

## **Justice Mark O'Regan**

### **Speech for Valedictory Sitting**

**29 November 2023**

Tēnei te mihi maioha

Ki a koutou, ngā mareikura, ngā manukura, e huihui nei i tēnei rā whakanui

Nōku te hōnore i tō koutou taenga mai

Tēnā koutou katoa.

Thank you all for honouring me with your presence, either in the courtroom or on the livestream today. I especially note the large number of judges and former judges who are present. Thank you. It is lovely for me to see the courtroom so full and I am humbled by the effort many of you have made to be present, especially those of you who have come from afar.

I want to begin where these speeches often end, by thanking my wife Nicky for her love and support throughout my judicial career and well before that as well. Judging is a stressful and at times all-consuming occupation and I am so lucky to have had you by my side. I also thank my children, Tim, Patrick and Cassie for keeping me grounded and for their forbearance as we moved to Auckland at the beginning of my judicial career and then back to Wellington when I was appointed to the Court of Appeal. I know neither move was easy for you and I am grateful to you that you made the moves without complaint, or at least not a lot of complaint. It is also lovely to have Tim's fiancée HanLing and Patrick's partner Gracie here today.

Two of my siblings, John and Mary, and their respective spouses Margaret and Acky are here today. My brother Paul intended to be here but has been prevented from doing so by illness, but his wife Mary is here. My brother

Peter and sister in law Mary Jane are not here because they live in the UK. Hopefully those not here will see the livestream or the recording of it, so I acknowledge all of my siblings as if you were with us. As the youngest of five, I have had a lot of advice and encouragement from my siblings, some solicited and some not, and have learned a lot from all of you. You have all been important influences in my life.

I thank you, Chief Justice your very kind tribute. And for making this sitting happen. I also thank our colleagues in Te Tari, the Office of the Chief Justice, especially Jo Robb, and the Supreme Court registry staff, for all the effort that has gone into arranging the sitting and the livestream of it.

I also thank you, Ms Jagose, Mr Barton and Mr David for your kind words. All three of you represent very important institutions in our legal system, ensuring we never lose sight of the importance of the rule of law in maintaining our collective freedom. Your words about me may have been a little exaggerated and embellished, but they are gratefully received all the same.

It is appropriate that this ceremony is taking place in this courtroom, not just because I have been a member of this court for nine years or so but because the Supreme Court had such a significant impact on my judicial career well before I was appointed to it.

A little-told story about the creation of the Supreme Court in 2004 is the impact it had on the Court of Appeal. The then Chief Justice and the four most senior judges of the Court of Appeal became the initial judges of the Supreme Court. This was wise because it dispelled any suspicion that the Government of the day would stack the court. But it meant the Court of Appeal lost its most experienced judges all at the same time. All of them were formidable judicial figures: Tom Gault, Ken Keith, Peter Blanchard and Andrew Tipping.

I was one of the four judges appointed to replace the new Supreme Court appointees on the Court of Appeal, along with Grant Hammond, Willie Young and Rob Chambers. The three judges who remained were John McGrath, Noel Anderson and Susan Glazebrook. Only John had been on the court for more than a couple of years. So the change that happened in 2004 meant that in many ways the Court of Appeal lost its connection with its institutional memory.

The extent to which the Court of Appeal changed after the creation of the Supreme Court is illustrated by the fact that in my nearly 11 years on that court, I served with 18 other permanent Court of Appeal judges. Compare that to Sir Owen Woodhouse, who was on the court for longer than me in the 1970s and 80s and served with only six other permanent court colleagues.

My appointment to the Court of Appeal also meant that my time as a trial judge was short: only three years. I was grateful to be asked to join the Court of Appeal, but there is no doubt that I would have spent many more years as a trial judge if the Supreme Court reform had not happened. So the Supreme Court changed the course of my career right from the time of its coming into being.

As the Chief Justice mentioned, I did not take the well-worn path to the bench. I was a commercial lawyer so I had never appeared as counsel in a court before I became a judge.

My lack of court experience made for some tricky experiences as I leaned the ropes. And learning the ropes while seated on an elevated bench with everyone in the room looking at you can be a little intimidating.

My first ever case in the High Court was a resource management appeal. It seems my background as a non-litigator had done the rounds, because counsel for the appellant began his submissions with this question: "Don't take this the wrong way Sir, but do you know anything about the Resource Management Act?" My mother always told me to tell the truth so I confessed I didn't. This caused his client, sitting in the back of the court, to bury his head in his hands. The counsel then proceeded to give me what he called a "primer" on the RMA. At the end of the case, I thanked counsel and left. The court taker asked tactfully: "Would you like me to tell counsel that you have reserved your decision, Sir?" I gratefully accepted her offer.

In my first murder trial, the pathologist's evidence and the accompanying photos were pretty shocking and I was very aware that the victim's widow was in court hearing the account of her husband's terrible last moments. I started feel squeamish and thought I was going to faint. I decided that taking a break to prevent this would be less embarrassing than actually fainting. So that's what I did. The prosecutor was Simon Moore, now Justice Moore, who is here with us today, and he asked surprisedly, "What is going on?" I was already out the door before he finished the question so he never got an answer. I sat down on the stairs outside the courtroom. The court taker came out of the courtroom and asked me what was wrong. I told her I thought I was going to faint. She replied, helpfully, "Stick your head between your legs Sir!" I took her advice and, as it turned out, I didn't faint. After a few minutes we resumed, without further incident. I developed a higher level of resistance after a few trials, so this problem didn't recur.

