

OPENING STATEMENT

ATTORNEY GENERAL'S OFFICE RETREAT 2016

DAVINA HOUSE

Where are we now and where to from here?

Lord Tevita Poasi Tupou, Resident Judge, Court of Appeal and Former Minister of Justice and Attorney General and former Crown Solicitor.

11 March 2016

1 INTRODUCTION

I would like to thank the choir for their excellent performance in reminding us that even in our hour of darkness, the Lord will always be standing in front of us speaking and whispering words of wisdom. I hope that the message from the numbers performed by the choir today will be forever anchored in our hearts to remind us that we should always seek the Lord's wisdom in our work and we should always praise him by saying Hallelujah even during difficult and challenging times at work.

I would like to acknowledge the presence of Reverend 'Ungatea Kata, the Acting Attorney General and Director of Public Prosecutions Mr. 'Aminiasi Kefu, Solicitor General Mr. Sione Sisifa, the former Attorney Generals Mr. 'Aisea Taumoepeau and Mrs. 'Alisi Taumoepeau, his Majesty's Lord Privy Seal Mr. Viliami Malolo and former Solicitor General Ms. Linda Folaumoetu'i.

I am deeply honoured to have been invited by the Acting Attorney General to open this Retreat of the Attorney General's Office.

I am happy to see amongst you, former Attorney Generals, Solicitor General and staff of the Crown Law Department, which is now known as the Attorney General's Office. I am also happy to see the current staff of the Attorney General's Office including the Solicitor General, legal counsels and the support staff.

2 THEME

(a) Where are we now and where to from here?

When I was invited to deliver the opening statement for today's retreat, I was told that the theme for today is "Where are we now and where to from here". I then took time to think about this theme, and I believe that this theme requires the Attorney General's Office staff to identify and discuss where weaknesses can be strengthened and where strengths can be improved.

(b) Where are we now?

The phrase "**where are we now?**" reminds me of one of my fishing experiences with Mr. Harry Waalkens. I was on Mr. Waalkens fishing boat heading to a fishing competition in Vava'u. As we were making our way to Vava'u, I felt that we were lost and I was starting to feel afraid. At that instance a cargo ship went by on its way to Vava'u. I immediately told Mr. Waalkens to follow the boat, so we can find our way to Vava'u. Mr. Waalkens said no, and was adamant that he can use his compass to help us find our way to Vava'u.

At this point we were at open sea and it was pitch dark. We then spotted an island, we then called another boat to ask – **Where are we?** and the boat responded that the island is Kelelesia

located in the Ha'apai Group. I was relieved that we were still in the Tongan Island group, and especially the Ha'apai Group.

Where are you now – Attorney General's Office?

Attorney General's Office you are now with legally trained lawyers who hold university degrees and support staff who support the work you do. You all work in an office that is lead by the Acting Attorney General and Director of Public Prosecutions and the Solicitor General and other senior officers. You as staff of the Attorney General's Office have gained experience, and you have used your skills and knowledge of the law in your work to advise the Government and represent the government and the public in the Tongan Courts. Through trials and tribulations you have reached the stage that you are in now.

Similar to my fishing story and using a compass to give us directions we reached the Ha'apai Group.

Today, your compass at work has been the Constitution and the laws of Tonga, case laws of Tonga and other persuasive legal principles and decisions from Commonwealth countries and directions from your seniors.

The first purpose of this retreat is to identify and discuss where weaknesses can be strengthened.

(c) Where to from here?

The second purpose is to identify and discuss where strengths can be improved?

Our destination in my fishing story was Vava'u. You, as the officers of the AG's office have a never ending destination in your work as legal advisers to Government. Government and its leaders may change, as it happened in the 2014 elections.

The rule of law is supreme as stated in Clause 83A of the Constitution. Laws changes through Acts passed by the Legislative Assembly and through applications by the Courts.

You must keep up with these changes and where you think necessary and appropriate , recommend changes to clarify and put legal issues beyond doubt.

There have been great political changes in Tonga in recent years when the King voluntarily gave up his power to appoint the Prime Minister and Ministers to Cabinet in 2006. Now, the elected members may elect one of them to be Prime Minister. The appointed Prime Minister in turn can appoint his own Ministers from the elected members including an option to appoint at least 4 non-members of Parliament. The only restriction is that the members who are not chosen must be the majority in Parliament. So now, we have 12 in Cabinet and 14 outside.

Regardless of he political changes, it is your duty to apply the law without bias or prejudice and without fear or favour.

Through my work in the Court of Appeal, I have come across cases where government has not followed the legal advice given by the Attorney General. The consequence invariably is that the Court of Appeal has upheld the legal advice of the Attorney General and overruled the decision of the Minister.

Some ministers have their own in-house legal advisers. However, there needs to be an understanding and cooperation between these legal advisers and the AG. There should not be conflicting legal advice given to Ministers and Government.

3 CONCLUSION

I wish you all an enjoyable and successful retreat through the guidance and blessings of our Lord. It is my pleasure and honour to declare this retreat of the Attorney General's Office open. Tu'a 'ofa atu.