

**Toi te Kupu, Toi te Mana**

JUSTICE JOE WILLIAMS\*

Kātahi anō nei ka pau te marama o Māhuru. I ēnei wā ka kiia ko Mahuru Māori taua marama. Koia tena te marama me whetawheta te iwi kia kōrerotia ai, kia whakanuia ai, kia whakaorangia ai te reo Māori hei reo tuturu mo te motu. Ka mutu ko te wiki o te reo Māori ka tīmata i te tekau ma whā o ngā rā o Māhuru, oti atu i te rua tekau ma tahi. Nō reira he wā tōtika pea tēnei ki te anga atu o tātou whakaaro ki te ora, te mate ranei o te reo i roto i ngā kōti o Aotearoa.

Me tīmata pea ki tētehi poto hitoria mo te reo i roto i nga kōti.

I te rau tau tekau ma iwa, i te wā i whakatūngia ai te Resident Magistrate’s Court e tā Hōri Kerei, me te Kōti Whenua Māori i muri mai, ko te reo Māori tonu te reo o ngā kōti. Ahakoa he Pākeha te kaiwhakawā i ngā Kōti o Kerei, ka noho ia i te taha o ētehi rangatira Māori tokorua. Katoa o rātou, Māori mai, Pākeha mai, i mātatau ki te kōrero Māori. Ka pērā anō te kōrero mo te Kōti Whenua Māori. Me pehea rā e kore ai? Ko te reo Māori te reo matua o te motu i ēra wā. Hēoi anō, ka mīmiti te tai o te reo i te rau tau rua tekau. Nā wai, nā wai ka roroku te reo Māori, ka hua mai ko te reo Pākeha i ngā pekanga katoa o te Kāwanatanga, tae atu ki ōna Kōti katoa.

Taka mai ki te wā o te tekau tau waru tekau, ka māmā noa iho te whakatau a Bisson J i te kēhi o *Mihaka v Police*, ko te reo Pākeha te reo o ngā Kōti o Ingarangi me Aotearoa hoki mai anō i te tau 1362 arā, no te wā o te Kīngitanga o Eruera III!<sup>1</sup> Nā reira ko te ia o ēnei momo whakataunga, he tohu atu ki te iwi Māori tae atu ki ngā iwi katoa o te motu, ko ēnei Kōti, he Kōti Pākeha – tōna kaiwhakawā, āna ture, āna ritenga, me tōna reo. Ina, ka whakarāwahotia ana te reo Māori, he tohu tērā no te kōti ki te Māori, kāhore he mana o tōna ahurea katoa.

I te wā o *Mihaka*, i tohungia ai te mana-a-ture o te reo Māori i section 77A o Te Ture Take Māori 1953. He penei tona tohu:

Official recognition is hereby given to the Māori language of New Zealand in its various dialects and idioms as the ancestral tongue of that portion of the population of New Zealand of Māori descent.

Hēoi anō, ahakoa te whānui, te teitei me te hōhonu o ēra kupu, kāhore kē he kiko o roto. Kāhore he aha kei roto i ngā kupu hei whakatinana i te mana o te reo Māori ki roto i ngā tari kāwanatanga, ki roto rānei i nga hāpori katoa o te motu tonu.

\* The Hon Sir Joseph Williams KNZM, Justice of the Supreme Court of New Zealand.

1 *Mihaka v Police* [1980] 1 NZLR 453 (HC), upheld by the Court of Appeal in *Mihaka v Police* [1980] 1 NZLR 460 (CA) (Woodhouse, Cooke and Richardson JJ).

Ka whakahōungia te ture mo te reo i te tau 1987. I roto i te Māori Language Act o tāua tau ka whainiho ngā kupu o te tekijhana tawhito. He mea tiki atu te taurira hei whaingā ma te Pāremata o Aotearoa, i te ture whakapumau i te reo taketake o Wēra.<sup>2</sup> Ko section 3 o te Ture hou o Aotearoa, ka pēnei:

The Māori language is hereby declared to be an official language of New Zealand.

Mo te taha ki nga kōti, ka whai ringaringa, ka whai waewae tērā whakaputanga i roto i ngā kupu o section 4:

- (1) In any legal proceedings, the following persons may speak Māori, whether or not they are able to understand or communicate in English or any other language:
  - (a) any member of the court, tribunal, or other body before which the proceedings are being conducted:
  - (b) any party or witness:
  - (c) any counsel:
  - (d) any other person with leave of the presiding officer.
- (2) The right conferred by subsection (1) to speak Māori does not—
  - (a) entitle any person referred to in that subsection to insist on being addressed or answered in Māori; or
  - (b) entitle any such person other than the presiding officer to require that the proceedings or any part of them be recorded in Māori.
- (3) Where any person intends to speak Māori in any legal proceedings, the presiding officer shall ensure that a competent interpreter is available.
- (4) Where, in any proceedings, any question arises as to the accuracy of any interpreting from Māori into English or from English into Māori, the question shall be determined by the presiding officer in such manner as the presiding officer thinks fit.
- (5) Rules of court or other appropriate rules of procedure may be made requiring any person intending to speak Māori in any legal proceedings to give reasonable notice of that intention, and generally regulating the procedure to be followed where Māori is, or is to be, spoken in such proceedings.

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2 Welsh Language Act 1967 (UK), s 1(1).

