

A portrait of Susan Kiefel, Chief Justice of the High Court of Australia, is the background for the entire page. She is a middle-aged woman with short, wavy, light brown hair, looking slightly to the right with a calm expression. She is wearing a dark navy blue blazer over a white top, with a small gold pin on her left lapel. The background is a blurred image of a library or courtroom with rows of wooden bookshelves filled with books.

Prerogative Writs
and Modern Judicial
Review – Constancy
and Change

Chief Justice of the High Court of Australia Susan Kiefel AC LLM

Story, page 5

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PNG Law Society



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OFFICE LOCATION

Level 2 Newcrest Haus
Hunter Street Down Town
PO Box 2004
Port Moresby, NCD
Papua New Guinea.

Ph: 321 7344/7348/0436/3546.

Email: lawsocenquires@datec.net.pg.

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Editorial

We acknowledge the patience of our members whilst moving office from Level 2 of Mogoru Moto Building to Newcrest Haus in the month of May 2023.

During the move, the telephone lines and the office email were disconnected and this made communications difficult for the members of the Law Society to reach the Society's office. We sincerely apologize for the communication hardship caused during the relocation of the Office.

The reason for relocating the office was that the Mogoru Moto Building was proceeding with renovations. All the other tenants including the Law Society were given notice to move out.

We looked around for office space in the National Capital District and found some very good ones but we chose Newcrest Haus for its speciousness.

During the first half of the year, the legal fraternity in PNG had the privilege of witnessing the visitation of 2 Chief Justices from Australia - Honourable Susan Kiefel AC LLM Chief Justice of the High Court of Australia & the Chief Justice of the Queensland Supreme Court Honourable Helen Bowskill.

We recently saw the building of a new Court House Complex in Bialla, West New Britain Province, thanks to the Chief Justice Sir Gibbs Salika and the staff of NJSS. The Bialla legal fraternity has the task now to look after that infrastructure and serve the interest of its people.

With these, happy reading..



Opening of the Bialla Court House Complex
p16..



L-R: Justice Berna Collier, Law Society Council member Christine Copland & CJ Helen Bowskill... p4

Front Cover:

Honourable Susan Kiefel AC LLM
Chief Justice of the High Court of Australia

Back Cover:

Counter flower pot courtesy of Ms Lisa Kaiyo.

Dear valued members of the Society,

I welcome you to our Issue 7 of Law Tok publication - 2023.

In the preceding years a lot has transpired in our quest to fulfil our mandated responsibilities to our membership, uphold the integrity of our legal profession and do justice to clients.

Without going too far back, much of what the Society has set out to accomplish in 2023 has been a direct result of deliberations and decisions made by the Council in 2021 and 2022.

Office relocation

One of the decisions that was made was the relocation of the Society's office from Level 3 of Mogoru Moto Building to Level 2 of Newcrest Haus. It is located in Hunter Street in Down Town Port Moresby.

The relocation of the office took effect in May 2023.

Training requirements

Attending to the training requirements of our membership remains the key focus of our Continuing Professional Development programs. In addition, we need to get more members involved in CPD activities by presenting papers. One of our fundamental keys to achieving this effect is increasing and lifting our standards and level of communication and interacting with you.

Contribution

I kindly encourage our members to contribute to this publication on any topic that covers the legal profession or article on new amendments to the laws, new Acts etc or maybe a paper you presented at a Workshop - something informative and worth reading.

Articles

In Issue 6, we ran couple of exciting news articles and we hope you will enjoy this Issue 7 as it features some extra news, worth reading.



President – Mr Allan Mana

Commend Society's Secretariat

I commend the work of the Secretariat as they do a lot of work behind the scenes.

Sir Buri Kidu Lecture Series

In May 2023, the legal fraternity in PNG had the privilege of witnessing the visitation of 2 Chief Justices from Australia - Honourable Susan Kiefel AC LLM Chief Justice of the High Court of Australia & the Chief Justice of the Queensland Supreme Court Honourable Helen Bowskill. CJ Kiefel later presented a paper at the Sir Buri Kidu Lecture Series at the University of Papua New Guinea

Conclusion

Lastly but not the least, I would like to remind ourselves of our commitment to the values of the rule of law, justice and respect for each other in our profession and private lives.

God Bless & Happy Reading.

Meet the Chief Justice of the High Court of Australia



BY BRIAN JEMEJEME

The Honourable Susan Kiefel (pictured) was appointed the Chief Justice of the High Court of Australia on 30 January 2017, after having served as a Justice of the High Court since 3 September 2007.

Her Honour was born in Cairns, Queensland, Australia in 1954. She was educated in Queensland and at the University of Cambridge, where she received a Master of Laws degree.

Having been admitted to the Queensland Bar in 1975, in 1987 she became the first woman in Queensland to be appointed Queen's Counsel.

Her Honour became a Justice of the Supreme Court of Queensland in 1990 and a Justice of Federal Court in 1994. For four years (2003 to 2007), she served as a part-time Commissioner of the Australian Law Reform Commission.

She also held a commission as a Justice of the Supreme Court of Norfolk Island in 2004. In 2011, she was awarded the Companion in the General Division of the Order of Australia.

