





## Introduction

While this guide seeks to outline the principles of the Treaty, it is clear that these must be derived from the texts of the Treaty and from the terms of the exchange recorded in its Articles, as well as from other sources. A comprehensive debate about the meaning of the words used in the Treaty continues in political, public and academic settings, and forms the social backdrop to legal processes and the elaboration of Treaty principles by the Courts and Waitangi Tribunal. Wider constitutional debates about the relationship between the Crown and Māori, and the constitutional place of Māori groups in New Zealand, continue independently of legal consideration of the Treaty, and need not be confined by it.

This section of the guide outlines what the Courts and the Waitangi Tribunal have said about some of the key concepts included in the Treaty: tino rangatiratanga, kāwanatanga, sovereignty, governance and taonga. These concepts are, of course, integral to the principles of the Treaty. Legal commentary on their meaning also provides a useful preliminary to the consideration of Treaty principles defined by the Courts and Waitangi Tribunal because it demonstrates the premises on which these bodies have based their construction of the principles. This commentary is presented here as a way of addressing how the Courts and the Waitangi Tribunal understand the interests at stake in the partnership, to which the Treaty principles are applied.

This section also addresses legal interpretations of fiduciary duty and indigenous developmental rights. To varying extents, the Courts and the Tribunal have located these concepts in the Treaty partnership, and have also acknowledged that they arise in legal analysis independently of the Treaty (as they have in other jurisdictions) as aspects of the common law doctrine of aboriginal title. Notwithstanding the high degree of overlap between these concepts and Treaty principles, they are addressed here separately, since they can both be regarded as arising from the Treaty, and as running parallel to it.

It should be noted here that the roles of the Waitangi Tribunal and the Courts are very different. The Courts interpret legislation, while the Tribunal has jurisdiction to measure legislation against Treaty principles. The Courts have consistently stated that sovereignty was acquired by the Crown, and that this includes Parliamentary supremacy – the right of Parliament to enact laws without restriction. The Courts

do not conceptualize the relationship between the Crown and Māori as one in which kāwanatanga is restrained by tino rangatiratanga, but rather emphasize the Crown's moral obligation to exercise its unlimited powers honourably and in accordance with the Treaty principles. Both the Courts and the Tribunal have acknowledged the reciprocity inherent in balancing these concepts.<sup>180</sup> Both bodies have also acknowledged that at times it may be necessary for the Crown to exercise kāwanatanga to override Māori interests for the public good. When such an override will be appropriate is a matter that the Courts have currently commented on only by reference to specific areas, particularly in respect of conservation issues. The Tribunal's consideration has been much broader, and in some instances the Tribunal's conception of an appropriate balance has differed from that expressed by the Court in respect of conservation issues. The Waitangi Tribunal takes the approach that sovereignty was ceded to the Crown, but that this is a limited form of sovereignty, which requires the Crown to respect Māori authority over their own affairs as far as possible.

## Tino rangatiratanga

The Courts have noted but not defined tino rangatiratanga, in the context of considering the nature of Māori commercial fishing rights,<sup>181</sup> the exclusivity of iwi boundaries,<sup>182</sup> customary fishing rights,<sup>183</sup> and the scope of taonga.<sup>184</sup> Although the Courts have not defined the concept, they have noted the difficulty of translating the term into English,<sup>185</sup> and its connection to concepts of guardianship or control.<sup>186</sup> The Court of Appeal has never been directly required to define the precise nature of the relationship between kāwanatanga and tino rangatiratanga in the course of interpreting a Treaty clause or otherwise referring to the Treaty. The Tribunal conceptualizes the Treaty partnership as a balance between kāwanatanga and rangatiratanga, and has commented extensively on the scope of tino rangatiratanga.

## The Courts

In the *Lands* case of 1987, the Court of Appeal was given its first opportunity to consider the principles of the Treaty for the purposes of section nine of the State-Owned Enterprises Act 1986. In order to elaborate the principles of the Treaty, it had first to consider the two language texts and to derive an understanding of the basic agreement between the parties to the Treaty. The President of the Court summarized this agreement as follows:

*In brief the basic terms of the bargain were that the Queen was to govern and the Māoris were to be her subjects; in return*

*their chieftainship and possessions were to be protected, but sales of land to the Crown could be negotiated. These aims partly conflicted.*<sup>187</sup>

In the High Court, Justice McGechan made some observations on the scope of tino rangatiratanga while considering the Crown's handling of the 1994 Māori Electoral Option in *Taiaroa and Others v Attorney-General* (1994). The meaning of tino rangatiratanga was not directly relevant to the question before him, but the judge took the opportunity to make the following comment:

*I do not attempt to state the full content of tino rangatiratanga preserved by Article 2. It probably is neither possible nor desirable. However, I readily accept it encompassed a claim to an ongoing distinctive existence as a people, albeit adapting as time passed and the combined society developed.*<sup>188</sup>

### **The Waitangi Tribunal**

The Tribunal, as noted above, has a wider scope of concern in which to consider the Treaty, and has produced more detailed discussion of its terms. In the course of considering claims against the Crown, the Waitangi Tribunal is mandated to interpret the Treaty and discuss the differences between the two texts.<sup>189</sup> In its reports, the Tribunal has offered useful comments on the relationship between kāwanatanga and tino rangatiratanga, describing it in terms of an exchange between the parties. The Waitangi Tribunal understands this exchange as the Treaty principle of reciprocity,<sup>190</sup> that is: “[the principle that] the cession by Māori of sovereignty to the Crown was in exchange for the protection by the Crown of Māori rangatiratanga”.<sup>191</sup> In the Tribunal's view, the maintenance of a separate Māori sovereignty was not sustainable under the Treaty:

*From the Treaty as a whole is obvious that it does not purport to describe a continuing relationship between sovereign States. Its purpose and effect was the reverse, to provide for the relinquishment by Māori of their sovereign status and to guarantee their protection upon becoming subjects of the Crown.*<sup>192</sup>

In its *Muriwhenua Fishing Claim Report* (1988), the Waitangi Tribunal explained that:

*In any event on reading the Māori text in the light of contemporary statements we are satisfied that sovereignty was ceded. Tino rangatiratanga, therefore, refers not to a separate sovereignty but to tribal self-management on lines similar to what we understand by local government.*<sup>193</sup>

