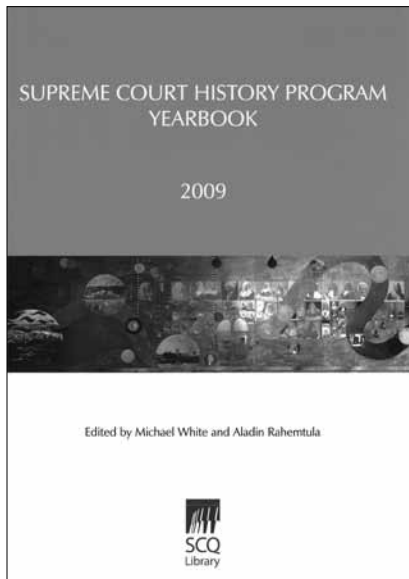


Supreme Court History Program Yearbook 2009

By Michael White and Aladin Rahemtula (eds) | SCQ Library | 2010



If there is to be an almanac focussing on judges, what better place for it to be published than Brisbane, our most judicial city. Of the family of the soldier governor for whom the place is named, it is said:¹

One of the earliest of the family known in history is supposed to have been William Brisbane, who, in 1332, was chancellor of Scotland [Hailes' Annals.] In Brisbane house in the parish of Largs, Ayrshire is preserved an old oaken chair, with the date 1357 and the arms are three cushions or woosacks, which should seem to have been adopted from the office of chancellor.

The origin of the city name is a tussle between the judicial view and the adversarial view. Two in the blue corner are the panorama ('A place where courts were held; *brys*, a trial at law, and *bann*, a mount; *breasban*, the royal mount.²) and the view that justice though blind is uncomfortably awake ('to bruise the bone'³).

As for the red corner, one source

holds that Brisbane 'was a nickname for a person who had sustained a broken bone. The surname derived from the Old French word, *briser*, which means *to break*, and the Old English word, *bàn*, which means *bone*. This was also a nickname given to a person who was often involved in fights, which resulted in the breaking of bones.'⁴ There is BC and AD. Now there is pre-ADR.

The city motto is '*meliora sequimur*', or 'We strive to be better.'⁵ Doubtless appropriate for a case managing bench. The family motto, on the other hand, is also that of an antediluvian (pre-ADR) bar: '*certamine summo*',⁶ which can be 'At the height of battle!', but is aptly 'Into the list!' (see e.g. *Macbeth*, '... come fate into the list. / And champion me to the utterance!'). If not senior counsel, use with care.

Professional publications know no mean time. Our learned colleagues in Phillip Street publish monthly. This organ is (for now) biannual. A greater frequency promotes currency; a lesser, depth.

The risk we have in the web is that these proportions can be rendered absurd. A frequency which has progressed to immediacy gives no currency unless there is context. A depth which has progressed to a black hole into which all information is indiscriminately sucked is not depth at all, but a kind of infinite and impenetrable shallowness.

We who enjoy these publications can be grateful that the production teams – which, at least in the

case of *Bar News* is a production team of one – are exemplars of the 'steamship effect', where the displacement of an old technology (in this case, the typographical word) by an innovation (the web) in fact stimulates a competing improvement in the former (these journals).

By its yearbook – of which 2009 is the fifth – the Queensland Supreme Court Library gives us another.

This is a standard yearbook only if one starts at the back: the necessary and well-assembled professional agglomeration Legal Personalia; Review of Queensland Legislation; and Review of Cases.

Once one gets to the book reviews, we have something different. Sixteen books reviewed, with one – a tribute to Lord Bingham – receiving two critiques, one from Justice Heydon and one from Justice Keane.

Both pass on personal recollections of Bingham's warmth. One essay in the tribute is Sir John Mummery's 'mercifully lengthy account' of the life of Lord Bowen. With luck it will retell that tale of Bowen's soother to Jessel MR, who bristled at the draft of the 1882 judges' address to the Queen:⁷

Instead of saying that [Your Majesty's Judges are] 'deeply sensible of our own many shortcomings', why not say that we are 'deeply sensible of the many shortcomings of each other'?

