

# Ellis v R [2022]

**NOTE: PUBLICATION OF NAMES OR  
COMPLAINANTS PROHIBITED BY S 139 OF THE CRIMINAL JUSTICE  
ACT 1985.**

**NOTE: PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF  
WITNESSES UNDER 17 YEARS OF AGE PROHIBITED BY S 139A OF THE  
CRIMINAL JUSTICE ACT 1985.**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 49/2019  
[2022] NZSC 114**

BETWEEN	PETER HUGH MCGREGOR ELLIS Appellant
AND	THE KING Respondent

Hearings: 14 November 2019  
25 June 2020

Court: Winkelmann CJ, Glazebrook, O'Regan, Williams and Arnold JJ

Counsel: R A Harrison, S J Gray and B L Irvine for Appellant  
(14 November 2019) U R Jagose KC, K S Grau and A D H Colley for Respondent

Counsel: R A Harrison, N R Coates, K D W Snelgar and S J Gray for  
(25 June 2020) Appellant  
U R Jagose KC, J R Gough, K S Grau and A D H Colley for  
Respondent  
M K Mahuika and H K Irwin-Easthope for Te Hunga Rōia Māori  
o Aotearoa | The Māori Law Society as Intervener

Judgment: 1 September 2020

Reasons: 7 October 2022

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## JUDGMENT OF THE COURT

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**The application for the continuation of the appeal despite the death of the  
appellant is granted.**

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## REASONS

	Para No.
Summary of Reasons	[1]
Glazebrook J	[24]
Winkelmann CJ	[149]
Williams J	[231]
O'Regan and Arnold JJ	[275]

### SUMMARY OF REASONS

(Given by the Court)

#### Background

[1] Mr Ellis was convicted of sexual offending against seven complainants in 1993. Two appeals to the Court of Appeal (in 1994 and 1999) were unsuccessful.<sup>1</sup> On 31 July 2019, this Court granted leave to appeal against the Court of Appeal decisions as well as an extension of time to do so. Mr Ellis died on 4 September 2019 before the appeal could be heard. ○

[2] The Court held two hearings to determine whether the appeal should continue despite his death: one on 14 November 2019 and one on 25 June 2020. The June hearing concerned the relevance of tikanga Māori to the issue of the continuation of the appeal.

[3] On 1 September 2020, this Court issued a results judgment allowing the appeal to continue. These are the Court's reasons for allowing the continuation of the appeal.<sup>2</sup>

[4] A judgment issued contemporaneously contains the Court's decision in relation to Mr Ellis' appeal against conviction.<sup>3</sup> ○

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<sup>1</sup> Except in relation to one complainant who recanted.

<sup>2</sup> All of the judges agree with this summary of their reasons. We emphasise that this is a summary only and the full analysis is what appears in the Reasons that follow.

<sup>3</sup> *Ellis v R* [2022] NZSC 115.

## **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:**

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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.

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- (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 11<sup>th</sup> of December 2019 support this statement.