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To the Constitutional Advisory Panel:

## **On “The Constitution Conversation”**

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### **Personal introduction**

My mother arrived in New Zealand in 1955 from Zurich to work at the Swiss Consulate in Wellington. My father was a refugee, originally from Tallinn, Estonia, who arrived in New Zealand in 1949. I speak three languages of Switzerland, and a very little of my father's. I was born in New Zealand, and am a passionate New Zealander. I have worked as a New Zealand diplomat, journalist, communications adviser and manager, and as a policy analyst and manager, mainly in resource management. I have worked in Parliament. I work currently for the New Zealand minerals sector on policy and advocacy. I have a six-year-old daughter.

### **Statement of principle**

I believe we are all human beings, regardless of proximate origin or when or how we got to New Zealand. I contend that our nation can only be a fair and just nation if it provides equal rights to all. That is not the case today in New Zealand.

Any discussion on our Constitution must address the fact that Maori tribes and groups - whose leadership is not always democratically elected, and whose views are not always open to inquiry – enjoy more privileges than anyone else. The Treaty of Waitangi is an explanation of this inequality, however, does not justify institutionalised discrimination against non-Maori.

I refer in particular to the increasing role of Maori in providing statutory advice, and in decision-making, on resource management matters. At issue is that Maori have a privileged position in these processes, in ways that affect the broader community, however, without being accountable to that broader community. By any measure, that is anti-democratic.

### **The issue**

The Treaty must be central to any review of New Zealand's Constitution; there is general agreement this is our “founding document”, or something like it. This will be difficult to do because the Treaty is a deceptively complex document.

In explanation, the Treaty was signed between a Colonial power that no longer exists, and with many but not all of the chiefs who could have had no notion of a nation state as that term is understood today. It was written in two languages meaning very different things. The motives for signature were not entirely honourable: they included keeping non-British colonisers out of New Zealand, and protection from musket-toting rival tribes. The Treaty predated the abolition of slavery, women's suffrage, in short, most of what we would consider human and political rights today, and which did not exist in New Zealand to any great extent or at all in 1840.

On that basis alone, the Treaty is an anachronism, and should be consigned to history. However, that would be unrealistic, given the realpolitik, so what are we to do? The practice has been established of the Treaty as a living document, amenable to contemporary interpretation. Indeed, this is necessary if we are to develop as a nation, with a shared and positive vision of our future.

Here too, problems arise, as we seek to interpret the Treaty. A "partnership" is spoken of between the people and Maori, in which all Maori are people but not all people are Maori. That is a strange sort of partnership. Furthermore, there is no such thing as Maori; there are more than 100 iwi, as well as myriad hapu, whanau, and other Maori groups. Many or all of these groups seek their own statutory relationship with the "Crown", i.e., the governing authority representing the people of New Zealand. All this in a nation of some 4.2 million people. It would be difficult to imagine a more perverse set of arrangements in a so-called developed country, in the 21<sup>st</sup> Century.

Contrast this situation with the views expressed by Abraham Lincoln at Gettysburg in 1863 - the idea of government "dedicated to the proposition that all [people] are created equal", and of government "of the people, by the people, for the people". Arguably, these ideas are basic to any concept of a decent society, and should form the basis of any review of New Zealand's Constitution.

Instead, New Zealanders have been asked eight random questions relating to the Constitution.

It is accepted that the present review has arisen from a political agreement between the National Party and the Maori Party, in forming a Government in late 2008. Perhaps, the best that may be hoped is that this review is the forerunner of a serious review of the Constitution.

## **Conclusion**

The bringing of the Treaty into any review of the Constitution is an essential but fraught undertaking because there is no general understanding or commonly-held view in New Zealand of the meaning of the Treaty or of its role in our Constitution. On that basis, perhaps, it is best for now that the Treaty remain a living document, and that our Constitutional arrangements remain in their current

fluid form, amenable to evolution as times change, and as New Zealanders' values and aspirations change with them. That said, I remain deeply concerned that tribal elites are gaining in power and influence in New Zealand, which is otherwise, supposedly, a democracy.

To my mind, the real questions for the Constitutional Advisory Panel are: Do New Zealanders wish to live in a decent society? If so, what does a decent society look like? Having established that, how should power be exercised in a decent society?

Meantime the eight questions must be considered a distraction from what should have been a robust, comprehensive and responsible review of the New Zealand Constitution.

### **Epilogue**

In 1939 all of the lands of my father's forbears were confiscated by the Soviet invaders of Estonia. My grandfather and several relatives were conscripted into the Red Army to fight the Germans. My grandfather died in battle in 1941. My great-uncle came home to the farm the same year to find Russian soldiers violating the womenfolk. He shot the soldiers, went into hiding, and was captured some time later, in Finland, while fighting there for the resistance. He spent 10 years in a gulag in Siberia, and was one of few who lived to tell the tale. My grandmother survived by working for the German railways during the German occupation. She and my father went into exile in 1944 to avoid Stalin's purges, and, after many camps in Germany, arrived in Wellington in July 1949 by ship in a southerly gale. All they had was the clothes on their backs. My father learned English, qualified as a draughtsman and later as an architect, had a family, and lived the rest of his life in New Zealand, as a grateful citizen, and with no bitterness or regrets stemming from his past.

I am sympathetic to the plight of Maori who suffered at the hands of British colonisers (many of whom are ancestors of present-day Maori), and understand the rationale for Treaty settlements, as partial redress for those wrongs. The settlements will eventually be completed, accepting that redress can never be complete. That should be the end of the matter. Let us go forward together as New Zealanders, to forge a prosperous and sustainable Aotearoa New Zealand, based on a spirit of open inquiry, and generosity of spirit. Let's change the flag, while we are at it.