

# Should the Supreme Court have the Hong Kong enhancement'?



By Anthony Grant, barrister, Raddcliffe Chambers

I wrote recently about the Court of Final Appeal in Hong Kong, which can call upon one or more judges from a panel of international jurists of the highest renown. In this article, I will call it "the Hong Kong enhancement". Should New Zealand adopt this model?

The Privy Council was removed as our final Court for essentially two reasons. One, its presence suggested that we had given control of our destiny to England. Two, its judges were sometimes reluctant to make decisions because of their ignorance of contemporary New Zealand society.

The advantage of the Hong Kong enhancement is that we would retain full control of our destiny since New Zealand judges would always outnumber a judge or two from overseas. Nor would there be any lack of understanding of contemporary New Zealand society, since all but one or two of the judges would live and work here.

Here are some reasons that favour our adoption of the Hong Kong enhancement:

1. With four million people, it is very difficult for us to be a cradle of legal excellence in all areas of the law.
2. Our system of civil justice has shrunk to alarming proportions. The number of civil trials in the High Court is so small that we aren't able to produce a body of advocates and judges who have had the kind of experience that is gained in the countries that we seek to emulate – the UK, Australia, Canada, and to some extent, the USA – with their much larger populations.

3. The tradition by which our most experienced barristers become judges has begun to break down. Now, some of the most suitable people to be judges prefer to carry on in private practice. Jim Farmer QC, Alan Galbraith QC, Julian Miles QC, Colin Carruthers QC – to name four – prefer to carry on in practice, or to retire (like the late Richard Craddock QC). In a small legal community, the loss of such people to the judiciary is a serious blow. This trend shows no sign of abating. I suspect it affects not just the leading commercial advocates but also many specialists who prefer private practice, with occasional trips to Positano, Portofino, and Paris, to P trials and claims of historical rape.

4. It is said by some that there is no need for change, since the Supreme Court's decisions have not been the subject of much international criticism. This argument can be tested by reference to the Court's workload. According to the NZLII website, the Supreme Court heard 22 civil appeals in 2010. By "civil appeals", I exclude not only criminal appeals but all applications for leave to appeal and appeals involving regulatory bodies and government departments. Of the 22 appeals, two involved Mr Seimer (a litigant who may yet create a record for the number of cases involving one person), one involved a parenting dispute, and another involved an award of costs, leaving 18 civil appeals. In an 11-month sitting year, that is 1.5 cases a month. These numbers suggest that any lack of international criticism may

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lie, in part at least, in the relative small number of cases that are decided by the Court.

The small number of appeals may be set to continue. The ADL published the Court of Appeal's roster of hearings for April. Only three days were set aside for substantial civil appeals for the whole of the month. That may have changed as the month went on, but the amount of serious civil work in the Court of Appeal would appear to be light.

5. The existence of a panel of distinguished jurists who can add lustre to our law should not be seen as a sign of judicial inadequacy. It should be seen in the opposite light.

If, with nine million people, and a very much larger economy than ours, Hong Kong is proud to publicise its practice of appointing some of the ablest jurists in the common law world to its highest court, why should we be embarrassed?

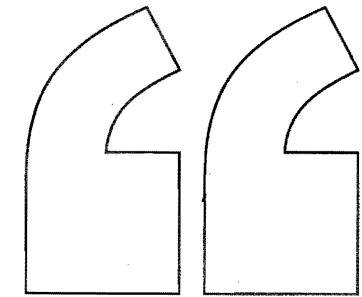
I wrote recently about a Supreme Court decision that was criticised by a senior London Chancery QC, Francis Barlow. One of the aspects of his criticisms that surprised me was the relative lack of restraint in the language he used to criticise our Court. He didn't seem to show it much respect.

The regular presence of jurists of the highest international stature would, I believe, enhance the international perception of the Supreme Court.

It should also be good for business. Hong Kong ranks as the third most successful financial centre in the world – an outstanding feat for a country of only nine million people. The quality of its legal system is a critical component in this success.

If the assistance of a panel of judges of the highest renown will help to achieve such success, why wouldn't we want that assistance to

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