In the *Māori Electoral Option Report* (1994), the Tribunal discussed the tension between tino rangatiratanga and kāwanatanga in the following way:

*The precise meaning of tino rangatiratanga in the Treaty and its relationship to the kāwanatanga which was ceded in Article I has been much debated. Some have argued that tino rangatiratanga was a guarantee of Māori sovereignty; others a right to self-determination; others again a right of self-management. The difficulty is that no one of these English constitutional terms properly captures the Māori meaning, or meanings, of tino rangatiratanga, a term which is eminently adaptable to time and circumstance. But if we look beyond the strict literal meaning of the Treaty to its broader principles, it is clear that the exercise of tino rangatiratanga, like kāwanatanga, cannot be unfettered; the one must be reconciled with the other ... In constitutional terms this could be seen as entitling Māori to a measure of autonomy, but not full independence outside the nation State they helped to create in signing the Treaty.*<sup>194</sup>

This concept of balancing tino rangatiratanga and kāwanatanga features strongly in the Tribunal's analysis. The Tribunal considers that while sovereignty was ceded to the Crown, in agreeing to the Treaty the Crown accepted certain limitations in the exercise of its power – namely, the protection of the capacity of Māori to exercise rangatiratanga:

*It is clear that cession of sovereignty to the Crown by Māori was conditional. It was qualified by the retention of tino rangatiratanga. It should be noted that rangatiratanga embraced protection not only of Māori land but of much more, including fisheries ... The Crown in obtaining the cession of sovereignty under the Treaty, therefore obtained it subject to important qualifications upon its exercise. In short, the right to govern which it acquired was a qualified right.*<sup>195</sup>

The Tribunal considers that the Crown can override tino rangatiratanga in the national interest, but only in exceptional circumstances. It is not enough that a Crown proposal is in the public interest or can be justified for reasons of convenience or economy.<sup>196</sup> In the *Ngāi Tahu Sea Fisheries Report* (1992) the Tribunal stated:

*Māori insistence on their right to retain tino rangatiratanga over their land resulted in the inclusion of article 2 of the Treaty, and was a measure of the depth and intensity of their relationship to the land and other natural resources. It follows that if the Crown is ever to be justified in exercising its power to gov-*

*ern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Māori in article 2 it should be only in exceptional circumstances and as a last resort in the national interest.*<sup>197</sup>

In the *Ngāwhā Geothermal Resources Report* (1993), the Tribunal explained that: “The tribal right of self-regulation or self-management is an inherent element of tino rangatiratanga”.<sup>198</sup> In its *Te Arawa Representatives Geothermal Resources Report* (1993), the Tribunal considered that this included a guarantee of “tribal control of Māori matters, including the right to regulate access of tribal members and others to tribal resources”.<sup>199</sup> The concept of self-management was discussed by the Tribunal in the context of Māori educational facilities in the *Wānanga Capital Establishment Report* (1999). The Tribunal found that:

*Rangatiratanga involves, at the very least, a concept of Māori self-management ... the efforts of these tribal groups [that is, Māori iwi groups] to create and sustain [tertiary education institutions] are a vital exercise of rangatiratanga. The establishment of wānanga as [tertiary education institutions] recognised by the State represents an attempt to engage actively with the Crown in the exercise of rangatiratanga in the management of new forms of tribal and Māori education. The Crown’s Treaty obligation is to foster, support, and assist these efforts.*<sup>200</sup>

Referring to the lack of tribal structures which might provide an effective interface with the Crown, the Tribunal commented that: “The Crown, in our view, has much work to do to complete its Treaty undertakings. It must provide a legally recognisable form of tribal rangatiratanga or management, a rangatiratanga the Treaty promised to uphold”.<sup>201</sup>

As to the practices and possessions included in the exercise of tino rangatiratanga, in *Te Whānau o Waipareira Report* (1998), the Waitangi Tribunal considered that tino rangatiratanga:

*... applies to much more than the customary ownership of lands, estates, forests, fisheries and other taonga. It describes a value that is basic to the Māori way of life, that permeates the essence of being Māori.*<sup>202</sup>

The Tribunal has stated that the guarantee of Article II preserves for Māori “full authority status and prestige with regard to their possessions and interests”.<sup>203</sup> In its *Muriwhenua Fishing Claim Report* (1988), the Tribunal made the following comment:

*There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically, and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly the exercise of authority was not only over property but of persons within the kinship group and their access to tribal resources.<sup>204</sup>*

The Tribunal has emphasized the close relationship between the concepts of mana and rangatiratanga. In the *Orakei Report* (1987), the Tribunal explained that:

*In Māori thinking “rangatiratanga” and “mana” are inseparable. One cannot have one without the other. The Māori text of the Treaty conveyed to the Māori people that, amongst other things, they were to be protected not only in the possession of their lands but in the mana to control them in accordance with their own customs and having regard to their own cultural preferences.<sup>205</sup>*

The Tribunal went on to elaborate this concept, commenting that:

*The conferral in the Māori text of “te tino rangatiratanga” of their lands on the Māori people carries with it, given the nature of their ownership and possession of their lands, all the incidents of tribal communalism and paramountcy. These include the holding of land as a community resource and the subordination of individual rights to maintaining tribal unity and cohesion.<sup>206</sup>*

In the *Taranaki Report* (1996), the Waitangi Tribunal considered that “Māori autonomy” was guaranteed by the Treaty, and that: “Autonomy is the inherent right of all peoples in their native countries”.<sup>207</sup> The Tribunal’s commentary on the term “autonomy” indicates an increasing acknowledgement of the extent to which issues affecting indigenous peoples have become internationalised:

*Broadly ... we consider ‘aboriginal autonomy’ to describe the rights of indigenes to constitutional status as first peoples, and their right to manage their own policies, resources, and affairs (within rules necessary for the operation of the State) and to enjoy cooperation and dialogue with the Government.<sup>208</sup>*

The Tribunal continues:

*The international term of ‘aboriginal autonomy’ or ‘aboriginal self-government’ describes the right of indigenes to constitutional status as first peoples and their rights to manage their own policy, resources and affairs, within minimum parameters necessary for the proper operation of the State. Equivalent Māori words are “tino rangatiratanga”, as used in the Treaty, and “mana motuhake” as used since the 1860s.<sup>209</sup>*