In 2008, Her Honour was made an Honorary Fellow of Wolfson College, Cambridge, and a Doctor for Laws from Griffith University. She was awarded a Doctor of Laws degree honoris causa from the University of Queensland in 2009, and awarded the Honorary Degree of Doctor of Laws by the University of Adelaide in 2018.

In 2019, she received the award of Doctor of Laws from both the Queensland University of Technology and the University of Sunshine Coast.

Among other things, Her Honour is a titular member of the International Academy of Comparative Law; a Honorary Benchler of the Honourable Society of Gray's Inn; and an Honorary Professor of the Faculty of Law at the University of Hong Kong.

Papua New Guinea Centre for Judicial Excellence (PNGCJE) organized a 'meet & greet' meeting (15 May 2023) between the Chief Justice Susan Kiefel and the PNG Law Society's Council.

Her Honour later presented a paper (17 May 2023) at the Sir Buri Kidu Lecture Series at the University of Papua New Guinea, Waigani, Port Moresby.

Pictures: Before and after the meeting.



June 16, 2023



L-R: Justice Berna Collier, Christine Copland, CJ Helen Bowskill & Tauvasa Tanuvasa. Copland & Tanuvasa are both Law Society Council members

BY BRIAN JEMEJEME

In 1995, the Chief Justice of Queensland the Honourable Helen Bowskill graduated from the Queensland University of Technology with a Bachelor of Laws degree and also, she was the recipient of University Medal that same year.

After graduation, she became an Associate to the Honourable Justice Douglas Drummond of the Federal Court of Australia in 1996.

In 1998, she was admitted as a barrister of the Supreme Court of Queensland and was later appointed Queen's Counsel in 2013.

As a barrister, Her Honour practised widely in the areas of public, administrative and commercial law, particularly focusing on native title law. Between 2011 and 2014, Her Honour served as Councillor on the Incorporated Council of Law Reporting for the State of Queensland.

Her commitment and dedication in what she loves doing best did not go unnoticed and she was officially appointed as the Chief Justice of the Supreme Court of Queensland on 19 March 2022.

Her other judicial appointments before becoming Chief Justice were as follows:

- served as a Judge of the Supreme Court of Queensland (2017 –2022)
- served as a Senior Judge Administrator (2021–22)
- served as a Judge of the District Court of Queensland,
- served as a Judge of the Children's Court of Queensland and
- served as a Judge of the Planning and Environment Court of Queensland (2014–17).

Prerogative Writs and Modern Judicial Review – Constancy and Change



BY BRIAN JMEJEME

‘Prerogative Writs and Modern Judicial Review – Constancy and Change’ was the subject of a paper presented by the Chief Justice of the High Court of Australia Her Honour Susan Kiefel (pictured) at the Sir Buri Kidu Lecture Series in Port Moresby.

The lecture series was held inside the new Lecture Theatre at the University of Papua New Guinea (UPNG) on 17 May 2023.

The paper contained 18 pages with seven sub-topics including the following,

- The History and Purposes of Judicial Review
- Judicial Review in Australia: the Colonial Courts
- Judicial Review and the Constitutions
- Developments in Australia
- Common Law Principle
- The Constitutional Writs

- Papua New Guinea’s Constitution and Judicial Review &

- The Conclusion.

Her Honour presented the paper before the Chief Justice of Papua New Guinea Sir Gibbs Salika, Council members of the PNG Law Society, members of the legal profession, law students, other important invited dignitaries and guests from the private and public sector including several judges and departmental heads of the National Judicial Staff Services (NJSS) and the Papua New Guinea Centre for Judicial Excellence (PNGCJE).

The presentation was also streamed live on Youtube. It was the first of its kind delivered by the Media and IT team from the UPNG.

Her presentation touched briefly on late Sir Buri Kidu’s educational background who obtained his law degree in Queensland and then became the Chief Justice of Papua New Guinea.

“He understood that public perception of the courts as independent from external pressure was critical to the courts’ effectiveness in the society,” she said.

The paper also talked about the Constitutional recognition - serving to protect the supervisory role of the courts and pointed to the aspect of the common law as a *constant* for (both) our legal systems.

[Read the original paper, unedited,
presented by Her Honour
from page 6 to page 14.](#)

Sir Buri Kidu Lecture Series, 17 May 2023

@ the University of Papua New Guinea, Port Moresby



A paper presented by
the Honourable Susan Kiefel AC LLM
Chief Justice of the High Court of Australia

Prerogative Writs and Modern Judicial Review – Constancy and Change

It is an honour to give this annual lecture, named for the first Papua New Guinean to serve as Chief Justice of the Supreme Court.

Australians no doubt feel Sir Buri Kidu has a special connection to our country, given that he attended school and studied for his degree in law in Queensland. And of course it was as a student in Brisbane that he met his future wife, herself a Queenslander, who became Dame Carol Kidu.

But the education which he had and the public service he gave, which extended over most of his adult life, was for his country.

As Chief Justice, Sir Buri Kidu was well known for his service about the important of the independence of the judiciary. He understood the public perception of the courts as independent from external pressure is critical to the courts' effectiveness in society. Nowhere in the perception of independence more important than in the exercise by the courts of their power of review of government decision-making.

