

(Ward, A., 1997: 475)

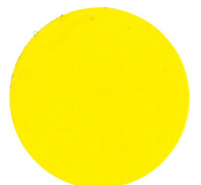
NATIONAL OVERVIEW

volume ii

Professor Alan Ward

Waitangi Tribunal Rangahaua Whanui Series

WAITANGI TRIBUNAL 1997



APPENDIX  
**THE PRINCIPLES  
OF THE TREATY**

As at date of publication  
Archive

Note: This appendix was compiled by Dr Janine Hayward.

This appendix draws together some statements by the courts, the Waitangi Tribunal, and the Government in New Zealand regarding the interpretation and application of the principles of the Treaty of Waitangi. The discussion is divided into three sections. The first part investigates the principles of the Treaty according to some seminal judgments of the courts in New Zealand since 1840, with an emphasis on the 1987 Court of Appeal decision in the case of *New Zealand Maori Council v Attorney-General*. The second part discusses the principles identified in some of the Waitangi Tribunal reports released since 1983. The final part presents the principles established by the Labour Government in 1989.

Two important points underlie this discussion. First, the Treaty is a living document to be interpreted in a contemporary setting. Therefore, new principles are constantly emerging from the Treaty and existing ones are modified. Professor Gordon Orr of the Waitangi Tribunal has observed that it may never be possible to formulate a comprehensive or complete set of principles because the Tribunal has dealt with only a limited range of cases and has not speculated about principles relevant to cases yet to be heard.<sup>1</sup> Secondly, and perhaps most importantly, the provisions of the Treaty itself should not be supplanted by the principles emerging from it. In the words of Justice Richardson in the 1987 case:

much of the contemporary focus is on the spirit rather than the letter of the Treaty, on adherence to the principles rather than the terms of the Treaty. Regrettably, but reflecting the limited dialogue there has been on the Treaty, it cannot yet be said that there is broad general agreement as to what those principles are.<sup>2</sup>

**APP. I TREATY PRINCIPLES EMERGING FROM THE COURTS, 1840–1995**

The attitude of New Zealand courts towards the Treaty of Waitangi has undergone significant development since 1840. This discussion is not exhaustive; rather it identifies significant cases that demonstrate an initial enthusiasm by the courts for upholding native title to land immediately after the signing of the Treaty in 1840, followed by a period from the mid-1860s well into the twentieth century during which the courts' interpretation gave the Treaty considerably less weight. A further turning point came in 1987 with *New Zealand Maori Council v Attorney-General*.

1. G S Orr, 'Principles Emerging from Waitangi Tribunal Decisions', unpublished paper presented to Tribunal members, 1989, p 1
2. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 672–673