

## **Address of the Attorney-General On the First Sitting of the Supreme Court: 1 July 2004**

May it please the Court:

It is with great pleasure and pride that I, as Attorney-General on behalf of the Government, appear before Your Honours today to mark this historic occasion, the first sitting of the Supreme Court, the new final appeal court for New Zealand.

One hundred years ago, Sir Robert Stout first publicly mooted the idea of abolishing our ties to the Privy Council. In 1904, Sir Robert noted: "Did we ever see a child learning to walk? It tried, and tried again to go alone, and it had many falls before it succeeded."

How prophetic those words turned out to be! New Zealand can never be accused of rushing into things and the idea of relocating our final appellate Court to our shores has had a long and considered history. From Sir Robert's initial proposal, through to the Law Commission report of 1989, the then Solicitor-General John McGrath's options paper in 1995 until the present day, the issue of a new final appellate court in New Zealand has been thoroughly discussed and debated.

Such an approach accords with the development of our justice system in general. It has always been an evolutionary process, responding to our nation's growth and developing sense of identity. It was not until 1958 that we finally established a permanent Court of Appeal and now, over 40 years later, we have created the Supreme Court.

Australia and Canada may, of course, lay claim to beating us to the post. In fact we are about the last to leave the Privy Council. Australia and Canada were not only the first to adopt the Statute of Westminster but also the first to abolish appeals to the Privy Council. However, in the development of legal systems, sometimes being second or even almost last does have some advantages. In the development of the Supreme Court, we have been fortunate in being able to draw on the different models of final appellate courts in a range of commonwealth countries.

The framework of the Supreme Court was developed by the Ministerial Advisory Group, after they considered the experience of a variety of jurisdictions. As a result, the report of the Group formed the basis of the Supreme Court Bill, which was largely adopted by Parliament. The Advisory Group, chaired by the current Solicitor-General, Terence Arnold, played a pivotal role in the establishment of the Court and I am most grateful for their contribution, as well as that of the dedicated team of officials from the Ministry of Justice and the Crown Law Office.

Now, for the first time in our history, New Zealand has an indigenous final appellate court, sitting at the apex of our justice system, providing an overview in the clarification and development of all New Zealand law. An onerous task, requiring our finest legal minds.

The burden of performing that important role falls on Your Honours and I would like to take this opportunity to express the government's appreciation and best wishes to you. Your Honours' appointments represent continuity and progression, rather than radical change, in our legal development. Your combined years of experience on first instance and appellate benches ensure a confident beginning for the Supreme Court.

Equally important is the support available to the Supreme Court through strong trial and appellate courts below. In particular, the Court of Appeal.

Since 1958, New Zealand has been fortunate in maintaining a highly respected (both nationally and internationally) Court of Appeal. We continue to be well-served by the membership of the current Court of Appeal, and its status and role in our legal system will remain unchanged. It will continue to be the primary appellate court in New Zealand, and as such, will play a vital role in our judicial system.

Simply because the Supreme Court is able to oversee all areas of New Zealand law does not mean it is also required to consider every case. As Sir Thaddeus McCarthy noted on his retirement from the bench:

"Quality not quantity should be the aim of the highest Court in the land".

Parties must seek the leave of the Court before their appeal can be heard. Accordingly, the Court will deal only with significant matters. Such a requirement brings new challenges for New Zealand counsel. Given the Ministerial Advisory Group's prediction the Supreme Court will have a workload of 40-50 cases per year, the Court will most likely have both the time and inclination to delve into legal issues in more detail than is often possible in the lower Courts.

One thing that often surprised me in the debates leading up to the establishment of the Supreme Court, was the failure of legal commentators to discuss the implications that such a judicial approach would have on the standard of advocacy in this country.

I am hopeful the establishment of the Supreme Court will lead to a renewed interest in the art of advocacy.

- The establishment of the Supreme Court must also be viewed as part of a wider reform of our legal system. The Law Commission report on the structure of the courts has identified and recommended a range of improvements in our court system.

The government will table a formal response to the report in Parliament by September.

Such reform proposals allow New Zealand to look forward and examine the future legal needs of our community. But we should do so always with a glance in the rear-view mirror.

As we celebrate the beginning of the Supreme Court and our legal "coming of age", we need to take this opportunity to reflect on the valuable contribution of the Judicial Committee of the Privy Council to New Zealand jurisprudence and to express our gratitude to Their Lordships and to the British government for their generosity. For almost 160 years, as we moved from colony to Dominion to independent state, we have had the benefit of access to judicial expertise of the highest quality, and we have gained much as a consequence. Our senior judiciary have had the opportunity, through sitting on the Judicial Committee, to experience life on a different bench and our counsel have been able to advocate before different judicial officers.

Such service, provided by the British government, has always been greatly appreciated and was crucial to New Zealand when we were an emerging nation with limited judicial resources. Although the time has now arrived when we are to stand on our own feet, we do so with knowledge gained through our link with the Privy Council.

It is relevant to note that just as New Zealand was embarking on a new development in our court system, so to was the United Kingdom. A feature of the debate surrounding the debate relating to the establishment of a New Zealand Supreme Court was the lack of knowledge and understanding of the far greater reforms taking place the United Kingdom court system. There was a real question whether the Privy Council as it had been known in the past would have been available to provide the same free service to New Zealand.

And so today, at the first sitting of the Supreme Court, I offer my warmest good wishes to Your Honours and to the advocates and parties who will appear before you. At long last New Zealanders can take ownership and responsibility for all aspects of our justice system.