Justice Wilson gives a crisply sympathetic assessment of the third edition of Richard Posner's *Law and Literature*, sharing with us Posner's

dilemma as to how literary theorists 'have not been able to explain in simple prose why they cannot explain their theories in simple prose'.

Sometime author the Honourable Ian Callinan passes on the visual arts, giving a favourable albeit robust review of robust writer John McDonald's *Art of Australia (volume 1)*.

But it is the middle of this yearbook where we find its meat. It deals with death. Four deaths, in fact; three judges and one solicitor-general.

Anyone who has involved themselves in the editing of an institutional journal will know that death has a resilient popularity: obituaries provide an important opportunity for members of the institution to remember not only their colleague but also the times and the reader's own place in them.

Which is not to say that an obituary cannot be a sad affair. Too often, as readers of *Bar News* will recall, there must be a tribute to a life cut down too soon. With Justice Dutney's death at 54 'during another epic cycling expedition', recollections in this yearbook give another example.

However, the death of a judge usually offers something else. Judges, at least in our common law system, are generally young only before their appointment. Their deaths merit the sadness all deaths merit, but coming without shock as they often do, they give

an opportunity for a professional retrospect, as it were.

In this, the yearbook flourishes, with a diversity of reminiscences on the lives of Peter Connolly and Kevin Ryan, very different and distinguished members of the court. It is no discourtesy to other reminiscers to record names more known to the southern bar, Dr Bruce McPherson, Governor General Quentin Bryce and Justice Susan Kiefel.

And so at the end, to the beginning of this tome, 'Articles'. For those of us who are jaded by the listless and patronising centralism of Sydney and Melbourne, this is the place to splash on a healthy musk of that much and mistakenly maligned perfume known as 'parochialism'.

Tip O'Neill, the Democrat speaker for much of Mr Reagan's presidency, famously observed that 'All politics is local'. So too the law. The thought that a 'common' law could exist without any deference to the idiosyncrasies of locality is nonsensical; those dogmatists who preach universality would do well to ponder the several delights of 'The Observance of Separation Day in Queensland' and 'Reinvigorating Australian Federalism'.

On its face, one of the most parochial of the articles is Justice Thomas's 'Judicial Leap-Frog in the Forties: The Philp-Mansfield Rift'. This is a subject which is remote to most of us, but something which

'fascinated more than a generation of Queensland lawyers', a tale of an (apparently) poisoned relationship between two eminent jurists of decades ago.

Justice Thomas could have related a story which continues to be remote; instead, we have a fine personality play which gives a judicious and informative assessment of a difficult time.

The Yearbook is a superior contribution to the life of Australian law. Editors Professor Michael White QC and Mr Aladin Rahemtula can only be congratulated on producing a work of bounty upon which we of the other states must look jealously. Governor Brisbane was generous enough to name his eldest son 'Thomas Australia', and we Sassenachs hope the editors and the court continue in a generosity of future almanac-making.

Review by David Ash

Endnotes

1. www.electricscotland.com/history/nation/brisbane.htm [accessed 19/10/2010].
2. www.family-crests.com/family-crest-coat-of-arms/last-names/scottish-surname-history-b.html [accessed 19/10/2010].
3. Clune & Turner (eds), *The Governors of New South Wales*, 2009, The Federation Press, page 126.
4. www.houseofnames.com/brisbane-family-crest [accessed 19/10/2010].
5. en.wikipedia.org/wiki/Coat_of_arms_of_Brisbane [accessed 19/10/2010].
6. www.brisbane.co.uk/brisbane/CoatOfArms.htm [accessed 19/10/2010].
7. Quoted in Megarry, *Miscellany-at-Law*, 1969, Stevens & Sons, pages 8 and 9.