

formal procedure, and that's the danger.

"I would advocate the informal atmosphere. I do not think that Maori people should be constrained by legal technicalities in bringing a case. Maori advocacy requires different rules of procedure and a totally different way of going about things."

The adversarial set-up of normal court situations is totally inappropriate for Maori people and coming to compromise and agreement, the chief judge says.

"When you look at the Waitangi Tribunal and the task it has to measure policies and legislation against the treaty... a willingness to understand the viewpoint of an opposing person becomes very important.

Asked if the tribunal should have retrospective powers, Chief Judge Durie replies, his brown eyes darting characteristically: "That's a very political question. I don't want to comment further than saying it's one on which a political decision has to be made. Government has to decide whether past claims should continue to be handled on a political level as they were in the past."

In a recent discussion paper on Maori legislation the Maori Council criticises a "disparate, diverse and unpredictable treatment of Maori claims," generally at a political level, to the detriment of Maoris and the country.

Disproportionate

"The resolution of disputes involving land," the chief judge of the land court says, "have gone to the political level. The result is that there have been some disproportionate awards; some claims have been rejected entirely where other claims which may not have been quite as good have been accepted.

"I think that is a bad thing. The worst aspect of it is that since 1960, largely as a result of Maori people moving from rural to predominantly urban localities, Maori land claims have been associated with protest.

"I think it unfortunate if Maoris were to come to the view that it is only as a result of protest that you might hope to achieve some redress..."

Most of the large number of "Maori issues" are being resolved by protest, Chief Judge Durie says.

"It's been very productive, frankly," he chuckles, "but I think it would be helpful to Maori people to have a tribunal that they can go to, to help provide information and help reconcile people in areas of dispute.

Reconciliation

"The Treaty of Waitangi was primarily intended as a means of reconciling Maori and European in this country (and) that's what the tribunal should be still concerned to do."

Under its act the tribunal is only asked to measure things against the principles of the treaty — a moral rather than a legal obligation, because the treaty is not recognised by New Zealand law.

If the tribunal's recommendations were not listened to, "and I'm not saying that's so," then the body would die, the chief judge says.

Rather than that, though, he wants the tribunal given the facilities to do its work better: "Where I think the Waitangi Tribunal is deficient is that to perform the sort of function we need to perform we need a research unit, people who can investigate the background of a case, make the results of the investigations known, lay that on the floor of the tribunal... and then investigate it.

"I think a number of Maori people make allegations about things after experiencing considerable frustrations in trying to find out what the facts are."

Needs research

The Maori Land Court also needs a research unit with the ability to "move out among Maori people and make proposals for land and community development projects," Chief Judge Durie says, pointing out that a 1980 royal commission chaired by Sir Thaddeus McCarthy declared the court inadequately staffed.

One senses the chief judge would always rather talk about the land court than the tribunal. He says that from when he was very young he has always been interested in land.

The tribunal looks at complaints, but "we in the Maori Land Court are looking at the very positive ways in which you can create new

developments in Maori land."

Since it was established in 1865 the role of the court has changed "enormously", Chief Judge Durie says. It has gone from being concerned with Maori customary ownership according to principles of British law, to setting up trusts and incorporations as it is doing now "so that the owners of Maori land can develop them in accordance with management patterns of their own choosing."

Pretty exciting

"The court is primarily, I hope, a facilitator of Maori aspirations," which, Chief Judge Durie says, is "pretty exciting".

He believes that as long as there is multiple ownership of land there will still be a mechanism needed for locating consensus of views and giving legal effect to group decisions.

The chief judge says the main issue in Maori land is that Maori land laws have tended to be written on a presumption that Maori ownership and use of land will be, or can be, the same as that of the European.

"The challenge is to come up with laws that can accommodate Maori concepts or ownership and development. Maori people have proved they can develop their own lands in their own ways."

The court still needs to become more informal, says Chief Judge Durie: "I find it strange that the Maori people who are customarily used to the settlement of disputes by discussion should have a court that doesn't have the sorts of facilities the family court has."

Karen Brown

(Left to right) Judge Willis, Sir Graham Lattimer, Judge Durie at Owae, Waitara. (Photo: Fiona Clark)

