Descriptions of well-established principles of Te Tiriti o Waitangi by the Courts and Waitangi Tribunal

Treaty Principle	Descriptions
Kāwanatanga	• In Ngaruahine v Hiringa Energy Limited, kāwanatanga was described as "the Crown's right to govern and delegate resource management decision-making powers to local authorities, or in this case the Panel". • Lands case (Somers J) – "where the word 'Sovereignty' is used in the English text the word 'Kāwanatanga' is used in the Māori version. This has the connotation of government or governance. The concept of sovereignty as understood in English law was unknown to the Māori." • Te Paparahi o te Raki stage 2 (Wai 1040) – "Because the rangatira made no cession of sovereignty, we do not see the authority granted to the Crown – kāwanatanga – as a superior authority, an overarching power to govern, make, and enforce law … Rather, the Crown's authority was expressly limited in Te Raki to its own sphere. Alongside it, and equal to it, was that of tino rangatiratanga", and also concluded in relation to the principle of kāwanatanga that there was apparent agreement from the rangatira that "the Crown would protect them from foreign threats and represent them in international affairs when necessary".
Tino Rangatiratanga (sometimes also described as being the same as or related to the principle of Māori autonomy / self-government / mana motuhake)	• In Ngaruahine v Hiringa Energy Limited, rangatiratanga in the context of the case was described as "the right of iwi to control, manage and use tribal resources according to their cultural preferences". • In Trans-Tasman Resources Ltd, the court agreed that "tino rangatiratanga in the context of the marine environment" included "tikanga-based customary rights and interests". • National Freshwater and Geothermal Resources Inquiry stage 2 (Wai 2358) – "Article 2 of the Treaty guaranteed to Māori that their tino rangatiratanga would be respected and protected" and that this principle "arises from this guarantee of their preexisting ability to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants". • In Te Paparahi o te Raki stage 2 (Wai 1040), citing Wai 9, it was noted tino rangatiratanga "necessarily carries with it, given the nature of their ownership and possession of their land, all the incidents of tribal communalism and paramountcy. These ... include the holding of land as a community resource and the subordination of individual rights to maintaining tribal unity and cohesion". • Also in Wai 1040 stage 2, citing the Te Tau Ihu report (Wai 785), the Tribunal noted that "inherent in Māori autonomy and tino rangatiratanga is the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlement".
Te mana taurite / ōritetanga / equity	• Kāinga Kore stage 1 (Wai 2750) – "The principle of equity derives from article 3 of the treaty, which guarantees Māori the same rights as British subjects – which, in the modern context, means the same as all other New Zealand citizens" and "the Crown could not favour settlers over Māori", and also "the principle of equity may require positive intervention by the Crown to address disparities". • Te Paparahi o te Raki stage 2 (Wai 1040), – "Article 3 guarantees Māori equal citizenship rights, including equal rights to political representation" and requires "the Crown to act fairly to both settlers and Māori and to ensure that

