

**TE HUNGA ROIA MAORI O AOTEAROA  
MAORI LAW SOCIETY ANNUAL CONFERENCE**

**AUT SOUTH CAMPUS  
640 Great South Road,  
Manukau, Auckland**

**18 November 2017**

Sian Elias\*

E nga mana, e nga reo,  
e te Hunga Roia Maori o Aotearoa.  
Tena koutou, tena koutou,  
tena ra tatou katoa.

I appreciate very much the invitation to address you. It seems only yesterday since the conference at Waitangi. It was a shock to realise it was two years ago. It is such sadness that since we were together we have lost John Chadwick, a founder of this organisation, a great man and a dear friend to me since law school days. We are also all bereft by the recent loss of David Ambler, a fine Judge and an outstanding man, who had so much to give still. These losses I acknowledge. They are still raw. These were two of our very best. Haere atu ra.

Thinking of John and David, set me off on the themes I want to talk about today. At Waitangi I was given instructions to speak about the Treaty. Today I have been given no marching orders. So, unconstrained, I thought I would offer some personal reflections from what is now a very long life in law and I will not take up all the time because it would be good to have time for discussion.

I do not offer these reminiscences to lecture you on how to live your own lives as lawyers today. The world you face is very different from the one when I entered Auckland Law School in 1966, a couple of months short of my 17th birthday. There were more Maori students in the class than women. It was not easy getting into the profession with my new degree. There was consternation when I applied for a job with a law firm. They were terribly exercised about whether I would have morning tea with the secretaries since it was unthinkable that I should have tea with the solicitors. I am still waiting for the phone call to tell me whether I got the job. Interestingly, Silvia Cartwright had exactly the same experience. We have since compared notes and decided that they did not want to turn us down in case we cried.

When I did eventually get a job, there were plenty of humiliations and challenges along the way. It was of course character-building. I ended up doing work that most lawyers would not touch. Although I did not think so at

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the time, I know now how lucky I was. What enriched my life were the people I came to know.

In 1978 or 1979, when I was at home with young children, I helped out at the Grey Lynn Neighbourhood Law Office. Vapi Kupenga was the social worker there and became a close friend. Through Vapi I ended up being involved in the He Taua case defence of Hone Harawira, Ben Dalton, Mangu Awarau and the other activists who were charged with rioting when they decided to stop the Engineering students from performing an obscene mock haka in their capping day stunts at Auckland University. It was an amazing case because it united the Maori world. Senior leaders who did not much like the behaviour of the protestors were outraged that the engineering students should have behaved as they did. I met then people who would stay in my life. Eruera and Amiria Stirling, Kingi Ihaka, Maori Marsden, Graeme Latimer, Elizabeth Murchie and many others. Dick Stirling gave his evidence in Maori. There was no Maori Language Act. I had to make an application for the evidence to be given in Maori and translated by Kingi Ihaka. Dick Stirling of course spoke beautiful English and indeed corrected Kingi Ihaka's translation.

David Williams asked me – at the last minute – to help Nganeko Minhinnick with the Manukau claim. That was life-changing for me. It was a pivotal case for all sorts of reasons. Through it I met so many people who have touched my life and changed me. They included Henare Tuwhangai, one of the most impressive men I have ever met, with great authority and deep knowledge of things Maori. I found him not a little unnerving, but he was very kind to me and told me how to cook whitebait. Eva Rickhart, by then a legend, came to offer a challenge to the Tribunal through a song. I thought of Eva a few years later when I was reading through the transcript of the hearing of the Royal Commission into the Whanganui River, held in the 1020s. The transcript recorded of one kaumatua that he “gave no evidence, sang a song”. It entirely missed the point.

A number of the old people I have met had very little English indeed. That was so of Nganeko Minhinnick's mother and Archie Tairaroa's mother, Grace. Both were beautiful women who treated me with love – and I certainly loved them. Some of the people I met had been brought up by their grandparents remotely and were steeped in old knowledge. Archie Tairaroa himself had been brought up with his uncle Titi Tihu and brought up to continue the struggle for the river. When Titi Tihu eventually lost the Whanganui River litigation in the Court of Appeal in 1962,<sup>1</sup> his relations from Tuwharetoa came down the river to Taumaranui to ask who in the next generation would carry on the fight. When Archie was named, his marriage to Martha was arranged to affirm the alliance between Tuwharetoa and Atihaunui-a-Paparangi to carry on the claim for the river. I was spell-bound by these stories and by these people. They had such presence and courtesy. They led by example. They let others take the limelight. They watched and listened. And when they talked, everyone listened.

