



The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

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MEDIA STATEMENT

Chief Justice pays tribute to John Fogarty KC



The Honourable John Fogarty KC (1947-2022)

The Chief Justice, The Rt Hon Dame Helen Winkelmann, today paid tribute on behalf of New Zealand's judiciary to the Honourable John Gerard Fogarty KC, who passed away on Saturday 10 December 2022.

“On behalf of the New Zealand judiciary I acknowledge the Hon John Fogarty KC’s service to the judiciary and extend my deepest sympathy to his family.

John will be greatly missed by his many friends and colleagues in the judiciary and in the profession.

John brought to the bench a broad and deep knowledge of the law. As a lawyer, and then as a judge, he worked selflessly for a just outcome. He was a man of unfailing courtesy – his colleagues on the bench remember his courtesy to them, to counsel, and to litigants. He was also a kind, humble and elegant man – elegant in his style, in his thinking and in his writing.”

John graduated from the University of Canterbury with an LLB (Hons) in 1971, before studying at the University of Toronto where he graduated with an LLM in 1974. He then joined Weston Ward & Lascelles, becoming a partner in that firm in 1978. He went to practice as barrister sole in 1985 and was appointed Queen's Counsel in 1990.

As a barrister he developed an extensive public law (including competition law) and commercial practice, appearing in many of the leading cases in those areas. He also worked as a mediator and arbitrator.

Deeply involved in his community, John was an advisor to the Deaf Sports Federation of New Zealand (formerly NZ Deaf Sports Association) for many years and was part of the organising committee for the 15th World Games for the Deaf, held in Christchurch in 1989.

John was appointed as a Judge of the High Court in 2003, sitting in Christchurch. He was the Civil List Judge for Christchurch in 2013, and was also a member of the criminal and civil division of the Court of Appeal between 2007 and 2015. From 2014, he sat at the Auckland High Court. He retired from the bench in 2017.



Justice Fogarty at his swearing-in. Photo: Des Ellery Photography

Source: Canterbury Tales – Canterbury District Law Society, Vol 10(1), February 2004

Amongst his many noted judgments is his first instance decision in the Takamore case (*Clarke v Takamore* HC Christchurch CIV-2007-409-001971, 29 July 2009) which addressed the place of tikanga in the common law.

Throughout his 14 years of judicial service, John also made a number of important extrajudicial contributions to the work of the High Court. He was a longstanding member of the Rules Committee, serving from 2005 to 2013 (including as Chair from March 2008). He was involved in several Rules subcommittees including in relation to the obligation of counsel to cooperate, class actions, and the Commerce Amendment Act 2008. As Chair of the Committee, he oversaw the reform of the rules relating to discovery, with the aim and effect of reducing the cost burden imposed by that step in proceedings.

His firm grounding in constitutional and public law was called upon by judicial leadership to assist with tasks of judicial administration in support of a strong and independent judiciary. He helped to navigate the important boundaries between the judiciary and the executive in matters of judicial administration. He also assisted judicial leadership with commenting on law reform proposals where they impacted upon the administration of justice. In this work he was able to draw upon the experience he gained prior to appointment serving on the New Zealand Law Society Legislation Committee (including for two years as its Chair) and his 10 years serving (under appointment from the Minister of Justice) as a member of the independent Legislation Design and Advisory Committee.

John is survived by his wife Nan, his three children, Peter, Bridget and Francesca, and his six grandchildren.