- (6) Any such rules of court or other appropriate rules of procedure may make failure to give the required notice a relevant consideration in relation to an award of costs, but no person shall be denied the right to speak Māori in any legal proceedings because of any such failure.

Nonakua tata nei, ka whakahoungia ano te ture reo Māori ki te Ture Mo Te Reo Māori 2016. He ture reo-rua tēnei ture. Ko te ture tuatahi tenei e mea ana, e ōrite te mana o te whakapuakinga Pakeha me te whakapuakinga Māori. Ka mutu, ahakoa ōrite, pēna e taupatupatu ana tētehi taha i tētehi, ka rangatira ko te taha Māori.<sup>3</sup> Engari, ahakoa te hiamō o te iwi Māori ki tēnā āhuatanga, kaore i paku rerekē te ritenga mo te kōrero Māori i roto i nga kōti, E rite ana te Ture o 2016 mo nga kōti ki tera o te Ture o 1987.<sup>4</sup>

Mehemea ka titiro atu te tangata ki nga herenga o te ture mo te reo Māori ki nga kōti, ka whakaaro iho ia, kāhore ke he mana tūturuo te reo kei reira. Ae rā, kua poroa a *Mihaka* e ēnei tekiana hou: pēnā e hiahia ana te tangata ki te kōrero Māori i roto i te kōti, ka ahei ia, ahakoa tana mātau ki te kōrero Pākeha; engari me āta ohititia te kōti, kei riria. Heoi, e kore e taea te karo, ki to te ture whakaaro, ka noho tauwi tonu te reo ki reira. E hara rawa te huarahi o section 3 me section 4 i te huarahi e rangona nuitia ai te reo ki nga kōti.

Engari kua rā tatou e tiwhatiwha, e tuohu ranei. Ahakoa kaore he hua o te huarahi māro o te ture i tēnei wā nei, he ara ke ano mā te ngākau tangata. Ko te wheako pea ia ka kī mai he māmā kē tēnā ara ki te whakawhere i nga tāngata o te kōti kia kōrero Māori. E whakapae ana te kaituhi, no te waru tau ki muri nei i hikoī poka noa te reo ki roto i te kōti, a ka noho tana tou Māori ki raro. Kia whakamāorititia ake.

Kia mōhio mai, kāore au e kōrero ana mo te Kōti Whenua Māori, mo Taraipiunara o Waitangi rānei. Kua roa ke te reo Māori e rangona ana i roto i ēnā momo kōti. E kōrero kē ana au mo te Kōti a Rohe, te Kōti Whānau, me te Kōti Taiohi. Kei reira te hāpori e tūtaki atu ki te ture – kanohi ki te kanohi. Ahakoa te tokomaha o ngā Māori e toia ana ki mua ki ēnei Kōti, ko te reo Māori, he reo tauhōu ki reira.

I te tau 2012, ka toko ake te whakaaro i roto i ngā hinengaro o tētehi kaiwhakawā Pākeha o Te Kōti a Rohe kia ruia ētehi kupu Māori ruarua noa iho nei ki roto ki o rātou whare kōti.<sup>5</sup> Ka tino tautoko te komiti Māori o te Kōti i tēnā whakaaro rangatira, a ka āta tonu atu ki te Kaiwhakawā Matua o tēnā kōti kia manaaki mai ia i te kaupapa.<sup>6</sup> Ka tere whakaae mai ia, a ka whakatakotonga tona whakahou ki āna āpiha katoa, atu i te tīmatanga o te Wiki o te Reo Māori, ka āta huakina ngā kōti ki te reo Māori me te reo Pākeha, a, ka pērā anō hoki ōna katinga. Ka whakaaro nga kaiwhakawā

3 Section 12(2).

4 Section 7.

5 Kaiwhakawā Ema Aitken.

6 He kōmiti kaiwhakawā Māori e kīa nei ko te Kaupapa Maori Advisory Group. Ko te Kaiwhakawā Matua i taua wa ko Kaiwhakawā (Kaiwhakawā Mātāmua ināianei) Jan-Marie Doogue.

Māori, he tohu nui whakaharahara tenei ki nga Māori kei mua i te Kōti, ka mutu ka whakaaro pea te Tumuaki o te Kōti, e hara i te ritenga taumaha, a he aha me kore ai? Me te mea hoki, e hara i te mea he tauhou te Kōti a Rohe ki tenei ritenga. Kua roa ke e mahia ana ki nga Kōti Māori motuhake o roto i te Kōti a Rohe, pēnei me te Kōti Rangatahi, te Kōti Matariki hoki. Ko te mate tonu, he ruarua noa iho ēnā kōti. Heoi anō, ka whakawhānuitia ki Te Kōti a Rohe nui tonu, Te Kōti Whanau, me te Kōti Taiohi. Nā wai ā, ka whai atu ngā kōti matāmua, arā te Kōti Matua, Te Kōti Pīra, me te Kōti Mananui. Ki taku mōhio, ka pērā ano te Kōti Taiao me te Kōti Take Mahi.

He pēnei te momo whakawāhinga i nga ata i roto i Te Kōti Mananui e noho nei au:

Kia rite mō ngā kaiwhakawā o te Kuini, e tū koa

Silence for their Honours the Queen's Judges, please stand.

Nau mai ki te Kōti Mananui

Welcome to the Supreme Court.