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<sup>1</sup> *In re the Bed of the Wanganui River* [1962] NZLR 600 (CA).

Some were truly visionary thinkers. They did not pause to think of all the reasons they might fail. They pressed always for what they considered to be right. They did not cut deals. The thoughts they had were about the big ideas. They knew that the worst thing was not to lose in a just cause, but to give a just cause away. They were steeped in tradition. It was in their bones. They had the confidence to break the rules. They did not follow fashion or the received wisdom. I never could wrong-foot Nganeko Minhinnick or Archie Tairaroa, or Monita Delamere or any of the senior leaders I was privileged to work with. I learned from them.

I would like to share with you some memories about the people who touched my life. They shaped me, but they also shaped directions for all of us. I have been thinking about some of the people I have known recently after Joe Williams called me “incorrigibly old fashioned”. I think he is right, and that I am. But in my defence I have to say that I was incredibly lucky in my time to have observed some of the best and they were old fashioned by some lights. That is not to say they were not forward-looking. They were. And they did not shrink from the new. They were not sentimental about the past. But they had old-fashioned virtues. They did not talk money or assets. They talked about big things. They were remarkable people, the like of whom we may not see again. So it is good to have reason to reflect on them and share memories. I have to be very selective. And I have time to give you fragments only. They are some things I remember and which remain touchstones for me in everything that I do.

I remember sitting around in the whare porotiti, Rongomaiwahine at Mohaka, while Ngati Pahauwera brainstormed about how they could help the Crown out of the groove in which it seemed to be stuck. Ramon Joe produced a diagram of the wheel of life to start at first principle. Everyone there tried to put themselves in the shoes of the Crown. No one wanted government to be broken. All believed in enterprise New Zealand. But they knew kawanatanga was fettered by rangatiratanga, as my predecessor, the first Chief Justice, had pointed out at the beginning.

Later, at the hearing in the same house, amid the tales of Te Kooti and that strange man Donald McLean and the enigmatic Te Hapuku, there was at one stage a lull in the formalities and a gentle moment when the Tribunal engaged with those who were there about the nature of rangatiratanga, in a reflective chat. Manu Bennett explained the training in the old days of the young leaders of the future who had to show that they were prepared to undertake the menial jobs and serve the people. They had, he said to take the shitty perch of the parrot in their mouths. And listening to this talk, and feeling the weight of the past in that remote and beautiful place, I would not have swapped places with anyone.

During the Whanganui River hearing after a long day on the River travelling from Putiki to Kaiwhaiki, to Pungarehu, Parikino, Kakata, Otukopiri, Matahiwi, Ranana, Pariarero, Pipiriki, and up the river to Tieke we eventually arrived to a flaming red sky at Otoko. After thawing out over a meal following our

welcome in the sunset, Eddie Durie and Archie Taiaora, Mak Temara, John Tahuparae and others of us went into the little ancient whare tipuna and the others told stories of Te Kooti who had lived there for some months. The King Country cold night pressed against the house while we listened, warm and sleepy, and I have never been happier in my life.

The Muriwhenua Fishing hearing was one which to me, in retrospect, seems bathed in endless summer. The hearing was held in a marquee at Ahipara in glorious weather. We stopped sitting at 4pm and every day dashed for the sea. I remember Nellie Rata and some of the other ladies (who had obviously been amused at how the Tribunal kept going into “chambers” to argue legal points and excluding everyone from the tent) telling us when we found them occupying part of the marquee for a gossip to “go away” because they were “in chambers”, and then dissolving into laughter. The only cloud at the hearing was that Professor Keith Sorrenson who was on the Tribunal tucked in too heartily to a meal of mussels which had been confiscated and left too long in the fisheries inspector’s vehicle in the sun. He was I think lucky to survive.

The Muriwhenua Fishing claim was peopled by wonderful men and women. Simon Snowden, Maori Marsden, Matiu Rata (whose brainchild the Tribunal was), MacCully Matiu, Wiki Karena and the wonderful Mira Szazy. Eddie Durie at the end of the hearing praised the strength in the north that had been shown in the case. And all of us felt that strength.

