OPENING ADDRESS

The Honourable Dame Silvia Cartwright PCNZM, DBE, Governor-General of New Zealand

Nga hau e wha, nga iwi e tau nei, tena koutou katoa. E nga mana, e nga reo, rau rangatira ma, tena koutou, tena koutou, tena koutou katoa.

It is a great privilege to be invited today to open this conference to honour the Rt Hon Sir Ivor Richardson on his retirement as President of the Court of Appeal. It is one year since I abandoned the law and assumed the office of Governor-General. Some may query my use of the term "abandon the law". I am, after all, the one who assents to legislation and am therefore at the very coalface.

The role of the Governor-General, however, is very different from that of a lawyer or judge. I receive beautifully presented legislation, in duplicate, with advice from my Ministers to assent to it, and a certificate from the Attorney-General that it does not conflict with the Bill of Rights Act and is therefore safe to sign. But I have no part to play in its gestation, and no role in its interpretation. So while I frequently have particular perspectives on what I am advised to assent to, I have no vehicle through which to indulge myself. One year on, I am a nostalgic judge - a sad figure from any viewpoint.

So when I read the programme for this conference, convened by the Victoria University's Faculty of Law and specifically by the grandly named *New Zealand Centre for Public Law,* my nostalgia intensified.

Judges and lawyers are privileged persons. There are a vast array of topics on which to ponder, from the humble conveyance of land and the need to preserve and protect the system of land tenure, to the heady heights of international law, commercial law and intellectual property, human rights law and the students' favourite: crime. The real delight of the law is that its study and practice is triggered by the uncertain behaviour of human beings. Were this not so, we would long have been replaced by computers and business plans.

The nostalgia to which I refer relates primarily to the absence now from my life of a nerve wracking trademark case, a good stiff interlocutory battle over who has the right to a list of a company's customers, and above all, my sadness at no longer knowingly meeting any criminals.

Worst of all, I cannot even stay to listen to the many here who will discuss topics which only a lawyer gets really excited about: Employment Law, or maybe the Treaty of Waitangi although, on reflection, many others in the community may share the judge's nervous thrill at the thought of a Treaty case.

I will be unable to discuss with Lord Lester some of the Human Rights issues that currently engross New Zealand and the rest of the world, to hear Professor Burrows on interpretation of legislation, Alison Quentin-Baxter on constitutions or the Chief Justice on Appellate judicial issues. But most of all, I will miss hearing Sir Ivor and his quiet penetrating observations on the law.

His writing, however, does remain for my quieter consideration. I have long admired the gift he has of plainly explaining the arcane or difficult concept. Take for example these comments in a paper on *Law and Economics:*

> …decisions on the design of our laws and decisions on their application allocate and reallocate resources and necessarily affect the use of society's limited resources. Justice may be priceless but it is not costless. The acceptable resolution of disputes by legislation or by the Courts may involve balancing human rights and other values, fairness considerations, and resource constraints. But the efficient use of scarce resources and the economic implications of suggested alternatives should never be ignored. Just as in decisions we make as individuals as to how we will spend our energies and our money, there are always trade-offs between efficiency, fairness, and other individual and community values.
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> …like economics, the legal system is concerned with behaviour. It seeks to influence behaviour by establishing rules of conduct and imposing sanctions for their breach. Rules and sanctions should be designed and decisions made having regard to resource implications'.

Sir Ivor's retirement presents an opportunity to look at the evolution of the law over a period of significant development. I know that this conference will be more concerned with the present and the future. But I hope you will indulge me in my bout of nostalgia.

Sir Ivor's legal life has spanned nearly 50 years, from the time he gained his undergraduate degree at Canterbury University. In that time, New Zealand has grown and developed legally and constitutionally. Sir Ivor's role has been pivotal in the process. His academic life at Victoria University, his period in the Crown Law Office, even his practice of law in a provincial city, Invercargill, all had a part in preparing him for a long, illustrious career as a jurist. I will not discuss his career in any detail – I know that will be done by others at a more appropriate time. But what I do want to reflect on briefly are the many developments that have occurred in the period that he has been a lawyer and jurist.