Hei te tōnga o ia rā ka pēnei te kaikaranga o te Kōti:

E tū koa.

Please stand.

Kua whakawātea ngā kaiwhakawā.

The Court is now adjourned.

Ka whai katoa ērā atu kōti i te ahunga o ēnei tauira ahakoa he paku rerenga kētanga kei tēnā kōti, he paku whakanikoniko kētanga kei tēnā kōti.

I tāua wā tonu ka amuamu ētehi; kaiwhakawā mai, rōia mai, āpiha kōti ranei mai. E hara i te mea he amuamu paoho nuitia ki te ao, engari he amuamu kokuhu noa iho nei. Ko te whakaaro ia, he tikanga kiko kore tēnei tikanga hōu. Arā he tohu parau noa iho i te ngākaupai o te kōti i te wā tonu ia e kōnatunatuhia ana ngā Māori ka tōia ki mua ki a ia. Kia kite iho te tangata i te tokomaha o ngāi Māori ka hāmenehia ki Te Kōti a Rohe, Kōti Taiohi rānei; i te takitini anō hoki o ngā mokopuna Māori ka kumea e Ōranga Tamariki ki te Kōti Whānau, ka whakaae pea ki tēna whakaaro hokirua. He Māori ano i kawa ai ki tēnei ritenga hōu. Ka kiia te kōrero he mirimiringa noa pea i te kakī o te Māori i mua i te meke i tana ihu! Me pēhea e karo ai i tēnā whakaaro?

Hēoi anō ma te wā tonu ka kitea te tika te hē rānei o Ngāi Te Whakahē. Ki a au nei na, he iti matakahi, tōtara wāhia, pēnā ka āta kōkūhuria te matakahi. Ahakoa he iti te matakahi o te reo Māori, kua oti te

kokuhu atu ki te rākau pūkākā o te Kōti. E hara i te mea ka huri koaro te ao i tenei ritenga hou. E hara hoki i te mea ka riro ngā Kōti ki te reo Māori i roto i te rā kotahi. Engari me pēnei pea te whakaaro: ko te whakawhitinga mai a Kupe i te Moana Nui a Kiwa, i whakaterengia ki te kume tuatahi i te kakau o tana hoe.

Kia hoki anō ki taku pakiwaitara e whakamaramatia ai te ahunga o oku whakaaro.

Ka roa, ka roa, ka noho pērā te whakawāhinga me te whakakatinga i ngā kōti o te motu. Engari i tētehi rangi, ka toko ake te whakaaro i roto i te Tari o ngā Rōia o te Karauna ki Pōneke me whai pea rātou i te tauira o ngā kōti. Heoi ano, he tari kāwanatanga hoki, he kawenga ōna i raro i te Tiriti o Waitangi. Ka wānanga ona āpiha, ka awhinatia rātou e tētehi mātanga reo, ka tuhia ētehi kupu ruarua, a ka whakaharatau kia tika te whakahua. Kātahi anō, ka haria ki nga kōti kia rangona ai te reo Māori e puta mai ana i ngā māngai o ngā rōia mo te Kāwanatanga. He pēnei te whakatakoto:

Tēnā koutou e ngā kaiwhakawā, ko mea taku ingoa, e tu ana ahau mo te Karauna.

May it please Your Honours, my name is so and so and I appear for the Crown.

Kahore i tino roa, ka whai atu ētehi o nga tari kaiwhiu, arā, ko nga tari kawē i nga kēhi whakawhiu tangata i roto i nga rohe katoa o te motu mo te Karauna. He pākihi tūmataiti ēnei tari kei tena tāone, kei tēnā taone, engari nā te mea he kanohi ōna roia ma te Karauna i roto i nga kōti taihara, ka whakaaro iho nga rangatira o aua tari, e tika ana me whai i te tauira o te Tari o nga Roia mo te Karauna. Kaua ko te katoa o aua tari, engari ko ētehi tonu.

Kātahi ka amuamu a Ngai Te Amuamu mā. Ka kī mai, he whakamānīoro tēnei ritenga hou i nga Māori ka whakawhiua e te kōti, i runga ano i te tono o aua roia Karauna tonu. He aha te pai, hei ta ratou, o te kōrerotia i te reo e te kaipatu tonu i te Māori nōna te reo?

Ahakoia nga komekome a ētehi, kātahi tēnei waka hou ka tere i te au o te wā. Nā wai, nā wai ka whakamā pea ētehi o ngā kaiwhakawā i te nui o te reo Māori ka kōrerohia i roto i ō rātou Kōti, me te ngū o te pae whakawā. Ka puta te hiahia me āta whakautu i te mihi Māori o ngā rōia o te Karauna ki tētehi paku mihi Māori ano. Me kōrero au mo ngā kōti mātāmua, no te mea, ko au tētehi i reira. Ka huri ngā kaiwhakawā, ka wānanga, ka whakapā atu ki ētehi mātanga reo, kātahi ka puta i ngā waha o ētehi o ngā kaiwhakawā he paku mihi e āhua pēnei nā:

Tēnā koe Ms Mea, nau mai ki te Kōti Matua/Pira/Mananui.

