

# THE RIGHT HONOURABLE THE LORD COOKE OF THORNDON

*Sir Michael Hardie Boys\**

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*Eulogy given at Lord Cooke of Thorndon's funeral.*

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Robin Cooke constantly encouraged me and challenged me. His wish that I speak today is among the greatest of those challenges. But the experience I had of him, the enrichment I drew from him, and my friendship with him, provide more than sufficient encouragement.

The Chief Justice has spoken of his achievements, judicial and academic, of his outstanding contribution to the law, of the many honours conferred upon him, of the high respect in which he is held, in New Zealand and throughout the common law world. There have been, and there will be, many other tributes to this exceptional man.

He has asked that I speak of him as a colleague; and it is a privilege and an honour that he should have asked me to do so. Of course I was but one of his many colleagues, yet I am sure I may safely speak for them all.

Robin Cooke was unfailingly honest in his approach to the often difficult, at times controversial, problems he was called on to address. He spoke and wrote as he believed. His belief was founded on an often soul-searching intellectual inquiry, tempered with a deep humanity.

I will be honest too. As a colleague Robin Cooke was at times difficult, at times frustrating, at times infuriating. He was no administrator. He detested meetings. They wasted valuable time. Of course he had his faults – who doesn't? But one could readily forgive him, because of all else that he was. To me at least he was always inspiring, frequently a source of astonishment at the range of his abilities, a constant and supportive friend who could be very amusing, and very good company, yet was awesome in his knowledge and love of the law, and of literature, and of cricket, and in his ability to knock off *The Times* crossword.

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\* Rt Hon Sir Michael Hardie Boys, GNZM, GCMG, QSO, former Governor-General and Judge of the Court of Appeal.

My role this afternoon means that I cannot avoid being rather personal. And much of what I am going to say may be familiar and commonplace to some, even many, here, but I hope to paint a picture of this remarkable man in the environment in which I knew him.

I didn't know Robin at all well until I went onto the Bench of what was then still called the Supreme Court. He had already finished at Victoria when I began there, and when he returned from his illustrious sojourn at Cambridge to put up his shingle as a barrister I had become very much an office-bound practitioner, and had little to do with him. He practised in a different sphere.

Then he became a Judge, and I clearly recall how excited many of us were when in one of his early judgments, in a custody case arising out of much publicised circumstances, he granted custody of the children to their father; in those days an unusual, and in the particular circumstances of the case a courageous thing to do, but one that demonstrated an independent, wise and humane mind.

I like to think that Robin showed those same qualities again several years later when I made a very rare appearance before a Court of Appeal of which he was a member, and he would have held in my favour - had not his brethren taken a different view.

At that time the Court of Appeal sat in draughty faded splendour in the old Public Trust building across Ballance St from the Law Society Library. Then at about the same time that I was appointed to what soon became the High Court, the Court of Appeal moved to its fine new building in Molesworth St and its space became available to the High Court. I was given Robin's old Chambers right on the corner of Stout St. The room appeared to have been vacated rather hastily. There were some old track shoes in a corner. I was to use Robin's chair, which blew clouds of stuffing when I sat on it and collapsed if I sat back too far.

Robin I suspect was largely indifferent to or oblivious of his surroundings, which might explain some aspects of his later Presidency that tended either to exasperate his colleagues or leave them in wonderment at his powers of endurance.

After a year I went to Christchurch, and it was from there that I suppose it can be said that I first became a colleague, albeit a very sporadic one, as I took advantage of the opportunity High Court Judges had to spend some months on secondment to the Court of Appeal. It was while I was on one of those visits that Robin arranged with his very good friend Professor Sir David Williams for me to go to Wolfson College, Cambridge. Wolfson was obviously not his first choice, for he was first and foremost a Caius man, but then he was, too, a Cambridge man through and through.

Being so thoroughly a Cambridge man, Robin was put in something of a quandary when President Mary Robinson of the Republic of Ireland visited the Court and presented him with a fine photograph of Trinity College, Dublin. Where could he hang it? Eventually a spot was found, well removed from his Cambridge collection.

My visit to Wolfson, coupled with Robin's Cambridge associations, set a precedent that was followed by a number of Judges over subsequent years. His initiative was typical of the

thoughtfulness he so often displayed to colleagues, and especially to younger practitioners, with whom he had a particular rapport. That his son Francis became one of them was a source of manifest pride.

While I was at Wolfson Robin came to London and took me to lunch, and began a campaign, in which he was ultimately successful, to drag us back from the Garden City to this, our home town.

By that time, he had been President for some 3 years, and had firmly established not only his reputation within New Zealand as assuredly the greatest of our Judges, but also that international reputation, of which the Chief Justice has spoken, as one of the common law world's great lawyers. And so to become a member of his Court was indeed a privilege, but also a serious challenge.

Robin was very kind to a newcomer, not expecting too much to start with, and helpful in his comments on one's own efforts. One of my early efforts was a draft judgment on a fairly straightforward point, in which I traced in considerable detail the history of the many cases on, or near, it. When I went to discuss my draft with him, he said "It's rather long, isn't it." I asked if I should do it again. His response was simply "As you have done all that work it might as well go out as it is." On the other hand, a year or two later a very short and I hoped concise oral judgment met with a mild "That was pretty brief."