For those with an interest in Human Rights, the abolition of the death penalty, except for treason and similar offences, in 1961 is about as significant a legislative amendment as

can occur. Since then New Zealand has remained steadfast in its adherence to the principle that there should be no reintroduction. This is in spite of the rise in its use in USA and in many other parts of the world and, more significantly, in the face of an increasingly violent society here at home. To contain the public's grief and its desire for vengeance when a dreadful crime has been committed takes leadership, not just from politicians but also from judicial leaders.

Then we are all too conscious of the shameful behaviour that meant that the Treaty of Waitangi with all its legal uncertainties was not for generations interpreted liberally in favour of the tangata whenua. The Court of Appeal, in its landmark Treaty cases, gave real effect to the principles of the Treaty. Contemporaneously its interpretation of the New Zealand Bill of Rights Act, an Act which was at first sight a toothless tiger, did much to recover and restore principles of equity and justice.

The role of a judge is not, however, confined to the Courtroom. As I am only too well aware, an innocent judge can be pulled from the safety of the Courtroom and plunged into the glare of a public Inquiry. This occurs less often than in the past, but Sir Ivor's contribution to the field of social policy cannot be overlooked. It was a massive exercise, one for which there was less support than might have been expected. But it had enormous value – clarifying issues after wide consultation, and it had an impact at grassroots well beyond the political.

He has been a jurist who has understood and written about the extensive social and economic change we have endured over the last few decades, and who has constantly been aware that if the Courts are not efficient they will not be effective in their primary task: the fair resolution of disputes.

In the Harkness Henry lecture in 1995 he wrote:

> Major economic, social and political change inevitably calls in question public policies underlying legal rules. Where there has been so much economic and social change, it becomes all the more important to take stock of our laws; to enquire whether they truly reflect the values of today's society; to assess their economic and social implications. In that stocktaking, the allocation of scarce resources necessarily involves weighing egalitarian and community values along with efficiency concerns.

Sir Ivor went on to discuss the two major problems for the Courts in deciding public interest litigation.

> First, litigation under the adversary processes of the Courts is not an ideal vehicle for conducting an extensive social inquiry … in the result there may be serious gaps in the material furnished to the Court.

> At the other extreme is the problem of information overload … in recent times Courts have taken over from counsel some of the responsibility for controlling the course of litigation. Judges have a proper public responsibility for case management, but it is never easy to strike the right balance between Court intervention or party autonomy. This is particularly true in public interest litigation where the costs are borne by the immediate parties and the Courts. But the decision has wider ramifications extending beyond the immediate parties.

Sir Ivor has given his perspective writing on many other aspects of the law and its practice: including the relationship between the courts and the public. In one paper he discusses four *'broad conceptual considerations':*

> …the first … is directed to values. To a large extent, any system of values reflects the values of a particular society. Another basic question concerns the role of the justice system in a democracy. A third consideration is that the system of justice must serve both the legitimate interests of the parties to litigation and the wider public interest. In the language of economists, and like health and education, justice is both a public and a private good. A fourth consideration is that the administration of justice involves the use and so the allocation of necessarily limited resources.

Then there were major judgments and treatises on Family Law. He has written on Law Schools and procedural issues concerning the Courts, such as the use of television in Courts to give a broader picture to the public on the administration of justice. He has written on the evolution of the legal system and on legal education.

Sir Ivor's perspective has touched on every topic to be discussed during this conference. Over the period he has been a lawyer and judge, Sir Ivor has not been an observer as ground shaking legal changes occurred. He has been at the forefront, first as a judge of the High Court and Court of Appeal, then as its President.

The about to retire President of the Court of Appeal has not only watched the evolution of our law over a significant period, but he has been its protector and developer. He has helped shape it.

I wish all those who will participate in this conference a successful and engrossing few days. I know that its legacy will go beyond this period and that much that is discussed will be read over the next few months and years by many who will be influential in the development of our law and policy. It will therefore bear fruit beyond this brief time. I look forward to reading the papers when they emerge.

I thank you again for allowing me to participate, albeit briefly and, of necessity, superficially.

Kia ora koutou katoa.