Kāhore au e mea ana ko te katoa o ngā kaiwhakawā o ngā Kōti mātamua i pēra. Ko etehi e horokukū ana, ko etehi atu ano, ka tino kore nei e hiahia kia puta tetehi kupu Māori kotahi i o ratou waha. Engari he nui tonu ano nga mea i āta tautoko mai i te kaupapa. Ki tōku rongu, ka pera ano te Kōti a Rohe me ōna pekanga.

Nā wai, ka pau te ono marama, te kōtahi tau pea rānei i muri mai i tērā, ka tere ano tēnei waka. Ka tupu ake pea te whakamā i etehi o ngā rōia mo ngā kaikaro i te taha taihara o te ture, o ngā rōia Māori e ngana ana ki te ako ki te kōrero hoki i te reo, o ngā rōia Pākeha ano hoki e tū ana mo te kiritaki Māori. Ko te ngako o te whakamā, he wehi kei Māori ake te Karauna i nga roia tonu mo nga Māori! I tua atu o tērā, he nui ano nga roia i ū ki te whakaaro, ko te reo Māori te reo tuatahi o enei motu, no reira e tika ana kia kōrerotia nuitia i roto i nga kōti, ahakoa mihi noa iho nei, kupu ruarua noa iho nei. E ai ki a ratou, ko te mea nui, kia rangona hei reo whai mana – nā konā ka mohio ai te whakaminenga i roto i taua kōti, no Aotearoa motuhake te kōti nei, e hara i a Ahitereiria, i a Ingarangi, i a whenua kē rānei.

Ka ngakau hihiko etehi o mātou i Pōneke kia whangaia tēnei kākano kia tupu tōtika. Katahi mātou ka whakahaere i tētehi wānanga mo aua rōia rā, kia pai ai tō rātou whakatakoto i te mihi Māori ki te Kōti. Ko te nuinga o te fīma kaiako tokoono peange, he punua roia ki roto o Pōneke. Ko etehi o rātou he Māori, ko etehi he Pākeha, engari ko te katoa, he tāngata whakapono ki te reo. Ka toru ngā pō, kotahi haora me te hāwhe i a pō, ka oti ai te wānanga. Takiwā i te waru tekau rōia i tae mai ki ngā karāehe i a pō. Kua tāpirihia e au ki tēnei tuinga, nga raina i hoatu ai ki a rātou mo te tu ki mua i te kōti, hei whakamārama noa ma te kaupānui. Nā taku kitenga i te tokomaha o nga akonga, rangatahi mai, kaumātua mai, me te ngākaunui ki te kaupapa, ka mōhio ai au he hua pea kei roto i tēnei rāpeti hōu i tukua e Te Kōti a Rohe kia oma i te tau 2012.

Kia huri pea inaianei ki te tau 2018 i te wā i kitea ariroa nei te pitomata o te hua. I roto au i te Kōti Pīra o Aotearoa i tērā wā. Tērā tētehi ata, i te tekau o nga haora, te wā timata ai nga kēhi. Ka tatari atu mātou ko aku hoawhakawā tokorua ki waho o te Kōti nama rua. E tāria ana te kaikaranga o te Kōti kia rere tōna reo wāwāhi i te kēhi o te rā, e hou atu ai matou ki roto mā te tomonga mo nga kaiwhakawā. Ehara i te mea, he kēhi kaupapa Māori, hēoi he pīra taihara māori noa iho nei, ka kitea nuitia ia rā i roto i tēnā Kōti. Kua wareware i a au te ingoa o te kēhi, na wai rānei i toa. Heoi, e hara ēnā mekameka i te aronga o taku kōrero.

Kahore i roa, ka oro mai te reo o te kaikaranga; “*kia rite mō ngā Kaiwhakawā o Te Kūini e tū koa!*” Ka tomo atu mātou. Ko au te mātamuri o Te Kōti i tāua wā, te whakamutunga o nga kaiwhakawā kia tomo atu. Ko te kaiwhakawā mātamua te tumuaki o tō mātou pae.

Nā wai ā, kua noho matou, ka takitūtū mai ngā rōia ki te whakapuaki tēnā i tōna ingoa me te ingoa o tōna kiritaki, tēna i tōna ingoa me te ingoa o tōna kiritaki. Ka rere te reo o te roia mo te kaupāra: *Tēnā koutou e nga*

*Kaiwhakawā, ko mea taku ingoa, e tū ana au mo te kaipira.* E rua nga kaipira i taua kēhi ki tōku maumahara, a, ka tu te roia tuarua ki te mihi, ko te reo Māori tonu te reo tuatahi i puta i a ia. No muri mai, ka tū te roia mo te Karauna, ka pērā ano. I ia mihinga ki te kōti, ka whakautua te mihi e to matou Tumuaki – ko te reo Māori tonu te reo tuatahi i puta i a ia.

E te kaipānui i ēnei whakaaro ruarua ōku, kia whakāhuatia mai i roto i to hinengaro kei te noho koe i roto i Kōti Nama 2 i taua ata rā. Tokowhitu nga tangata i reira. Tokotoru he kaiwhakawā, tokotoru he roia, kotahi te kairēhita o te Kōti nāna te reo karanga. Mo etehi rima meneti pea i muri mai o to mātou tomonga, ka rangatira ko te reo Māori. Engari kia mōhio mai, ko au anahe te Māori i roto i te rūma. Waihoki, ko au anahe te mea i reira i mātau ki te reo, engari kahore tetehi kupu Māori kotahi i taka i aku ngutu Māori! Katahi ka taka te kapa ki au. Ko Aotearoa tēnei e tupu nei i mua i oku kanohi.

