

# A TRIBUTE TO DR GEORGE BARTON

*Sir Ivor Richardson\**

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*This address was given by Sir Ivor Richardson on the occasion of the special sitting of the High Court in Wellington on Wednesday 6 July 2011 to honour Dr George Barton QC.*

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I welcome this opportunity to speak in tribute to Dr George Barton.

We were academic and professional colleagues and good friends for nearly 50 years. We relished our weekly lunches with other close friends where we debated current issues and put the world to rights – sometimes unanimously, often with dissents.

What, for me, has always been so special about George's working life is the way he combined legal scholarship and his constant view of the practice of law as necessarily involving public service. Vigorous and seemingly indestructible, his sudden death came as a shock, even at age 86.

When someone has been in the law and done so much over so long, it is difficult to know where to start. Let me begin with a brief sketch of George's career.

George Barton graduated BA, LLB and LLM from the University of New Zealand. He was awarded a Humanitarian Trust Fund Studentship and studied at Cambridge, graduating with a DPhil.

His work at Cambridge on "Jurisdiction Over Visiting Forces" won immediate international acclaim and, 50 years on, two of his resulting articles in the *British Yearbook of International Law* were cited in the *American Journal of International Law*.<sup>1</sup>

After Cambridge, George went on to work in the Human Rights Division of the United Nations in New York from 1949 to 1952. Back in Wellington in 1952 he joined the Law Faculty at Victoria University of Wellington and, except for four years in that powerhouse practice Morrison, Spratt and Taylor from 1955 to 1959, he was a key figure in the Law School for 20 years. He taught

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\* Distinguished Fellow, Law Faculty, Victoria University of Wellington. Professor of Law at Victoria University of Wellington 1967–1973; Dean of the Law Faculty at Victoria University of Wellington 1968–1971; Pro-Chancellor of Victoria University from 1979–1984; Chancellor of Victoria University 1984–1986; appointed to the Court of Appeal 1977; President of the Court of Appeal in 1996–2002.

1 Cited in "International Decisions: *Public Prosecutor v Ashby*" (1999) 93 AJIL 195 at 221, fn 17. Those articles were GP Barton "Foreign Armed Forces: Immunity from Criminal Jurisdiction" (1950) 27 BYIL 186; GP Barton "Foreign Armed Forces: Qualified Jurisdictional Immunity" (1954) 31 BYIL 341.

equity, civil procedure and evidence over many years – plus first-year law, other subjects and LLM seminars to meet the needs of the times. As well, he developed the first New Zealand course in legal history and, naturally, was called on to contribute biographies of leading legal figures in every volume of the *Dictionary of New Zealand Biography*.

During those latter years he became Professor of Jurisprudence and Constitutional Law and Dean of the Faculty of Law for a term. Efficiently organised as always, he combined his teaching and research as a member of the Law Faculty with his work as a barrister. His students certainly appreciated that blending of academic rigour and practical experience, as many have remarked in these last few weeks.

We had many good times and adventures together at Victoria University of Wellington, not the least when we went to a law schools' conference in Perth. There were some unusual Australian academics present. One kept knocking on doors looking for alcohol. I thought he was particularly optimistic in knocking on George's door. Another, who taught at Adelaide, rode a bicycle downhill from his house to the law school in the morning, was collected by his wife at the end of the day, and at the weekend returned to the law school with a trailer to uplift the five bicycles he had used during the week. That Adelaide professor went on to a successful career on the bench.

Lawyers and judges like to refer to works of authority to support what they say. I have two authorities to cite because they sum up some very special features of George's contributions to law and to the community.

The first is from the citation for the degree of Doctor of Laws *honoris causa* conferred by Victoria University of Wellington on George on 29 April 1987:

The combining of legal scholarship with practice as a much sought-after barrister has required both great intellectual vitality and administrative ability of a very high order. Those qualities have been most prominently seen in the conduct of the major cases he has undertaken. He has not been daunted by the protracted complexities or the political unpopularity of the cases he has undertaken to argue, several of which have been concerned with issues of great constitutional significance.