In the *Te Whānau o Waipareira Report* (1998), the Tribunal considered a claim by a Māori charitable trust that government departments (the Community Funding Agency and the Department of Social Welfare) had failed to recognise the special Treaty status of the trust and to consult with it in terms of Article II of the Treaty. The claim was unusual for several reasons. First, it dealt with welfare spending, as opposed to historical injustice, and secondly, it involved a non-tribal group, that is, a group not linked by kinship, arguing that it could exercise rights arising from rangatiratanga and was therefore one of the Crown’s Treaty partners. The Tribunal entered into a detailed discussion of the meaning of tino rangatiratanga in contemporary circumstances, having identified the exercise of rangatiratanga as the characteristic which qualified a Māori community for special recognition under the Treaty. The Tribunal noted that: “The principle of rangatiratanga may be applied to a variety of Māori activities each with the goal of promoting a Māori responsibility for Māori affairs”.<sup>210</sup> The Tribunal continued:

*The principle of rangatiratanga appears to be simply that Māori are guaranteed control of their own tikanga, including their social and political institutions and processes and, to the extent practicable and reasonable, they should fix their own policy and manage their own programmes.<sup>211</sup>*

The Tribunal emphasized the internal relationships in groups that allow the exercise of rangatiratanga: “It is the reciprocal relationship of rangatiratanga between leadership and membership that binds people together in a Māori community”.<sup>212</sup> The Tribunal noted also that: “Rangatiratanga is not absolute. The character of rangatiratanga depends on the internal dynamics of the community, and it may well fade around the edges, and can change over time”.<sup>213</sup> The Tribunal went on explain that:

*The political success of a rangatira may wax and wane, ebb and flow; yet rangatiratanga itself endures as a fundamental value in Māori culture, and the key customary principle in Māori social, political, and economic organisation. Kinship and descent*

*provide ready-made networks of relationships among Māori, but it is rangatiratanga that determines which of those relationships have current significance.*<sup>214</sup>

The Tribunal has also emphasized the spiritual aspects of rangatiratanga, saying that:

*For Māori, rangatiratanga has both sacred and secular aspects, neither of which should be isolated from the other. So, for example, even commercial activity may be subject to ritual constraints. This is especially so where rangatiratanga applies to taonga, as is envisaged in article 2.*<sup>215</sup>

The Tribunal noted that rangatiratanga was often exercised in respect of taonga:

*The relationship between rangatiratanga and taonga is as subject to object. The exercise of rangatiratanga over taonga proceeds from the perception that the people and taonga are part of the same universe, regulated by the atua (gods). In exercising care and protection, nurturing, conserving and maintaining taonga for the future benefit of the group (commonly called kaitiakitanga), rangatira have always sought divine sanction for the responsible use of those taonga.*<sup>216</sup>

The Tribunal found that in certain circumstances, groups other than traditional tribes may be entitled to the special protection of the Crown under the Treaty. This is particularly so if the group is “distinctively Māori” in adhering to customary values and in seeking to promote the welfare of its community. Factors could include the way in which the community had emerged (by addressing Māori needs, based on a marae, involving the development of a network of kaumātua and so on), and the adherence to Māori values in the basic approach of the organisation including the roles of kaumātua, a focus on nurturing, and the continued provision of services even when funding is not available.

## Kāwanatanga

In considering the principles of the Treaty, the Courts have emphasized the concepts of good faith, and of reasonableness. In order to give effect to the Treaty principles, the Crown must ensure that the exercise of its law-making power in respect of its Māori Treaty partner is honourable. The Courts have commented that the Crown is free to decide among a number of possible ways of meeting Treaty obligations, provided it can show that it is acting reasonably in choosing a particular

course of action. President Cooke explained in the *Lands* case (1987), which considered the capacity of the Crown to transfer assets in which Māori have asserted an interest, that:

*... it does not follow that in each instance the question will admit of only one answer. If the Crown acting reasonably and in good faith satisfies itself that known or foreseeable Māori claims do not require retention of certain land, no principle of the Treaty will prevent a transfer.*<sup>217</sup>

The Courts have also emphasized that the New Zealand Parliament is supreme, and that the Treaty does not act as a legal restriction on its capacity to make laws.

The Waitangi Tribunal agrees that sovereignty was ceded by Māori, but stresses that this transfer was conditional on the guarantees made to Māori, specifically the retention of tino rangatiratanga. The Tribunal emphasizes the balance between kāwanatanga and rangatiratanga, commenting that each is qualified by the other.<sup>218</sup>

## The Courts

In the *Lands* case (1987), several of the judges commented on the constitutional supremacy of Parliament in New Zealand. Justice Somers affirmed that Parliament’s legislative powers cannot be checked by the Courts, adding that even though the Courts cannot unilaterally enforce the Crown’s Treaty obligations, the Crown’s moral duties remain:

*Neither the provisions of the Treaty of Waitangi nor its principles are, as a matter of law, a restraint on the legislative supremacy of Parliament. This is not to suggest that the Courts have ever supposed that the Crown was not under an obligation to have regard to the Treaty although that duty was not justiciable in this country, at least when the dispute was not with the Crown in respect of its prerogative or Royal rights.*<sup>219</sup>

Justice Somers acknowledged that the Treaty signatories held different understandings as to its meaning, and concluded that: “Notwithstanding that feature I am satisfied that the question of sovereignty in New Zealand was not in doubt”.<sup>220</sup> He concluded, referring to the 1840 Proclamations, that: “The sovereignty of the Crown was then beyond dispute and the subsequent legislative history of New Zealand clearly evidences that. Sovereignty in New Zealand resides in Parliament”.<sup>221</sup> Justice Somers went on to note that:

*Where the word “Sovereignty” is used in the English text the word “Kāwanatanga” is used in the Māori version. This has the connotation of government or governance. The concept of sovereignty as understood in English law was unknown to Māori.*<sup>222</sup>

Justice Bisson, in the same case, also observed that the principles of the Treaty accommodate the right of the Crown to govern in the interests of all New Zealanders, taking into account the circumstances of the time:

*... it is in accordance with the principles of the Treaty that the Crown should provide laws and make related decisions for the community as a whole having regard to the economic and other needs of the day.*<sup>223</sup>