Judicial review of government decision-making has its source in the common law of England. The original remedies given by the

courts with respect to unauthorized governmental action were the prerogative writs of the King's Bench. The supervisory powers associated with the writs inhered in our courts with the reception in our countries of the common law.

The *Constitution of the Independent State of Papua New Guinea* expressly acknowledges this. The *Commonwealth Constitution of Australia* provides for the grant of certain of the prerogative writs and other remedies as part of the original jurisdiction of the High Court of Australia. Constitutional recognition serves to protect the supervisory role of the courts and points to this aspect of the common law as a *constant* for both our legal systems.

This does not mean that the supervisory power of our courts to review government action is immune for *change*. The *Commonwealth Constitution of Australia* was framed upon an expectation that the courts would continue to develop the common law to meet changing conceptions of justice and the needs of our society.

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Protect the Role of the Courts

The principles stated in the Preamble of the *Constitution of the Independent State of Papua New Guinea* exhort the judiciary to ‘encourage and promote Papua New Guinea ways in defining and shaping (its) national sovereignty.’¹

Since Federation in Australia in 1901 there have been developments in the common law relating to judicial review. For a time, it seems that the complex procedures associated with the prerogative writs would stifle the development of the common law. Ironically, it was a statute which provided for a simplified process of review and resulted in many cases coming before the courts which led to the High Court seeking an organizing principle. That principle would confirm and protect the role of the courts in determining the limits of governmental power and align the common law with the *Constitution*.



Above: Meet & Greet meeting continues and below, all smiles in front of the camera after the meeting.

PNG Law Society thanks PNGCJE for organizing the meeting.

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L-R: ...A/Deputy Secretary (DJAG) and Law Society Council member E’ava Geita, Law Society Council member Justin Wohuinangu, Justice Berna Collier, Chief Justice of the High Court of Australia Susan Kiefel, Solicitor General and Law Society Council member Tauvasa Tanuvasa and Nixon Joe, a Principal Legal Officer (DJAG).

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The History and Purpose of Judicial Review

As mentioned at the outset, the law of judicial review in Australia and in Papua New Guinea has its roots in the jurisdiction and practices of the original King's Court or *Curia Regis* in England. Generally speaking, in Australia the view is taken that the common law was 'received.'

Other former colonies may regard it as having been imposed. But history teaches that it was not been uncommon for new laws or legal processes to have an external source rather than resulting from internal development.

We tend to overlook that the prerogative writs had their origin in the courts of William the Conqueror and were themselves a result of invasion and settlement.²

By the end of 13th century the *Curia Regis* had been divided into two: the 'Common Bench' or Court of Common Pleas', and the 'King's Bench'.³ The jurisdiction of the King's Bench developed so that it came to correct and supervise the decisions of all other courts and judges.⁴

Writing in 1768, Blackstone described the King's Bench as 'the supreme court of common law in the kingdom'.⁵ He said that 'the jurisdiction of this court is very high and transcendent.

It keeps all inferior jurisdictions within the bounds of their authority'.⁶ That means by which the King's Bench kept other courts within the limits of their jurisdiction namely mandamus and habeas corpus. Although on the occasion they were issued out of the Court of Common Pleas and Chancery, they were pre-eminently issued out of King's Bench exercising its supervisory jurisdiction.⁷

The supervisory jurisdiction of the King's Bench over other courts came to be extended to the decisions made by administrators. It is said that judicial review in an administrative law sense thru the use of the prerogative writs was seen by the

early 17th century.⁸ They began to be used in connection with administrative agencies such as the Commissioners of Sewers.⁹ With the expansion of state functions in post-industrial England and the emergence of many statutory bodies and administrative agencies, the way was open for the expansion of judicial review of government action.

Of course the power exercised was not then called "judicial review". Substantive law principles at that time were expressed in terms of procedure and remedies. The courts' power was articulated as being the power to grant the prerogative writs. Importantly, this power was inherent, coming from the common law developed by the courts, not statute.¹⁰ The courts saw their role as enforcing the rule of law.

The prerogative writs came to be a key means by which the King's Bench supervised exercises of public power. By means of the prerogative writs administrative decisions could be effectively invalidated and actions upon those decisions prohibited. And in time the colonial courts in Australia came to exercise the power to issue them.

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"But history teaches that it was not been uncommon for new laws or legal processes to have an external source rather than resulting from internal development"

Prerogative Writs and Modern Judicial Review – Constancy and Change

Judicial Review in Australia: the Colonial Courts

When the Supreme Courts of the colonies of New South Wales and Van Diemens Land were established in 1823, the judges of those courts were given the jurisdiction and power of the common law courts at Westminster, including the King's Bench.¹¹ This was a momentous step for the colonies. Prior to this the colonial courts had no power to issue prohibition, certiorari, mandamus or habeas corpus. Now the courts were for the first time in a position to impose legal control on the institutions which exercised power in and over the respective colonies.¹²

The first Chief Justice of New South Wales, Sir Francis Forbes, evidently understood the supervisory jurisdiction to be inherent in the creation of superior courts and to reflect constitutional principles of the common law. He had no difficulty in asserting authority by way of that supervisory jurisdiction over the executive such as it was at the time.¹³ In a notable case some fifteen men had been arrested for cattle stealing and detained for many weeks with little action having been taken to remand them for trial.¹⁴ One of the few trained barristers in the colony of the time successfully applied to a court, over which the Chief Justice presided, by writ of habeas corpus. The court granted an order for the men's discharge.