I pause to mention *Fitzgerald v Muldoon*.<sup>2</sup> Victorious at the 1975 election, Prime Minister Muldoon made a press statement announcing the abolition of the superannuation scheme established pursuant to the New Zealand Superannuation Act 1974. George persuaded the Chief Justice, Sir Richard Wild, to rule that the press statement constituted the exercise of a pretended power of suspending laws in breach of s 1 of the Bill of Rights Act 1688.

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<sup>2</sup> *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC Wellington).

And *Parsons v Burk* in 1971,<sup>3</sup> and *Ashby v Minister of Immigration* in 1981 both challenged sporting contacts between New Zealand and South Africa.<sup>4</sup>

The degree citation ends:

In the spirit of the familiar saying about a good picture being worth hundreds of words, I invite [the new graduates in law] to see George Barton as an exemplary figure in their profession. He has sought constantly to deepen his knowledge and attain wisdom; he has been eager for diverse experience; and the fruit of that knowledge working upon that experience has been the distinctive and admirable contribution he has made to the well-being of the community he has served.

I can almost hear George saying, "Cut it out" – but I have not finished. I turn to the second authority. It was in 1989 that, with great finesse, the then recently appointed Chief Justice, Sir Thomas Eichelbaum, and the Attorney-General, the Rt Hon David Lange, persuaded George to accept appointment as a QC.

The Attorney then said in his press statement:<sup>5</sup>

Dr Barton is an outstanding member of the legal profession, regarded by many of his colleagues as New Zealand's leading barrister. Throughout a career of over 30 years at the Bar, Dr Barton's approach to his practice is to accept a brief from any person with a cause that should be argued, no matter how unfashionable or unpopular it may be. Although at the top of his profession, Dr Barton is prepared to match his fees to the ability of individuals to pay: any other approach would have been unthinkable for him, as it would have resulted in many clients not being able to bring their grievance to court for determination.

Ten years on from George's appointment as a silk, the Attorney-General, the Rt Hon Sir Douglas Graham, hosted a dinner at Parliament Buildings to mark George's long contribution to the law in New Zealand. Speaking on that occasion I recorded, with thanks to the marvels of modern technology, that George had appeared in 170 cases reported in the New Zealand Law Reports (NZLR), which is as far back as the technology then took us, as well as many hundreds, if not thousands, of other cases, some reported in specialist reports and others not reported.

Ten of those reported in the NZLR were in the Privy Council, 81 in the Court of Appeal, 78 in the High Court or Supreme Court, and one before the Visitor of the University of Waikato. A remarkable achievement.

As I have said, 10 of those reported cases were in the Privy Council, starting with the fluoridation case in 1964. They also included the second *Europa Oil* case where,<sup>6</sup> assisted by Sir

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3 *Parsons v Burk* [1971] NZLR 244 (SC Wellington).

4 *Ashby v Minister of Immigration* [1981] 1 NZLR 222 (CA).

5 "Appointment of Queen's Counsel: Dr George Barton" [1990] NZLJ 14.

Garfield Barwick, nominally a member of the Board, he persuaded the Privy Council to retreat somewhat from the first *Europa* case;<sup>7</sup> and *Lesa v Attorney-General*,<sup>8</sup> where George was representing Ms Lesa, a Samoan claiming under citizenship legislation to be a natural born British subject and so a New Zealand citizen. After George won the appeal both the governments of New Zealand and Western Samoa felt obliged to stem an anticipated tide of immigration to New Zealand. Samoans appreciated his work on their behalf and honoured him with a *matai* title. It meant a lot to him and the family.

It must be rare for any barrister from any jurisdiction to have appeared before the Judicial Committee in so many cases over a span of 40 years.

And in the Court of Appeal he was a fixture, almost part of the furniture, for even longer.

With affection, those of us who have known George and Ailsa over all the years salute them.

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6 *Europa Oil (NZ) Ltd v Commissioner of Inland Revenue* [1976] 1 NZLR 546 (PC).

7 *Commissioner of Inland Revenue v Europa Oil (NZ) Ltd* [1971] NZLR 641 (PC).

8 *Lesa v Attorney-General* [1983] 2 AC 20 (PC).