

**IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE**

**CIV-2014-425-102
CIV-2016-425-15
CIV-2016-425-16
[2026] NZHC 1338**

BETWEEN

RAKIURA TITI COMMITTEE
Applicant (First Respondent in substantive
proceedings)

AND

TONY COLIN REIHANA
Respondent (Applicant in substantive
proceedings)

Hearing: On the papers

Counsel: C M Lenihan for the Applicant
Mr Reihana, Respondent, in person

Judgment: 19 May 2026

Reissued: 20 May 2026

**JUDGMENT OF HARLAND J
(Grepe v Loam application)**

Introduction

[1] This judgment deals with an application by Mr Reihana to adjourn the hearing of the Rakiura Titi Committee's (the Committee) application for *Grepe v Loam* and costs orders. A hearing of this application has been set down before me in the High Court at Invercargill on 11 June 2026. The Committee opposes the application for adjournment.

Background

[2] There is a considerable history to these proceedings. It is not necessary for the purposes of this application to traverse it in full, however, the background provides the basis for the Committee’s application for *Grepe v Loam* and costs orders, and Mr Reihana’s opposition to it. In this judgment, I will refer to the *Grepe v Loam* and costs applications as “the applications” and Mr Reihana’s application as the “application for adjournment” to avoid confusion.

[3] The applications were filed by the Committee on 19 November 2025 seeking the following:

- (a) an extended *Grepe v Loam* order, to prevent the respondent from making further applications or taking any further steps in these proceedings (CIV-2014-425-102, CIV-2016-425-15 and CIV-2016-425-16), or leading any further proceedings in connection with these proceedings, without the leave of the Court; and
- (b) subject to the above *Grepe v Loam* order, an order that the respondent is prohibited from continuing with these proceedings and any related proceedings or making further applications or taking any further steps in these proceedings, unless he first pays all outstanding court costs awarded to the plaintiff in connection with these proceedings.

[4] The applications are made relying on rr 1.6 and 7.43(1)(b) of the High Court Rules 2016 (HCR), the Court’s inherent jurisdiction and the principles set out in *Grepe v Loam*, *Khatiri v Tomar* and *DFT v JDN and Ors*.¹

[5] A memorandum of counsel and an affidavit of Mr Stewart Bull were filed in support of the application.

¹ *Grepe v Loam* (1887) 37 ChD 168(c)(a), *Khatiri v Tomar* [2021] NZHC 3019 and *DFT v JDN and Ors* [2023] NZCA 16.

[6] Mr Reihana opposes the applications. His notice of opposition, dated 9 December 2025, said the application is premature, largely but not solely based on the need to await the outcome of a High Court decision (which was, at that time, pending) dealing with his application to remove the stay of the judicial review proceedings (the substantive proceedings) which are at the heart of this dispute. At that time, Preston J had heard the application for removal of the stay but had not issued her judgment in relation to it.

[7] At a case management conference on 15 December 2025, Dunningham J made various timetabling directions about the filing of affidavits by Mr Reihana and thereafter in reply by the Committee and their respective submissions. She directed a half-day hearing on a date to be allocated after 13 April 2026. No doubt that date was nominated because, by that time, all of the evidence timetable directions would have been completed.

[8] On 2 February 2026, Preston J issued her judgment declining Mr Reihana's application to lift the stay in the substantive proceeding. This judgment was issued prior to the date by which Mr Reihana's affidavits were due to be filed in respect of this application.

[9] On 23 February 2026, Mr Reihana filed a memorandum in respect of these applications, seeking an adjournment of the hearing allocated on 11 June 2026 because of his challenges to Preston J's judgment. He submitted:

And especially where my interlocutory applications to oust this "Gross Miscarriage of Justice" wouldn't be attainable if a *Gepe v Loam* order was imposed, and where Preston Js' refusal to vary / rescind leads to a higher tier appeal. MUST ADJOURN

[10] Mr Reihana appealed the judgment of Preston J to the Court of Appeal on 26 February 2026.²

² Mr Reihana also applied to vary or rescind Preston J's judgment but this application was dismissed on the basis he had an appeal before the Court of Appeal.

