



Address by the President of the New Zealand Bar Association,
Kate Davenport QC
on the Occasion of the Swearing in of the
Rt. Hon. Chief Justice Dame Helen Winkelmann GNZM

Kia ora koutou katoa
Greetings to you all.

E ngā mana, e ngā reo, e te iwi whanui, tēnā koutou, tēnā koutou, tēnā koutou
All people, languages and creeds, welcome, welcome, welcome.

E te Kaiwhakawā Mātua, tēnā koe
I acknowledge the Chief Justice

E ngā Kaiwhakawā o ngā kooti katoa o Aotearoa, tēnā koutou,
Greeting to all judges of the Courts of New Zealand

May it please the Court:

On behalf of the independent bar, I congratulate your Honour on your swearing-in as the Chief Justice of New Zealand and Tokelau and your role (in the absence or incapacity of the Governor-General) as Administrator of the Government.

I spoke at your Honour's swearing in as a judge of the High Court in 2004 and I am personally very pleased that the great things that I predicted for your future at that time have come true and am very proud to be here to speak at this ceremony today.

This hearing has significant constitutional importance to all New Zealanders.

Although your Honour is our 13th Chief Justice, in a line that stretches from the first holder of that office Sir William Martin in 1841, your Honour's is the first ever appointment of the head of our final appellate court, the Supreme Court of New Zealand, which was only formed in 2004 at a time when Dame Sian Elias was already Chief Justice.

In her speech at the special sitting of the Supreme Court on 1 July 2004¹, Dame Sian commented that what should be celebrated was the aspiration for the delivery of justice which was prompted by the creation of the Supreme Court. The Court was formed to ensure that those areas of law that were of great importance to the lives of New Zealanders were accessible and not subject to expensive litigation in a remote foreign country.

¹ Elias S. Speech at the Special Sitting of the New Zealand Supreme Court, 1 July 2004"
https://www.courtsofnz.govt.nz/speechpapers/Speech01-07-2004.pdf/at_download/file (accessed 10 March 2019)

I also note in this regard the importance to all New Zealanders of the Treaty of Waitangi and its constitutional significance. This is an integral part of our constitution and the Supreme Court therefore has an important role in upholding its legal recognition at all levels.

Prior to your Honour's appointment, the Solicitor-General prepared and circulated criteria for the appointment of the Chief Justice. The Bar Association was asked to comment on these criteria. The Candidate was to:

- 1) be an outstanding judge;
- 2) with outstanding leadership skills;
- 3) have an excellent understanding of and ability to work within the environment in which the administration of justice operates; and
- 4) show certain personal qualities including:
 - a. the ability to work courteously in and out of Court, respecting the views of others;
 - b. superior written and oral communication skills;
 - c. resilience, stamina and firmness of purpose under pressure;
 - d. interpersonal skills;
 - e. patience and the ability to listen; and
 - f. decisiveness.

Your Honour clearly fits all these criteria, as not only did you get the job, but your appointment was met with great support from your colleagues on the bench, from the profession, and from the Executive.

I would like to focus on these criteria and skills and how they relate to the work of the Court.

The first criterion for appointment is that our Chief Justice is an outstanding judge, and there is no doubt that your Honour fits this description. Your Honour has an extremely impressive intellect, combined with an ability to deliver well written and reasoned judgments.

Equally, it must be said that the Chief Justice is the "first among equals", and your Honour sits on a bench full of outstanding judges. But the Chief Justice must be a leader and must inspire confidence in those who receive justice and those who are involved in the delivery of justice.

Again, this is clearly one of your Honour's strengths and your former colleagues from the High Court bench spoke very highly of your Honour's leadership of that court and your ability to inspire all to accept your decisions whatever their own views because they all felt that you had taken the time to listen to and understand all perspectives before making your decision.

One of the personal criteria is that the Chief Justice must have resilience, stamina and firmness of purpose under pressure. This is critical - not just your renowned physical stamina but also your resilience to stress and public scrutiny.

Judges swear an oath that they will "...do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will." ² This is not an easy oath to uphold and resilience and firmness of purpose are essential in doing so.

There are often great pressures and external forces that attempt to sway judges one way or another. Sometime that pressure results from unfair criticism or personal attacks by the public (and sometimes politicians) on our judges as they seek to uphold that oath. Equally, your Honour as the Chief Justice may be called on to speak to the public about the law, about difficult legal issues and areas where she thinks that there is room for society to debate the issues and this may also lead to adverse pressure.

When these pressures occur, there is frequently a lack of understanding of the legal principles to be applied and the constraints on judges. The profession has a duty to explain and educate and ensure that the Court can continue to do right without fear or favour, affection or ill will.

This is one of the more important duties on the profession. By constitutional convention, judges cannot comment on criticism notwithstanding that it is wrong or unfair and lawyers must do so in their place.

Fair comment and criticism are appropriate but where there have been personal attacks or criticisms of the judge, rather than the judge's decision, then everyone should stand up, and clearly condemn such comments, as they are direct attacks on the independence of the judiciary. We must be willing to go on record to ensure that the correct version of events is related.

The Bar Association will continue to do what it can to support the judiciary and to educate all on the legal processes.

