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Patriating Appeals:
New Zealand's withdrawal from the
Judicial Committee of the Privy Council

A thesis presented in partial fulfilment of
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Abstract

In 1900, the Judicial Committee of the Privy Council was the final court of appeal for one-quarter of the world's people residing in the British Empire, with the notable exception of those who lived in the British Isles. Despite the major exodus from the Judicial Committee's jurisdiction in the two decades following the end of the Second World War, it was not until the late 1960s before the possibility of New Zealand's departure was raised. A sporadic debate then ensued.

In 1986, the Government initiated the first of three formal attempts to end New Zealand appeals to the Judicial Committee. Each attempt was very contentious, and it was not until 2003 when this objective was achieved. This thesis examines the ending of New Zealand appeals to the Judicial Committee. It identifies a series of debates, involving common themes and contrasting political positions, over more than 35 years. It also identifies changing legal features, which provide an important backdrop to the debates. It concludes with an assessment of why this process took so long.

Preface

During my public service career, I was fortunate to work with a great team of colleagues from several Government Departments, on the final proposal for ending appeals to the Judicial Committee of the Privy Council, and for developing the legislation which founded the Supreme Court of New Zealand. The Attorney-General, Hon. Margaret Wilson, was responsible for the project, while the Solicitor-General, Terence Arnold, QC, led the officials. The team's role brought us into contact with a wide range of New Zealanders, many of whom had strong views as to whether appeals should continue to London or be redirected to a new Supreme Court in Wellington. We were conscious that this was an historic event.

In preparing for a new phase of life, I decided to undertake post-graduate studies in history, and New Zealand's efforts to end appeals to the Judicial Committee became an obvious topic for my thesis. This study only briefly touches on the period when I was directly involved. Many of the 'hard yards' in developing the nature of the change had been done by others during earlier Administrations: ministers, judicial leaders, officials, and community leaders including from Maori and the legal profession; and by Margaret Wilson with her first proposal as Attorney-General.

Ferretting in the archives and studying various legal articles, I became aware that there is a bigger story to tell, both of the efforts of those who sought to adapt and enhance New Zealand's access arrangements to the Judicial Committee, and of the efforts of those who worked to find a New Zealand-based alternative. Legally trained historians may offer further insights, but there is also very useful information sufficient for the general historian. I trust this thesis contributes towards the development of that bigger story.

Naturally, I was excited to be involved in the Supreme Court project. It accorded with my own perspectives. R.G. Collingwood asks can historians be impartial? In his answer, he observes: 'it is the historian's judgments of value that select from the infinite welter of things that have happened the things that are worth thinking about.'¹ This thesis presents my judgments, informed by my fortunate vantage point as one of the policy advisers who worked on the final proposal, of the efforts that resulted in the patriation of appeals to New Zealand.

¹ R.G. Collingwood, Can Historians be Impartial? In *The principles of History and other writings in philosophy of history*, edited by W.H. Dray and W.J. van der Dussen, (Oxford: Oxford University Press, 1999), 217.

Table of Contents

Abstract.....	i
Preface.....	ii
Table of Contents	iv
List of Figures	vi
Abbreviations	vii
Acknowledgements.....	viii
Chapter One - Introduction	1
Chapter Two – British to the Core.....	12
Introduction	12
Origins	12
The Final Appellate Court	18
New Zealand Appeals.....	22
The Early Twentieth Century	27
The Post-Second World War Period.....	33
Broader Influential Developments.....	41
Commonwealth Judges Join the Judicial Committee	46
A New Commonwealth Court of Appeal?	55
The Future of New Zealand Appeals.....	56
The Beginnings of the Public Debate.....	66
Conclusion.....	72
Chapter Three – Who Wants Juristocracy?.....	74
Introduction	74
Reforming the Constitution.....	74
The Court of Appeal Speaks.....	83
National Legal Identity Revealed	87
A new Chief Justice	92
The Law Commission reports.....	95
The Government responds	96
Conclusion.....	98

Chapter Four – The New Zealand Courts Structure Bill.....	101
Introduction	101
Initial position	101
Rumblings	104
Law Leaders visit London	110
The Solicitor-General reports.....	114
Reactions to the report.....	118
The views of Maori.....	125
Personnel Changes at the Court of Appeal.....	128
The Government Decides to end Appeal Rights to the Judicial Committee.....	132
After the 1996 election.....	136
Conclusion.....	140
 Chapter Five – Finally, a new Supreme Court	 142
Introduction	142
Opening proposal.....	142
Developments in the United Kingdom.....	148
Lord Cooke.....	150
Criminal appeals.....	152
The Ministerial Advisory Group	153
Cabinet decides.....	161
Subsequent developments.....	161
Conclusion.....	169
 CONCLUSION	 171
Source of Figures	177
Appendix One: Judicial Committee Judgments on NZ Appeals	178
Appendix Two: A Statistical Overview of New Zealand Appeals	207
Appendix Three: New Zealand Judicial Privy Counsellors	211
Appendix Four: New Zealand Privy Counsellors	212
Bibliography.....	215
Primary Sources	215
Secondary Sources	220

List of Figures

Figure 1: Sir Joshua Williams	21
Figure 2: Sir Michael Myers	36
Figure 3: Judges and the law profession greet Lord Chancellor Jowitt	38
Figure 4: Sir Richard Wild	54
Figure 5: New Zealand Herald's front page editorial, 9 October 2003	166

Abbreviations

AC – Appellate Committee of the House of Lords in the United Kingdom.

BAILII – British and Irish Legal Information Institute.

CJ – Chief Justice.

CRNZ – Criminal Reports of New Zealand.

J – Justice

NZAR – New Zealand Administrative Reports.

NZLII – New Zealand Legal Information Institute.

NZLJ – New Zealand Law Journal

NZLR – New Zealand Law Reports.

NZPCC – New Zealand Privy Council Cases.

NZPD – New Zealand Parliamentary Debates.

NZTC – New Zealand Tax Cases.

P – President (of the New Zealand Court of Appeal).

PRNZ – Procedural Reports of New Zealand.

QC/KC – Queen’s/King’s Counsel.

Rt. Hon. – The Right Honourable, it denotes that the person has been appointed to the Privy Council, and includes both judicial and political Privy Counsellors.

TVNZ – Television New Zealand.

VUWLR – Victoria University of Wellington Law Review.

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- The librarians: I have greatly availed myself of the library services especially at the Palmerston North and the Wellington campuses. Books, journal articles and on-line resources were easily delivered. Advice was readily given by the librarians. I also appreciated the Bonus scheme, which enabled me, through Massey, to borrow books from Australian universities
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Through the University Libraries of Australia and New Zealand scheme (ULANZ) I accessed books and journals at Victoria University of Wellington, both for general history at the Kelburn campus and for legal history at the Pipitea campus. Further

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I, alone, am responsible for the opinions and errors in this study.

Patrick McCabe

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