Robin's own oral judgments, especially in longer and more complicated cases, were a marvel to hear. He had an ability to speak in the same way that he wrote, his words beautifully phrased, his thoughts logically and carefully developed, as, sometimes with his eyes closed, he unhurriedly and succinctly covered all the ground and expounded the reasons for his conclusion.

One soon settled into, or rather accepted, the routine, such as it was, of Robin's Court. We would assemble each morning at 10 to await his arrival so that we could go into Court. Frequently we would wait some time. Perhaps he had not yet arrived, perhaps he was immersed in finishing a judgment or touching up a lecture or a learned article. Sometimes, we suspected, quite without evidential basis, that he was stuck on a clue in *The Times* crossword. No-one was bold enough to go along and find out. Finally he would come, often with his mind obviously still on the earlier problem, and we would go into Court when he would immediately focus on the case in hand, on the real issue, and do his best to get counsel to do the same. He prized oral argument, and above all the repartee of exchanges with counsel who knew what they were talking about. He could be impatient with those who did not, but was kind to the nervous and inexperienced who were trying their best. If he became engrossed, or perplexed, rubbing his eyes, inflicting molar damage on his handkerchief, he might lose all sense of time. One might need to point out that it was well over morning tea time, or lunchtime, or that it was getting dark outside.

When the hearing had ended, he might go straight to his room because of some other pressing matter, and leave us unsure of who should write the judgment, even of what he thought the outcome should be. The truth was that he intended to write the judgment himself, and we would see the result in due course. Or we might all discuss the case over a cup of tea, and agree on the outcome, and

Robin would suggest who should write the judgment or that we should each write one. If there was time, we might have a more sociable chat, and he would reveal that side of his nature that made him such a good conversationalist, such entertaining and, to the ladies, charming, company.

Then the rest of us would in due course go home at a sensible hour, but not he. Often one would go along Molesworth St at night and the lights in his corner room would still be burning. If one went in at the weekend, more than likely he would be there. He never spared himself. He accepted responsibility for writing many more judgments than anyone else. Never, I am sure, did he say no to a request to give a lecture, or to write an article, even to edit the multi-volume *Laws of New Zealand*, for which he successfully twisted many a reluctant contributor's arm.

He had a prodigious output of work, but still had time to read outside the law, to watch cricket, and even, until he could no longer manage it physically, to go jogging at lunchtime or at the end of the day. On his return, he was a sight to behold.

But I digress.

If one had to write the judgment, a draft would go to all who had sat, and we would wait, sometimes for quite a while, for Robin's response. Then, he might make some suggestions, perhaps some grammatical or stylistic corrections – woe betide anyone who wrote or said "different to" or "compared to". If he disagreed with what one had written we could discuss it, he would listen, we would endeavour to come to a solution. He was never dogmatic. He might be willing to modify a view to achieve a consensus, but otherwise he would not compromise. If agreement could not be reached, he would simply write his own judgment.

We often had to wait a very long time for Robin's judgments. He had undertaken to do so many, and so many other things. But eventually, there would appear on one's desk yet another example of his erudition and his love of language. His simple, elegant, pellucid prose was always a pleasure to read, both for its style and because of the broad sweep of his knowledge of law that it displayed. His judgments were more profound, more imaginative, more forward looking than most are capable of. They were always persuasive, always authoritative.

But let it not be thought that he sought to dominate the Court, in the sense of imposing his view upon it. He led its thinking, certainly, but there was often disagreement with his viewpoint. After all, each member of the Court was different from all the others, our experiences, our personalities, our philosophies were all different. Some were more traditional in their approach, more cautious. Some wanted to move even faster than he. And so there were quite often dissenting judgments, or maybe judgments coming to the same conclusion by a different, safer, route. At times, but rarely as I recall, Robin was in the minority, but he took that in good part. He knew he was right, anyway. On the other hand, and I suppose for that same reason, he was none too pleased when the Privy Council took a different view, as it sometimes did.

His thinking was challenging, independent, but always soundly based on principle. He had a profound humanity, and as his motto shows, he saw fairness as the end objective of any legal system. "Pro aequitate dicere" it reads – "To speak out for fairness".

Some have called Robin an activist, but that is a foolish label, indicative of a failure to understand our legal history and the nature of the judicial process. He was in truth liberal, open minded, seeing the law as a living instrument, unafraid to ensure as far as he could that it met the needs of contemporary society; above all, that it achieved fairness.

I left the Court a few months before Robin did. His unique elevation to the peerage, and his decision to make himself available to sit on the Privy Council, and to take part in appropriate debate in the House of Lords, along with his appointments to final Courts in Hong Kong, Fiji, Samoa and briefly even Kiribati, along with a continuing round of lecturing and writing, were typical of the man we knew. His would not be an idle retirement. He continued to give of himself utterly.

Those of us who had the privilege of working with him found in him a good and true friend, supportive and generous. We have much to be thankful for.

We have much to thank Annette for, too. I suppose all husbands are a trial to their wives at times, and Robin I am sure was no exception.

Yet with her good humour, her patience and her understanding of the importance of what he was doing, she stood by him, supported him, nursed him. Without Annette, Robin could not have become the giant in the law that he was. In saluting Robin, we, his former colleagues, salute Annette too, and we extend our deepest sympathy to her and the family. You have so much to be proud of – and today we share that pride with you, and we express our gratitude for all that Robin has meant to us, too.