Your Honour, I turn now to another of the criteria for appointment to the role of Chief Justice, namely that the candidate must have an excellent understanding of and ability to work within the environment in which the administration of justice operates.

Your Honour, of course, is well-known for your innovative approach to judicial administration, and in 2013 while Chief High Court Judge, you were awarded what amounts to the judicial administration equivalent to an "Oscar". Your Honour shared that award with the Hon. Justice Miller for excellence in judicial administration for your work on the High Court's earthquakes list. The list aimed to ensure a timely disposition of cases flowing out of the Canterbury earthquakes so that people could resume their lives as quickly as possible.

This requirement for judicial administrative excellence is critical currently, particularly as we seek to ensure that everyone has effective access to justice, a subject that my friend, Ms Beck, has already addressed.

In your statement when you were first appointed you said: ³

Access to justice is the critical underpinning of the rule of law in our society: it is the notion that all, the good, the bad, the weak, the powerful, exist under and are bound by the law. That condition cannot exist without access to courts, and without the ability to obtain a just

² Oaths and Declarations Act 1957 s18

³ Press statement 17 December 2018 https://www.courtsofnz.govt.nz/publications/appointment-new-chief-justice/AWJ_3B.pdf (accessed 12 march 2019)

resolution of claims before those courts. Cost, delay and a lack of representation all can act as barriers to justice.”

The Bar Association endorses these comments. Justice is for us all and should not be reserved for those who can afford it.

Somewhere along the line, we have priced the ordinary New Zealander out of the legal market. By "we" I don't just mean the profession; I also mean the limited civil legal aid structure, reduced criminal legal aid spending and other costs of litigation such as court fees.

The upper threshold for qualifying for legal aid is ridiculously low. Alongside this, we don't have innovative or even adequate charging systems within the profession to allow many New Zealanders access to our courts. And the "user pays" philosophy that was implemented over the last 20 to 30 years has resulted in court fees rising substantially.

Now the most pressing question is how can all New Zealanders get a fair deal and the right to be heard? That means everyone from every kind of background, economic level and educational ability having a right to be heard which they can actually exercise. A right is of no use if you can't afford to exercise it.

The challenge for the Judiciary, Executive, Legislature and the legal profession is to ensure that all those whose case is legitimate and fits within the criteria set out in the relevant legislation can turn to our lowest or our highest court for determination of their case, without facing debilitating barriers.

This is a challenge that your Honour will have to grapple with as Chief Justice, because as the ability to engage a lawyer shrinks, the number of self-represented litigants swells. This puts pressure on the courts and the judiciary to find ways to deal fairly with the self-represented.

I know that your Honour is acutely aware of this and the profession must stand up for an effective judicial apparatus. Both the New Zealand Law Society and the New Zealand Bar Association will continue to draw attention to the needs of the judicial branch of government. We will continue to explore solutions for overcoming barriers to accessing our justice system.

Your Honour, we must also consider what justice should look like in the years that your Honour will be Chief Justice. It promises to be a time of startling change. We are all trying to predict the effects of artificial intelligence and what benefits might be found in online courts and alternative dispute resolution structures.

We may well move to more efficient ways of administering justice. Courts will need to become more user friendly and may not even be held in a designated room or space. Perhaps courtrooms will only be needed for a very few cases and the rest will be done online.

What I do know is that the judiciary and your Honour must be central to the conversation about how we move forward. You are the experts as you are at the coal face.

And we must also never forget that justice ultimately serves the people. As your Honour said in your statement, we have a range of people and cultures who relate in different ways to our justice system. Those whose cultures rely on the establishment of personal relationships will find it difficult to confront impersonal and remote technologies when they seek a hearing. They will want to be heard by a person.

We must never lose sight of the human face of justice, which is represented by all those who sit on the benches of our courts, and all those who work in or come to our courts.

As we work through these changes, open communication needs to be maintained between the administration, the judiciary and the profession. The NZBA will certainly do its part in ensuring the lines of communication remain open.

Your Honour, you represent the face of the judiciary, but you are much more than just the role. As a judge, lawyer, parent, spouse, sibling and friend you will need support from others, and you are very fortunate that you come from a large and involved family.

Your siblings, Greg, Adrienne and Brent and their families form part of a close and loving family that give you that support and will certainly continue to challenge you. Your mother Kathleen sadly died late last year before she knew that you had been appointed, but she was so proud of all that you had achieved to date. I am sure you feel both her absence and her presence today. She was the sun around which your family orbited, and her loss leaves a huge hole in your life, but her legacy lives on in the remarkable woman that she produced in your Honour.

For your husband Martin and your four children – David, Anthony, Helena and Christopher – you are the sun around which they orbit, and they bring you great joy. But I am sure that they will not hesitate to share with you their views on how you are doing! I know you will have their support in the future and their help to ensure you have the resilience, energy and enthusiasm for this demanding role.

Your Honour, the profession stands firmly behind you and the judiciary, particularly as we all seek to ensure the robustness of the rule of law in our country. We wish your Honour every success.

No reira, tēnā koutou, tēnā koutou, tēnā koutou katoa

May it please the Court.