The Court was also of the view that Māori owed a duty of cooperation to the Crown in the reasonable exercise of its governance right. President Cooke commented that: “For their part the Māori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible Ministers, and reasonable cooperation”.<sup>224</sup> He went on to confirm that:

*The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed to try and shackle the Government unreasonably would itself be inconsistent with the principles.*<sup>225</sup>

In the *Whales* case (1995), the Court of Appeal addressed the relationship between conservation law and Māori interests. Discussing the definition of “kāwanatanga”, the Court said:

*Alternative English renderings sometimes given of the latter word are “complete government” (see Professor Sir Hugh Kawharu’s version reproduced in [the Lands case, at 662-663]) or “governance”. Clearly, whatever version or rendering is preferred, the first article must cover power in the Queen in Parliament to enact comprehensive legislation for the protection and conservation of the environment and natural resources. The rights and interests of everyone in New Zealand, Māori and Pākehā and all others alike, must be subject to that overriding authority.*<sup>226</sup>

## **The Waitangi Tribunal**

The Tribunal considers that sovereignty was ceded to the Crown under the Treaty, but in recent reports, has argued that the Crown is limited

in its exercise of sovereignty by the promises made in the Treaty of Waitangi. In this respect, as was earlier noted, the role of the Tribunal differs from that of the Courts. The Courts interpret legislation, while the Tribunal has jurisdiction to measure legislation against the Treaty principles. In the *Muriwhenua Fishing Claim Report* (1988), the Tribunal expressed the view that despite the differences in the texts of the Treaty, Māori understood the Queen’s role as a mediator of intertribal disputes and that kāwanatanga therefore was exercised at a supra-tribal level:

*... the Queen promised peace. The Treaty would guarantee the status of the tribes without the need for war. It was obvious that to do that, the Queen’s authority had to be supreme. The concept of a national controlling authority with kāwanatanga (lit. governance), or the power to govern or make laws, was new to Māori, divided as they were to their respective tribes. But the supremacy of this new form of control was clear. The Queen as guarantor and protector of the Māori interest ... had perforce an overriding power.*<sup>227</sup>

In numerous reports, the Tribunal has examined what it describes as the essential exchange of sovereignty for the protection of tino rangatiratanga, and has noted that the authority exercised by one Treaty partner qualifies that of the other. In the *Muriwhenua Fishing Claim Report* (1988), the Tribunal explained that:

*The cession of sovereignty or kāwanatanga gives power to the Crown to legislate for all matters relating to “peace and good order”; and that includes the right to make laws for conservation control. Resource protection is in the interests of all persons. Those laws may need to apply to all persons alike. The right so given however is not an authority to disregard or diminish the principles in article the second, or the authority of the tribes to exercise a control. Sovereignty is limited by the rights reserved in article the second.*<sup>228</sup>

In the view of the Tribunal, kāwanatanga clearly allocated to the Crown the right to legislate, providing that the interests of the Māori Treaty partner were recognised and upheld. In the *Mohaka River Report* (1992), the Tribunal referred to the Crown’s obligation and right to enact laws for conservation: “Undoubtedly the Crown does have a right and a duty to make laws for the conservation of natural resources. But this need not be inconsistent with the exercise of rangatiratanga”.<sup>229</sup> In the *Ngāti Rangiteaorere Report* (1990), the Tribunal referred to the procedural requirements attached to the exercise of kāwanatanga in respect of Māori lands:

*In the view of the Crown the exercise of kāwanatanga, or sovereignty in the English text, clearly included the right to legislate; but in our view this should not have been exercised in matters relating to Māori and their lands and other resources, without consultation.*<sup>230</sup>

The Tribunal has noted that both rangatiratanga and sovereignty are evolving concepts, stating that: “Sovereignty is a complex concept, the meaning of which has changed over time”.<sup>231</sup> In the *Turangi Township Report* (1995), the Tribunal elaborated its understanding of the limited sovereignty ceded to the Crown under the Treaty:

*The limited sovereignty acquired by the Crown under the Treaty does not create a constitutional problem. Few, if any, Western governments enjoy unqualified sovereign power. Apart from the legal constraints imposed by entrenched constitutions, where these exist, the power of modern States are being increasingly constrained by international agreements.*<sup>232</sup>

In the *Orakei Report* (1987), the Tribunal explained that the concept of sovereignty in the English text of the Treaty was a culturally embedded one, composed of attributes which were unknown to Māori in 1840, but which nonetheless was accepted by the chiefs as an overarching, albeit qualified power:

*To the Crown was given “Kāwanatanga” in the Māori text, not “mana” for as we have noted in the Manukau Report (1985:8.3) the missionaries knew well enough no Māori would cede that. “Kāwanatanga” was another missionary coined word, and for reasons given in the above report, likely meant to the Māori, the right to make laws for peace and good order and to protect the mana Māori. That, on its face, is less than the supreme sovereignty of the English text and does not carry the English cultural assumptions that go with it, the unfettered authority of Parliament or the principles of common law administered by the Queen’s judges in the Queen’s name. But nor does the Māori text invalidate the proclamation of sovereignty that followed the Treaty. Contemporary statements show well enough Māori accepted the Crown’s higher authority and saw themselves as subjects, be it with the substantial rights reserved to them under the Treaty.*<sup>233</sup>

As to the meaning of kāwanatanga, in the *Manukau Report* (1985), the Tribunal made the following comment:

*In the Māori text of the [Treaty] the Māori chiefs ceded to the Queen ‘kāwanatanga’. We think this is something less than the*

*sovereignty (or absolute authority) ceded in the English text. As used in the Treaty it means the authority to make laws for the good order and security of the country but subject to an undertaking to protect particular Māori interests.*<sup>234</sup>

The Tribunal has discussed the transferability of kāwanatanga, particularly where the Crown’s governance functions appear to have been devolved to local government or private entities. The Tribunal’s basic understanding was set out in the *Manukau Report* (1985) where it found that: “There is a duty on the Crown not to confer authority on an independent body without ensuring that the body’s jurisdiction is consistent with the Crown’s Treaty promises”.<sup>235</sup> This understanding was further elaborated in the *Te Arawa Representatives Geothermal Resources Report* (1993) where the Tribunal held that: “If the Crown chooses to so delegate it must do so in terms which ensure that its Treaty duty of protection is fulfilled”.<sup>236</sup> In respect of the transfer of property to local authorities, the Tribunal in the *Ngāwhā Geothermal Resources Report* (1993) considered that:

*In return for the powers ceded to Māori by the Crown in article 1, the Crown, in article 2, guaranteed to protect Māori rangatiratanga over their taonga. This obligation is a continuing one and cannot be avoided or modified by the Crown delegating its power or Treaty obligations to the discretion of local authorities ... if the Crown chooses to so delegate, it must do so in terms which ensure its Treaty duty of protection is fulfilled.*<sup>237</sup>

## Taonga

Article II of the Māori language version of the Treaty makes reference to “ō rātou taonga katoa”. Professor Sir Hugh Kawharu, a respected scholar and former member of the Waitangi Tribunal, translated taonga as “treasures”.<sup>238</sup> This definition was later accepted by the Privy Council in the *Broadcasting Assets* case (1994).<sup>239</sup> The Waitangi Tribunal agrees that the term refers to “anything highly prized”, including the “forests fisheries and other properties” listed in the English text of the Treaty.<sup>240</sup>

## The Courts

Court cases concerning the concept of taonga have largely centered on the Crown’s obligation under the Treaty to protect te reo Māori. The Crown has recognised te reo Māori as a taonga, and this acknowledgement appears in the preamble to the Māori Language Act 1987, which establishes te reo Māori as an official language of New Zealand.

In the *Broadcasting Assets* case (1994), the Privy Council considered the application of the principles of the Treaty in respect of the Māori language as a taonga. The Council emphasized that the Crown’s obligation to actively protect taonga was not an absolute one:

*It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances.*<sup>241</sup>

In this case, the Privy Council referred to the need for the Crown to match its response to the vulnerability of the taonga in question:

*... if as is the case with the Māori language at the present time, a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations. This may well require the Crown to take especially vigorous action for its protection.*<sup>242</sup>

The Privy Council considered that the responsibility for the preservation of taonga does not lie solely with the Crown: “Under the Treaty the obligation is shared. Māori are also required to take reasonable action, in particular action in the home, for the language’s preservation.”<sup>243</sup>

In the *Coal* case (1989), the then President Cooke offered a personal view on the status of coal as a taonga, saying that:

*Let it be clear that this is only a personal suggestion ... The demand for coal and the establishment of the New Zealand coal industry have come largely from European or Western civilisation. Even so coal can be classified as a form of taonga, and there was apparently some limited Māori use of it before the Treaty, and there has been the Māori contribution to the industry.*<sup>244</sup>

In the *Whales* case (1995), the Court of Appeal determined that although fisheries and fishing practices are clearly covered by Article II, a commercial whale-watching business could not be regarded as a taonga. However, the issue deserved close attention:

*Although a commercial whale-watching business is not taonga or the enjoyment of a fishery within the contemplation of the treaty, certainly it is so linked to taonga and fisheries that a reasonable treaty partner would recognise that treaty principles are relevant.*<sup>245</sup>

The High Court considered the relevance of the Treaty of Waitangi to a case concerning the guardianship of a Māori child. In *Barton-Prescott v Director-General of Social Welfare* (1997), the Court found that the Treaty should have a direct bearing on the interpretation of family legislation even though those statutes made no explicit reference to the Treaty. The Court went on to state: “We also take the view that the familial organisation of one of the peoples a party to the treaty, must be seen as one of the taonga, the preservation of which is contemplated”.<sup>246</sup>

### The Waitangi Tribunal

In its early reports, the *Motunui-Waitara Report* (1983), the *Kaituna River Report* (1984), the *Manukau Report* (1985), and the *Te Reo Māori Report* (1986), the Tribunal noted that taonga include all valued resources or tangibles such as fishing grounds, harbours and foreshores (and the estuary and the sea, together with the use and enjoyment of the flora and fauna adjacent to it) as well as intangible valuables such as the Māori language and the mauri (or life-force) of a river.<sup>247</sup>

Clearly, the Tribunal has accepted that physical resources and possessions can be taonga. In the *Motunui-Waitara Report* (1983), the Tribunal accepted the approach of the Te Atiawa people for whom “‘taonga’ embraces all things treasured by their ancestors, and includes specifically the treasures of the forests and fisheries”.<sup>248</sup> The Tribunal further explained that:

*... the Māori language is generally metaphorical and idiomatic ... The use of the word “taonga” in a metaphorical sense to cover a variety of possibilities rather than itemized specifics is consistent with the Māori use of language ... We consider that the Treaty envisaged protection for Māori fishing grounds because the English text specifically provided for that while the Māori text implied it.*<sup>249</sup>

The Tribunal also considers that intangible valuables can also be taonga. In its *Manukau Report* (1985), the Waitangi Tribunal explained that: “A river may be a taonga as a valuable resource. Its ‘mauri’ or ‘life-force’ is another taonga”.<sup>250</sup> In the *Wānanga Capital Establishment Report* (1999) the Tribunal noted that language and Māori customary knowledge were taonga:

*It is clear that te reo and mātauranga Māori are taonga. It is also clear that these three wānanga are playing an important role in studying, transmitting and preserving these taonga. To meet its Treaty obligation to protect these taonga, the Crown should provide wānanga with adequate support and resources in an appropriate manner.*<sup>251</sup>

In the *Orakei Report* (1987), other examples of intangible taonga were given:

*We emphasise here, as described in our earlier reports, that “taonga” is not limited to property and possessions. Ancient sayings include the haka (posture dance) as a “taonga” presented to visitors. “Taonga” may even include thoughts. We have found that it includes fisheries ... and language.*<sup>252</sup>

On the other hand, in its *Kiwifruit Marketing Report* (1995) the Tribunal expressed the view that while “in pre-contact times the exchange of treasures by iwi and hapū might have been regarded as a taonga”, there was insufficient evidence “to conclude that post-contact trade in the period prior to 1840 was a taonga protected by the Treaty”.<sup>253</sup> The Māori claimants asserted the right to export kiwifruit free of legislative restrictions, claiming that the right is a taonga requiring protection under Article II of the Treaty. The Tribunal’s central finding was that the sovereignty ceded under the Treaty included the right to regulate trade. The rangatiratanga retained was not therefore a separate sovereignty, but rather a right to tribal self-management.<sup>254</sup> In the Tribunal’s view, then, the regulation of trade was a legitimate act of kāwanatanga.