Nō reira kāhore au e kī ana na ēnei ritenga iti noa iho nei e kitea ana i nga kōti katoa o te motu, kua huri te ao, kua whakamāorititia katotia rānei ngā Kōti o Aotearoa. Kātahi te whakaaro heahea ko tēnā. Engari, e tino kore au e whakaae ki te whakapae he tohu parau noa iho ēnei ritenga i te ngākaupai o te Kōti. Āe, he maunga tūpoupou e pikitia ai e ngā kōti kia mutu te whakarau kino i te Māori, kia mutu rānei te kāhaki i ngā mokopuna Māori e Ōranga Tamariki. Hēoi anō, he pērā rawa te maunga kei mua i ngā kōti kia kehokeho ai tōna mārāma ki ngā tikanga Māori me te ahurea Māori. Kāhore aku pōhehetanga, mā te paku mihimihi noa iho i roto i te Kōti, kua ū te waka o te ture ki uta. Āe, he kiko o roto i te whakaaro ko te rere o te reo Māori i roto i ngā Kōti Pākeha nei, he pani mo te ngākau taimaha o te Kōti i runga i tōna mārāma i te kaha roa o tōna tūkinotanga i te Māori me āna tikanga. Engari, arā kē atu ano ngā hua o tēnei ritenga hōu.

Tuatahi, mā roto i te paku mihimihi i roto i te reo tētehi ki tētehi i roto i ngā hātepe o te ture, ka āta whakatūpatotia te kaimihi, rōia mai, kaiwhakawā mai. Ki te kōrero Māori te tangata, ahakoa mihi noa iho nei, kupu ruarua noa iho nei, he uaua rawa ki te whakatau i muri mai, kāhore he take o te tikanga Māori, o te ahurea Māori, ka mutu o te ao Māori. Ki te mihi te tangata i roto reo Māori, ka whakaatu atu ia ki ngai taringa whakarongo i tōna whakapono ki te mana o te ao o tāua reo. Ahakoa kupu ruarua, hauā rānei te reo, tino kore te kaiwhakawā kōrero Māori e tuhi i te whakataunga i *Mihaka*. He mea nui tēnā.

Tuarua, ahakoa he aha te reo, he matapihi tēnā ki te wairua tūturu o tōna iwi. Hēoi anō, ko te reo Māori te waka kua utaina ki te whakaaro Māori, ki te ahurea Māori hoki. Īna ka hoea mai tēnā waka ki roto i te kōti, kei reira anō te whakaaro Māori me te ao Māori. Ka areare ana ngā taringa rōia me ngā taringa kaiwhakawā ki te ia o te reo Māori, ka puare anō hoki ngā ngākau ki aua whakaaro me taua ahurea. Mā kona pea ka nanao atu te kōti i te pitomata o te tika i roto i ngā hātepe o te ture. He tika no Aotearoa. Hei reira pea ka kitea te pono, ka rangona rānei te aroha.

Tuatoru, he tūtohu nui te rere o te reo Māori ki roto i ngā kōti o Aotearoa. E tohu atu ana i te Aotearoatanga o ngā kōti. Kua roa te whare pāremata me ngā tari kāwanatanga e pēnā ana. Kua roa ano hoki te hāpori e pēnā ana i ōna whakaminenga nui, i āna whakahaerenga nui hoki. E kī ana ki a tātou o te whenua nei, ōtira ki te ao, ko Aotearoa ahurei kāmehameha tēnei. Kua takaroa ke nga kōti, engari kei te whai atu ināianei.

Ko te kōrero o kui mā, a koro mā e pēnei ana: toi te kupu, toi te mana. He nui ōna whakamāoritanga, engari mo tēnei kaupapa, ko tōna tikanga e mea ana mehemea ka ora te reo, ka mau tonu te mana o te tangata nōna te reo. Ka rangona te reo Māori i roto i ngā Kōti, ka whai tūranga te mana Māori ki reira. Engari ehara tēnā te ara ahu kōtahi anahe. Ka whai mana tonu nga kōti mehemea ka toi i a ia te kupu Māori i āna ritenga katoa.

## INTRODUCTIONS IN COURT

### **One judge, one counsel, one client:**

Tēnā koe e te kaiwhakawā.

Ko [name] taku ingoa.

E tū ana ahau mo te [Kaikaro/Kaitono/Karauna/Kaipīra/Kaiurupare] i tēnei wā.

### **Three or more judges, two counsel, more than one client:**

Tēnā koutou e ngā kaiwhakawā.

Ko [name], ko [name] ō māua ingoa.

E tū atu nei mo ngā [Kaikaro/Kaitono/Karauna/Kaipīra/Kaiurupare].

**Kaikaro** – defendant

**Kaitono** – applicant

**Karauna** – Crown

**Kaipīra** – appellant

**Kaiurupare** – respondent



The month of September has recently ended. These days, that month is called “Māori September” (although the alliteration works better in Māori). This is the month when people make extra efforts to speak, celebrate and revive the Māori language as a language of ordinary discourse in New Zealand. So it is that the official Māori Language Week begins on the 14th of September and ends on the 21st. It is therefore a good time to turn our thoughts to the survival or otherwise of the Māori language in New Zealand’s courts.