Judicial supervision of executive action in Australia has long been an important part of the legal and political landscape in Australia. In fact, it preceded control of the executive which would be brought about constitutionally, through the creation of democratically elected legislatures and acceptance of the principle of responsible government. Its importance in colonial times continued as the colonies were federated as States. The common law methods of judicial review developed through the 20th century, but now in a context created by the *Constitution*, although this influence would not be obvious for some time.

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Picture supplied by Tauvasa Tanuvasa



Prerogative Writs and Modern Judicial Review – Constancy and Change

Judicial Review and the Constitutions

In 1972, speaking of the establishment of a Constitutional Planning Committee to undertake the drafting of an independent Constitution for Papua New Guinea the Chief Minister, then Mr Michael Somare, spoke of that idea of a “home-grown Constitution”.¹⁵ By that it was meant that the Constitution should not just be adopted from another foreign precedent and should not depend on the transfer of power from the departing colonial authority.¹⁶

Australia’s Constitution was also home-grown. It was framed by Australians after many years punctuated by vigorous debate as to how to bring together the colonies into one federated State. The structure and system of governance was crucial to its successful operation as were the institutions it created such as the courts. The Constitution separated the branches of government and gave to the federal judicial branch the judicial power of the Commonwealth.

The framers of our Constitution accorded a special place to the judiciary. It gave them the power, and the duty, to assess the validity of both legislative and executive acts against relevant constitutional and statutory requirements. The statement made by Chief Justice Marshall in *Marbury v Madison* is often cited in judgments in Australia: ‘[i]t is emphatically the province and duty of the judicial department to say what the law is’.¹⁷ It follows from that statement that it is the duty of the courts to declare and enforce the law. In doing so they must from time to time determine the limits of the powers of all three branches of government. One of the means by which the courts do so is judicial review and the remedies associated with it. In these respects, our respective constitutions provide similar powers.

The *Commonwealth Constitution* entrenches judicial review by the High Court in the provision it makes in s 75(v) by which the court may make orders of prohibition, mandamus or injunction with respect to the conduct of officers of the Commonwealth. The term ‘officers of the

Commonwealth’ is understood broadly and includes Ministers. Section 75(v) cannot be removed or amended by Parliament. The provision has been described as ‘a means of assuring to all people affected that officers of the Commonwealth obey the law and neither exceed nor neglect any jurisdiction which the law confers on them’.¹⁸

Papua New Guinea’s *Constitution* provides the National Court with inherent power to review any exercise of judicial authority’.¹⁹ More relevant for present purposes is s 155(4), which provides that both the National Court and the Supreme Court have ‘an inherent power to make ... orders in the nature of prerogative writs and such other orders as are necessary to do justice in the circumstances of a particular case’. It has been held that the ‘other orders’ can include injunctions.²⁰

Undeniably the purpose of judicial review is accountability – to subject the executive government to the rule of law. It may be understood as an aspect of the rule of law because it operates to prevent that breach of government from exceeding its powers. The courts of Papua New Guinea and Australia continue the commitment to the rule of the law which, it will be recalled, informed the processes of the King’s Bench.

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The Chief Justice of the High Court of Australia Susan Kiefel (front second right) visits the Legal Training Institute (LTI)

Prerogative Writs and Modern Judicial Review – Constancy and Change

Developments in Australia

For the first eight decades following Federation, the prerogative writs and the injunctions in s 75(v) of the Constitution, together with declaratory relief, were the principal means by which executive decision-making in the Commonwealth could be supervised. As late as 1979 it was said by the High Court that '[t]he use of the word "prohibition" in s 75(v) imports into [the High Court's] jurisdiction the law appertaining to the grant of prohibition by the King's Bench'.²¹

Whilst this acknowledged that the common law continued to inform these constitutional remedies, it had for some time been observed that the practices and procedures associated with the common law remedies were unwieldly and unnecessary'.²² Even lawyers could not fully understand their technicalities. It was evident that the prerogative writs procedures could not properly provide for the judicial review of administrative action in modern times.

In 1971, the Commonwealth Administrative Review Committee,²³ recommended that there be a comprehensive system of administrative law, one which is 'essentially Australian and which is specially tailored to meet our own experience, needs and constitutional problems'.²⁴ The recommendations of the Committee, and its successors,²⁵ eventually led to the creation of the Commonwealth Ombudsman, the Federal Court and the enactment of the Administrative Decisions (Judicial Review) Act 1977 (Cth) ('ADR Act'), which commenced operation in 1980.

The federal court system in Australia now had a court and tribunal other than the High Court to whom persons could have recourse for judicial review of administrative decisions or actions which adversely affected them. Importantly, the ADJR Act provided in a simplified form grounds for review and remedies.

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"It was evident that the prerogative writs procedures could not properly provide for the judicial review of administrative action in modern times"



Attorney General and PNG Law Society Council member Tauvasa Tanuvasa & the Chief Justice of the High Court of Australia Susan Kiefel at the Legal Training Institute (LTI).