Elsewhere the Waitangi Tribunal has explained the need to view “taonga” in the context of Māori cultural values and especially the complex relationship between Māori peoples and their ancestral lands and waters. In its *Muriwhenua Fishing Claim Report* (1988), the Tribunal stated:

*The fisheries taonga includes connections between the individual and tribe, and fish and fishing grounds in the sense not just of tenure, or “belonging”, but also of personal or tribal identity, blood and genealogy, and of spirit. This means that a “hurt” to the environment or to the fisheries may be felt personally by a Māori person or tribe, and may hurt not only the physical being, but also the prestige, the emotions and the mana. The fisheries taonga, like other taonga, is a manifestation of a complex Māori physico-spiritual conception of life and life’s forces. It contains economic benefits, but it is also a giver of personal identity, a symbol of social stability, and a source of emotional and spiritual strength.*<sup>255</sup>

In the *Ngāwhā Geothermal Resources Report* (1993) that Tribunal considered that in exercising its duty of active protection, the Crown should take advice on the nature of the taonga from those exercising rangatiratanga over it:

*The Crown obligation actively to protect Māori Treaty rights cannot be fulfilled in the absence of a full appreciation of the nature of the taonga including its spiritual and cultural dimensions. This can only be gained from those having rangatiratanga over the taonga.*<sup>256</sup>

In its *Te Whānau o Waipareira Report* (1998), the Tribunal further emphasized the strong spiritual component to the meaning of taonga:

*While the term taonga is not easily defined, a spiritual link with the people and an obligation on them to protect it for future benefit is commonly a critical element, as is conveyed, for example, in the following pepeha: Kia ūhia rā anō te mana, te ihi, te wehi, te tapu a te Atua ki runga, kātahi ka waiho ai ki ngā kaitiaki hei manaaki mā ngā whakatupuranga e tupu ake – he taonga kei reira. A property (material or non-material) becomes a taonga when, with divine blessing, it is entrusted for the benefit of future generations.*<sup>257</sup>

In the *Radio Spectrum Final Report* (1999), the three members of the Tribunal were divided on the issue of the status of the electromagnetic spectrum as a taonga. The majority of the Tribunal (J M Anderson and Professor M P K Sorrenson) accepted “the claimant’s argument that the electromagnetic spectrum, in its natural state, was known to Māori and was a taonga”.<sup>258</sup> The majority found that in earlier times Māori were aware of the existence of various natural phenomena and made use of them – an example given was the use of the light of stars for navigation. They found that Māori had incorporated these phenomena into their philosophical world-view and that accordingly Māori had traditional knowledge of the electromagnetic spectrum which entitled them to Treaty rights, particularly to the development of the taonga through new technology.<sup>259</sup>

The minority of the Tribunal considering the Radio Spectrum claim (Judge P J Savage, the presiding officer) found that the Treaty did not reserve to Māori “taonga katoa” (all treasures), but “rātou taonga katoa” (all *their* treasures).<sup>260</sup> He did not accept that this would include the radio spectrum, electromagnetic spectrum or resources generally.<sup>261</sup> Judge Savage said that if Māori had a right to a fair and equitable share of the radio or electromagnetic spectrum, then they had such a right in respect of all resources, since there was nothing about the spectrum which required it “to be dealt with in a different way from other assets of mankind”.<sup>262</sup>

## Common law parallels - fiduciary duty and developmental rights

### Fiduciary duty

In elaborating the principles of the Treaty, the Courts have drawn an analogy between partnership and a fiduciary relationship. The doctrine of fiduciary duty has been referred to and discussed, but has not yet directly been applied by the Court as a basis of a Crown obligation which is independent of the Treaty. This guide deals with fiduciary duty separately in order to address the content of this obligation and to acknowledge that it may arise independently of the Treaty.

In other areas of law, fiduciary relationships arise where one party to a relationship has a legal power which will affect the interests of the other. In such a relationship, the party exercising the power often has a fiduciary obligation to act in a way which protects the interests of the affected party.<sup>263</sup> This analogy raises the possibility of the emergence of a cause of action for Māori, separate from the Treaty, by which they could assert that their interests have been adversely affected by Crown action in breach of its fiduciary duties. To date, to the extent that the Court has referred to the doctrine as a potential source of Crown obligation, its findings have been based on the interpretation of a legislative reference to the Treaty. In jurisdictions where fiduciary duties have been found to exist between the Crown and indigenous peoples, the form of the fiduciary obligation is *sui generis*, or unique in law.

### The Courts

In the *Lands* case (1987), President Cooke concluded that “the relationship between the Treaty partners creates responsibilities analogous to fiduciary duties”.<sup>264</sup> In a later case, he summarised the unanimous findings of the five judges in the *Lands* case as follows: “The Treaty created an enduring relationship of a fiduciary nature akin to partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards each other”.<sup>265</sup>

In 1993, the Court of Appeal considered Māori customary rights as part of its judgment in the *Sealords* case.<sup>266</sup> The Court referred again to key judicial decisions from other jurisdictions, particularly Canada and Australia, saying that:

*The opinions expressed in this Court in the cases already mentioned as to fiduciary duties and a relationship akin to partnership have now been further strengthened by judgments in the*

*Supreme Court of Canada and the High Court of Australia. In these judgments there have been further affirmations that the continuance after British sovereignty and treaties of unextinguished aboriginal title gives rise to a fiduciary duty and constructive trust on the part of the Crown ... clearly there is now a substantial body of Commonwealth case law pointing to a fiduciary duty. In New Zealand the Treaty of Waitangi is major support for such a duty. The New Zealand judgments are part of widespread international recognition that the rights of indigenous people are entitled to some effective protection and advancement.*<sup>267</sup>

In a case decided later in the same year, the Court of Appeal also considered a claim against the Crown brought by Māori with an interest in the Rangitaiki and Wheao rivers, asserting that in order to protect those interests, the Crown should not allow the corporatisation of hydroelectric dams on those rivers. President Cooke, delivering the judgment of the Court, said: “An extinguishment [of native title] by less than fair conduct or on less than fair terms would be likely to be a breach of the fiduciary duty widely and increasingly recognised as falling on the colonising power”.<sup>268</sup> In this case, the Court admitted the possibility of Māori claims to natural resources alleging a breach of the Crown’s fiduciary duties. The Court commented on potential Māori rights to river water, noting that if the Crown had assumed control of rivers without consent, then a remedy conceivably lay in Court action based on fiduciary duty.<sup>269</sup>

