ADDRESS TO INTERNATIONAL ASSOCIATION OF WOMEN JUDGES CONFERENCE 2021

Judge Sharyn Otene

Judge Otene presented at the 2021 International Association of Women Judges conference – the theme was Celebrating Diversity. Judge Otene's panel consisted of the Hon. Lillian McLellan (Canada), Hon. Fleur Kingham (Australia), and Hon. Irina Graciela Cervantes Bravo (Mexico), which focused on Indigenous women and was moderated by Judge La Verne King of the District Court. This speech has been adapted for publication.

E ngā mana

E ngā reo

E ngā rau rangatira mā

Tēna koutou katoa.

Ko wai au? Sharyn Otene tōku ingoa. Ngāpuhi ahau. He kaiwhakawa ahua ki Te Kōti a Rohe o Aotearoa. My name is Sharyn Otene. I am Ngāpuhi and I am a judge of the District Court of Aotearoa.

In opening, I acknowledged the many voices that comprise our gathering. Extending that metaphor, I am going to speak about narratives for the power they have to influence thinking, and, thus, shape action and outcomes. Within that, I wish to reflect upon the challenge for wāhine Māori (the indigenous women of Aotearoa New Zealand) in the context of our contemporary narratives.

I therefore begin with a story about the Mana Wāhine Inquiry that the Waitangi Tribunal commenced in February this year. The Waitangi Tribunal is the body charged with investigating claims brought by Māori against the Crown for breaches of promises that were made in 1840 when they signed Te Tiriti o Waitangi or the Treaty of Waitangi, often described as Aotearoa New Zealand's founding document.

The Mana Wāhine Inquiry will, amongst other things, examine how wāhine Māori have been excluded from decision making since 1840 and

what that has meant for participation of wāhine Māori in society and for intergenerational wellbeing.

There are many claimants and strands to this inquiry, but the foundation claim was brought by 16 of our pre-eminent wāhine Māori leaders. It was triggered by the removal of one of them, Dame Mira Szaszy, from the shortlist for appointment to a body that received the return of our fishery on behalf of Māori. It was one of the most important settlements of the time for its economic value and so for the self-determining future that it would enable.

The claim was made in 1993. As I said, the inquiry commenced in February of this year. It has taken more than a quarter of a century for the voices of those claimants to be heard. And of course, many of them have now passed. That lapse of time might in itself say something about the marginalisation of wāhine Māori. But it is also a powerful example, demonstrating that when you understand your responsibilities to your past and to your future, a quarter century is an irrelevance; that the passage of time in no way dims the resolute, unswerving commitment to address the negation of the power, authority and status of wāhine Māori that has occurred by colonisation.

If anything, the resolve is deeper and strengthened by the other claimants who have gathered around and carry the kaupapa forward. What the claimants advance is a foundation for the future that has a firm hold on the past when men and women were essential parts of the Māori collective. The claimants set an expectation that the Crown engage with them on that basis.

That claim resonates with the strong and compelling contemporary narrative in Aotearoa, the narrative that the justice system in Aotearoa is broken, that it harms families and most especially whānau Māori and that in doing so it perpetuates intergenerational harm. It is a narrative calling for transformative change.

Those calls are heard most urgently and loudest in the criminal justice sphere. And to provide context for that, as Chief Justice Winkelmann has said, we have not only high rates of imprisonment, but we have staggering and rates of Māori imprisonment.[1]

As we heard yesterday, our court leadership has acknowledged the calls for transformative change and said that there will be response, not only for

1 Helen Winkelmann, Chief Justice of New Zealand "Picking up the threads: the common law – continuity and change in challenging times" (Robin Cooke Lecture 2020, Victoria University of Wellington Law School, Wellington, 2 December 2020).

Māori but for all whom our courts serve. That response is primarily focused on criminal justice and the detail is still in development. But it is announced that it will draw upon the best practice of solution-focused courts already in operation and will be designed in collaboration with Māori and with local communities.

Those signals of leadership have been embraced by the justice sector. The energy and momentum is palpable. If that energy is galvanised so that not only offending, but also the underlying drivers of offending are addressed, it is axiomatic that the wellbeing of the entire community will be enhanced.

But there is a challenge in this – looking back to the example of Dame Mira and her sister claimants, the challenge is to ensure that the voice of wāhine Māori in these calls for transformative change is heard, that it is a voice that contributes to the shaping of responses and that it is a voice that affects outcomes.

To ensure that the voice of wāhine Māori is heard and included, I suggest that we broaden the narrative about incarceration so that it starts with our children. The power of that is to be found in the simple logic of statistics which tell us that Māori comprise approximately 24 per cent of the child population of Aotearoa, yet 68 per cent of children in the custody of the state are Māori.[2] As staggering as our Māori incarceration rates are, equally staggering is the rate at which the state assumes the care of Māori children.

If we look ahead to our young people who appear in our youth justice system, the statistics tell us that around 90 per cent have had involvement with the state care system in some way.[3] And you will understand how, for some, the trajectory continues to incarceration.

Our Prime Minister's Chief Science Advisor puts it this way:[4]

> Talking about the cumulative effects of family violence and child maltreatment, and the wellbeing of babies, seems a long way from arguments about the prison muster, but that is where the evidence says we must begin.

2 Oranga Tamariki Ministry for Children *Annual Report 2019/2020* (December 2020).

3 Ministry of Justice *Youth Justice Indicators Summary Report—December 2020* (Wellington, December 2020) see 17 in particular.

4 Juliet Gerrard *Every 4 minutes: A discussion paper on preventing family violence in New Zealand* (Office of the Prime Minister's Chief Science Advisor Kaitohutohu Mātanga Putaiao Matua kit e Pirimia, 6 November 2018) at 5.

But how do we broaden the narrative to our children? How do we make the mana wāhine voice heard if wāhine are not an equitable presence in the power structures that control narratives? In the short time I have I make one suggestion – that it can come by empowering the community. A key example of active empowerment is an organisation called Te Korimako.

Te Korimako is a collective of Māori Family Court practitioners, all who are women. Te Korimako was formed in 2018 out of concern that whānau involved in the state child protection system were effectively disenfranchised from it by an absence of knowledge of its processes. You might frame that with the language of access to justice and equity of treatment.

These wāhine responded by creating a training and education programme for Māori social service providers who work with those families. Those providers are often the only point of effective engagement with families, working with them at grassroot level in their community and in their homes. They can get their foot in the door in the way that state agencies often cannot.

However, the social service providers do not usually have legally trained workers, which is where Te Korimako comes in. They give those workers (whom they call navigators) an understanding of the child protection system, how it works, and the roles of various agents within it. Once the navigators have that information, they can pass that knowledge onto families.

Te Korimako started with a three-day training course in 2018 with about 80 participants. Since then, it has extended to many additional trainings the length and breadth of the country and they continue. Its reach has become significant.

If I think about my experience in the Family Court, what we are so often lacking because of disenfranchisement is family participation in the process through which the most fundamental decisions are being made for their children. Initiatives like Te Korimako's have the potential to assist whānau towards being agents of their own solutions for their children, rather than have those solutions imposed. Te Korimako and its kaupapa encourages participation rather than disengagement.

But there is another important aspect. It is unlikely to be fully appreciated until we have the lens of history to look through, but I think that Te Korimako has educated and energised iwi and community social services to make state custody of Māori children a matter of urgent public discourse. I do not think

it is going too far to say that it may have played a part in a recent fall in the number of Māori children entering state care.

In effect, Te Korimako's work has created a narrative that has energised the community and shaped outcomes and for that,it is undoubtedly an exercise in mana wāhine.

Kia ora mai tātou.