



## History of court system

[The setting up of Courts in New Zealand](#)<sup>1</sup>

[The Supreme Court](#)<sup>2</sup>

[Appellate Courts](#)<sup>3</sup>

[Lower Courts](#)<sup>4</sup>

[The first District Courts](#)<sup>5</sup>

[The Magistrates' Courts become district courts](#)<sup>6</sup>

[A separate Court of Appeal](#)<sup>7</sup>

[The Supreme Court becomes the High Court](#)<sup>8</sup>

[Supreme Court established](#)<sup>9</sup>

[Other Courts](#)<sup>10</sup>

## The setting up of Courts in New Zealand

New Zealand prior to 1840 has been described as 'The Lawless Land'. ( *Portrait of a Profession Cooke* (ed) 1969) This is only partly true - Māori governed themselves according to tikanga (custom), but European settlers were subject to little legal control.

From the early part of the 19th Century, officials in New South Wales attempted to bring some control to New Zealand. Justices of the peace were appointed to preserve order in New Zealand settlements and from time to time courts in New South Wales dealt with civil and criminal matters from New Zealand. However New Zealand was too far away, and colonial officials in New South Wales were not especially eager to enforce the law.

By 1839, increasing European contact was having a serious impact on the stability of Māori society. The instability, the likelihood of large scale European immigration, and the potential for conflict between settlers and Māori all contributed to the British decision to acquire sovereignty. This led to negotiations with Māori, which culminated in the Treaty of Waitangi in February 1840 and proclamation of British sovereignty over the country.

The Treaty did not have the force of law in the new domestic legal system. Its adoption and its terms, such as granting the rights of British subjects to Māori in Article 3, had however legal implications for the new colonial administration.

By November 1840, New Zealand had been declared a colony separate from New South Wales. A New Zealand Governor had been given authority to appoint officials to be responsible for administering justice.

## The Supreme Court

In December 1841 an ordinance was passed establishing the Supreme Court of New Zealand. The same court exists today as the High Court. It was modelled on English courts, but with an important distinction. From the outset the Supreme Court had jurisdiction in common law and equity, anticipating the English restructuring by decades. Property and conveyancing ordinances in New Zealand greatly simplified English conveyancing and property law. The procedural rules of the Supreme Court were streamlined.

In 1842, the Supreme Court comprised the Chief Justice alone. A second judge (Mr Justice Chapman) was appointed in 1844. All judges had to be barristers or solicitors with at least seven years' experience.

## Appellate courts

Initially there were too few judges to set up an appeal court. In 1846 New Zealand had just two judges, Chief Justice Martin and Mr Justice Chapman. As a temporary solution, a Court of Appeals was set up comprising the Governor and members of the Executive Council. It was not until 1862 that a Court of Appeal composing judges was formed. It was made up of the Supreme Court judges, who were convened as required in an appellate division.

In 1957 a permanent Court of Appeal was established. Initially, it was made up of the Chief Justice, by virtue of office, and three judges permanently appointed to the court, one of whom was appointed President. The number of permanent judges (including the President) was raised, eventually, to seven. With the establishment of the Supreme Court, the Chief Justice is no longer a member of the Court of Appeal.

New Zealand's highest court from 1840 to 2004 was the Judicial Committee of the Privy Council. This English court had been an important governmental body for centuries. By the nineteenth century its principal function was to hear cases from the colonies. English law lords (and later judges from other Commonwealth countries) heard appeals from New Zealand in London. It was effectively New Zealand's highest court until 2004 when the Supreme Court was set up.

## Lower courts

From 1841 the Legislative Council created a number of lower-level courts. They had limited jurisdiction and were designed to meet the needs of a fledgling colony. They included the Courts of Requests, which was mainly used to recover small debts, and the Courts of Petty Sessions, where justices of the peace administered the criminal law.

In 1846, the resident magistrates' courts were established. Resident magistrates could decide a limited range of criminal cases and civil claims.

## The first District Courts

In 1858 both the Courts of Requests and Courts of Petty Sessions were abolished by the District Courts Act. The same Act established the district courts, at a middle level between the resident magistrates' courts and the Supreme Court. The district courts were given a relatively wide range of responsibility. However, their role overlapped both with that of the Supreme Court and the resident magistrates' courts and they gradually ceased to function. The final district courts were abolished in 1909.

## The Magistrates' Courts become district courts

At the same time as district courts were fading out of the picture, the resident magistrates' courts were playing an ever-larger role. In 1893 they became known simply as the magistrates' courts and their responsibility and authority was extended.

The magistrates' courts became increasingly important and pressure grew to improve the status of the magistrates and the court. On the recommendation of the Royal Commission on the Courts (1978), the magistrates' courts were in 1980 renamed the district courts and were given extended jurisdiction. Stipendiary magistrates became District Court judges.

## A separate Court of Appeal

As a result of the Judicature Amendment Act 1957, the Court of Appeal was established as a court separate from the then Supreme Court, and three Supreme Court judges were appointed as judges of the Court of Appeal.

## The Supreme Court becomes the High Court

A further result of the Royal Commission on the Courts' recommendations was that in 1980 the Supreme Court was renamed the High Court (as it is still named today). At the same time the areas of concurrent jurisdiction for the High Court and District courts were extended.

## Supreme Court established

From 2004 the Privy Council was replaced as New Zealand's highest appellate court by a Supreme Court of New Zealand. The new Supreme Court began hearing cases in July 2004.

## The District Courts are unified

In 2017 the districts courts were unified into a single District Court.

## Other courts

Over the years many other courts with specialised jurisdictions have been established by statute. Current examples include the Employment Court, Environment Court, and Māori Land Court; and the Family Court and Youth Court (which are divisions of the District Court).

## Bibliography

- Spiller, Finn & Boast, *A New Zealand Legal History* (2nd Edn) (2001)
- P A Joseph, *Constitutional and Administrative Law in New Zealand* (2nd Edn) (2001)
- Cooke (ed), *Portrait of a Profession* (1969)
- *Report of the Royal Commission on the Courts*, 1978
- Spiller, *New Zealand Court of Appeal: A History 1958-1996* (2000)
- McDowell and Webb *The New Zealand Legal System* (2nd Edn) (1998)
- Mulholland, *Introduction to the New Zealand Legal System* (9th Edn) (1999).
- *The Laws of New Zealand*, Courts Reissue 1 (2004)

## Links

1. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#settingup>
2. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#supreme>
3. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#appellate>
4. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#lower>
5. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#district>
6. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#magistrates>
7. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#appeal>
8. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#supremehigh>
9. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#supremeestab>
10. <https://www.courtsofnz.govt.nz/about-the-judiciary/copy-of-overview/#othercourts>