Prerogative Writs and Modern Judicial Review – Constancy and Change

Common Law Principle

The enactment of the *ADJR Act* was significant, not the least because one of its principal purposes was to facilitate access to the courts. But this did not mean that the common law of judicial review had become redundant, even if the courts had been slow to develop and clarify it. With the growth of administrative law cases coming before the courts, the High Court was able to turn its attention to the common law rules upon which the statutory grounds were based, such as the requirements of procedural fairness, rationality and consideration of relevant considerations.

What was missing from both the statute and the common law was a fundamental or organising principle. It is only by reference to such a principle that the courts could more effectively determine the limits of governmental decision-making. The answer for Australian courts was found in the principle of ‘jurisdictional error’. Over time the star of jurisdictional error as a basis for judicial review has risen, whilst the significance of the statutory regime has declined.²⁶ And it would be this principle which would be used to develop a coherent constitutional and common law approach to judicial review and the prerogative writs.

The idea of jurisdictional error is of a decision which is ‘made outside jurisdiction’ or as ‘wanting in authority’.²⁷ It would later be said by the High Court that a decision that involves jurisdictional error is one that lacks legal foundation and is properly regarded, in law, as no decision at all.²⁸ The idea of jurisdictional error can be seen in early decisions of the High Court of Australia, although the ubiquity of the contemporary label is more recent.

The idea had been conveyed in decisions as early as 1914 by expressions such as ‘wrongful assumption of jurisdiction’ and ‘proceeding without or in excess of jurisdiction’,²⁹ although the early cases did not have the constitutional context which jurisdictional error came to have. The adoption of jurisdictional error as the governing principle for judicial review was a distinctly Australian approach which differed from English law.

In decisions in the 1990s,³⁰ the concept of jurisdictional error could be seen in the refusal to follow the approach of the English courts,³¹ and in the language of jurisdictional error, both implicit and express. In the course of these decisions, which confirmed the centrality of the principle, two key features were identified. First, the principle served to confirm the role of the courts in determining the limits of a decision-maker’s powers and, second, the jurisdiction of the court went no further.³² Both these features are grounded in the notions of the separation of judicial power and the rule of law.

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Chief Justice of the High Court of Australia Susan Kiefel (pink ribbon) at LTI & in a ‘meet and greet’ meeting below with the Law Society Council members



Prerogative Writs and Modern Judicial Review – Constancy and Change

The Constitutional Writs

The conception of the common law supervisory power of judicial review, framed around jurisdictional error, then informed the writs provided for in the *Constitution*. In a case in 2000,³³ it was accepted that the writs could only be applied to cure jurisdiction errors. It was also accepted that a failure to afford procedural fairness constituted such an error. The effect of this and other decisions was that the common law of judicial review and the soon to be called ‘constitutional writs’ were now more closely aligned. They were founded on the same principles, having the features earlier referred to.

The constitutional writs had the advantage that they were constitutionally entrenched. The High Court’s power to provide relief from decisions of officers of the Commonwealth which were tainted by jurisdictional error could not be ousted by legislation. This was made clear when amendments to the Migration Act in 2001 included a provision which purported to insulate decisions and put them beyond the reach of the prerogative or constitutional writs.³⁴ The Court read the provision as applying only to decisions not affected by jurisdictional error.³⁵

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High Court of Australia

Canberra

Picture supplied:

Prerogative Writs and Modern Judicial Review – Constancy and Change

Papua New Guinea's Constitution and Judicial Review

The *Constitutional of the Independent State of Papua New Guinea* in its Preamble points the way to the development of a distinctively PNG approach to law and governance. A former Chief Justice Sir Arnold K Amet, expressed the view that some of the goals expressed in the Preamble 'direct state instrumentalities including the judiciary to encourage and promote Papua New Guinean ways in defining and shaping our national sovereignty'.³⁶ And he said that, as a body of law, administrative law is intended to ensure 'just and honest government'.³⁷

Like Australia, Papua New Guinea inherited the common law. The historical powers to which the common law provided such as judicial review are acknowledged constitutionally in the courts. It is expected that the courts will develop that body of law consistently with the Constitutional and in accordance with the demands of the PNG society.

Conclusion

In 1993, Sir Buri Kidu remarked on the role the rule of law has had in driving legal thought in the South Pacific.³⁸ Its continuing importance being 'symbolized by the homegrown Constitutions adopted' throughout the region. He continued:

"To safeguard the freedoms and rights enshrined in these Constitutions, the Constitutions have been made the supreme law of the land, and the courts have been empowered to uphold the supremacy of the Constitution."³⁹

Each of our countries has the important legacy of the old common law prerogative writs. What remains of them is the essential idea of an independent judiciary which has a duty to declare the law and determine the limits of governmental power. This is a reflection of the rule of law to which our countries strive to be faithful.

The old writs now have a constitutional context so that their fundamental principles are entrenched. As Sir Buri noted, it is for the courts, empowered to uphold the supremacy of their Constitutions, to

develop the processes and remedies by which this jurisdiction can provide the clearest guidance and protection from unauthorized governmental action.



The new Court infrastructure at Waigani,
Port Moresby.

New Court House brings fresh perspective



Invited guests enjoy the outlook of the new Court chambers.

The birth of the new Court House signals the strength of the legal force in the province when it comes to deal with justice.

