

**PART I INTRODUCTION**

*Ko Ngāpuhi te iwi  
Ko Hokianga taku Tūrangawaewae  
Ko Jessica Aroha Hope Reid taku ingoa  
He mihi mahana kia a koutou*

*I am Jessica Aroha Hope Reid.  
I am Maori, I come from the tribe of Ngapuhi which is in the North.  
My standing place in the world is the Hokianga Harbour, also in the North.  
Warm greetings to you all.*

- i. **I would first like** to acknowledge Madam Chair and the Distinguished Guests and Speakers.
- ii. I am humbled being here in the presence of such **learned voices** and such **inspiring individuals**. And I am honoured as an undergraduate to take part in such a **prestigious event**.
- iii. I would also like to take the time to acknowledge the people who have influenced me on my academic journey.
- iv. I would like to acknowledge Judge Tony Fitzgerald of the District Court – whom I interviewed for my research and who has been a learned mentor to me on the practice of Therapeutic Jurisprudence.
- v. I would also like to acknowledge Bernie and Katherine of Hauora Hokianga – two beautiful women who have shared their knowledge of Tikanga Maori and Maori Mental Health with me.
- vi. Finally, I would like to thank Erana Cooper, Valmaine Toki and Warren Brookbanks, three leading academics in the area of Maori Mental Health and Therapeutic Jurisprudence, who have been encouraging and patient mentors to me in my exploration of these areas.

*Today, I'd like to speak to you today about the initiative of a Maori Mental Health Court.*

- i. The purpose of this presentation can be reflected in the whakatauki

*Ma Te huruhuru, Ka rere Te manu - Adorn the bird with feather so it can fly*

- I. This proverb reflects the idea that a bird cannot fly without feathers BUT if you give the bird what it needs, it can thrive.
- II. The imperative for this idea comes from the fact that in modern day Aotearoa, the **number one health concern for Māori is mental health.**
  - i. **One in ten** people in Aotearoa suffer from a mental illness in their lifetime.
  - ii. For Maori it is **one and two.**
  - iii. And over half of these who suffer from an illness will suffer for their **entire lifetime.**
- III. Yet, Māori are more likely to come into contact with mental health services through a **justice doorway than a primary care point.**
  - i. This is in part because Maori are **4 times more likely to be prosecuted** than non-Māori and **4 times more likely to be convicted** of an offence.
  - ii. Maori are also **7 x more likely than non-Maori to be sent to prison if convicted.**
- IV. Once in prison, Maori are **grossly over-represented.**
  - i. Although they make up approximately **15% of the population**, around **half** of prison inmates are **Maori men** and **60% are Maori women.**
  - ii. Most importantly, once in prison, Maori are **incredibly unlikely** to receive **culturally appropriate treatment** for mental illness, and are much more likely to receive **no treatment at all.**
  - iii. Further, the stress of involvement with the criminal justice system is likely to lead to **further deterioration of mental health.**
  - iv. This sets up a vicious cycle of mental illness and incarceration which is incredibly difficult to break and for many, is a life sentence.
- V. In this presentation I am going to make **the argument that it is time** for a Māori Mental Health Court in Aotearoa. I will argue in **three parts that:**
  - i. The two elements that are needed to make this court a successful Maori Mental Health Court are **Tikanga Maori and Therapeutic Jurisprudence.**
  - ii. Together, these elements could be **interwoven to adorn the Maori with feathers they need to reach mental health and wellbeing and thrive**