Application for adjournment

[11] The Committee opposes the application for adjournment. Their opposition is largely based on the history of these proceedings and the Committee's submission that Mr Reihana is using this application for adjournment as a stalling tactic. At that point, Mr Reihana was awaiting the determination of his application requesting that Preston J rescind or overturn her judgment of 2 February 2026, which has since been dismissed.

[12] In the round, the Committee submits there are no grounds put forward justifying an adjournment of the hearing.

[13] On 4 March 2026, I issued a minute asking counsel for the Committee to consider its *Grepe v Loam* application in light of the Court of Appeal's judgment in *Tomar v Khatri*,³ given that the Committee's application relied, in part, on the High Court judgment which was overturned in that appeal. I directed that counsel for the Committee file and serve a memorandum addressing the inter-relationship between the Committee's application and s 166 of the Senior Courts Act 2016, in light of the Court of Appeal's decision and to specifically address whether a *Grepe v Loam* order was still able to be obtained. I indicated I would consider making further directions, after receiving their memorandum, if a response was necessary or if there was a need for further amendments or directions to be made in relation to the timetable directed by Dunningham J on 15 December 2025.

[14] Counsel for the Committee filed their memorandum as directed on 30 March 2026 submitting:

- (a) its applications do not "cut across the statutory regime" as it is not the kind of order that could be granted under s 166 of the Senior Courts Act; and
- (b) it is open to the Court to consider the applications under its inherent jurisdiction.

³ *Tomar v Khatri* [2026] NZCA 21.

[15] Mr Reihana responded to my minute on 9 March 2026 advising that he would be uncontactable from 15 March 2026 for some two months while on the Titi Islands. He reiterated his view that an application for adjournment of the hearing on 11 June 2026 was necessary, stating:

The Plaintiff understands that the Court can pursuant to s. 166 Senior Courts Act 2016 restrain the respondents from seeking their Grepe v Loam orders where, in this case; the “charge” of Gross Miscarriage of Justice must be permitted to be rectified first.

Discussion

[16] Mr Reihana has not filed any affidavits in response to Mr Bull’s affidavit by the date directed by Dunningham J. These affidavits were due to be filed on 27 February 2026. No request was made by Mr Reihana to suspend this direction or to allow further time to file any affidavit in response. Given the matters referred to above, it is reasonable to infer Mr Reihana’s focus was on Preston J’s judgment and his view that his challenge to it should be determined first and ahead of these applications.

[17] I am not persuaded that these applications should be adjourned for that reason. The orders for costs made against Mr Reihana are orders of the Court and he has not complied with them. Even if he disagrees with Preston J’s judgment, the orders the Court has made are still in force. Given that the applications by the Committee seek to deal with these orders, what Mr Reihana chooses to do in relation to Preston J’s judgment and any future proceedings in relation to it are not, of themselves, a reason to prevent these applications from proceeding.

[18] The position is however complicated by Mr Reihana’s absence on the Titi Islands. All parties to this proceeding will appreciate that, while participating in annual titi gathering, Mr Reihana is not able to be contacted.

[19] By a narrow margin, I am persuaded that these applications should be adjourned for a short period but only because Mr Reihana has been uncontactable and may have overlooked the need for him to comply with Dunningham J’s timetable orders.

[20] A hearing can be allocated on 24 August 2026 in Christchurch. There is no real prejudice to anyone if this proceeding is adjourned for a period of two months.

[21] Mr Reihana said he would be on the Titi Islands for approximately two months from 15 March 2026. That timeframe has now expired. I make the following new timetable directions:

- (a) Mr Reihana is to file and serve any affidavits in response to the Committee's application by ***5.00 pm on 26 June 2026***;
- (b) the Committee is to file and serve any reply by ***5.00 pm on 10 July 2026***;
- (c) a half-day hearing is to be allocated in the Christchurch High Court on ***24 August 2026***. The parties can appear via AVL if they are not able to appear in person and must liaise with the High Court Registry to facilitate this;
- (d) the Committee is to file and serve its submissions by ***5.00 pm on 24 July 2026***;
- (e) Mr Reihana is to file and serve his submissions by ***5.00 pm on 7 August 2026***.

Harland J

Solicitors:
C M Lenihan, Barrister, Invercargill

Copy to:
T C Reihana