

Law

Supreme Court UK: views from Canada and South Africa

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DAVID REBER FOR THE TIMES



The new Supreme Court, a fine sculpture-encrusted Portland stone building, was created as a nostalgic revisit of the 18th-19th century Gothic Revival

What lawyers think of Blair's legacy

Does The Times Law panel approve of the new Supreme Court? **Frances Gibb reports**

The creation of the United Kingdom's first Supreme Court which comes into being today, has overwhelming support among lawyers — and they also predict that it will flex its muscles to become more powerful, in time, than the law lords that it replaces.

A survey of *The Times* Law panel, our sounding board of 100 leading lawyers across all specialisms, shows that three quarters believe that the reform is "worthwhile" and two thirds also believe that the move will not just mean business as usual. In the longer term, they say, the Supreme Court justices will be more activist — with the potential of more clashes with government.

On the face of it, the reform may look just like moving house to a newly refurbished building. The law lords, as they were, become Supreme Court justices, with new facilities: a library, newly modernised courtrooms, even a chill-out room and a new crest, not to mention the carpet designed by Peter Blake, best known for his cover of the Beatles' *Sgt. Pepper's* album.

The move has taken six years to plan amid extensive debate, not least over the site, finally chosen on the opposite side of Parliament Square

from the Palace of Westminster, and flanked appropriately by buildings representing the executive and the Church — the Treasury on one side and Westminster Abbey on the other.

But after spending £77 million (opposition MPs say £100 million), will it just be business as usual?

Vanessa Barnett, a media lawyer at Berwin Leighton Paisner, says that moving house is the right analogy: "Always worthwhile in the end, however long it takes" and predicting: "It's not until you flee the nest that you have any idea of what possibilities there are in life ... and I expect the Supreme Court to have such an experience."

The public law silk, Richard Gordon, QC, believes that the new name alone will influence what the justices do and he predicts that it will be "more activist". He says: "It shares the name of its US counterpart, which is a court with virtually unlimited power. In a new setting and with a new name, the justices will feel it incumbent upon them to do something new. Inevitably, as it seems to me, it will adopt a more constitutional stance that will involve more clashes with central government."

Nigel Tait, a libel lawyer with

Carter-Ruck, predicts that the new justices will be more ready to interfere with legislation or as Owen Warnock, employment lawyer with Eversheds, puts it, to have "less sympathy with the executive and more inclination to intervene in government". Michael Fordham, QC, another public law silk, agrees: "This is a clean start ... this change will rightly encourage a fresh look at old restrictions in the approach

also being members of that most enticing club — the House of Lords".

Ben Rose, a partner with Hickman & Rose, agrees that greater clarity between the arms of the constitution is important. Lack of clarity can be "corrosive" and foment mistrust, he says, as seen over the role of the Attorney-General in giving legal advice on the war in Iraq. But he does not think that the new court, with its "cautious judiciary", will flex its muscles. "It is an important change but won't cause a revolution." Conversely Roger Bamber, a family lawyer with Mills & Reeve, disagrees that the reform is worthwhile but predicts that it will enhance judicial power.

A substantial minority do not support the reform and many also believe that nothing will change. Neil Kitchener, QC, observes that "it will make no difference" and that there is "no reason to believe that the new court will behave in any way differently to the old court". Ronnie Fox, the employment lawyer at Fox solicitors, who dismisses the reform as "expensive political posturing" agrees, and the Chancery silk Michael Todd says that the law lords "have always displayed independence". The notion that they will act any differently in the Supreme Court "is fanciful". Frances Hughes, a family lawyer with Hughes Fowler Carruthers, says: "The judges' independence from the Government is not an issue."

Either way, greater transparency will be important: the public will have a better idea of what the court is for. As Richard Linsell, of Addleshaw Goddard, predicts, the public will "grow to appreciate [the justices'] role and more clearly understand how 'freedom under the rule of law' works in a modern democracy".

More comments from other members of the Law panel on timesonline.co.uk/law

Inside today

Eight-page supplement on the Supreme Court

to Parliament and constitutional rights". Freed from the "inapt" former name and links to Parliament, he says, "an independent constitutional court can rise to the task of guaranteeing the rule of law and protection of human rights".

The law lords, the panel agree, have an excellent record in robust independence. But the physical separation from the House of Lords will make a difference — if only to public perception. Robin Fry, a copyright lawyer with Beachcroft, says that the new court will bring "confident and independent oversight of the executive without the corrosive influence of our most senior judges

Queen's Counsel
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