The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

Mihi for the Waitangi Day Celebration, Waitangi

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E ngā iwi katoa o Aotearoa, tēnei ka mihi atu ki a koutou katoa i tēnei rā whakahirahira, te rā o Waitangi.

On 29 January 1840, Captain William Hobson arrived in this beautiful place, the Bay of Islands aboard the HMS Britomart. He carried with him instructions to enter into a Treaty with the indigenous occupants for the acquisition of sovereignty.

The Bay of Islands (a name given to the area by Captain Cook 71 years earlier) already had a name – Te Pewhairangi. In 1646, a Dutch cartographer, had named the larger island group "New Zealand". But the big islands too already had other names: Aotearoa and Te Ika a Māui for the Northern Island; Te Waipounamu and Te Waka a Māui for the larger Southern Island; and Rakiura for the smaller southernmost one.

These were the names given by Māori to the lands in which, as at 1840, they had been living for at least 25 generations, with their own customs and their own governance systems. This is what made it necessary for Captain Hobson, in accordance with his instructions, to negotiate a Treaty with those pre-exisiting communities . This was necessary to bring the islands that were to become New Zealand into the British Empire. Walking in uninvited would not do.

There was debate on both sides of the Treaty discussion, both amongst Māori, and in Britain, about the wisdom of Treaty-making. There were those on the British side who felt that drawing these distant islands into the Empire would be too expensive and bring too few benefits. But there were others who, in the face of the uncontrolled British settlement that was underway, believed it necessary to introduce British law

On the Māori side, the debate was just as intense. Would the arrival of Empire enhance mana Māori or destroy it? Would this Treaty at Waitangi protect against the risks to Māori life presented by the missionaries, the venturers, and the soldiers? Would it give iwi access to the tremendous opportunities that came with allegiance to the world's only superpower. A Treaty could open up the world for Māori, but what might they lose in the process?

British law and courts were an important part of what the British offered Māori. They were held out to the chiefs as a means of resolving disputes, particularly cross cultural disputes with settlers, without the need for resort to force. Māori well understood that the legal values of the settlers were very different from their own. The Māori legal order was made up not of case law, courts and judges, but of customs and practices which were as old as the Polynesian people.

Settlers also were well aware that Māori had their own legal order. These differences had already led to many disagreements over land transactions, provision of goods and services and, more generally the recognition of chiefly authority.

The challenge was to find a bridge between these systems and these peoples. Could the Treaty be that bridge?

Over the following months, 539 chiefs signified their support for this Treaty and its possibilities. As with the British side, the Māori view was not unanimous, but the broad consensus was clear.

The Treaty did not always remain at the forefront of the national consciousness. For a time it was drowned out by other priorities. But it was never forgotten. Throughout the story of our nation, there were always voices challenging those who exercised authority – politicians, officials and judges - to live up to the Treaty's promises. There still are.

We celebrate our national day on the day the Treaty was signed. That is fitting because the Treaty founded the nation of New Zealand. Speaking in 1990, 150 years after the signing of the Treaty, the then President of the Court Appeal, Sir Robin Cooke, wrote that the Treaty is "simply the most important document in New Zealand's history." There can be no debate about that in 2022. But the Treaty is not just an historical document. It is also a constitutional document - in the best sense of that word, in that it expresses and embodies aspirations for how the nation will function.

The model the Treaty provided to the new nation was one of seeking consensus whilst acknowledging and respecting difference.

While in its form the Treaty was an exchange of solemn promises between two peoples, at its heart lay a vision for a country in which the law would be protective of all peoples. That is the promise of the rule of law. The original vision was for a bi-cultural, bi-lingual society. From that foundation has grown our multicultural, multilingual Nation.

This is still our vision. We are a Nation in and of the Pacific. We respect the rights of all, including those of the indigenous people of these islands. We prefer inclusion to exclusion. We strive to ensure that no matter a person's background, no matter their ability or their wealth, all are able to live safe, happy and productive lives.

As those original Treaty partners hoped, the courts have played a central role in securing this vision. The courts administer the criminal law to protect whānau and communities from the harm that crime causes. We administer the civil law to help New Zealanders resolve their disputes with each other according to law. Through application of the law, our courts hold governments to standards of legality, fairness and transparency and vindicate human rights. Contract, land, competition and employment law helps to ensure that the economy operates efficiently and for the benefit of all, and environmental law, to ensure adequate protection of the environment for future generations.

Again, as those original Treaty partners hoped, the courts have dealt with conflict in society in a way that has maintained peace. This has been achieved even though at times during our history, conflict has arisen from deeply held views or interests. We have seen the courts doing this work in recent times in connection with issues that have flowed out of the pandemic. When the courts decide these difficult issues, they give their reasons, so that the parties, and the wider society can see the principles and values that inform those decisions.

These are profound responsibilities, and over the history of New Zealand the courts have not always got it right. The judiciary is conscious that where the courts have failed to meet these ideals, the consequence has been injustice.

Like all public institutions the courts must work hard to meet the very particular needs and ideals of our society. The judiciary, together with the Ministry of Justice, is developing a new model for criminal and family justice - Te Ao Mārama. This model connects the courts more closely to the community. It aims to use the community's strength and knowledge to provide better outcomes - breaking the inter-generational cycle of offending and allowing whanau to heal. It will do this by working with iwi and community groups so that people who come before the courts understand and can participate in the processes, and so that the support of

the community is available to those caught up in the system – whether they be victims, defendants or whānau.

To achieve these ideals, this vision for New Zealand – that the law is protective of all and supportive of a peaceful society - the shelter of the law must be available to all no matter their ethnicity, gender, or their means, and irrespective of disability. These are the ideals to which the New Zealand judiciary is committed.

No reira, tēna koutou, tēna koutou, tēna tātou katoa.