It is perhaps useful to start with a brief history of the Māori language in our courts.

In the 19th century, when Sir George Grey’s Resident Magistrates Court was established, and the Native Land Court shortly after, Māori was the ordinary language of those Courts. Although in Grey’s courts, the Magistrate was invariably Pākehā, he (it always was a he) always sat with two local chiefs (called “Assessors”). All of them, both Māori and Pākehā, were proficient in Māori. That was also the case with the Native Land Court. How could it not be? Māori was the primary language of communication in the country at the time. But it came to pass that the tide of the Māori language ebbed in the 20th century. And in time, the use of Māori waned in the branches of government, including the courts, and English became their primary language of communication.

So by the 1980s, it was seen as relatively uncontroversial for Bisson J in *Mihaka v Police* to find that English had been the language of the courts both in England and New Zealand since 1362; that is, from the times of King Edward III!<sup>1</sup> The effect of judgments like this was to signal both to Māori and to other New Zealanders that the courts of New Zealand are Pākehā courts — their judges, their laws, their processes and their language. The Māori language was rendered foreign, and in rendering it so, the law signalled that Māori culture and values had no status.

At the time of the *Mihaka* judgment, s 77A of the Māori Affairs Act 1953 set out the legal status of the Māori language. It provided as follows:

Official recognition is hereby given to the Māori language of New Zealand in its various dialects and idioms as the ancestral tongue of that portion of the population of New Zealand of Māori descent.

The words looked impressive, but of course they meant nothing. There was nothing in the provision to back up this statement of official recognition, whether within the public sector or in the wider community.

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1 *Mihaka v Police* [1980] 1 NZLR 453 (HC), upheld by the Court of Appeal in *Mihaka v Police* [1980] 1 NZLR 460 (CA) (Woodhouse, Cooke and Richardson JJ).

The law in relation to the Māori language was reformed in 1987. The Māori Language Act of that year added teeth to the words of s 77A. The example followed by the New Zealand legislature was the Act giving official recognition to the indigenous language of Wales.<sup>2</sup> Section 3 of the new New Zealand Act provided as follows:

The Māori language is hereby declared to be an official language of New Zealand.

Insofar as the courts are concerned, the effect of that declaration is to be found in the infrastructure provided by s 4:

- (1) In any legal proceedings, the following persons may speak Māori, whether or not they are able to understand or communicate in English or any other language:
  - (a) any member of the court, tribunal, or other body before which the proceedings are being conducted:
  - (b) any party or witness:
  - (c) any counsel:
  - (d) any other person with leave of the presiding officer.
- (2) The right conferred by subsection (1) to speak Māori does not—
  - (a) entitle any person referred to in that subsection to insist on being addressed or answered in Māori; or
  - (b) entitle any such person other than the presiding officer to require that the proceedings or any part of them be recorded in Māori.
- (3) Where any person intends to speak Māori in any legal proceedings, the presiding officer shall ensure that a competent interpreter is available.
- (4) Where, in any proceedings, any question arises as to the accuracy of any interpreting from Māori into English or from English into Māori, the question shall be determined by the presiding officer in such manner as the presiding officer thinks fit.
- (5) Rules of court or other appropriate rules of procedure may be made requiring any person intending to speak Māori in any legal proceedings to give reasonable notice of that intention, and generally regulating the procedure to be followed where Māori is, or is to be, spoken in such proceedings.

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2 Welsh Language Act 1967 (UK), s 1(1).

- (6) Any such rules of court or other appropriate rules of procedure may make failure to give the required notice a relevant consideration in relation to an award of costs, but no person shall be denied the right to speak Māori in any legal proceedings because of any such failure.

The law in relation to te reo Māori was then reformed again in the Māori Language Act 2016. This is a bilingual Act. In fact, it is the first Act to provide that the English and Māori versions are to be treated as of equal status. Interestingly, however, despite formal equality, the Act provides that in the event of disagreement between the two versions, the Māori version is to prevail.<sup>3</sup> While Māori were no doubt excited about this aspect of the Act, no substantive change was made to the right to speak Māori in the courts. The section providing that right in the 2016 Act<sup>4</sup> is identical in material respects to s 4 of the 1987 Act.

If one considers the legal obligations imposed on the courts by these provisions, one would be forgiven for thinking that the Māori language has no real status at all. Of course, the section overturned *Mihaka*: a person wishing to speak Māori in the courts can do so even if they are perfectly fluent in English; but the court must be given notice of that intention or the person is likely to draw the ire of the court. So there is no avoiding it; as far as the law is concerned, the Māori language remains effectively a foreign language within the court. Sections 3 and 4 did not provide a pathway by which the Māori language is likely to become a language regularly heard in the courts.

That said, there is, I suggest, no reason to feel despondent. Although the hard path of the law provides little solace, the pathway of the heart perhaps provides more hope. Experience suggests this may be an easier means by which to encourage people within the courts to speak Māori. In fact, eight years ago, the Māori language just walked into the courtroom and sat down on its Māori backside. Let me explain.

First, I should make clear that I am not here referring to the Māori Land Court or the Waitangi Tribunal. Those have long been jurisdictions in which Māori is a primary means of communication. Rather, I am speaking about the experience of the other first instance courts: the District Court, the Family Court and the Youth Court, where most people engage with the law face to face as it were. Although thousands of Māori are regularly brought before these courts, te reo Māori is a foreign language there.

