

ADDRESS AT MEMORIAL SITTING FOR THE RT HON SIR IVOR RICHARDSON, PCNZM

*Rt Hon Dame Sian Elias**

The address was given at No 1 Court, Court of Appeal, Wellington, on Friday 1 May 2015.

Te whare e tū nei,
E ngā mate, haere atu rā.
E ngā kanohi ora o rātou mā
Nau mai, haere mai ki tēnei hui a Te Kooti Pira.

It is my privilege to welcome you to this special sitting of Te Kooti Pira, the Court of Appeal of New Zealand. It is held to mark the service to law and to New Zealand of Ivor Lloyd Morgan Richardson – Judge of this Court for 25 years and its President for the last six years of his service as a Judge.

I have greeted this courthouse, in which Sir Ivor sat from its opening in 1980. I have acknowledged those who have gone before, who are always with us on occasions such as this. I have greeted you, the living faces of those who have passed through this place, Te Kooti Pira, the Court of Appeal.

On the bench with me are as many serving Judges as can fit and retired Judges of this Court and the High Court who sat with Sir Ivor and who have come, a number from a distance, because of their affection and deep respect for this leader of judges. Many others have written with their regrets at not being able to be here.

I welcome in particular the family of Sir Ivor: Jane, Helen, Megan, and Sarah. We are grateful to you for allowing us this opportunity to pay tribute to the Judge.

In accordance with the traditions of the Court, those who have first claim on the attention of the Court are the Queen's Counsel who are present. I will therefore first call on them to make their appearances. Then we will hear from the Attorney-General and representatives of the New

* Chief Justice of New Zealand.

Zealand Law Society and the Bar Association before the President, Justice Ellen France speaks for the Court of Appeal, after which I will conclude the sitting with an appreciation of Sir Ivor's influence as a judge.

In my remarks I do not rehearse again the outlines of Sir Ivor's remarkable career and his many and varied contributions to New Zealand society and its good government, in which he believed firmly. I want instead to reflect on the qualities of the Judge and the man. My perspective is inevitably personal. It is shaped by 40 years of Richardson-watching.

When Sir Ivor was appointed to the bench in 1977, I was on the sort of involuntary extended unpaid maternity leave that was inevitable in legal practice in those days. Mr Justice Richardson (they were all "Mr"s in those days before Dame Silvia's arrival cut off their privileges) noticed that I always popped into the Court of Appeal when in Wellington to see if anything interesting was afoot. He teased me about seeking out cheap entertainment but thereafter always took an interest in my career, encouraging me as he encouraged countless other young practitioners. Of course, one of the reasons I and other young practitioners of the time were encouraged to persevere with careers in law was the sense of excitement generated by that remarkable Court of Appeal, led successively by Richmond, Woodhouse, Cooke and Richardson. Cases like *Van Gorkom v Attorney-General*,¹ *CREEDNZ*,² *Mt Albert Borough v Johnson*,³ *Reid v Reid*⁴ and *Daganayasi*⁵ were transformative.

They were cases that blew away the cobwebs of formalism. In Sir Ivor's case some of the fresh thinking was stimulated by his exposure to American legal education at the University of Michigan. Because things have changed so fast in legal education, it now seems strange to remember that the systematic study of law on academic lines was much further advanced then in the great law schools of the United States than it was in Commonwealth jurisdictions. After more adventurous beginnings when American authorities had been cited by New Zealand judges from Chapman to Stout, New Zealand law had settled into a period of what has been described as "slavish imitation" of English law.

Sir Ivor was at the forefront of the judges who shifted the focus and opened the windows. His service as an appellate Judge coincided with a period of change in law and society. At times in legal history, the courts have not responded well to shifts in society and reforming legislation. Sir Ivor

1 *Van Gorkom v Attorney-General* [1978] 2 NZLR 387 (CA).

2 *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA).

3 *Mount Albert Borough Council v Johnson* [1979] 2 NZLR 234 (CA).

4 *Reid v Reid* [1980] 2 NZLR 270 (CA).

5 *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130 (CA).

himself was conscious of the ways in which the judges of the past had thwarted social reform because of their personal hostility to its aims. He pointed to Lord Devlin's description of the Victorian Bill of Rights such judges applied, protective of "liberty ..., freedom of contract, and the sacredness of property, and ... highly suspicious of taxation".⁶

Sir Ivor and the Court in which he served were less suspicious of change. They responded in the spirit of reforming legislation, especially in relation to fair division of matrimonial property and the better protection of human rights. They tackled the technicalities and formalism of court process, enabling the development in particular of modern administrative law, and not neglecting social and economic context in the application of legislation and in the development of the common law.

Sir Ivor's work as an appellate Judge for nearly three decades touched all areas of law and provided leading cases which remain authoritative. One of the reasons he was such a successful appellate Judge was because of the breadth of his experiences. His service to government in many capacities over many years left Ivor with a deep respect for those who work to deliver good government and a sense of the proper boundaries between executive, legislative and judicial authority. He was acutely conscious of social context.

Sir Ivor has been particularly influential in his approach to statutory interpretation, willing to look for assistance to parliamentary materials, international instruments, scholarly writing (and not just the work of dead scholars) and, where appropriate, legislative facts. His judgments are carefully constructed and characterised by restraint in expression and full exposition of reasons. Sir Ivor did not much care for the intrusion of the personality of the judge in judgments. He was modest about the judicial role and considered (echoing Benjamin Cardozo) that the work of a judge was soon overtaken and that few judgments endure.

