

Opening of Supreme Court

Lord Asquith said in the middle of the 20th century of an appellate jurisdiction in England:

“The intellectual atmosphere is one of extreme, of almost Himalayan rarefication. One would hardly be surprised if an abominable snowman entered the court and applied for security for costs”.

Well, a snowman wouldn't last long in here today and it is easy to predict a genuine and deep respect for this new jurisdiction within a far more modern and in some senses informal context.

The ultimate question about ultimate appellate courts is whether they are final because they are right, or whether they are right because they are final. Respect for every institution has to be earned. The Court has to get some runs on the board – not just in a one-dayer or even a single test, but over a number of series of tests. As the Chief Justice has observed extra-curially, the judicial method is inherently conservative, and that aids its work in fostering the development of the law in evolutionary and incremental ways.

I suggest that there are at least four reasons for real confidence that our Supreme Court will qualify for the first alternative in that ultimate question:

First, with respect, the individual attributes of its Judges. In distinctive ways your Honours have all made outstanding contributions to New Zealand's recent jurisprudence, and collectively you are eminently qualified to take up the challenge of consistently providing final answers that are right. You will know that you have the support and goodwill of the Bar in achieving that.

Secondly, in bringing a final appellate court home, we achieve familiarity with New Zealand conditions that the Court's decisions will affect. Your Honours are of this society, and are exposed to and at all times aware of all that is going on, from the aspirations of many groups of New Zealanders for the best conditions to foster social and economic well-being, and mutual respect for the differences between us, to politicians and commentators fulminating on the elusive line between development and creation of the law, and also to the desirable business conditions for a small relatively affluent country where most economic activity is done in small businesses, as components of a country particularly dependent for our standard of living on matters beyond our shores and therefore largely beyond our control. We are in an era of heightened awareness of human rights and expectations that the Courts will recognise and enforce them. In this, we reflect aspirations in many countries, but they are tempered perhaps,

by the beginnings of acknowledgments that the law cannot provide a complete remedy for every recognised wrong. The law must reflect the society it regulates and this Court will foster confidence as its judgments demonstrate an understanding of all those tensions and aspirations.

Thirdly, you are able to control the quantity of your work so as not to pressure its quality. You have all demonstrated, year in and year out, sustained capacity for working incredibly hard under the pressure of, at times, too much work. You should hear no complaint of a significant reduction in the volume of your output. It is obviously of prime importance that the Court has time for collegial and individual reflection, and that your caseload does not become so pressured as to inhibit that in any way.

Although the leave criteria create latitude that would allow you to raise and lower the bar to accommodate varying flows of potential appeals, the Court's decisions on leave will create their own expectations and, with respect, you are urged to resist such a temptation.

Whilst for many, this momentous day has been an awfully long time coming, in the end the transition has been managed within a short timeframe and the country can reasonably expect a further lead time, that may indeed be an extended one, before a volume of properly deserving appeals are determined. I understand that when the High Court of Australia was created a little more than 100 years ago, there were fears that it would not have enough to do, and when the United States Supreme Court was created, it heard no cases for 2 years.

The case for a second appellate court in 21st Century New Zealand is compelling. Although our society is a small, and relative to many a calm one, ours is none the less a complex modern society that will throw up numerous issues that deserve the Court's attention. We should publicly commit at the outset to measuring its success by quality and not quantity.

It is perhaps relevant to observe that, as the source of the vast majority of your potential work, the new Court of Appeal appears to be humming along. One indication of its confidence, if not any perceived infallibility, are intimations of concern that they will not create any work for you at all. Indeed, I have heard a suggestion that a discrete signal is needed for counsel ambitious to come to this Court, to indicate a wish for the Court of Appeal to make a deliberate mistake, in order to help give this Court appeals to deal with. We are, with respect, well served at all levels.

Fourthly, the physical premises for the Court are very important. Those observing attempts at constitutional reform in Britain say that current initiatives to reconstitute the House of Lords seem likely to founder on the absence of an appropriate building: Your court has been created

with a government commitment to appropriately house the Court in a manner befitting its position at the top of the judicial system. Madam Attorney, you can be assured that the Bar is watching keenly the fulfilment of that commitment in all its details, to ensure the standing of the physical environment in which our Supreme Court will live, and that it is completed without impairing any of the resources needed for the rest of the court system. If there is any wavering on that commitment you can be assured of the support of the profession, in keeping your colleagues up to it. We confidently look forward to having the Court in a home befitting its standing.

There are many other reasons for confidence that this Court will develop a reputation for being right and therefore creating respect for the finality of its decisions. Not the least of those is the demonstrated courage to make unpopular decisions, on a reasoned basis, so as to be understood and accepted, even if not agreed with by all. We have good grounds to be both optimistic and grateful. On behalf of the Bar Association I thank the Court for the opportunity to contribute to today's sitting. Personally, this is the only one of how ever many submissions I might make to the Court that I anticipate getting through without interruption, and I thank you all for that.

Institutionally, we wish the Court strength to deal with the most difficult of legal issues arising in this country, and adequate resources to support its work. Personally we wish each of you the best of health for a stimulating further stage in your already illustrious careers.