

**Dame Helen Winkelmann, Chief Justice of New Zealand**

***Valedictory sitting for Justice Mark O'Regan on the occasion of his retirement***

**Supreme Court, Wellington**

**Wednesday 29 November 2023**

Kei te mana whenua, Te Āti Awa, tēnā koutou.

Kei te hunga kua whetūrangitia,  
koutou ko te hunga i takahi i te ara o te ture,  
tēnā, hoki wairua mai.

Kei te whare e tū nei,  
te pukenga wai o te ture i Pōneke  
tēnā koe.

E te whetū o te rangi nei, Justice O'Regan, tēnā koutou ko tō whānau.

Kei aku rangatira, tēnā koutou, tēnā koutou, otirā tēnā tātou katoa.

I welcome you to this special sitting of Te Kōti Mana Nui o Aotearoa, the Supreme Court of New Zealand, to mark the retirement of Justice Mark O'Regan.

Sitting alongside me on the bench today are judges from the Supreme Court, Court of Appeal and High Court. We also have many other judges from the Court of Appeal, Auckland High Court and Christchurch High Court appearing via VMR.

I welcome Justice O'Regan's family, his wife Nicky Saker, and their children Tim, Patrick and Cassie. I welcome the judge's siblings John and Mary, and all of the members of the wider O'Regan and Saker families.

Today you will hear first-hand of the contribution that your whanaunga — your husband, your father, your brother — has made to the law and to the administration of justice in this country. It is wonderful that you will hear of the high regard in which he is held by so many.

I greet our distinguished guests. I mention in particular Tā Tīpene O'Regan, Justice O'Regan's whanaunga from Te Waipounamu, and his wife Lady Sandra. I also mention the retired Judges of this Court, retired Chief Justice Dame Sian Elias, Sir Ken Keith and Sir Terence Arnold. I welcome the many retired judges of the Court of Appeal and High Court. I welcome also the Chief Judges of the District Court and Employment Court.

The business of this court today is nothing other than Justice O'Regan.

We sit today, on the last day of Justice O'Regan's statutory term of office, to acknowledge his service to the law, and to the judiciary. This is an historic event not because his service spans 22 years (although that is a remarkable achievement). It is an historic event because of the importance of the contribution that Justice O'Regan has made to this Court, to the development of the law and more broadly to the administration of justice in Aotearoa New Zealand.

It is right for this historic event to be acknowledged in a way that is appropriate for this country and which reflects the mana of the occasion. That is why we opened the ceremony today with our rōpū waiata, made up of clerks and judicial support staff. Ka rere ngā mihi ki a koutou.

This ceremony will be a strange, and perhaps uncomfortable experience for your Honour. Unlike some of your colleagues, you are not a person who seeks the limelight. I am afraid you will just have to put up with it.

As to how we will conduct the hearing, I will shortly take the appearances of King's Counsel who have rights of first audience before the Court. I will then address some remarks to Justice O'Regan. After I have finished, I will invite the Solicitor General, Ms Una Jagose, to address the Court on behalf of the Government, then Mr Paul David, as President-elect for the New Zealand Bar Association, followed by Mr Frazer Barton, as President of the New Zealand Law Society. Your honour, you will then have a right of reply.

I will now take the appearances of King's Counsel.

Justice O'Regan, I speak on behalf of the judiciary to acknowledge your contribution to the law, to the judiciary and to our society. I speak on behalf of your judicial colleagues, and those who have worked with you in the courts, to convey the esteem and the affection in which you are held. In doing so I may cover some of the same biographical data as other speakers, but I will be speaking with knowledge gained from the courts and judiciary.

To start at the beginning. Not with the arrival of the O'Regan clan to the West Coast of the South Island in the early 1860s, part of the Irish diaspora fleeing the famines. Nor with your birth into this proud family of Irish New Zealanders, the O'Regans, in 1953. But rather with your appointment in February 2001 as a High Court judge to sit in Auckland. The beginning for the purposes of your judicial whānau.

We were lucky indeed that you were prepared to accept appointment to the High Court bench. As a commercial lawyer, practising at Chapman Tripp, the expected path for you was to work a little bit more, retire comfortably and then perhaps, if you felt motivated to do so, take on some directorships.

But that was not in your DNA. You come from a family which has valued public service. Your great uncle Patrick O'Regan, Tā Tīpene's grandfather, was a well-known New Zealand politician, lawyer, and, later, judge of the Arbitration Court. In politics and practice, Patrick championed the lot of the working man. Your father, Barry was a judge of the High Court, sitting in Wellington. Your aunt, Sister Pauline O'Regan, was a prominent and outspoken nun and social justice campaigner. And of course, you have two brothers who are lawyers and a sister who was the first woman to have been head of a government department, and the first Chief Executive of the Ministry of Women's Affairs. Service in pursuit of a just society is clearly in your DNA.

The judiciary was fortunate to gain the benefit of your commercial experience, drawn from your time working at Chapman Tripp and, before that, from an inhouse role at DHL in Paris.