In 2012, a Pākeha District Court Judge came to the view that it might help community perception of their courts if a few Māori words were used in court proceedings.<sup>5</sup> The Court's committee of Māori judges very much supported the proposal and recommended to the Chief District Court

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3 Section 12(2).

4 Section 7.

5 Judge Ema Aitken.

Judge that she embrace it.<sup>6</sup> The Chief Judge agreed and a direction was issued to court officers that from the beginning of Māori Language Week, courts would be opened and closed in both the English and Māori languages. Given the potential advantages of such a change, the Chief Judge was no doubt of the view that there was nothing to lose in doing so. In any event, it is not entirely true that the District Court was a stranger to the use of Māori. Specialist kaupapa Māori courts such as the Kōti Rangatahi and the Kōti Matariki regularly undertook their work in Māori. The problem was that these Courts were few and far between and impacted on relatively few litigants. So the idea was to plant some Māori in the wider District Court, including the Family and Youth Courts. It was not long after that that the Senior Courts followed suit — that is, the High Court, the Court of Appeal and the Supreme Court. As far as I am aware, the Environment and Employment Courts take the same approach now too.

Here is the version of the formal opening of the court that is used in the Supreme Court where I sit:

Kia rite mō ngā kaiwhakawā o te Kuini, e tū koa.

Silence for their Honours the Queen's Judges, please stand.

Nau mai ki te Kōti Mananui.

Welcome to the Supreme Court.

At the end of each day, the Court crier will say:

E tū koa.

Please stand.

Kua whakawātea ngā kaiwhakawā.

The Court is now adjourned.

All other courts follow the general gist of these examples, though there are small differences and embellishments reflecting the particular jurisdiction.

At the time, dissatisfaction was occasionally expressed by a few judges, lawyers and court officials. Not loud or formal complaints broadcast to the world, just quiet grumbles expressed privately. It was felt that this change was an empty gesture. That is, false virtue-signalling by a court when (some said) at the same time, Māori appearing before it were unlikely to receive justice. Given the number of Māori appearing in the criminal courts

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6 The committee was called the Kaupapa Māori Advisory Group. The Chief District Court Judge at the time was Chief Judge (now Justice) Jan-Marie Doogue.

and the number of Māori children the subject of applications by Oranga Tamariki to the Family Court, perhaps that scepticism was justified. Indeed, there were a few Māori who were unimpressed by this change. It was said that the court was simply stroking the necks of Māori defendants before it punched them in the nose! They may have had a point.

Time will tell whether the naysayers were right. But from my perspective, the smallest wedge can split a tōtara if inserted strategically. My sense is *te reo Māori* is such a wedge, and it has been inserted into the smooth grain of the judicial process. This innovation will certainly not turn the world on its head. It is not as if the courts will become Māori-speaking overnight. But it is important to bear in mind that when Kupe crossed the Pacific Ocean, his voyage began with the first pull of his paddle.

In any event, let me return to the story to better explain my thinking.

After a time, court openings and adjournments in Māori became normalised as an expected feature of courtroom procedure in New Zealand. But one day, someone in the Crown Law Office had the idea that counsel appearing should follow the courts' example. After all, Crown Law was a government department with its own Treaty responsibilities as such. Crown counsel ruminated on the idea and sought the help of a Māori language expert. Appropriate lines were composed and practiced. And in time, Crown counsel began to introduce themselves in Māori in court. The introduction goes something like this:

Tēnā koutou e ngā kaiwhakawā, ko mea taku ingoa, e tu ana ahau mo te Karauna.

May it please Your Honours, my name is so and so and I appear for the Crown.

Before long, some of the Crown prosecution firms followed suit; that is, the firms that undertake prosecution work on behalf of the Crown throughout the country. These are private law firms situated in the main cities and provincial towns. But because they are effectively the face of the Crown in the criminal courts, the leaders of those firms, or at least some of them, felt it was appropriate to follow the example of Crown Law in this respect.

This produced more grumbling. Some felt that the use of Māori by government lawyers was an insult to the Māori being prosecuted by those very lawyers. What good can come, some asked, from encouraging government lawyers to employ the language of the defendants they are prosecuting?

But despite the grumbles, this canoe caught the current of the times and took off. After a time, judges came to feel somewhat self-conscious about their own silence when so much Māori was being spoken in their

courts. Some wanted to respond appropriately to the Crown introductions by way of a brief formal Māori greeting in return. I can speak for the developments in the Senior Courts because I was involved in them. The judges ruminated, sought the assistance of Māori speakers and eventually came to respond in something along the following lines:

Tēnā koe Ms Mea, nau mai ki te Kōti Matua/Pīra/Mananui.

Greetings, Ms So And So, welcome to the High Court/Court of Appeal/Supreme Court.

I am certainly not saying that all of the judges of the Senior Courts took this approach. Some were reluctant and others were obdurately opposed to the idea that any Māori lines should fall from their lips. But there were many who very much supported the idea of responding in Māori. As far as I know, the District Court and its various branches had a similar experience.