Such modesty is characteristic but in his case not entirely accurate. Many of Sir Ivor's judgments will stand the test of time. For all that, I consider that Sir Ivor's principal legacy may well be his influence on judging. His long tenure on the Court of Appeal and the standing and regard in which he was held meant that he influenced a generation of judges. No one in my time, or I think in Ivor's time, has had like influence on judging. I am tempted to describe Ivor as the judges' Judge, except that I know that does not capture the breadth of his interest and his influence.

Although the permanent Court of Appeal had been established in 1958, its potential to become a great court, responsive to New Zealand conditions and needs, was I think not truly realised until the period when Sir Ivor was part of the complement. A great court cannot be the work of one man. Even John Marshall had Joseph Story. Sir Ivor himself was always generous and appreciative of the contribution of those who served with him, making special mention in his final sitting of what he called "the Woodhouse years" (in which the court was led by that "remarkable lateral thinker"). No

6 Lord Devlin "Judges and Lawmakers" (1976) 39 MLR 1 at 14.

one who has read the amazing output of the Court of Appeal after 1977 or who practised as a lawyer through those years has any doubt that Ivor himself was critical in cementing the standing of the New Zealand Court of Appeal as one of the leading courts of the common law world, cited as an equal by the High Court of Australia, the Supreme Court of Canada and the House of Lords. That was a remarkable achievement for a Court still in formal tutelage to the Privy Council.

I want to mention in particular Sir Ivor's contribution to the collegiality of the Court. In his final sitting, Ivor said that he had worked "on a daily basis" for 10 or more years with seven other permanent appellate Judges, each as he said with "particular and rather different strengths". Sir Owen Woodhouse, Lord Cooke of Thorndon, Sir Duncan McMullin, Sir Edward Somers, Sir Maurice Casey, Sir Michael Hardie Boys and Sir Thomas Gault. Such stability in membership of a court is no doubt one of the explanations for the great achievements of the Court of Appeal during Sir Ivor's time, but as we know from histories of other courts, stability in membership does not guarantee effectiveness. Courts can become dysfunctional when strong personalities are locked together. No one who sat with Sir Ivor doubts that he was a point of stability and reason in the life of the Court and that its effectiveness was in no small measure due to his membership, even in the years before he became its President and assumed its formal leadership.

His influence in the Court owed much to his innate intellectual strengths and to his commitment to full and patient explanation of the reasons for decision, without resort to "flamboyant rhetoric and evangelical fervour",⁷ which can be so destructive of collegiality on a court and which he was careful to avoid. It helped very much that he and Jane were such warm and interesting hosts at countless dinners. But Ivor's influence on the Court was also a result of his personal qualities of modesty, balance, intellectual honesty and his very great courtesy.

Sir Ivor was the most courteous of men – to counsel (even in the most anxious of cases), to his colleagues (no matter what the provocation), to court staff and off the bench as well as on it. His example of courtesy was generally infectious – not always, but generally. It continues to be the standard by which those who serve as judges today try to live, even if we are not always as successful as Ivor.

Ivor served with three Chief Justices. The relationships between Chief Justices and Presidents under the arrangements before setting up the Supreme Court were sometimes a little strained. Both Sir Thomas Eichelbaum and I found Ivor generous and ever helpful and constructive. As Sir Thomas said to me recently "it was just such a pleasure to work with Ivor".

Ivor was always willing to take on administrative chores to help the wider judiciary. He piloted the courts through a number of reforms to meet their responsibilities and community expectations better. In particular, he was a driving force in the setting up of judicial educational programmes and

7 Ivor Richardson "The Role of an Appellate Judge" (1981) 5 Otago L Rev 1 at 10.

in opening up the courts to the news media, particularly through televising proceedings. In these and other reforms he was a pioneer, often well ahead of most of his colleagues. He was a modern Judge always, never nostalgic about the past, always interested in directions and in young people. He was motivated by the conviction that the courts do not belong to judges and lawyers. They are, he said "the people's courts",⁸ and he tried to ensure that the people had better access to their courts and that the work of the courts was accessible by being expressed in decisions that were plain, principled and fit to meet the needs of New Zealand society.

In his final sitting, Sir Ivor spoke of the qualities he had observed and appreciated in the judges who had served with him. He referred to their "ability, balance, judgment, and commitment". Very often when paying tribute to others, we unconsciously identify the qualities we most admire and hope to see in ourselves. I think all of us would expect a great judge to have ability, judgment and commitment. So the word that jumps out in Ivor's tribute to others is the word "balance". It is striking how often in discussing Ivor people use that word of him. Sir Ivor's judging conveyed a great sense of balance. I think that verdict would give him satisfaction.

In the many messages that arrived after news of Ivor's sudden death was one from the Chief Justice of Hong Kong, expressing sadness and the gratitude of the people of Hong Kong for Ivor's service as a member of the Hong Kong Court of Final Appeal between 2003 and 2009. It concludes by saying of Ivor that "he was truly a giant in the common law world and will be recognised in legal history in this way".

We have been lucky in our time to be of such company.

No reira, tēnā koutou, tēnā koutou, tēnā rā tātou katoa.

8 Ivor Richardson "The Courts and the Public" [1995] NZLJ 11 at 13.

