

Eulogy for Rt Hon Sir Owen Woodhouse

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Capturing the essence of Owen Woodhouse makes demands. He was a complex, multi-faceted human being, blessed both with penetrating insight and human empathy. His compassion for people was perhaps his most salient characteristic. The number and range of his friends and acquaintances both in New Zealand and overseas was astonishing.

Owen had the gift of friendship. He inspired enormous loyalty and affection among those with whom he interacted and worked. He laboured in some tough situations. He was a leader. He had the capacity to weld a disparate group into a team and produce high quality outcomes. Everyone wanted to help him. He also knew how to run a social occasion and was a great host, if a trifle heavy handed with the whisky.

Owen had a warm-hearted social vision. He was a visionary with judgment and wisdom. He believed those in distress should be helped and the well-being of each one should be of concern to all. He looked into the future and tried to see how it would be. These qualities were reflected not only in his court judgments but also in the reports he wrote both in New Zealand and Australia.

In all of this, he carried his message through a unique prose style. Always spare, his prose had a limpid and crystalline quality to it. It was the result of painstaking drafting and redrafting. The Woodhouse Report in Australia went through nine drafts. He wrote these reports himself. They were powerful, clear, elegant and persuasive. From Owen I learned it was fine to start a sentence with “and.” He was always critical of lawyers with a turgid style.

Owen Woodhouse was devoted to his family. He and Peggy were such a great team and they nurtured a family of six wonderful people – Roger who predeceased Owen but not Peggy, then Susan, Peter, John, Tim and Margaret. Those five are all here today with their families. When Peg died in 2000 Owen was sad beyond consolation.

They married in Napier in 1940, seven years after Owen had set his cap at Margaret Thorp, when he was not yet 17 years of age, a law clerk in Napier earning ten shillings a week, having left school early during the depression. She invited him to tennis at her home and that was, as they say, the ball game. In his privately circulated “A Personal Affair” he says “And at an early age I had my eye on the girl next door. Our marriage has been my life.” Notice that sentence begins with “and.” He spent the years from 1935 until 1939 as a full time but underpaid law clerk in Auckland for several law firms studying part time for a law degree at the University of Auckland, from which he graduated in 1940. He was for a period law clerk to Alfred North. He also found the time to edit the University newspaper “Craccum.”

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Apart from his family, four primary forces shaped Owen Woodhouse's beliefs and values – Napier, the 1931 earthquake there, the great depression and Second World War.

- Napier, where he was born in 1916, was a tolerant and happy community. There he was brought up, there all the Woodhouse children were born, there he practised law

The Earthquake of 1931 that thrust the land mass up by nine feet visited terrible suffering upon Napier, with 256 deaths and many injuries. Owen was then at Napier Boys' High School and was outside when the earthquake struck since it was the beginning of cadet week. He saw directly the physical ruin and human desolation that event caused in the town.

- The depression that he lived through and from which he directly suffered made its impact on his outlook – the retrenchment, the unemployment, the poverty, the hunger, the soup kitchens and the dislocation of people's lives.

The ranks of the Second World War veterans like Owen, who left such a heavy imprint upon New Zealand life, are thinning now. Their values, their courage and their sacrifice were real.

Owen joined the territorial artillery and was called up in 1940. He decided it was better to join the Navy and be trained in England. At the end of 1941, he was accepted and left New Zealand for England on the "Dominion Monarch" in January 1942. He did not tell the authorities he suffered from asthma and was embarrassed when he had an attack in England. He was lucky not to be sent home. The poet Denis Glover was one of his naval friends of whom Owen wrote he had "Music in his soul." Tough naval training all over the United Kingdom followed where he enjoyed fascinating experiences, and met many people. He passed the tests to become an officer. He cabled Peg back in New Zealand "With delicate grace have donned gold lace, No arrogant louse, your loving Woodhouse."