Brendan Navugar, an Executive Officer to the Public Solicitor's Office who also attended the opening ceremony generalizes the event - leading to the opening of the Court House Complex.

Story and photographs

BY BRENDAN NAVUGAR

Executive Officer - Public Solicitor's Office

Chief Justice Sir Gibbs Salika and the Supreme Court made an invitation to the Law and Justice Sector Agency (LJSA) and the National Judicial Staff Services (NJSS) heads to attend the official opening of the Bialla Court House Complex in Bialla, West New Britain Province, on April 14, 2023.

A large contingent of NJSS staff, law and justice sector officers, protocol officers, and important dignitaries arrived in Kimbe town on April 13, 2023, in preparation for the opening ceremony in Bialla town.

On April 14, 2023, around 5 a.m., the Court Party, along with other LJSA heads and personnel, assembled outside the Liamo Resort before

making a three-hour drive from Kimbe to Bialla town. The convoy left at 05:22am and drove for approximately 3 hours, arriving at Bialla Town at 08:57am.

The convoy headed directly to the Bialla town airstrip to welcome the arrival of the Prime Minister, the provincial political leaders, the Chief Justice, resident Judge Justice John Numapo, other judges and acting judges on a chartered helicopter.

The town folks and primary school children lined up along the roadside in anticipation of the arrival of the Prime Minister James Marape and his dignitaries. The Prime Minister flew in after all the important dignitaries arrived. He was received by the Governor of West New Britain Province Sasindran Muthuvel and other provincial political leaders.

After a brief photo session, the Prime Minister and the dignitaries proceeded to the site of the Bialla Court House Complex. Speeches and introductory remarks were made and soon after, they proceeded to the main Court House and Honorable James Marape, the Prime Minister of Papua New Guinea, officially opened the new Court House with the cutting of the ribbons and unveiling of the commemorative plaque.

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The modern look of the new Court House Complex brings to the town a fresh perspective and will stand to provide the necessary but important infrastructure for law and justice administration in the province.

All the important dignitaries were well received by the people of Bialla and West New Britain, and the town was full of excitement as traditional dancers made their way through the street with well attired students.

Towards the end of the program, the Prime Minister, CJ, judges and other VIPs were given a brief tour of the new court facilities before the refreshments were served.

To add icing to the whole ceremony, Heaven opened its floodgates – sending the rain down, cooling off the heat, reverting the dust back to the earth and bathed everyone. It was a great day for everyone and especially the people of Bialla Town and West New Britain as a whole.

The Court House is built in the Nakanai District.



Above left is the commemorative plaque with random photos before and after the opening of the new Court House in Bialla, Nakanai District, WNB. 14 April 2023

Invited dignitaries & pictorial of Court House opening event

The Bialla Court House Complex was officially opened by the Honorable James Marape MP, Prime Minister of Papua New Guinea, on April 14, 2023. Some notable dignitaries who attended the opening ceremony were:

Minister for Justice PILA NININGI
Former Chief Justice SIR SALAMO INJIA
Chief Magistrate MARK PUPAKA
Public Prosecutor PONDROS KALUWIN
Public Solicitor LESLIE MAMU

Opposition Leader and Member for Kandrian Gloucester JOSEPH LELANG,
A/Secretary for Department of Justice NICHODEMUS MOSORO
Correctional Services Commissioner STEPHEN POKANIS

Attorney General and Council member of the PNG Law Society TAUVASA TANUVASA CHOU-LEE
Former Police Commissioner GARY BAKI
Manager for Hargy Oil Palm Limited GRAIG GIBSON

Lawyers – Felix Kua, Abraham Kumbari, Patrick Mokae and David Kulu
Augustus Bray - Prosecutor in Charge, Public Prosecutor's Office (Kimbe)
Doko Kari - Solicitor in Charge, Public Solicitor's Office (Kimbe)



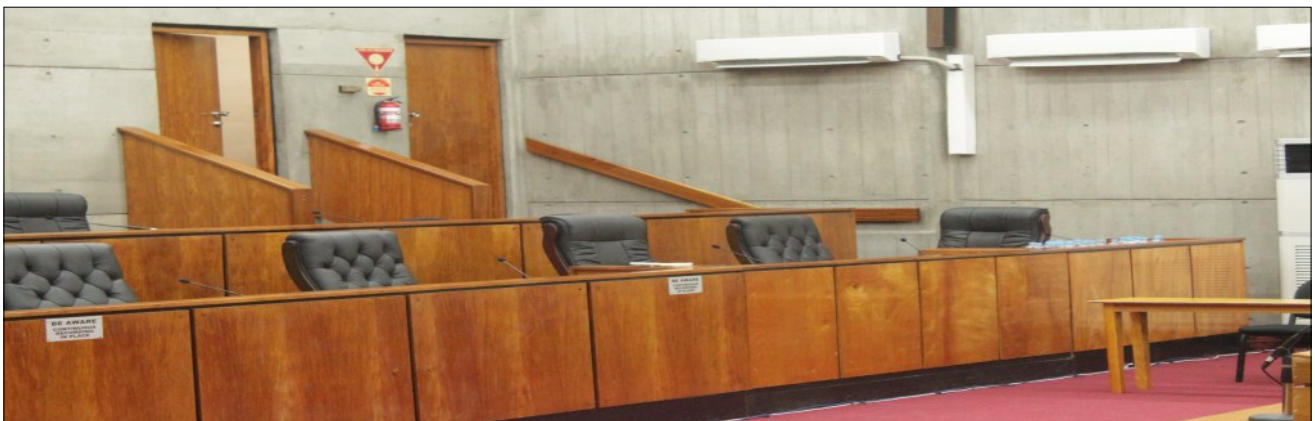
Random photos after & before the
Bialla Court House opening.



