

**ADDRESS BY THE SOLICITOR-GENERAL AT THE VALEDICTORY SITTING
OF RT. HON. CHIEF JUSTICE DAME SIAN ELIAS AS CHIEF JUSTICE OF NEW
ZEALAND AND TOKELAU**

8 March 2019

E ngā kaiwhakawā o ngā Kōti mana nui, e te Pehitene o te Kōti Pira, e ngā kaiwhakawā o ngā kōti katoa o te motu, tēnā koutou.

E te Kaiwhakawā Tumuaki, e wahine toa, e rangitira, tēnā koe.

1. Your Honour, the Attorney-General is today returning from overseas and is sorry not to be here to convey the Government's message of thanks and appreciation. But I am pleased about that as it is a great personal pleasure to be able to speak here today. It falls to me to convey the Government's sincere appreciation and admiration for your public service as a judicial officer, and to offer the Government's best wishes to you in your retirement. Today is a memorable occasion; for you, for your family, for the profession, for Aotearoa. We are joined by family along with – as is evident - your friends, colleagues and many others.
2. This special sitting of te kōti mana nui, the Supreme Court, provides an opportunity to reflect publicly on your Honour's distinguished record of service to the law, a career that has spanned some 46 years. Your Honour's legal career and notable achievements will be familiar to many here today. Much more will be said – today and in the future - and much will be written about your significant contribution to Aotearoa, to our legal order, and to society. I can't hope to do justice to that in my time today, so I will touch on just some aspects here.
3. Your Honour graduated from the University of Auckland in 1970 with a Bachelor of Laws with Honours. Following your admission to the Bar, your Honour travelled to the United States to complete your JSM at Stanford University. Upon returning to New

Zealand your Honour entered the legal practice at Turner Hopkins and Partners in Auckland in 1972. Your Honour practised part-time as a barrister, assisting at the Grey Lynn Neighbourhood Law Office until 1981 when you began full-time practice as a barrister, appearing in a wide range of New Zealand Courts and Tribunals.

4. It was while you were at the Grey Lynn offices that saw one of the many cases you have been involved in that changed the course of the history of this country. You represented young and understandably angry members of the He Taua group charged with rioting, among other charges, following their efforts to stop the Engineering students from their “tradition” of performing mock haka in capping day antics at the University of Auckland. Official efforts to cease this offensive tradition had failed and He Taua went personally to seek an end to the offence. The clash between what was seen, wrongly, as lighthearted capping antics and Māori values and tradition became violent and – through your defence of the group - became a seminal moment for Aotearoa.
5. I doubt this was the first time that your steely resolve, your bravery and your humanity was seen. And throughout your Honour’s career you have guided the development and improvement of the law in numerous capacities with those same qualities. Your Honour served as a Law Commissioner from 1986 until 1990 and you played an instrumental role in the Commission’s 1989 Report on the reform and restatement of company law in New Zealand. The conscientiousness and dedication that you bring to your work were reflected in your Honour’s involvement as counsel for the plaintiff in the lengthy litigation between the statutory managers of Equiticorp Limited and the Crown. Your amply demonstrated resilience and rigour in the face of complex legal issues over the 14-month trial.

6. Your Honour has significantly advanced the law in respect of te Tiriti o Waitangi and you have coupled your intelligence and your advocacy in the interests of tangata whenua throughout Aotearoa. I have just mentioned He Taua in the 1970s. In 1984 your Honour helped Ngāneko Minhinnick bring the Manukau claim to the Waitangi Tribunal. You were counsel for the plaintiffs in the NZ Māori Council *Lands* Case in 1987, a seminal case that enabled a new line of jurisprudence to emerge in New Zealand based upon the articulated principles of te Tiriti. Your Honour has said that that case was a pivotal and life-changing case for you. Your Honour also assisted on the Muriwhenua Fishing claim and the hearing resulted in the recommendation that led to the enactment of section 9 of the State-Owned Enterprises Act 1986 and the Treaty Settlements process.
7. Your Honour acted for the New Zealand Māori Council also in the Broadcasting Assets Case and, despite being unsuccessful in the case at the Privy Council, you were successful in the significant recognition of Crown duties and obligations that followed and the foundation was laid there to seek further recognition of te reo Māori as a taonga - now seen in the enactment of te Ture mō te reo Māori (the Māori language Act) which affirms te reo Māori as a taonga.
8. It is appropriate to be making this address on International Women's Day. Your Honour has long been an inspiration and a role model for women in the legal profession and you continue to inspire women graduates into our profession across the country. During your time at the Auckland District Law Society you held positions on several committees that focused on the advancement of the interests of women in the legal profession and in 1988 your Honour and Dame Lowell Goddard were the first women to be appointed Queen's Counsel in New Zealand.

