

Welcome

CHIEF JUDGE DURIE

I just wanted to extend the welcome provided to you by adding a particular welcome from the Institute of Advanced Legal Studies. The Institute under Sir Ivor Richardson is a non-profit organisation established to promote discussion in important areas of law. And so I would like at the outset just to distinguish this conference from the ordinary business of many conferences that are arranged today, by saying that it is not actually the purpose of this conference to make a profit.

In fact the Institute of Advanced Legal Studies is one of the few organisations that is concerned to take seriously the motto of Victoria University to which the Institute is related, that even in this day and age, wisdom is still more to be desired than gold. I say that despite the fact that some of you will notice that the crest of Victoria University has changed, and the lion rampant that once used to stand at the top of the crest is now on one side and bears a remarkable resemblance to the logo of a certain well-known corporation.

I might begin by raising a domestic matter. I would like to mention that this year is significant for the Waitangi Tribunal in that it is the 20th year of the Tribunal's existence. And when I am asked as to the Tribunal's achievements over those years, I think I would have to say that our greatest achievement is the fact that we survived them.

You may recall the parliamentary debate of 1987 which was whether the Tribunal should be put on ice. I can tell you now that it was rather disconcerting for us at that time; we had rather hoped for a tropical island.

I think the Tribunal survived however because of its commitment to certain standards of scholarship, integrity of process and impartiality. There has also been a measure of political instability, but doubtless some governments will say that that has not always been apparent. But looking now to the years ahead, it does appear to me that the focus has shifted and it has shifted to the formulation of policy and that seems to me to be entirely appropriate that it is policy, not the Waitangi Tribunal, that is the focus of this Conference.

My personal feeling is that we can move to this next stage of finding an appropriate policy to deal with these matters with quite a deal of hope. Whatever our views may be of the Fisheries Settlement for example, I think I can say that it has attracted a great deal of international applause. It is often held up overseas as a model. That Settlement we can note has now been followed closely by the Tainui Settlement and, more recently, by the long expected proposals of Government for a claims resolution policy.

Now, despite some criticism that has been made, to me these developments present an encouraging picture. Who, knowing history, would begrudge the precedence given Tainui. And who, knowing the claims process, would doubt for one moment that the

settlement of claims does not and should not depend on the Waitangi Tribunal but upon Maori and the Government, and the formulation of a sound and agreed policy. So, despite the criticisms, I feel encouraged that at least the initial steps have now been taken towards that end.

I have only these disquiets. It seems that the main issues for Maori in 1995 must relate to questions of representation and, perhaps more important still, the maintenance of equity and fairness as between the tribes.

To my mind, these are predominantly Maori issues and they require Maori policy to resolve them. In this day and age it seems only reasonable to expect that Maori policy will be devised by Maori and not for them, whether by the Government or whether by the Waitangi Tribunal. The disquiet that I have is in the apparent lack of structure to settle Maori policy in some democratic way and that there does not appear to be the access to the necessary funding for the careful research and consultation that is required.

It is not surprising, given the absence of structure for Maori policy to be developed, that Maori policy should be seen to be dictated, at least as portrayed through the media, by those who can shout the loudest. It would be helpful to think that the system could be better.

I have no suggestions of my own on what might be done, but I can point by way of illustration to Australia where this issue was addressed in 1989. There the country was divided into 17 districts, arranged in the same way as electorates by reference to Aboriginal population densities and 19 elected Aboriginal representatives now manage what was once the Department of Aboriginal Affairs.

This has provided not only a national representation but also a budget, a generous budget, enabling research to be undertaken on policy development, statistics and the various options. And I note that the body concerned which is known as ATSIC has contracted a great deal of that research work through the Universities. It has also allowed for extensive Aboriginal consultations. The situation has now developed there where, despite some imperfections, nonetheless Aboriginal policy is proposed by Aborigines and negotiated with Government.

It may be helpful to add that, while community input is a key factor to the process, one should not minimise the value of the academic input in terms of research. It is interesting to observe, then, if you go to Australia, how some words are differently used. The word 'settlement' in Australia, for example, appears to be applied not so much to a pay out as to a process. And a process that is directed not so much to paying off the past but in settling arrangements for the future.

Indeed, the need for Maori policy is so great that, despite the demands on the Tribunal and its limited budget, I would gladly give away the whole of the Tribunal's budget if that were possible if it could pass to Maori to develop policy of their own.

Integral to the process of claims resolution are certain other bodies, and I refer to some of them. The Aboriginal Social Justice Commissioner seeks to advance the

debate in Australia in terms of social relations, social opportunities for Aboriginals and self-determination policy.

The Council for Aboriginal Reconciliation is, I think, a particularly significant body. This is a prestigious group of distinguished white and Aboriginal Australians who seek to give special consideration to the issues and to promote a more informed public debate.

The Constitutional Centenary Foundation is reworking the Australian Constitution and asking the basic questions about what is the constitutional status of Aboriginals and how are they to be provided for.

The Aboriginal Land Councils take various forms, funded by a percentage of mining royalties in the Northern Territories and from a share of land taxes in New South Wales.

All these bodies provide evidence that self-determination within a national framework is both feasible and non-threatening.

The Australian Land Fund proposals, which are still in Bill form, envisage a perpetual fund with 60% of the income to be reinvested and only 40% being available to assist land recovery for traditional and urban Aboriginal groups.

The point I would make here is that this fund is just a small part of a broader strategy and is not an answer in itself. So cast in this light the claims resolution process in Australia can be presented, and I think is presented there, as something that is beneficial not just to Aboriginal but something that is beneficial to Australia. It is not founded in a pay-off for the past but much more clearly in the search for a better future.

Submissions that we receive in the Waitangi Tribunal suggest to me that Maori people are in fact seeking very much the same. I would say, for example, from representations to the Tribunal that Maori are not in fact dysfunctionally locked into old history, as it is sometimes portrayed, and nor would they bankrupt the country.

The claims process here, at least from the perspective of those who appear before the Tribunal, is also futures directed. This disparity between Maori objectives and public understanding calls for a much more informed debate. It may be of some assistance were there also a Council here, as in Australia, of leading Maori and Pakeha New Zealanders who were able to debate the issues and provide a better input to the public discussion.

In the meantime, the Tribunal has been left with this rather uneasy impression that we are in fact still strangers in one country, and that we are in fact still talking past each other.

In short, and discussing policy in the more sober light of this largely legal conference, we may find that the issue is not in fact mainly about money but primarily about how we manage race relations in the years ahead. Certainly the arrangements to be made must be sustainable in terms of national and regional economies - that position

seems to have been accepted. I think it was at least largely accepted by those who were party to the Fisheries Deed of Settlement.

But the most pressing questions for the moment, as I see them, are questions of equity. I have referred to one, equity between the tribes themselves, and this appears to me to be absent, and is the most demanding issue for Maori at this moment.

We have also to consider equity as between traditional and urban groups. The urban dispossessed appear to have been largely omitted from the equation so far, and yet they may represent the main casualties of our history and they may form the largest Maori number.

And, of course, the settlement process is also about equity between Maori and Pakeha. In addressing these issues at this Conference, we may find that at the end of the day the constraint upon us is not the economy but the limit to our own imaginations or the limit to our ability to capture a better vision for the future.

This Conference has been arranged so that these matters can be discussed in a temperate climate, removed from the demands of the adversarial approach; they appear to me call for quiet and reasoned reflection. This Conference has been arranged to that end with ample opportunity for discussion.

I hope that you will all have the opportunity to contribute to that discussion and I thank you for making yourselves available.