Some amazing things came out of that hearing and the earlier one at Te Hapua – the recommendation that led to the enactment of s 9 of the State-Owned Enterprises Act 1986 and the recommendation that gave us the spring board to apply to the Court for the injunction to stop the fish being subject to further quota. The first led to the Treaty Settlements, the second led to the transfer of quota and resources in the fishing industry. It ushered in the new world of settlements that you live in.

When preparing for one of the hearings in the North I was visiting Matt Rata at his home at Te Kao when he received a visit from a local man. The man was moving from home to Auckland for work. The man was one of those who had supported himself and his family by seasonal work in the freezing works and fencing and by some commercial fishing. The privatisation of the fisheries removed the commercial fishing which destroyed the economic viability of his way of life and made it necessary for him to move away to get work. It was a vivid illustration of what we were fighting for in the fishing claim. The settlements transferred huge benefits but not the preservation of life we were seeking then. That is sadness to me. It is not how the claims started out but they arose because of the Crown’s privatisation agenda and the opportunity presented because the claims were holding these policies up. I do not doubt the huge benefits that have been achieved in the settlements, but they have changed things. That I feel a bit wistful for what might have been achieved is probably one of the indications that I am old-fashioned indeed.

The hearing of the Muriwhenua Fishing claim may have been conducted in sunshine, but when it came for the Tribunal to deliver its decision, and after it had been decided the handover would be at Cape Reinga, a storm hit. The rain was horizontal and there was no cover. It was cold. The karakia undertaken by Bishop Bennett was mercifully brief. The Ratana prayers were longer, but endurable. Monita Delamere's Ringatu karakia however lasted a full 40 minutes. I cannot say of that experience that there is no place that I would rather have been at the time. But, in retrospect, it is one of the more spectacular events in my life. Monita himself was one of the very best men I ever met.

In cases for Arawa I listened in awe to the grasp of genealogy and the stories told by Hiko Hohepa and Joe Malcolm. My exposure to them and to the other people I acted for means that when I travel around New Zealand I look past the towns and roads that bounded my imagination in the past and see the landforms and glimpse something of the meaning they hold.

The Lands case<sup>2</sup> meant dealings with leaders from around the country. They included Sir James Henare, Sir Henry Ngata, Sir Hepi Te HeuHeu, Bob Mahuta, Api Mahuika, Dame Whina Cooper. The evidence they supplied to the court was pivotal in getting the judges of the Court of Appeal to understand the harm in the economic restructuring of government activities and the risk that land and waters would pass from Crown control so that it would be unable to meet any Treaty claim.

The cases about the television channel and the radio frequencies<sup>3</sup> brought me into contact with the very many people who worked for the language and its survival. Huirangi Waikerepuru, Whatarangi Winiata, among the leaders and all the younger generation who have brought about a miracle. For me, the cases about the language and the struggle to get a tiny amount in prime time television were the saddest of the lot. I never had any doubt that in the end Archie Tairaoa would get the River, for example. But the loss of the language meant that time was not on its side and that what Whatarangi Winiata say as the efficient delivery of the diminishing band of native speakers to a wider audience was urgent.

I remember in the Privy Council hearing on the language case<sup>4</sup> their Lordships were fascinated by Huirangi and his beautiful ear pendant. (Some of them later quizzed me about him.) They did not know that he also had his patu with him. While we were in London, Huirangi told me how he had walked around the city while Martin Dawson, Eugenie Larcy and I were preparing for the case and how beautiful he thought the buildings were. Well, London in those days was very dirty. And I must say that I had never really appreciated it. Whenever I have been in London since however I have looked at the buildings and thought of Huirangi and how right he was. He made me look at what was familiar with new eyes.

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<sup>2</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA).

<sup>3</sup> *Attorney-General v New Zealand Maori Council* [1992] 2 NZLR 576 (CA).

<sup>4</sup> *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC).

Another fragment I have that sustains me is the memory of an hour or two sitting in the sun at Tahuna Pa. We had spent the whole night with travelling over the lost lands at Maioro with Ngati Te Ata and Waikato elders. The land was a burial place, threatened by the iron sands mining. We had gone over it that night to acknowledge the dead. It was a night of grieving. After we got back, Pumi Taituha brought us back to the living world in a quiet time of resolution in which, as we sat in the sun, he pulled out his guitar and sang. He started with "Blessed are the Pure in Heart".

