

Introduction

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The Board of the New Zealand Institute of Advanced Legal Studies decided last year to hold a Conference on February 9 and 10, 1995 on the subject of "Treaty Claims: The Unfinished Business". This timing proved to be very opportune because the chosen dates followed the release by the Government of proposals for the settlement of Treaty claims but preceded the hui to discuss those proposals.

The Conference was attended by approximately 160 registrants, who included Maori leaders from around the country, Maori Land Court Judges, members of the Waitangi Tribunal, lawyers who have been prominent in the conduct of Treaty claims, academics and senior officials from central and local government. The Institute invited a number of senior politicians, Maori leaders and prominent lawyers and academics to speak at the Conference and was delighted that these invitations were all accepted. Without exception, the speakers made thoughtful and valuable contributions of the highest quality. The Institute was also delighted that the Prime Minister was able to accept an invitation to visit the Conference.

When summing up the Conference at its conclusion, I identified four major themes which seemed to me to have emerged from the presentations and the discussion:

- 1 In considering Treaty issues, there is a tendency for Maori and non-Maori to talk past each other rather than to each other. This occurs procedurally because the processes of Maori and non-Maori are very different, which can readily result in misunderstanding. It also occurs in the substantive consideration of issues, as is illustrated by some aspects of the Crown's current proposals.
- 2 The "fiscal envelope" contained in the Crown's proposals is likely to be of very limited practical significance because all avenues for the resolution of Treaty claims will remain open, whatever the fate of the envelope. These avenues are:
 - (a) Direct negotiations between claimants and Crown. Such negotiations are likely to resolve a number of claims, particularly if there is an awareness on both sides of the cross-cultural context and, to come back to the previous point, the importance of not talking past each other.
 - (b) Claims to the Waitangi Tribunal. The Tribunal will probably be called upon to exercise its as yet unexercised decision-making powers on claims to SOE assets and forests, which is likely to lead to applications for review by the High Court. This could, regrettably, require a more legalistic approach on the part of the Tribunal. The educative role of the Tribunal will continue to be most important.

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- (c) Claims through the Courts. In addition to proceedings for judicial review of Tribunal decisions, the Courts will continue to resolve litigation arising out of the incorporation of Treaty principles into statute law. They will also probably be required to determine claims based on common law, or Judge-made law, which is likely to be seen increasingly as providing a legal basis which is similar to but independent of the Treaty. More fundamentally, it is at least possible that the Courts will in the next few years be asked to reconsider the status of the Treaty in New Zealand law as a matter of common law.
- 3 The resolution of Treaty claims must be on an Iwi basis, but in the application of the proceeds of settlements full regard must be had to the position of Maori women, Maori children and urban Maori.
- 4 As a country, we should consider new structures which recognise the position of Maori. Such structures can be accommodated within our existing constitutional framework. They should include institutional provision for the development by Maori of policy of their own.