He always had the purpose of serving in motor torpedo boats and he resolutely secured his wish. The MTBs (motor torpedo boats) of the Coastal Forces were intended for offensive operations by night. They were of plywood construction, 70 feet long, powered enormous marine engines. From April 1943, Owen took part in many patrols from various bases in the Mediterranean, the Aegean and the Adriatic. In the nature of this type of warfare, the engagements were close requiring much courage and skill. He saw a lot of action. After Sicily fell his flotilla went up the coast of Italy, a country that he came to know well and love

In November 1943, Owen was appointed the Coastal Forces Liaison Officer to work ashore with Tito's partisans at their headquarters on the island of Hvar. This was a position of unusual responsibility and danger involving sensitive intelligence issues, strategy, negotiations and lengthy reports. He was active along the Dalmatian coast. He was obliged to attend many meetings all over the theatre of war. He thrived as an Intelligence Officer being blessed with both tact and insight.

In August 1944, Owen was given command of MTB 85. His boat broke down in an operation

resulting in considerable danger but he was given a new one, MTB410. It was in this vessel in the closing stages of the war in April 1945 that he won the Distinguished Service Cross for an operation in the Gulf of Venice in which the flotilla sank five ships out of eight. His MTB sank two of them and his boat came under heavy fire for 12 minutes. Owen was responsible for the sinking of enemy shipping and loss of life. He did his duty with professional detachment. He told me, however, the last time I saw him in February of this year how he was having dreams about the fate of the German sailors who had perished as a result of his activities and what terrible toll it must have taken on their families. That compassion was typical of him.

When the war in Europe concluded, Owen came under heavy pressure to accept an appointment as assistant to the naval attaché in the newly opened British Embassy in Belgrade, where he remained six months. He was promoted to Lieutenant Commander. In the war, he progressed through the ranks of bombardier, seaman, able seaman, sub-lieutenant, lieutenant and finally Lieutenant Commander, a testament to the quality of the man.

The intensity and breadth of his war experiences taught Owen Woodhouse a great deal. It taught him how to operate and what an operator he was. He had a tremendous sense of strategy and was a master of clever tactics. Furthermore, he was remorselessly determined and could not easily be convinced to change his stance. Behind his humane purposes and positive outlook, there was real grit and steel. These qualities were forged in the war.

Back in Napier New Zealand, aged 29, he resumed his legal career and was quickly appearing in major cases. In 1953, he was appointed Crown Prosecutor.

At the early age of 44, he was appointed a Supreme Court judge, now the High Court, in 1961. He served as a judge until 1986 becoming a judge of the Court of Appeal in 1973 and became the President of that Court in 1981. As a lawyer and as a judge, he was of the highest quality. The depth of his life experiences was reflected in the insights contained in his judgments. He was something of a lateral thinker and not afraid to strike out in new directions. For him, the law was not an end in itself. The pursuit of certainty was not always the pursuit of justice. He thought the law had to move on. That was part of the judicial function.

Owen was appointed counsel assisting a Commission of Inquiry into fluoridation of the public water supply that reported in 1957. The work required the sifting and evaluation of complex scientific information. He wrote the entire report and it brought him to the attention of politicians and administrators in Wellington.

In 1967, he was asked to chair the Royal Commission into Personal Injury in New Zealand. He wrote every word of that report too. Appointed in September 1966, the report was complete by December 1967. It precipitated a legal revolution and made Owen Woodhouse a figure of international significance. I met him first when I was a student at the University of Chicago Law School and he visited with the Royal Commission. I drove him back to the Drake Hotel along Lakeshore Drive from the South side in an uninsured beat up 1955 Chevrolet.

His report swept away the common law action for damages and provided in substitution

earnings related compensation for all, 24 hours of the day. There was no place for the old jury trials, nor the common law itself. Workers compensation was abolished. It was all to be done with no further money than the old compulsory insurances provided. The report caused a deal of fluttering in the legal and political dovecotes. It needed to be studied, a White Paper was to be written; I was its main author, selected and insinuated into the system by Owen Woodhouse.