**PART I      TIKANGA**

- i. I will begin with Tikanga and **the reason** why we need a Maori Mental Health Court.
- ii. The **acute negative statistics** for Māori indicate that something is out of balance in the world of Māori mental health.
- iii. One explanation for this lies in the fact that the Māori approach to Hauora Maori (health) is based on a holistic wellness model.
- iv. This means that a person's health is connected to other principles **of Tikanga, the right way(s) of living for Māori.**
- v. This means Māori understanding of mental health are inextricably linked **to Te Ao Māori (the Māori world view)** and the especially important **Te Ao Wairua** (the spiritual world) for Maori are an especially spiritual people.
- vi. This connectedness is reflected in one of the foundational models for Māori Mental Health, **Te Whare Tapa Wha by Mason Durie.**
  - a. In this model, the **wellbeing of a person** is represented as **te whare**, the meeting house, with the **four sides of the house representing the four cornerstone elements of Hauora Maori.**
  - b. If one of the four dimensions is missing or damaged, then a person or a collective may become **'unbalanced' and unwell.**
  - c. **The four dimensions** are; te taha hinengaro (the health of the mind), te taha tinana (the health of the body), te taha whānau (the health of the family) and finally, te taha wairua (the health of the spirit).
- vii. While Māori health and well-being is a multi-faceted experience, it is acknowledged that **wairua is the most vital part of that experience for Māori.**
  - a. The spiritual essence of a person is their **Mauri**, their life force.
  - b. **Wairua is not only a sense of spirituality**, it determines them as an individual and as a collective, who and what they are, where they have come from and where they are going.
  - c. Thus, a **traditional Māori consideration of illness** will unquestionably focus on wairua as a key element in determining whether damage here is a contributing factor to any illness.
- viii. Yet, **despite the significance of wairua, for many Māori, modern health services lack recognition of this spiritual element of te taha wairua.**

## II THERAPEUTIC JURISPRUDENCE

- i. The second key element of the Maori Mental Health Court is Therapeutic Jurisprudence.
- ii. Therapeutic Jurisprudence is at its simplest, **the study of the law's healing potential**.
- iii. The idea behind Therapeutic Jurisprudence is that the law has the ability to have a **direct impact** on the offender's lawyers, judges, and other actors it encounters.
- iv. Most importantly, this impact can be either **therapeutic or anti-therapeutic**.
- v. Therapeutic Jurisprudence states that, when appropriate, the court should use tools of the behavioural and social sciences to promote the health and wellbeing of those it encounters.
- vi. The main way in which it does so is through **problem-solving courts**.
- vii. A problem-solving court is simply a specialised court focussed on dealing with the issues that are related to offending. There are specialised courts in NZ already, such as:
  - i. The Rangatahi Court – which deals with Maori Youth
  - ii. The Pacific Youth Court – which deals with Pacific Youth
  - iii. The Youth Drug Court – which deals with Youth Drug Offending
  - iv. The Homeless Court – which deals with crime related to homelessness
  - v. And the Family Violence Court – which deals with Family Violence
- viii. The fact that these courts already exist in Aotearoa **indicate three things for the development of a Maori Mental Health Court**.
  - a. One, that there is **already a strong therapeutic approach to justice** being practiced in Aotearoa.
  - b. Two, that there are **models** which a Maori Mental Health Court could be based on.
  - c. And **most importantly**, the fact that these courts are being **continuously commissioned and developed** indicates that **this innovative therapeutic approach** to issues that defy resolution in the traditional system **is ACTUALLY working!**
- ix. Building on this motion, a Maori Mental Health Court could provide an **opportunity** for the judicial process to focus on the psychological well-being of an individual, from a Tikanga Maori perspective.
- x. In this way, Therapeutic Jurisprudence and Mental Health Courts could provide a way to break the cycle between mental illness and criminal offending for Maori.