Nganeko was someone who was pure in heart. She was someone who was loyal. She was an activist because that was her obligation, laid on her by her people. She passed the Manu Bennet test for a true leader because her whole life was service. She was very young, only a teenager, when she was sent by her family to go to the Maori Land Court in Auckland to find out what had happened to their lands and their waters. She started asking questions that no one had answers for. She was not someone who could be deflected from what was right. That was often highly inconvenient for government departments and councils and judges. It was not very easy being her lawyer! But she moved mountains. Everyone in New Zealand has been touched by her work and life, even if they do not know it.

Like so many of the people I have mentioned, Nganeko was kind and caring and had a great sense of fun. Once when we needed to talk and I was terribly pushed for time, I suggested she might drive down country with me to see a horse run. She was tickled pink, because she said she had never set foot on a race course and would be delighted to tell her brother (who was a punter) that she was at last in late middle age kicking over the traces. I do not remember how the horse ran. But I do remember the drive and Nganeko's company. I remember how we went on to the race course she went straight up to a man who was cleaning rubbish up to greet him and to thank him. She did not know the man but, as she said to me, she felt that such people, who clean up after the rest of us, are never acknowledged. I learned a real lesson that day. As I have learned so many lessons from simply hanging around some truly great human beings and observing them. They did not tell me what to do or correct my errors. They showed by example.

I learned so many things, but will mention here four of them:

I learned how little I knew (and the more I got to know, the more I was aware how much more there was to know!).

I learned of the beauty of the language and the thinking of the native speakers – and even I could glimpse the rich layers and variations around the country.

I learned that real leaders often follow and always care for the people.

I learned that the only things that truly matter are people and the big ideas they hold dear.

What does this have to do with law and your work as lawyers? Well, I think it is important to remember that we deal with people and with their dreams and hopes. It is easy to forget in the press of cases and transactions that the thirst for justice is part of what makes people human. They do not invoke law just to have disputes resolved. They want outcomes that are right. And outcomes that are not right usually breed more trouble in the end.

Cass Sunstein has written of the “expressive function of law”.<sup>5</sup> Lord Radcliffe too spoke of the same sense of shared values when he said that we have lost some important clue if we think that law is only the rules we obey simply to keep out of trouble.<sup>6</sup> Law makes possible important human connections and relationships and it reflects values like dignity, and honour, and equality, and love. And these connections have to be everywhere – in the administration of Treaty settlements, in the differences that are inescapable where people care and which have to be resolved, and in all the places in which people are in trouble. The last time I addressed this Association I reminded you that for the suffragettes getting the vote was not the end.<sup>7</sup> There was no point if it was not used to change the world, for women and men, to make it more just. Te Hunga Roia Maori o Aotearoa needs to change our world. You need to be ambitious for justice for all in our society and you need to work to achieve it.

I worry that in legal practice today there is little time to watch and learn. To hang around with people and let them explain the problems and their ideas without our jumping to offer solutions too quickly as professionals. I want to urge you all to take whatever opportunities come your way to take time. You cannot serve the people if you do not love them. You cannot love them unless you know them. I know very well how lucky I have been in my professional life. It has been filled with love and intellectual stimulation and excitement. These came to me from those I worked for.

William Yeats once wrote of the audience he imagined for his poems – a Connemara fisherman – and his ambition that, before he died, he might write his fisherman maybe one great poem, “as cold and passionate as the dawn”.<sup>8</sup> I am not addled enough to have a similar ambition about writing a judgment “as cold and passionate as the dawn” and I know that my work is more likely to put people to sleep than to enthral. But there have been a few times when beavering away at a text late at night I have been very conscious of an audience I would not want to let down. I have told you something about some of them today.

No reira tena koutou, tena koutou, kiora tatou katoa.

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<sup>5</sup> Cass R Sunstein “On the Expressive Function of Law” (1996) 144 U Pa L Rev 2021.

<sup>6</sup> Lord Radcliffe “Law and the Democratic State” in *Not in Feather Beds* (Hamish Hamilton, London, 1968) at 51.

<sup>7</sup> Sian Elias “The Meaning and Purpose of the Treaty of Waitangi” (2015) October Maori LR 3 at 12.

<sup>8</sup> William Butler Yeats “The Fisherman”.

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