9. In 1995 your Honour was appointed a judge of the High Court. A notable case from your time in that Court is *Lange v Atkinson*, where your Honour tackled the issue of whether appropriate balance is struck by the common law between the two principles of reputation and free speech in the context of political speech. Your Honour's order that the defences of political expression and qualified privilege be joined into the one defence of qualified privilege was affirmed by the Court of Appeal.
10. 1999 was a somewhat busy year for your Honour. First, you were sworn in as the 12th Chief Justice of New Zealand, thus becoming the first woman to hold the position as the most senior judge and leader of the judicial branch of government. Secondly, your Honour was appointed Dame Grand Companion of New Zealand – also the first woman to receive the appointment in the then relatively new Royal Honours System of New Zealand. Thirdly, you were appointed a Privy Councillor and first sat on the Privy Council in 2001. Your career in the law to date has certainly been extensive as well as jam packed; indeed I note in the recent Law Talk it reported that more than half of the profession have commenced practice since your Honour was appointed Chief Justice in 1999.
11. Te Kōti Mana Nui the Supreme Court formally came into existence in 2004 with the passing of the Supreme Court Act 2003, which also ended appeals to the Judicial Committee of the Privy Council. The Government acknowledges with deep gratitude your leadership of the judiciary through this period of transition as the first Chief Justice of our still relatively new indigenous final court of appeal.
12. While on the Supreme Court bench, your Honour has of course presided over the challenging and significant legal issues for parties and for the country. In *Takamore v Clarke*, your recognition of tikanga Māori, and the recognition and protection of Māori rights in principle steered a course to our systems acknowledgment that tikanga is

certainly part of this country's common law. In *Brooker v Police* and *Morse v Police*, your Honour addressed the complicated issue of the appropriate legal boundaries that apply to forms of dissenting behaviour. You observed that referring to how a putative 'reasonable person' would respond to the dissenting activity would risk imposing an audience veto on dissent by limiting it to whatever a viewer feels comfortable with viewing. Your Honour's decision in *Chamberlains v Lai* found that the public policy arguments did not justify the retention of limited common law immunity for legal practitioners from claims by their clients for professional negligence. This decision emphasised the necessity of public confidence in the accountability of members of the legal profession.

13. In all of these cases, and many more besides, your Honour has had a steady hand on the tiller of the rule of law. The rule of law and the checks it provides on the exercise of power, enforced by an independent judiciary, are at the heart of our democratic system of government according to law. They are the features of our system of government which successive administrations welcome as they are the cornerstone of their legitimacy to govern.
14. One of the markers of a free, open and democratic society committed to the rule of law is independence of the judicial branch. The constitutional principle of separation of powers requires that the courts are independent of the Executive government to ensure both impartiality in judicial decisions and institutional independence in organising and managing the work of the courts. The effective and efficient functioning of courts is assisted by the Executive through the Ministry of Justice. That relationship – not always easy – requires a respect for respective responsibilities and for institutional constraints. Today the government acknowledges your significant effort in fostering this critical constitutional relationship. The Memorandum of Understanding between the Secretary

for Justice and the Chief Justice - which you were instrumental in establishing and which sets out the principles to be observed by the judiciary and the Executive - will be a long lasting blueprint for negotiating that relationship into the future.

15. As I was preparing this address – ably assisted by others I have to say – it occurred to me that what I have just said might make you seem like a terrifying prospect; brave, smart, ground-breaking, ever-energetic. And while that is certainly true – you do a good terrifying your Honour, if I may say so – I cannot complete this address without acknowledging another significant contribution. You have presided over many ceremonial occasions; swearings-in of judges, retirements of your colleague judges, calls to the inner bar, admissions to the bar, and have spoken extensively extra-judicially. Just a smattering of those extra judicial speeches include to law society national and branch events, Te Hunga Roia Māori o Aotearoa conferences, academic conferences, opening and re-opening of court houses, graduation of adult literacy students at Rimutaka prison, lectures to law students, to rotary clubs, the Hamlyn Lectures, the Shirley Smith address, the Henry Harkness lecture.
16. The full list is long and daunting, your audiences diverse, both domestically and internationally. Throughout this your humanity and warmth shine through; you find just the right words to inspire and encourage your audience, you do so with charming self-deprecation, you are kind and thoughtful. No boiler plate addresses at swearings in or calls to the inner bar over nearly two decades but rather personalised, reflective and gracious addresses that are deeply inspiring to the subject and gratefully received.
17. You have been a hugely accessible Chief Justice – not just to the profession but to the country. I can only imagine that - along with your judicial duties – you have worked to a punishing schedule. But I doubt you'll put your feet up – or not for long. I hope that, freed of the constraints of being a sitting judge, your Honour will continue to give

us the benefit of your thinking and your challenges to the way we see ourselves and our constitutional and legal order. I for one look forward to more.

18. Finally, on this point, may I take advantage of the Attorney's absence to acknowledge personally your wisdom and kindnesses to me in the past three years since I took office as Solicitor-General. Ngā mihi maioha.

19. At the first sitting of this Court – te Kōti Mana Nui - your Honour ended your address by saying, of the Court:

We have a keen appreciation of the task ahead; a consciousness of the solemn trust we undertake; and a willingness to respond to the expectations with which this reform has been undertaken.

20. Your Honour, your time on New Zealand's highest court has been characterised by an unwavering commitment to the rule of law and taking account of contemporary social values. Your leadership and ability to refine complex legal issues has provided important guidance to the judiciary and to the profession. Your task as New Zealand's 12th Chief Justice is complete, the trust repaid, and the expectations surpassed.

21. Chief Justice, e te Kaiwhakawā Tumuaki, the Government thanks you for your invaluable public service as a judicial officer and as Chief Justice. The Government wishes you all the very best in your retirement.

Kia hora te marino, kia whakapapapounamu te moana, kia tere te kārohirohi i mua i tōu huarahi, ko tō hoahaere, ko te rangimarie.

Your Honour those beautiful words of farewell from Ngati Maniapoto; May the calm be widespread, may the ocean glisten like greenstone, may the shimmer of light dance across your pathway and may peace itself be your travelling companion.

Ka rite ki te pai o te Kōti (as the Court pleases)