A few months later, perhaps a year, the canoe gathered even more momentum. This time, it was criminal defence lawyers, Māori lawyers and lawyers generally appearing for Māori clients who expressed a certain self-consciousness about their Anglophone introductions. Many simply did not want to be seen to be out-Māori'd by the Crown in front of their Māori clients. Beyond that, there were many lawyers who believed that since Māori is the indigenous language of the country, it should be used wherever possible in the formalities of the court, even if just a few words or a brief introduction. To them, the most important thing was to signal that te reo Māori has status in our courts. In this way, people attending the courts could see and hear something distinctive about our system in comparison to the courts of Australia, England or other common law countries.

Some of us based in Wellington became enthusiastic about encouraging these developments and expanding them. So, we ran free classes for lawyers generally who might wish to introduce themselves to the court in Māori. Most of the teaching team of about six were young Wellington lawyers. Some were Māori, and some Pākehā. But all believed in the importance of the project. Classes were held over three nights for an hour and a half each night. Around 80 lawyers came to each class. I have attached to this brief article, for the information of readers, the lines that were given to those who attended. On seeing the numbers involved and enthusiasm of the bar, young and old, to learn, I came to the view that there might be some point after all in this waka that was launched by the District Court in 2012.

Let me then turn to 2018, when the potential of these changes became even clearer. I was in the Court of Appeal at the time. One particular morning at 10 o'clock (the time that cases in that Court begin), I was waiting with two colleagues outside the No 2 Courtroom. We were waiting to hear the voice of the Court crier signalling that the day's business would begin, at which point we would enter the Court by the judges' door. There was

nothing particularly special about the case we were to hear. It was not a Māori issues case, just an ordinary run-of-the-mill criminal appeal. Very much the routine business of the Court. I have long since forgotten the name of the case and which side won. Those particular details are not germane to the point I am going to make.

Before long, the voice of the crier rang out: “*Kia rite mō ngā Kaiwhakawā o Te Kūini e tū koa!*” We walked into Court. I was the junior judge on the Court, and so was the last to enter. The most senior judge presided.

In due course, we were seated and the lawyers stood to introduce themselves, each providing their name and that of their client. Counsel for the appellant introduced himself in these terms: *Tēnā koutou e nga Kaiwhakawā, ko mea taku ingoa, e tū ana au mo te kaipira*. There were, from memory, two appellants in the same case, and when the lawyer for the second appellant stood, he too introduced himself in Māori. After that, Crown counsel introduced herself in a similar manner. A response was given by the presiding Judge to each introduction, once again in Māori first and then in English.

So, dear reader of these few thoughts of mine, I invite you to picture yourself in Courtroom No 2 on that morning. There are seven people in the courtroom: three judges, three lawyers and the registrar who opened the proceedings in Māori. You should be aware that I was the only Māori in the room. Similarly, I was the only person in the room who could speak Māori. But not a single word in Māori fell from my Māori lips. At that point, the penny dropped. This was New Zealand developing before my very eyes.

I am not saying that these micro procedures played out regularly in New Zealand courtrooms are in themselves transformational, or that somehow they suggest that the courts of New Zealand have become Māori in any deep way. Such a suggestion would be ridiculous. But I very much disagree with the allegation that they are merely empty and cynical virtue signalling. Yes, there is a mountain to be climbed before over-incarceration of Māori generally and over-removal of Māori children by the state can be said to be properly addressed. The climb will be similar for the courts to come to terms with Māori custom and Māori values in the law. I am under no illusion that sprinkling a few Māori words into the courts' processes might somehow represent any kind of substantive change. And I am not unsympathetic to the view that doing so can be seen as a way of salving the heavy conscience of the court for past, and more recent injustices. But there is much more to the story than that.

First, by saying a few words in Māori by way of introduction in the formal processes of the court, the speakers, whether lawyers or judges, subtly remind themselves of something important. It is difficult for such a person to express the view in their formal work, whether making submissions or writing judgments, that Māori custom, Māori values and

indeed the Māori world have no status in the law. A judge that speaks Māori, even if briefly and haltingly, would not have written *Mihaka*. This is important.

Secondly, no matter what the language, all languages are a window into the soul of the community that speaks it. In Māori terms, *te reo Māori* is the canoe whose cargo is the distinctive Māori ways of thinking and of understanding the world. When that canoe is paddled into the courtroom, this cargo always comes with it. When the ears of lawyers and judges are open to the flow of *te reo Māori*, there is a better chance that their hearts will also be open to those ways of thinking and seeing the world. In a subtle way then, bringing *te reo* into the courts increases the potential of legal processes to find a genuine kind of justice. A New Zealand kind of justice. By engaging with different perspectives, empathy is easier to bridge and truth is more likely to be found.

Thirdly, the use of Māori in New Zealand courts has important symbolic value. It emphasises the *New Zealand* part of that institution. There have long been similar changes in the way in which the legislature and the public sector generally go about their business. The wider community, too, has long since followed a similar path in the context of our important events and gatherings. These changes are a signal to ourselves and to the world that New Zealand is unique. The courts are finally starting to catch up.

The old people have a saying: *toi te kupu, toi te mana*. This saying has many interpretations, but in the context of this article, it is best understood as meaning that when a people preserve their “word” they also preserve their dignity. So, when the Māori language is heard in the courts, then Māori people also have a respected place there. But this saying is not a one-way street. The dignity of the court is also enhanced when it does what it can to normalise New Zealand’s indigenous language in its formal procedures.