Appellate work lacks the drama and human dimension of trial work, but it has some advantages too. The most significant of these is collegiality and shared

decision-making. I am lucky that in my time on the Court of Appeal and on the Supreme Court, I have had colleagues who have been good company and good to work with. You hear stories of overseas courts where there are simmering tensions and judges who disparage each other and undermine each other in their judgments. I hope that never happens here. The other happy feature of appellate work is that there are many interesting and very challenging cases.

Going back to the Court of Appeal and the 2004 changes. It is sobering that of the 7 judges that formed that court at the time of the creation of the Supreme Court, only three are still with us: Willie Young, Susan Glazebrook and me. I am very pleased that Chris McGrath, Nanette Moreau Hammond and Deb Chambers are here today. I owe much to John McGrath, who, when Solicitor-General, instructed me to act for the Crown on the early tribal Treaty settlements. That work was the most satisfying of my career as a lawyer. Of course, my cousin Tipene, who is here today, was a formidable adversary in one of those negotiations. Later, John and I worked together on the Court of Appeal. I replaced John on this Court when he retired, but there was a six month overlap so we had the chance to work together on this Court as well, which I greatly valued. Grant Hammond made an immense contribution to the Court of Appeal, after which he did the same thing at the Law Commission as its President. Rob Chambers was very welcoming to me when I began my career as a High Court Judge in Auckland and became a good friend. We then went to the Court of Appeal together. As well as having a formidable legal intellect, he was also incredibly mischievous and funny. His sudden death came way too soon.

There are many people I want to thank for what they have done for me in my judicial career.

I was privileged to be led by two great Chief Justices, Sian Elias and Helen Winkelmann. The job of Chief Justice is, in fact, two jobs: each of which would fully occupy any lesser mortal. The first is the presiding judge and leader (both administrative and intellectual) of the Supreme Court. The second is leader and public face of the entire judicial branch of Government, taking in all courts and all judges. I was fortunate to work closely with you, Sian and Helen, over a four year period when I was President of the Court of Appeal, you, Sian were Chief Justice and you, Helen were Chief Judge of the High Court. And I have also worked closely with each of you during my time on this Court. So I have seen you both in both of the roles I have described and I have great admiration for both of you. I take this opportunity to thank you both for your friendship, your leadership, and your sheer hard work on behalf of the judiciary and the country.

I also thank my Supreme Court colleagues, past and present. Six of you are sitting on the bench with me today and the others, Sian Elias and Terence Arnold, are also present. When Sian retired she said all her colleagues had beautiful minds, but qualified that by saying they somehow became a little muddle headed at times. Far be it from me to endorse that. It is of course true that we do not agree with each other all the time, and even think a colleague's approach is muddle headed, but we manage to do that while respecting each others' entitlement to their own view. Thank you all for your friendship and collegiality.

In my nearly 23 years on the bench I have had four associates: Frankie Brown when I was on the High Court in Auckland, Denise Jones and Tracy Bryant at the Court of Appeal and Deb Goodwin for all of my time in the Supreme Court. All of you are here today and I take the opportunity to thank you for hard work

and good company over the years. Denise also worked with me as my secretary at Chapman Tripp for many years before I became a judge so we worked together for more well over 20 years.

Clerks are a little different: the role lasts for two years maximum, and sometimes that time is spent with more than one judge. So I have had something like 17 clerks who have worked with me over the years. All have been great people to work with, all full of the enthusiasm of the young and the knowledge of technology that puts me to shame. And the more recent ones have also been good singers or musicians. The older ones have gone on to great careers as academics, practitioners and in some cases, in other fields altogether. Many have become friends. I thank them all.

I am also grateful to the registry staff who make the court work. We are very fortunate on this court at the calibre of our registry : all very competent people and always a pleasure to deal with.

I also thank the staff in Te Tari, the Office of the Chief Justice, especially the director, Cate Brett and the Communications and Engagement Manager, Liz Kennedy, with whom I have worked closely in recent years, and Debbie Iversen, with whom I worked closely many years ago.

I want to acknowledge the Ministry of Justice officials with whom we Judges work in the collaborative enterprise of running a fair and effective justice system. The differing priorities of the Ministry and the Judiciary can cause tension at times, but my own recent experience of the engagement between the two institutions is that it is professional, courteous, and focussed on that collaborative enterprise.

So, this is the end of my 23 years as a judge, apart from the odd time I may be wheeled in as an off course substitute for one of my colleagues. There has at various times been talk of increasing the retirement age for judges but I think I have gone my measured mile and I'm ready to go. I thank you all again for honouring me with your presence today.

Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.

#### Postscript

The waiata group has done us proud today. I thought a waiata may be sung but was not expecting "The Parting Glass" What a treat!