After delays, hesitations and changes, the scheme was enacted but not as it had been recommended. ACC in New Zealand would have worked better if his report had been followed in every respect. The experience with the scheme has not matched the vision of the original blueprint. New Zealand never received what was envisaged by Owen: a “unified and comprehensive scheme of accident prevention, rehabilitation and compensation.” Owen was publicly critical of unwise later decisions that befell the scheme

One person who noticed the Woodhouse Report in New Zealand was Gough Whitlam then Leader of the Opposition in Australia. He visited Owen in Auckland to talk about it. A lawyer himself, Whitlam was attracted to the reform. When he became Prime Minister of Australia in 1972, one of the first things he did was to ask the New Zealand government to lend Owen to head up an Australian inquiry. The government agreed, a step that did much for trans-Tasman relations. Owen rang me when I was teaching at the University of Virginia and said “Palmer, you have to come to Australia” and I became Principal Assistant to the Committee of Inquiry. It never occurred to me to refuse.

The landscape in Australia was very different from New Zealand and the way of the reformer much harder. We had a tough time, but it was the most exciting adventure I ever had. Here is Owen’s crisp summary of the fundamental principle in the Australian report:

“There is the initial principle of community responsibility. For three main reasons the community must accept the obligations that are clearly owed to every person who has been struck down by sickness or by injury. First there are the civilised reasons of humanity. Next, there are the economic reasons of self-interest. If the well-being of the workforce is neglected, the economy soon will suffer and society itself thus has much to lose. Finally, there is the plain fact that rights universally enjoyed must be accompanied by obligations universally accepted. The scheme proposed is a national scheme. It involves national responsibility. It must be organised as a responsibility of the State.”

Sadly, when the Bill was in the Senate, Sir John Kerr, who, when he was Chief Justice of New South Wales, had made submission to the inquiry favouring the end of the common law remedy, dismissed Whitlam from office. The scheme perished with him. Owen led the Australian inquiry with determination and vigour. One example will suffice – the inquiry was within the jurisdiction of the Attorney-General, Lionel Murphy. He was not enamoured of the Woodhouse ideas. He clamped a restriction on the inquiry that no movements interstate were to be undertaken without his express approval. Owen spent his own money and flew to Canberra to see the Prime Minister. By nightfall, the inquiry was no longer within Senator Murphy’s power.

The third Woodhouse Report came after Owen was appointed President of the Law Commission in 1986. The new Commission was asked to review the Accident Compensation Act 1982 and one of its recommendations was that sickness should be covered by the scheme as soon as possible. I took up that opportunity. We tried to get a combined scheme together after I became Prime Minister and a Bill was introduced in 1990. The time will come for that coverage.

Owen did much work on the Law Commission Act 1985, while it was being designed and he became Commission's first President at the age of 71. He suggested that each Law Commission Report should be accompanied by a draft Bill and that be given an automatic first reading by law. I could not get it through Cabinet but it should be done. Owen set up the Law Commission when the statute was passed and kept a strong and imaginative arm on the tiller navigating the directions it took. Ken Keith, who is here today, was his Deputy President. The Commission under Owen's leadership made many useful contributions to law reform in New Zealand – the structure of the courts, wholesale reform of company law, accident compensation, a Personal Property Securities Act, a new Act on the interpretation of statutes, work on the statute of limitations and a valuable report on Imperial Statutes in force in New Zealand. A start was also made on the massive evidence project. During this period, he was also a member of the international arbitral tribunal in Greenpeace's claim against France over the Rainbow Warrior bombing.

Mention should be made of Owen's constitutional views. His judgment as President of the Court of Appeal in striking down a set of regulations in 1982 was bold. His 1979 JC Beaglehole Memorial lecture called for a halt to expanding executive power, likening the situation in New Zealand to that enjoyed by the Stuart Kings. He called for a written Constitution supported by a Bill of Rights. We are still waiting for the real thing.

Owen Woodhouse rendered the State much distinguished service. We shall not see his like again. But his legacy will live long in the life of New Zealand and the culture of its law. He was a wonderful mentor to many.

We celebrate today what was not merely a good life, it was a great one.

30 April 2014.