You are part of a small group of commercial lawyers who have made a similar transition to the bench, all of whom have then served with distinction. The quality of that contribution makes the case for why we must not restrict ourselves to litigators when we look for future judicial appointments.

Having said that, you were something of an unusual commercial lawyer given the extent of your involvement in treaty negotiations. Whilst still in practice you were asked to lead settlement negotiations for the Crown for the Waikato-Tainui treaty claim. Justice Ellen France, who was at Crown Law at the time and worked with you on that team, said that you were the person in the

team coming up with the ideas and solutions to move things on past the difficult moments, and past the challenging obstacles.

I have no doubt that it is this background which has shaped your very distinctive judicial philosophy. You believe that it is the function of judges, and of judgments, to resolve the controversy before the court — and that judgments should only articulate the principles necessary for that resolution. You believe that judgments should be accessible, and that the principles they lay down should be workable — workable in a busy legal office, and in the business community. But you also believe that the law must meet New Zealand's unique situation and provide just outcomes in the individual case. Notwithstanding your business background then, you are decidedly not a law and economics man.

This judicial philosophy has served you and New Zealand well. You have produced many leading judgments in many areas of the law.

For example, the leading judgment in the area of charities law — in *Attorney-General v Family First*; in the area of Bill of Rights jurisprudence — in *D v NZ Police*; and on the difficult question of the application of the Property Relationships Act in the context of trusts — in *Clayton v Clayton*.

Although a natural consensus builder, you have also written important dissenting judgments — dissents often informed by your view of the judicial role, in cases such as *Attorney-General v Taylor*, *Ririnui v Landcorp Farming Ltd*, and *Wairarapa Moana ki Pouākani v Mercury*.

It is hard to overstate the importance of the contribution you have made to the Supreme Court, through your judgments of course, but also through your intellectual rigour, through the very considerable administrative tasks you have shouldered, and through your commitment to the vision for this Court — a vision that important legal matters, including those relating to the Treaty of Waitangi, should be resolved with an understanding of New Zealand's conditions, history and traditions.

Because of your obvious leadership qualities, it was inevitable that you would be asked to lead. You led the Court of Appeal as its President between 2010 and your appointment to this Court in 2014. For many years you led judicial engagement with the Ministry of Justice in attempts to upgrade the courts' then-antediluvian IT system. And in more recent times you have led the Huakina kia Tika | Open Justice Committee — calmly and in a business-like way introducing innovation after innovation, including the live-streaming of proceedings, and the publication of Supreme Court submissions. More broadly you have played a key part in the working relationship with the Ministry of Justice. The Secretary for Justice has asked me to offer his apologies — he would be here if he could be, but he has asked me to convey the high regard in which you are held by those within the Ministry of Justice.

I am not going to lie — the sheer effectiveness and efficiency of your approach does have its downsides for your colleagues — at times. You are not particularly tolerant of those around you who struggle to make up their minds. Nevertheless, your decisiveness is a good model for others. You also have a close attachment to speed in dispatch — perhaps drawn from your years working at the freight forwarding company DHL. This of course again is mostly upside, but I think it also explains what seems to me to be an otherwise inexplicable hostility to the work of the Rules Committee.

Finally, I want to speak about you as a colleague. To help me with this, I asked your colleagues how they would describe you. You will be pleased to know there was a surprising consistency in description — your colleagues see you clearly. They describe you as being without ego. They say

you are a humble person. And you are courteous — always considerate of others. They say you are respectful of everyone in the courts team, irrespective of rank or station, seeking to engage on equal terms and seeing value in the contribution of each individual. You are a team player, through and through. But although you are naturally quiet, it would be a mistake to see you as a reserved person. You love to tell a story — you are, after all, an Irishman — and you see the humour in the everyday.

Justice O'Regan you have a very full life outside of the judiciary. Although you would never brag, you have a brilliant and talented wife, Nicky Saker, who is herself a leader in the world of literature, the arts and communication. You have talented children of whom you are rightly proud. Through your stories we also have a pretty good idea that you love the game of cricket, and that, although again you are not one to brag about your latest innings, you have played in a cricket team until recently — a team so serious about the game that it has gone on international tours. In the interests of accuracy, and of not overselling your cricketing prowess, I think those tours were self-funded.

Nevertheless, it is relevant for my purposes to relate that for many years you were the opening batsman for the Kelburn Park XI. Of course, you were. Because it is the role of an opening batsman to anchor the innings of his team. He or she does this by facing the new ball, anticipating when it is likely to seam and pitch, patiently wearing that seam down with ones or twos, going for six only when circumstances are appropriate. All the while keeping the scoreboard ticking over. Foregoing the egotistical flash of the batting blade in order to advance the overall effectiveness of the team.

Justice O'Regan, you have been our opening batsman. Thank you for your service to what has been your team for the last 22 years — the New Zealand judiciary — and thank you for your service to Aotearoa New Zealand.

Kia kaha, kia māia, kia manawanui

Kia ora tātou katoa