SUMMARY OF RELEVANT PRINCIPLES OF THE TREATY OF WAITANGI


(1) The acquisition of sovereignty in exchange for the protection of rangatiratanga

“There is . . . one overarching principle . . . that . . . the Treaty must be viewed as a solemn compact between two identified parties, the Crown and the Maori, through which the colonisation of New Zealand was to become possible. For its part the Crown sought legitimacy from the indigenous people for its acquisition of sovereignty and in return it gave certain guarantees”. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641, 673. Per Richardson J

“Foremost amongst [the] principles are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori. “ New Zealand Maori Council v Attorney General [1994] 1 NZLR 513, 517, (PC) per Lord Woolf.

“The Treaty was an acknowledgment of Maori existence, of their prior occupation of the land and of an intent that the Maori presence would remain and be respected. It made us one country, but acknowledged that we were two people”. Waitangi Tribunal, Orakei Report, 1996, p 130.

(2) The Treaty established a partnership, and imposes on the partners the duty to act reasonably and in good faith

(3) The Crown’s duty of active protection

“the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable”. New Zealand Maori Council v Attorney General [1987] 1 NZLR 641, 664, per Cooke P.

“It is so linked to taonga and fisheries that a reasonable Treaty partner would recognise that Treaty principles were relevant. Such issues are not to be approached narrowly . . . [and] the Crown is not right in trying to limits those principles to consultation . . . since . . . it has been established that principles require active protection of Maori interests. To restrict this to consultation would be hollow.” Ngāi Tahu Maori Trust Board v Director General of Conservation [1995] 3 NZLR 534, 535, per Cooke P.

“The Treaty of Waitangi obliges the Crown not only to recognise the Maori interests specified in the Treaty but actively to protect them.” Waitangi Tribunal, Manukau Report, 1989, p 70.
“the Crown is obliged to protect Maori property interests to the fullest extent reasonably practicable”. *Waitangi Tribunal, Mohaka River Report, 1992, p 77.*


4. **Maori to retain rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship**

“The Maori Chiefs looked to the Crown for protection from other foreign powers, for peace and for law and order. They reposed their trust for these things in the Crown believing that they retained their own rangatiratanga and taonga. The Crown assured them of the utmost good faith in the matter in which their existing rights would be guaranteed and in particular guaranteed down to each individual Maori the full and exclusive and undisturbed possession of their lands which is the basic and most important principle of the Treaty in the context of the case before this Court”. *New Zealand Maori Council v Attorney General [1987] 1 NZLR 641, 771, per Bisson J.*

“The essential point was that the Treaty both assured Maori survival and envisaged their advance but to achieve that in Treaty terms, the Crown had not merely to protect those natural resources Maori might wish to retain, but to assure the retention of a sufficient share from which they would survive and profit, and a facility to fully exploit them”. *Waitangi tribunal, Muriwhenua Fishing Report, p 187.*

5. **The Crown cannot evade its obligations under the Treaty by conferring authority on some other body**

“the Crown cannot divest itself of its Treaty obligations or confer an inconsistent jurisdiction on others” *Waitangi Tribunal, Manukau Report, 1989, p 73.*

6. **Tino rangatiratanga includes management of resources and other taonga according to Maori cultural preferences**

“We consider that the Maori text of the Treaty would have conveyed to Maori people that amongst other things they were to be protected not only in the possession of their fishing grounds, but in the mana to control them and then in accordance with their own customs and having regard to their own cultural preferences”. *Waitangi Tribunal, Motunui-Waitara Report, pg 51.*

7. **The need for compromise by Maori and the wider community**

“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.” *Waitangi Tribunal, Muriwhenua Fishing Report, p195.*

8. **The tribal right of self-regulation**

“on reading the Maori text in the light of contemporary statements we are satisfied that sovereignty was ceded [under article 1]. Tino rangatiratanga therefore refers not to a
separate sovereignty but to tribal self management on lines similar to what we understand by local government.” *Waitangi Tribunal, Muriwhenua Fishing Report, p 187.*