

Foreword

The launch of a new periodical is invariably done with enthusiasm and the sense of excitement that comes from thinking up and presenting a novel publication that goes beyond established criteria for good, legal writing. That was the atmosphere in which *The Journal of Maori Legal Writing* was launched in 2005.

The challenge faced in this second edition is to sustain the enthusiasm and quality of the inaugural issue, develop a clearer sense of long-term purpose and settle into the mundane rhythm of soliciting, reviewing, editing and compiling material.

I draw an analogy with parenting. The matamua, or first born is greatly anticipated, and the hopes of the whanau and iwi are placed on this fresh new life. The second child (and subsequent others), whilst still keenly awaited and welcomed, benefits from experience gained from rearing the first. Standards and boundaries have been set, and there are clear expectations to emulate.

This Journal is a forum in which Maori and non-Maori have an outlet to provide sustained legal analysis of issues affecting Maori in our legal system. It provides a forum for academics, students and others to debate at an intellectual level, issues that are relevant to us as Maori and indigenous peoples. As it develops, a more global scope will be possible.

This volume begins and ends with tributes to two different lives that have each had a significant impact within legal circles in Aotearoa/New Zealand – a poroporoaki to the inimitable Judge Karina Williams, and an essay from a retiring (but far from shy) academic, Professor Jim Evans. Their presence is an unlikely metaphor for the diversity of faces and skills required to assist Maori who are negotiating the contemporary legal landscape – the young Maori woman who worked at the coalface and the older Pakeha man, who worked with similar dedication, albeit behind the scenes. With people like these working in our field, there is hope for our collective futures in Aotearoa.

Much has happened since the inaugural edition. Few could have foreseen the long-term ramifications of the Court of Appeal's *Ngati Apa* decision of 2003 that underpinned the first edition. The subsequent legislation

prompted protest on the ground, with the Hikoī, and also brought international attention and notoriety with the visit of Rodolfo Stavenhagen. Stavenhagen, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, has released his report to the Economic and Social Council of the United Nations. That report, stating that serious human rights breaches exist against Maori in Aotearoa/New Zealand, is appended to this volume.

New Zealand's political sphere has also been indelibly affected by the foreshore and seabed debate, prompting the formation of the Maori Party, which has since evolved into a more permanent force in Parliament and the political process. The emergence of new Maori leadership in the form of Hone Harawira, Tariana Turia and Pita Sharples is undoubtedly evidence of attempts by Maori to throw something positive up on the wake of the foreshore tide.

This edition of the Journal deals with a number of important contemporary topics.

Section A, is an article by University of Otago legal academic Jacinta Ruru and Auckland Maori studies anthropologist, Lyn Carter, on "Freeing the Natives": The Role of the Waitangi Settlements in the Reassertion of Tikanga Maori'. The authors discuss a timely issue in relation to the application of tikanga Maori to development rights; and the effects of codification of tikanga Maori in statute on the iwi of Ngai Tahu.

Section B, is a regular feature of the Journal – a showcase of legal writing by undergraduate law students on a given theme or concept of tikanga. This year the subject is the relationship between the concepts of ownership, rangatiratanga and kaitiakitanga. Ngaroma Tahana discusses her iwi, Te Arawa's historical relationship with their lakes, and foreshadows their recently announced settlement with the Crown concerning these resources. Blair Keown and Anna Shackell write as non-Maori about the common law notion of "ownership" and its interface with Maori concepts that seek to fulfil the same purpose as that historically linked to ownership.

Finally, Section C, deals with further developments that have taken place in relation to the foreshore and seabed since the landmark legislation, The Foreshore and Seabed Act 2004.

"Reflections on *Nireaha Tamaki v Baker*", is an article written by recently retired emeritus Professor Jim Evans of the University of Auckland's,

Faculty of Law. Professor Evans argues that the debacle over the foreshore and seabed following the *Ngati Apa* decision in 2003 could have been avoided if the Privy Council had been clearer in its deliberations in *Nireaha Tamaki v Baker*, way back in 1901.

It is fitting I think, to conclude this edition of the Journal with Professor Evan's contribution. He has been a prominent teacher, thinker, researcher and valued colleague at the Faculty of Law, in Auckland, for many years. It was with great sadness that we farewelled him when he retired from teaching in 2005.

I end on a personal note of farewell to both Jim and Karina –

As a former student of Professor Evans' in the 1990s, and more recently as colleague and friend teaching Jurisprudence, I have found Jim to always be kind and supportive. University education has changed much in the past decade, and he is the last of the pre-email, card catalogue, look-it-up-in-hard-copy staff to retire. A large and irreplaceable chunk of the institutional memory of the Law School goes with him.

Likewise, my experience of Karina Williams was similarly positive. I remember her seeking me out and asking if I required any help, when I was a brand new solicitor negotiating the grubby interior of the old Otahuhu District Court some years ago. She was professional but approachable – as comfortable with tattooed gang members as she was with judges and lawyers. I recall my great relief at seeing a friendly face, and I imagine that she maintained a similar disposition to her clients. We miss her.

Kei raro i te tarutaru, te tuhi o nga tupuna



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SECTION A

**THE ROLE OF THE WAITANGI SETTLEMENTS IN THE
REASSERTION OF TIKANGA MAORI**