, the stipend was pointless, so we did not move forward with that.
32. As my caregiver, Mere essentially did everything for me which required walking and movement. When Mere was out working, I would have to stay in the same spot all day. Eventually, I was provided with crutches and walking sticks, but these were taken away from me once the swelling had reduced, I finally went out and bought my own walking stick.

## **CONCLUSION**

33. Looking back, I did not want to cause a fuss or push back against the system. When I did do this, I never found myself in a better position than I was before. What I needed at that time was support, especially funding to cover the various bills and medical expenses. I also needed more help in finding jobs, or training for a new career. Mere has looked after me extremely well, but this comes at a great cost.

Dated at **NAPIER** this 29 day of **March 2023**

*M Kingi*

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**Malcolm Kingi**