**PART III INTERWEAVING TIKANGA AND THERAPEUTIC JURISPRUDENCE TO FORM A MMHC**

- i. In this third part, I would like to take a moment to explore what a Maori Mental Health Court would **look like** in terms of **using the principles of Tikanga Maori, as supported by a framework of Therapeutic Jurisprudence**.
  - A. I stress this is just a **tentative glimpse** and at times this may raise more questions than answers. And for that I apologise and say wait for my PhD.
  - B. But in terms of what my initial research has indicated, a Maori Mental Health Court would likely involve these elements:
- ii. Firstly, to begin the starting point for all the **substantive and procedural mechanisms of the court would be Tikanga**.
  - A. This is one place where Tikanga and Therapeutic Jurisprudence are well matched, as Therapeutic Jurisprudence is **not intended to be an over-riding charter**, rather a **lens** through which the law and legal processes can be viewed.
  - B. This means that **Tikanga would be the ‘first law’** of the judicial process and this avoids any further erosion to understandings of Tikanga Māori, Te Ao Maori and hauora in the process.
- iii. As the starting point would be Tikanga, the process in a Maori Mental Health Court would **not be much like the Western ‘courts’ at all**.
  - A. This process would likely take place on a **marae** (a meeting house), not in a courtroom.
  - B. The process would begin with a **Powhiri (a ceremony of welcome which brings the parties together)** – not with a Judge dictating an adversarial process.
  - C. Further, the process of the court would be guided by **Tikanga dispute resolution principles** such as **aroha** (love) **manaaki** (hospitality) and **whanaungatanga** (familial responsibilities) with the aim of restoring **utu** (balance), rather than the adversarial process that usually takes place between defence and prosecution.
  - D. And, **the key players** would not simply be the Judge, the victim and the offender, but also their wider whanau (family), hapu (sub-tribe) and iwi (tribe), and kaumatua (whanau elders and leaders) and Maori leaders learned in Tikanga, as well as Maori Clinical Psychologists and other representatives from governmental agencies involved in Health, Justice and Social Development.
- iv. In addition to this **Tikanga-based dispute resolution process, what the Court needs is a holistic Tikanga-based treatment process** that addresses all four elements of whare tapa wha, especially the wairua element. This is something which Therapeutic Jurisprudence promotes and facilitates, a multi-disciplinary approach.
  - A. An example of this can be seen in **Drug and Alcohol Abuse**, more commonly known as addiction, which is a prime mental illness to be dealt with under a Maori Mental Health Court.

1. Te Taha **Hinengaro – The Study of Psychology** teaches us that addiction is not because one is lazy or weak-willed; it is because heavy substance use changes our behaviour patterns, our thought patterns and even the physical structures in our brain. To address this, there have been Maori models of wellness and mental health such as **Powhiri and Poutama** which are practiced specifically to deal with the Māori mind.
  2. Te Taha **Tinana –The Study of Psychology** also teaches us that there is a strong physical component to addiction in terms of the physical symptoms of withdrawal. This, to address Pakeha often use medication but a Tikanga Maori response would be to use Rongoa, medicinal herbs, and other physical therapies such as a massage.
  3. Te Taha **Whanau** – The Social Sciences also teach us that Community care is a vital part of follow up and long-term management of mental illness. Collectivity is also an especially important value for Maori people. Thus, for a Tikanga-based treatment to be effective, connections to the whanau, hapu, iwi and the wider community need to be developed and strengthened.
  4. Te Taha **Wairua** – Wairua is a **difficult concept to discuss on its own**, as it is such an integrated part of Hauora Maori. **However, Donna Awatere** made a poignant observation on this when she said: White psychiatric prisons are full of Maori who ‘see’ people. Rather than being ‘crazy’ these people are considered matakite (spiritually gifted) and this is considered a gift from the gods. This is because to see wairua is to see ones tupuna (ancestors) and thus to live ones whakapapa every day. Therefore, for Maori, you would be crazy if you didn’t. Thus to nurture this gift as the gift it is, a Maori Mental Health treatment should encourage connection to one’s tupuna and the holistic connection to Te Ao Maori.
- v. **The reason why I believe this process would work is because Tikanga and Therapeutic Jurisprudence have a common objective.**
- A. This is because the goal of Therapeutic Jurisprudence is to promote a more therapeutic justice system that heals offenders and stops re-offending.
  - B. Tikanga is likewise **looking for the tika way, the right way toward healing, achieving oranga (wellbeing) and paiheretangata – binding of people back together.**

#### IV CONCLUSION

- I. In conclusion, I would like to end on a whakatauki that encapsulates the single message that I hope you take from this presentation.

*“Ka pu te ruha, ka hao te rangatahi,*

*The old worn out net is cast aside, and the new net goes fishing”*

- II. This whakatauki expresses the view that the current ‘one size fits all’ approach to criminal justice is not working. And it is especially not working for Maori.
- III. Maori need a holistic approach to haoura and oranga (health and well-being) which recognises the vital element of wairua.
- IV. Therapeutic Jurisprudence provides a unique framework through which to realise these elements of Hauora and to promote the law as a force for helping and healing.
- V. At the beginning of my presentation you may have thought this initiative of a Maori mental Health Court was an interesting idea. But I hope I have convinced you it is much more than that.
- VI. It is a real opportunity for a way forward for Maori Mental Health.
- VII. Hopefully if waiho ma te wa, the time and the space, is given to allow this promising area to develop it could develop into something tika, right and meaningful for Maori and Maori Mental Health.