Although the Court gave consideration to this concept, it has not yet been applied in New Zealand. In considering whether it might be applied in the future, President Cooke has indicated that: “In New Zealand we would have to be guided by our conception of the strength of the competing arguments and any others relevant to this country’s circumstances”.<sup>270</sup> President Cooke has also stated that Canadian judgements on fiduciary duty in respect of indigenous peoples will “be found of major guidance when such matters come finally to be decided in New Zealand”,<sup>271</sup> noting that “in interpreting New Zealand Parliamentary and common law it must be right for New Zealand Courts to lean against any inference that in this democracy the rights of the Māori people are less respected than the rights of aboriginal peoples are in North America”.<sup>272</sup>

The possibility of a claim based on common law fiduciary duty is significant because Treaty rights cannot be directly enforced by the Courts unless referred to in legislation, whereas breaches of fiduciary duty can be considered and remedied by a Court as part of its normal functions.

## The Waitangi Tribunal

The Waitangi Tribunal has often referred to the fiduciary obligations of the Crown, which it says “includes the obligation to act in the best interests of Māori”.<sup>273</sup> In the *Te Maunga Railways Land Report* (1994), the Tribunal described the fiduciary duties of the Crown in the following way:

*A fiduciary relationship is founded on trust and confidence in another, when one side is in a position of power or domination or influence over the other. One side is thus in a position of vulnerability and must rely on the integrity and good faith of the other. When the Treaty of Waitangi was signed the Crown undertook to protect and preserve Māori rights in lands and resources in exchange for recognition as the legitimate government of the whole country in which Māori and Pākehā had equal rights and privileges as British subjects. Because the Crown is in the powerful position as the government in this partnership, the Crown has a fiduciary obligation to protect Māori interests.*<sup>274</sup>

In the *Tūrangi Township Report* (1995) the Tribunal considered “whether the fiduciary obligations can be argued as arising from, as being enacted in, or as arising independently of the Treaty of Waitangi”.<sup>275</sup> The Tribunal noted that the Court of Appeal has not yet decided a case based solely on the Crown’s common law fiduciary duties to Māori, that is, reference to fiduciary duty in the Court has so far also involved the interpretation of a legislative reference to the Treaty. After noting the comments made in the Court of Appeal indicating that the Treaty parties had responsibilities “which are said to be analogous to ‘fiduciary duties’ or ‘of a fiduciary nature’,” and that these responsibilities have their source in the Treaty, the Tribunal further commented:

*In deference to the courts, whose function it is to declare the common law, this Tribunal must await an authoritative decision from them on the question. ... (However) [t]here is no suggestion [thus far] that [fiduciary obligations] arise independently of the Treaty or have their source in the common law. We do not, of course, foreclose the possibility that at some future time the New Zealand Court of Appeal may so hold.*<sup>276</sup>

In *Te Maunga Railways Land Report* (1994) the Waitangi Tribunal considered the issue of land taken from Māori under the Public Works Act. It found that the Crown’s fiduciary duties as a Treaty partner required it to protect Māori interests by facilitating the return of the land when it was no longer needed for the purpose for which it was taken:

*The Crown has the discretion to decide on what terms it may be returned when no longer required for any public purpose. We believe that it is inherent in the fiduciary obligation of the Crown under the Treaty of Waitangi that this discretion be used positively, to ensure that Māori are not prevented from having their ancestral land returned to them by the requirement to pay full market value as a condition of return.<sup>277</sup>*

The Tribunal has also said that the Crown’s general fiduciary obligations to Māori required it to take steps to ensure that it did not discriminate between Māori groupings in giving effect to its Treaty obligations:

*It is fundamental that a fiduciary must act fairly as between beneficiaries rather than allowing one of the group to be favoured. Whether or not the duty arises in a particular case, however, must depend on the circumstances. There may well be circumstances in which the Crown has good cause to promote the interests of one particular sector of the Māori community defined, for example, by need, gender, age or tribe, thereby positively discriminating between Māori groupings. However, where the Crown’s purpose is to promote projects for the benefit of Māori generally, clearly it should act impartially and adopt fair procedures to achieve that end.<sup>278</sup>*

### **Developmental rights**

As discussed earlier, the Courts have frequently referred to the Treaty as an evolving instrument, capable of adaptation to modern circumstances. Development rights are relevant to the application of Article II guarantees in a contemporary environment, such as when Māori assert their Treaty rights in respect of resources or property interests which did not exist in 1840, or could not be exploited at that time. The issue concerns the degree to which modern technologies can be used by Māori to give effect to their Article II rights. Clearly the signatories to the Treaty could not have envisaged the vast array of new technologies and property rights which have come into existence since 1840, but it is also apparent that it was the intention of both parties to benefit from their association with one another, and the Treaty clearly anticipated the emergence of new and hybridized cultural practices. The Courts and the Tribunal have endorsed the approach taken by their counterparts in other jurisdictions by emphasizing that the Treaty partnership survives societal change, and that Māori are entitled, within certain limits, to develop traditional practices and exploit their resources by acquiring and adapting new skills and technology in the same way as other communities.

## The Courts

The Court of Appeal noted in the *Whales* case (1995) that: “A right of development of indigenous rights is indeed coming to be recognised in international jurisprudence, but any such right is not necessarily exclusive of other persons or other interests”.<sup>279</sup> In discussing the Crown’s obligation to actively protect Māori property interests, the Courts have sometimes determined that the property right asserted by Māori applicants was too far beyond the original conceptions of the signatories to the Treaty, or too far beyond the scope of customary rights, to fall within those interests requiring the Crown’s protection. In effect, the Courts have been engaged in the task of identifying the limits to the range of Māori property rights which could attract the Crown’s obligation of active protection.