Lawyers Check List

Rules of Court Etiquette - Courtesy to an Opponent:

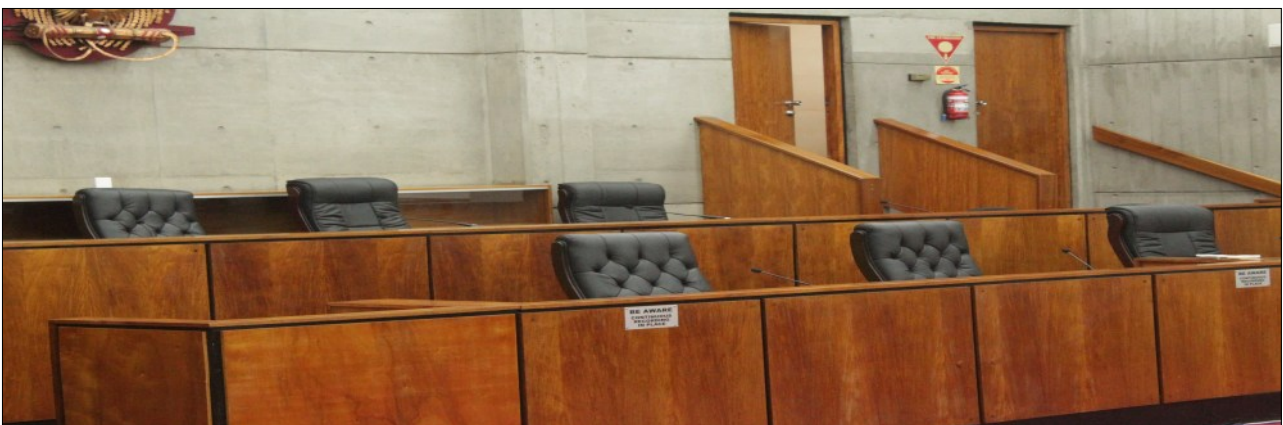
- Rule 1.** Inform your opponent if you are going to be late or unable to attend
- Rule 2.** Advise your opponent in advance if the time estimate for a matter materially changes
- Rule 3.** Respect the procedure adopted by the particular Judge or Court
- Rule 4.** Do not insult or verbally intimidate your opponent
- Rule 5.** Be courteous in correspondence if sending communications to your opponent. Courtesy to the Court Administration and Witnesses.
- Rule 6.** Dress properly
- Rule 7.** Do not attend the Judge's Chambers without opposing Counsel being present
- Rule 8.** Avoid improper ex parte emails or other communications with a Judge
- Rule 9.** Time estimates given should be as accurate as possible
- Rule 10.** Always inform the Court promptly on settlement of a case
- Rule 11.** Lists of authorities and copies of cases should be filed and served
- Rule 12.** Speak to your opponent prior to the hearing
- Rule 13.** No mobile phones in the Court
- Rule 14.** Always have a list of material to be relied upon available for the Court
- Rule 15.** Do not take coffee, tea or food into Court
- Rule 16.** Provide your name to the Court officials
- Rule 17.** Observe the etiquette of the Bar table
- Rule 18.** The Bar table should never be left unoccupied whilst the Judge is still sitting
- Rule 19.** Speak from the Bar table
- Rule 20.** Announce your appearance



Check List

Rules of Court Etiquette - Courtesy to an Opponent:

- Rule 21.** Do not interrupt Counsel
- Rule 22.** Address your opponent as “learned friend”
- Rule 23.** Address the Court properly
- Rule 24.** Never address a Judge in the second person
- Rule 25.** Address witnesses properly
- Rule 26.** Never argue with a Judge
- Rule 27.** Cite authorities and references to Judges properly
- Rule 28.** Have draft orders prepared
- Rule 29.** Be absolutely punctual
- Rule 30.** Stand when the Judge enters the Court
- Rule 31.** Always bow when entering or leaving a Court which is in session
- Rule 32.** Always stand when addressing a Judge
- Rule 33.** Never interrupt a Judge from speaking
- Rule 34.** Do not patronize the Judge
- Rule 35.** Do not disparage or put down the Judge
- Rule 36.** Help the Judge
- Rule 37.** Remain silent during a ruling or judgement of the Court
- Rule 38.** Avoid the Judge out of the Court
- Rule 39.** Do not communicate with the Judge out of Court
- Rule 40.** Be gracious in defeat



RPC APPLICATION CHECK-LIST

Application - Form PCA 1

Applicant should:

- 1 – Provided accurate business/home addresses and contact details (phone and fax numbers, email address)
- 2 – Indicate place and date of admission
 - in PNG
 - in countries other than PNG
 - if Australia, state where admitted
- 3 – Indicate citizenship (*Section 2*)
- 4 – Indicate exact nature of employment (*section 4*)
- 5 – State actual physical location of place of employment:

*Example: Ramendi & Co. Lawyers, Justice Building Level 1, Atlas Street, Hohola 4,
 Section 81, Lot 14, National capital District*
- 6 – Date and sign the application form (*Section 7*)

Application - Form PCA 3

Applicant should:

- 1 – State name and full address
- 2 – State whether a citizen of PNG or non-citizen intending to reside in PNG for not less than 12 months from the Date of Application
- 3 – Date and sign this form before a Commissioner for Oaths

TRUST MONIES STATUTORY DECLARATION

In the Statutory Declaration on Trust Monies, state his/her occupation:

*Example: ...” ... I, Anton Ramendi, a lawyer of Ramendi & Co. Lawyers
 PO Box 030, Boroko, National Capital District....”*

UPC APPLICATION CHECK-LIST

APPLICATION – FORM PCA 2

The applicant has:

Part 1 – provided proper business/home addresses and contacts (phone and fax numbers, email addresses), including place/date of admission

Part 2 – Circle only one of the parts that apply to him/her i.e, 2 (a), (b), (c), (d) or (e)

Part 3 – Indicated whether he/she is a sole practitioner, partner, employed by a law firm, or employed by the State

Part 4 – Stated the actual physical location of practice.

Example: Ramendi & Co. lawyers,
Justice Building Level 1, Atlas Street, Hohola 4,
Section 81, Lot 14, National capital District.

Part 5 – (Same as Part 4)

Part 6 – Indicated by circling whether he/she is a citizen of PNG

Dated and sign the application form

In his/her Statutory Declaration on Trust Monies, state his/her occupation.

Example: ...” ... I. Anton Ramendi, a lawyer, of Ramendi & Co. Lawyers,
PO Box 030, Boroko, National Capital District....”

Provide supporting references from UPC holders who have employed them and under whom they have practised.

CONTRIBUTION CORNER

THE Editorial Committee would like to thank the following for contributing to this publication in one way or other. We kindly encourage our members to feel free and contribute as well. It can be on any topic you think is worth sharing and beneficial for our members.



Lisa Kaiyo
Magisterial Services

Special thanks to Lisa Kaiyo for donating 3x flower pots and a vase. Her generosity gifts has added beautification to the reception area.



Tauvasa Tanuvasa
Attorney General and Council
member of the PNG Law Society

We also thank Mr Tanuvasa for supplying us photos of the opening of the Court House at Bialla and other photos with the Chief Justice of the High Court of Australia.

To members of the
Society,

We value your
criticism,
comments, opinion
and ideas to better
inform, improve
and interact with
you.

Feel free to contribute

Thanks also to Bredan Navugar for the article and pictures of the Opening of the Bialla Court House.



Stacey Lavekia-Wali
Acting Deputy Executive Director
PNG Centre for Judicial Excellence - PNGCJE

We also thank Stacey Lavekia-Wali for the photos of CJ Susan Kiefel & Justice Berna Collier with the Law Society Council members.



Brendan Navugar
Executive Officer
Public Solicitor's Office



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notice board

PNG Law Society Office location

For some who are still enquiring about the location of the PNG Law Society, the Law Society Office is located here:

LEVEL 2
NEWCREST HAUS
HUNTER STREET, DOWN TOWN PORT MORESBY

Postal address: PO Box 2004, Port Moresby
NCD, Papua New Guinea

Telephone: Main Switchboard: 321 7344 / 321 0436 / 321 3546
Statcom helpdesk: 321 7348

Emails: lawsocenquires@datec.net.pg

Names of the 19th
Council of the Law
Society
to be published in the
next Law Tok
publication
- Issue 8



NATIONAL JUDICIAL STAFF SERVICE **GOROKA NATIONAL COURT**

P O Box 112
GOROKA
Eastern Highlands Province

Telephone: 532 1755/ 532 1749
Facsimile: 532 3848/532 2360

IN-TOWN LAWYERS TELEPHONE & FAX NUMBERS

NAME OF FIRMS	TELEPHONE #s	FACIMILE #s
Gendua & Associates Lawyers	532 3700 / 7003 9477	532 3585
Koningi Lawyers	532 2033 / 7271 4496	532 3301
Niuage Lawyers (Richard Yombon)	7019 9987	Nil
Pilisa Lawyers	532 1411 / 7277 6678	532 2511
Javati Lawyers	532 9895 / 7725 2668	532 1860
Rex Kasito Lawyers (Samuel Ifina)	7167 4133	Nil
Solicitor's General Office	532 2415	532 3983
Public Solicitors Office	532 1697	532 1054 / 1341
Public Prosecutors Office	532 1814	532 1851

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3 x Flower pots courtesy of Lisa Kaiyo

PNG LAW SOCIETY - LEVEL 2 NEWCREST HAUS. HUNTER STREET, DOWN TOWN PORT MORESBY.
PO BOX 2004 PORT MORESBY NCD. PHONE: 3217344/3217348/3210436/3213546
EMAIL: lawsocenquires@datec.net.pg



Desktop vase courtesy of Lisa Kaiyo