	settlers' interests were not prioritised to the disadvantage of Māori. Where disadvantage did occur, the principle of equity, along with those of active protection and redress, required that there be active intervention to restore the balance".
Matapopore moroki / Active protection (sometimes also referred to as a duty, i.e active protection)	• Lands case (Cooke P) – "the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable". • In Bleakley v Environmental Risk Management Authority, it was noted that Treaty obligations include a "a duty of active protection of taonga" and in relation to taonga noted "that generalised references to "taonga" include intangible spiritual and cultural aspects, both as related to tangible taonga, and in their own right. There is no reason to believe the term was used in any other sense when employed in the Treaty". • Kāinga Kore stage 1 (Wai 2750), – "the Crown is obliged to actively protect Māori rights and interests to the fullest extent reasonably practicable". This protective duty extends beyond property interests in the like of land or water to encompass Māori interests in both the benefit and enjoyment of their taonga and the mana or authority to exercise control over them". • In Te Paparahi o te Raki stage 2 (Wai 1040), the Tribunal noted that it has often stated "that the principle of active protection is inclusive of the Crown's duty to protect Māori interests and their exercise of tino rangatiratanga". However, they also noted that, whilst this remains an important principle, it has sometimes been applied paternalistically, due to the power imbalance between the Crown and tangata whenua but in relation to protecting tino rangatiratanga "the Crown cannot paternalistically 'protect' what it has no authority over".
Whakaaronui tētahi ki tētahi / Mutual recognition and respect	• Te Paparahi o te Raki stage 2 (Wai 1040) – "each party must recognise and respect the values, laws, and institutions of the other" and "at the heart of Māori values and the Māori way of life was and is tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law."
Houruatanga / Partnership	• Lands case (Cooke P) – "The Treaty signified a partnership between races, and it is in this concept that the answer to the present case has to be found. For more than a century and a quarter after the Treaty, integration, amalgamation of the races, the assimilation of the Māori to the Pakeha, was the goal which in the main successive Governments tended to pursue … Now the emphasis is much more on the need to preserve Māoritanga, Māori land and communal life, a distinctive Māori identity. • Kāinga Kore stage 1 (Wai 2750) – "the treaty established a relationship between Māori and the Crown akin to a partnership. In the years following the Court of Appeal's detailed articulation of the partnership principle in the Lands case (1987), jurisprudence framed the treaty as an 'exchange'. The Crown would recognise and actively protect Māori tino rangatiratanga over the lands, natural resources, taonga, and other properties guaranteed to them in article 2, and also the rights contained in article 3, in return for Māori having accepted the Crown's kāwanatanga, or right to govern, in article 1. At the same time, the Tribunal has long emphasised that the treaty did not confer on the Crown unilateral power to make laws for Māori. Instead, rangatiratanga and kāwanatanga have been characterised as distinct forms of authority which constrained and balanced one another. Within the treaty partnership, neither could be absolute". • Te Whānau o Waipareira (Wai 414) – "Partnership thus serves to describe a relationship where one party is not subordinate to the other but where each must respect the other's status and authority in all walks of life".

	• Te Paparahi o te Raki stage 2 (Wai 1040) – "With the signing of the treaty, the basis for a partnership was laid. In February 1840, rangatira had sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals … the imagery of 'houruatanga' conveys not just working together, but moving forward together and beside each other … the treaty partnership, therefore, required the cooperation of both parties to agree their respective areas of authority and influence, and both parties were required to act honourably and in good faith. The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed: that was for Māori to negotiate with the Crown". • Ko Aotearoa Tenei (Wai 262) – "Partnership is New Zealand's framework because of our history since 1840 and the important role Māori play in contemporary national life. There is no sign that this role will diminish. On the contrary, the signs are that it will grow and the partnership framework will endure. it is evolving as New Zealand evolves. There are signs it is changing from the familiar late twentieth century partnership built on the notion that the perpetrator's successor must pay the victim's successor for the original colonial sin, into a twentyfirst century relationship of mutual advantage in which, through joint and agreed action, both sides end up better off than they were before they started. This is the Treaty of Waitangi beyond grievance."
Whakatika / Redress	• Te Paparahi o te Raki stage 2 (Wai 1040) – "Where the Crown has breached the treaty agreement through its legislation, policy, actions, or omissions, [Māori] are afforded the right to redress from their treaty partner, including financial or other compensation … the Crown had an obligation to investigate fully claims of injustice or prejudice [and] where it found its actions were inconsistent with promises made in the treaty, it had a further obligation to provide timely and adequate redress". • Kāinga Kore stage 1 (Wai 2750) – "The principle of redress derives from the principles of partnership and active protection. Redress is required when the Crown fails to protect Māori and their interests, including their rangatiratanga. • In the Lands case, it was (Somers J) held that "the principles of the Treaty include an obligation to redress past breaches of the Treaty" and it was noted (Casey J) in relation to redress that "monetary compensation is often not a satisfactory alternative … [and] what may have been adequate payment at the time is seen as derisory today, adding to the sense of grievance displayed".
The duty to make informed decisions (sometimes also referred to as a duty to consult)	• Te Paparahi o te Raki stage 2 (Wai 1040) – "The Crown must carefully consider and inform itself of the impact its laws and policies may have on Māori individuals and groups … proceeding with law and policy without consulting Māori can only be treaty-consistent in exceptional circumstances, such as when delays might cause prejudice". • The Napier Hospital and Health Services Report (Wai 692) – "the Crown must establish whether there are Treaty implications and, if there are, it must satisfy itself that it has sufficient information to act consistently with Treaty principles". • Lands case (Richarson J) – "the responsibility of one treaty partner to act in good faith fairly and reasonably towards the other puts the onus on a partner, here the Crown, when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty. In that situation it will have discharged the obligation to act reasonably and in good faith. In many cases where it seems there may be Treaty implications that responsibility to make informed decisions will require some consultation. In some extensive consultation and co-operation will be necessary. In others where there are Treaty implications the partner may have