In the *Whales* case (1995) the Court of Appeal discussed the status of a whale-watching enterprise as a taonga requiring the Crown’s active protection,<sup>280</sup> and determined that:

*However liberally Māori customary title and Treaty rights may be construed, tourism and whale watching are remote from anything in fact contemplated by the original parties to the Treaty. Ngāi Tahu’s claim to a veto must be rejected.*<sup>281</sup>

In a case concerning Māori interests in hydroelectric dams, the Court of Appeal determined that despite its evolving status, the Treaty could not be interpreted as extending the protection of Māori rights to the generation of electricity. President Cooke, endorsing an earlier decision of the High Court, held that:

*However liberally Māori customary title and Treaty rights might be construed, they were never conceived as including the right to generate electricity by harnessing water power ... The Treaty of Waitangi is to be construed as a living instrument, but even so it could not sensibly be regarded today as meant to safeguard rights to generate electricity.*<sup>282</sup>

## The Waitangi Tribunal

The Waitangi Tribunal has discussed the right to development in a more explicit way. It considers that the right is recognised in domestic and international law,<sup>283</sup> and that the concept that “all peoples” have a right to development “is an emerging concept in international law”,<sup>284</sup> requiring that:

*States should adopt special measures in favour of groups in order to create conditions favourable for their development. If a*

*group claims that the realisation of its right to development requires a certain type of autonomy, such a claim should be considered legitimate.*<sup>285</sup>

The Tribunal has considered the right to development in the broader context of the Treaty principle of mutual benefit, emphasizing that both parties to the Treaty intended to benefit from the agreement they had made. In the Tribunal's view, the Treaty principle of mutual benefit,<sup>286</sup> encompasses the right of Māori to continue to acquire and adapt new technologies brought by European settlers, consistent with the right to development. In its *Muriwhenua Fishing Claim Report* (1988) the Tribunal discussed the extent of Māori rights to fisheries, including those fisheries exploitable by the use of new technology, and provided its views on the nature of the Crown's obligation to protect Māori interests in those resources. The report contains key Tribunal findings on the issue of developmental rights:

*Both parties expected to gain from the Treaty, the Māori from new technologies and markets, non-Māori from the acquisition of settlement rights and both from the cession of sovereignty to a supervisory State power. For Māori, access to new markets and technologies necessarily assumes a sharing with the settlers who provide them, and for non-Māori, a sharing in resources requires that Māori development be not constrained but perhaps even assisted where it can be. But neither partner in our view can demand their own benefits if there is not also an adherence to reasonable State objectives of common benefit. It ought not to be forgotten that there were pledges on both sides.*<sup>287</sup>

In the same report, the Tribunal made the general point that: "The Treaty offered a better life for both parties. A rule that limits Māori to their old skills forecloses upon their future. That is inconsistent with the Treaty".<sup>288</sup> It further elaborated the following points:

- (a) *The Treaty does not prohibit or limit any specific manner, method or purpose of taking fish, or prevent the tribes from utilising improvements in techniques, methods or gear.*
- (b) *Access to new technology and markets was part of the quid pro quo for settlement. The evidence is compelling that Māori avidly sought Western technology well before 1840*  
...
- (c) *An opinion that Māori fishing rights must be limited to the use of the canoes and fibres of yesteryear ignores the fact that the Treaty was also a bargain. It leads to the rejoinder that if settlement was agreed to on the basis of*

*what was known, non-Māori also must be limited to their capabilities at 1840.*<sup>289</sup>

In the *Ngāi Tahu Sea Fisheries Report* (1992) the Tribunal noted that both the Crown and the claimants accepted that a right to development is inherent in the Treaty.<sup>290</sup> However the parties disagreed on aspects of the content and scope of such a right. In the context of the sea fishing rights of Ngāi Tahu, the Tribunal found that traditional Māori fishing rights include a right to develop the industry including the right to employ new techniques, knowledge and equipment for commercial purposes, and Ngāi Tahu were entitled to a reasonable share of the new fisheries made accessible by the evolution of fishing technology.<sup>291</sup> The Tribunal further noted that:

*The Treaty guarantee extended not merely to those sea fisheries over which Māori exercised rangatiratanga in 1840 but to such extended fisheries in which they subsequently became entitled to an exclusive share under the right to development inherent in the Treaty.*<sup>292</sup>

In its *Radio Spectrum Final Report* (1999), the Tribunal considered developmental rights in the course of determining the extent of Māori rights to the electromagnetic spectrum, and to the newly-created property rights in spectrum. The majority of the Tribunal found that the electromagnetic spectrum in its natural state was known to Māori and was a taonga, and held that in creating new property rights in the spectrum, the Crown was obliged to consult and negotiate with Māori a fair and equitable share of the property.<sup>293</sup> It determined that the following principles were relevant:

*Mutual Benefit: Māori expected, and the Crown was obliged to ensure, that they and the colonists would gain mutual benefits from colonisation and contact with the rest of the world, including the benefits of new technologies.*

*Development: Māori expected and were entitled to develop their properties and themselves and to have a fair and equitable share in Crown-created property rights, including those made available by scientific and technical developments. The Treaty – or rather the two Treaties that the parties agreed to – needed to evolve to meet new and changing circumstances.*<sup>294</sup>

The dissenting view of Judge Savage in the *Radio Spectrum Final Report* (1999) should be noted. The judge held that the right to development was not a generalised concept, but could only be applied to an existing right. He did not consider that a right to develop resources not known about or used in a traditional manner at 1840 was inherent in the Treaty principle of partnership.<sup>295</sup>

In the *Muriwhenua Fishing Claim Report* (1988), the Tribunal introduces the related concept of the “principle of options”, by which Māori individuals retained the ability to determine the course of their cultural and economic development:

*Neither text prevents individual Māori from pursuing a direction of personal choice. The Treaty provided an effective option to Māori to develop along customary lines and from a traditional base, or to assimilate into a new way. Inferentially it offered a third alternative, to walk in two worlds. That same option is open to all people, is currently much in vogue and may represent the ultimate in partnership. But these are options, that is to say, it was not intended that the partner’s choices could be forced.<sup>296</sup>*

In the *Ngāi Tahu Sea Fisheries Report* (1992), the Tribunal elaborated this idea:

*In essence [the principle of options] is concerned with the choice open to Māori under the Treaty. Article 2 contemplates the protection of tribal authority and self-management of tribal resources according to Māori culture and customs. Article 3 in turn conferred on individual Māori the rights and privileges of British subjects. The Treaty envisages that Māori should be free to pursue either or indeed both options in appropriate circumstances. The Crown is obliged to offer reasonable protection to Māori in the exercise of the rights so guaranteed them.<sup>297</sup>*