

Sir Edward Durie Reminiscences

Sir Edward Taihakurei Durie KNZM

This speech was delivered by Sir Edward Taihakurei Durie KNZM at the opening of the Waitangi Tribunal's fiftieth anniversary conference on 9 October 2025 at Te Herenga Waka Marae, Wellington. Some edits have been made for clarity and readability.

Can I just say something first about Bill Wilson, because he was the most recent one that was mentioned up there? Bill Wilson was a former Supreme Court judge. On the Waitangi Tribunal, he was a member of the Muriwhenua Inquiry and a very big help to us. We were going up to Muriwhenua one year, and we were reading the newspapers and it was all about a new Act that had come out for the sale of State-owned enterprise assets. We knew that up in

Muriwhenua there were three large farms against which Māori had claims and that they could be very much affected by that sale.

So we thought that Sir David Baragwanath, who was the lawyer up there at the time, would not miss a trick and would be giving us a hard time in the morning. Sure enough, he was there at 9am asking the Tribunal to put aside what it had for the day and to go straight into addressing this concern about that Act. David, as usual, finished his submissions at about noon. We always thought of him as the legal equivalent of the opera singer – the opera that never ends – but he was brilliant. He framed his submission so well we could virtually write it up as a report.

We adjourned at midday. Bill Wilson made a big contribution. He was very clever in this area. We had a

report finished by about 3 pm. We telephoned it through to Wellington – we only had typewriters in those days, no emails – and it was in the hands of the Minister by 4.30 pm. We did not have the rulebook then that required applications for urgency, so that was a very quick result. It was remarkable how rapidly things could change.

Sir Geoffrey Palmer, who is here today, was at the time either the Minister of Justice, the Attorney-General, or the Prime Minister – he filled all the roles. He picked up straight away that this was really an issue for the High Court, so he made a small amendment to the legislation to say that nothing in the Act shall be contrary to the principles of the Treaty of Waitangi. David Seymour has been thanking him ever since.

The effect was that David Baragwanath and Dame Sian Elias

Former Tribunal chairperson Sir Edward Taihakurei Durie KNZM



were able to move it swiftly into the High Court, then into the Court of Appeal, and that decision from Robin Cooke and Ivor Richardson was the start of Treaty jurisprudence. That was the major change for the Tribunal. Before that, we were like a man-of-war with no guns – we could make only recommendations. Suddenly, there was a way of shifting things to another court, where effect could be given to the principles we had been writing about. I remember Bill for his contribution on that occasion.

There is one other person I would mention who was not a member of the Tribunal but may as well have been, because of the advice she gave us informally, and that is Dame Joan Metge, who died about two weeks ago. She introduced Māori studies to this (Victoria) university in the 1960s, when there was strong opposition. The argument was that Māori did not write and universities were about literature, so how could you have Māori studies? Anthropology yes, but not Māori studies. But she got it started. She was also a major thinker on tikanga Māori, which might seem strange given that she looked like a very English schoolteacher, yet she was deeply involved in thinking about how you take what people say and do and convert that into a legal system.

I would like to start by referring to our guest speakers and their connections to the Waitangi Tribunal. Judge Meer from the Land Claims Court in South Africa was its president. That court resulted from discussions in which the Waitangi Tribunal was present. In 1995, following the end of apartheid, I was an observer and resource person at the African National Congress constitutional conference in Cape Town. I was there for the Tribunal and the Māori Land Court, interested in historical justice and land restitution. I could see we had many areas in common, even black spot removals. The Land Claims Court emerged from that process and

I am looking forward to hearing how things went from there.

A special welcome to Judge Diane McDonald. In Canada, we followed their example in setting up the Tribunal. In 1976, Judge Thomas Berger of the British Columbia Supreme Court conducted the Mackenzie Valley Pipeline Inquiry. He said that, if we were going to deal with indigenous people, we could not ask them to come into our systems – we had to go to them, on their ground, and following their processes and laws. That was exactly what we were thinking in New Zealand.

If we had said that here in 1976, nobody would have listened. But if a distinguished Canadian judge said it, people paid attention. I went over to meet him, travelled to Yellowknife, to Inuvik, and to spring camps with the Dene people. Their way of thinking was no different in principle from Māori here. That process became the model we followed when the Tribunal finally got off the ground.

We also needed a green light from our own jurists. I went to Sir Thaddeus McCarthy, then president of the Court of Appeal. He said that policy inquiries could be shaped any way you liked as long as you complied with natural justice. He advised working with Ministers. We did not do that, because we thought our role was to assess claims against the Crown, not work with it. Looking back, I regret that, because once you find a breach, the next step – how to fix it – is pure policy.

Looking back over 50 years, the Treaty was once not considered part of the law. Today, Treaty jurisprudence is taught in law schools. Māori law was not recognised; today it is, even by the Supreme Court. Fifty years ago, most Māori did not know how their land was lost. Today, the full story is available in Tribunal archives. As a child biking past land my grandmother said was ours, I asked how we lost it. They did not know. That loss of knowledge was devastating. Today, historians have

restored that knowledge, and that is a huge change.

Māori was once a dying language. Today, we could not stop it. Māori news once had 15 minutes a week on radio; today, we have our own stations and television channel. Customary fishing rights were once ignored; now, Māori have their own fishing industry. But the greatest achievement is that we have changed New Zealand's national identity. We no longer look to a 'motherland'. We are grounded in who we are. I realised this watching the New Zealand Youth Choir begin with a karanga, move through waiata and haka, and win the World Youth Choir competition. You would never have seen that 50 years ago.

The Tribunal did not drive the bus – politicians did. Matiu Rata introduced the Treaty of Waitangi Act. He was visionary, energetic, and profoundly underestimated in our history. Others followed: Geoffrey Palmer, Doug Graham, Jim Bolger, Margaret Wilson, Michael Cullen, Chris Finlayson. The Crown is not the enemy. It did enormous work to get us where we are.

I thank the lawyers who knew when to stand back and let the people lead, and the Crown Law Office for respecting the Tribunal process. I thank the protest movement, which made our ideas seem conservative by comparison and kept pressure on when things stalled.

Finally, I thank the Tribunal members themselves – academics, practitioners, historians, leaders – people I loved and still miss. Their balance of thought and practicality made the work possible.

And I thank those who followed: Sir Joe Williams, Wilson Isaac, and Judge Fox, who has brought tikanga Māori to the forefront and taken us into constitutional thinking. Even imagining what a constitution might look like helps us find a better framework for the future.

Thank you all very much. I greatly appreciate the opportunity. □