	sufficient information in its possession for it to act consistently with the principles of the Treaty without any specific consultation".
Matatika mana whakahaere / Right to development	• The Freshwater and Geothermal Resources Inquiry (Wai 2358) stage 1 – "Māori had the right to develop as a people and to develop their properties". • Te Paparahi o te Raki stage 2 (Wai 1040) – "the treaty guarantee of full rights in properties (including taonga to which British law did not recognise a property right) and of tino rangatiratanga over them included a right to develop them if Māori so chose".
Equal treatment	• Kāinga Kore stage 1 (Wai 2750) – "The principle of equal treatment concerns the Crown's obligation to act fairly between Māori groups. This means the Crown must avoid unfairly advantaging one group over another 'if their circumstances, rights, and interests [are] broadly the same'. It must also 'act in a way that allows 4 Māori groups to maintain amicable relations' without creating or exacerbating divisions between them." • The Freshwater and Geothermal Resources Inquiry (Wai 2358) the interim report on Māori appointments to regional planning committees – "This principle requires the Crown to act fairly and impartially to all Māori groups. The Crown should not 'make arbitrary distinctions between groups so as to unjustly favour some ahead of others', and should instead 'treat like cases alike'".
Options	• Kāinga Kore stage 1 (Wai 2750) – "The principle of options … recognises the right of Māori to choose their social and cultural path, whether by living according to their own tikanga, participating in settler society and culture, or walking 'in two worlds'". • Ngāi Tahu Fisheries report (Wai 27) – "[the principle of options] is concerned with the choice open to Māori under the Treaty. Article 2 contemplates the protection of tribal authority and self-management of tribal resources according to Māori culture and customs. Article 3 in turn conferred on individual Māori the rights and privileges of British subjects. The Treaty envisages that Māori should be free to pursue either or indeed both options in appropriate circumstances".
Reciprocity and Mutual benefit	• Report on the Crown's Foreshore and Seabed Policy (Wai 1071) – "kawanatanga has to be qualified by respect for tino rangatiratanga, as defined above. The Tribunal has called this the principle of reciprocity, which is an 'overarching principle' that guides the interpretation and application of other principles, such as partnership … the nature of the relationship between the Treaty partners is a reciprocal one, with obligations and mutual benefits flowing from it". • The Te Arawa Mandate Report (Wai 1150) – "The Māori cession of kāwanatanga to the Crown was made in exchange for the Crown's recognition of tino rangatiratanga … to attain true reciprocity, there must be consultation and negotiation in practice as well as in name, and flexibility in the application of policies where shown to be strictly necessary". • The Maniapoto Mandate Inquiry Report (Wai 2858) – "reciprocity requires a 'careful, fair, and practical response' to iwi and hapū preferences in the way in which they may choose to exercise their tino rangatiratanga". • Mangonui Sewerage Claim (Wai 17) "The basic concept was that a place could be made for two peoples of vastly different cultures, of mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed … it is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained".

	• Radio Spectrum Final Report (Wai 776) – "Māori expected, and the Crown was obliged to ensure, that they and the colonists would gain mutual benefits … including the benefits of new technologies".
The duty to act reasonably, honourably and in good faith	• In the Lands case, the court said "the principles of the Treaty … require the Pākehā and Māori Treaty partners to act towards each other reasonably and with the utmost good faith. That duty is no light one. It is infinitely more than a formality" and noted (Cooke P) of acting in utmost good faith that it "is the characteristic obligation of partnership". • Turanga Tangata Turanga Whenua volume 1 (Wai 814) – "The Crown's obligation to act at all times in accordance with the Treaty principle of utmost good faith, which was so firmly articulated by the Court of Appeal in the Lands case. This is a high standard. It imposes an obligation to behave impeccably in dealings with Māori; a negative duty to avoid any appearance whatever of manipulation or sharp dealing; and a positive duty to look to the Māori interest at all times and to protect that interest to the extent reasonably practicable in the circumstances". • He Whiritaunoka: The Whanganui Land Report, Vol. 3 (Wai 903) – "Acting in good faith requires the Crown and Māori to demonstrate, in all their dealings, respect, fairness, honesty, and openness".