The Hon Justice John Basten: an appreciation

By the Hon AS Bell, Chief Justice of New South Wales*

Introduction

Throughout his long and distinguished career, the Hon Justice John Basten has made an outstanding and rarely matched contribution to the community as an appellate judge, barrister, academic, public interest lawyer and champion of Indigenous rights.

His Honour has served as a judge of the Supreme Court of New South Wales and a judge of appeal since being sworn in on 2 May 2005. In the course of his judicial service, he has participated in over 2100 cases in both the Court of Appeal and the Court of Criminal Appeal, in addition to sitting from time to time as a judge of the Common Law and Equity Divisions of the Supreme Court of New South Wales. This has resulted in a remarkable corpus of work of the highest quality, driven by his Honour's prodigious energy and acute intellect.

Justice Basten is a recognised intellectual leader in many areas of law, most notably but by no means only in constitutional law, public and administrative law including judicial review, the law of statutory interpretation, tort law, criminal law, land and planning law and questions concerning federal jurisdiction and the jurisdiction of the Local, District and Land and Environment Courts of New South Wales, NCAT, ICAC and the New South Wales Crime Commission.

His Honour has reached the statutory retirement age with a deserved reputation as one of the most widely respected and hardest working judges in the country. He will continue to sit on the Supreme Court as an acting judge and acting judge of appeal. Although his Honour has eschewed a formal farewell ceremony, what follows should be on the public record.

Pre-judicial career

John Basten commenced his career as a teaching fellow at the University of Chicago Law School in 1972–1973 which was followed, after a brief sojourn at Freehill Hollingdale & Page, by nine years at the then fledgling University of New South Wales Law School as a lecturer and senior lecturer in Law between 1974–1982.

In the 1970s and early 1980s, he played an instrumental role in the establishment of Sydney's 'community legal centre movement' and has been described by the Hon Virginia Bell AC SC as 'an inspiration to a generation of public interest lawyers'. He was a founding member of the Redfern Legal Centre, sitting on its management committee from its inception in March 1977 until 1983. In the ensuing 39 years, the Centre has developed into a landmark institution in and for the provision of free legal advice, services and education to disadvantaged and marginalised people in New South Wales, particularly those living in inner Sydney.

Following his admission to the New South Wales Bar in 1982, his Honour continued to support the work of the Redfern Legal Centre, frequently accepting briefs from the Centre pro bono. A notable example of this collaboration is the case of *Riley v Parole Board of New South Wales* (1985) 3 NSWLR 606, concerning a prisoner's right to reasons on a denial of parole as an element of natural justice. Much of his Honour's subsequent work at the bar in relation to access to justice and Indigenous rights was undertaken on an entirely pro bono basis.

In his first year at the bar, he acted for Timothy Anderson in the lengthy coronial inquest into the Hilton Hotel bombing which occurred in February 1978. At the time of the coronial inquiry, Anderson was in prison in relation to an earlier conviction of conspiracy with Paul Alister and Ross Dunn to murder Robert John Cameron (see *Alister v The Queen* (1984) 154 CLR 404; [1984] HCA 85) in relation to which he was pardoned and released in 1985. He was re-arrested in 1989 and then charged and convicted of murder in relation to the Hilton bombings. Anderson was ultimately acquitted by the New South Wales Court of Criminal Appeal: *Anderson v R* (1991) 53 A Crim R 421.

While a barrister, Basten QC was heavily involved in cases concerning the then-novel concept of native title as governed by the *Native Title Act 1993* (Cth), including in the following cases before the High Court: *Fejo v Northern Territory of Australia* (1998) 195 CLR 96; [1998] HCA 58; *Commonwealth of Australia v Yarmirr (Croker Island Case)* (2001) 208 CLR 1; [2001] HCA 56; *Western Australia v Ward* (2002) 213 CLR 1; [2002] HCA 28; *Yanner v Eaton* (1999) 201 CLR 351; [1999] HCA 53; and *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58. The then attorney general for New South Wales observed at his Honour's swearing-in that his 'contribution to the development of native title law and the construction of the Native Title Act' was 'unsurpassed'.

During his 23 years at the New South Wales Bar (including 13 as Queen's Counsel), his Honour appeared in some 64 cases before the High Court of Australia, a number exceeded by very few before or since. Significant cases in addition to those mentioned above include:

- in constitutional law, *Davis v Commonwealth* (1988) 166 CLR 79; [1988] HCA 63; *APLA Limited v Legal Services Commissioner (NSW)* (2005) 224 CLR 322; [2005] HCA 44; *Solomons v District Court (NSW)* (2002) 211 CLR 119; [2002] HCA 47;
- in discrimination law, *Australian Iron & Steel Pty Ltd v Banovic* (1989) 168 CLR 165; [1989] HCA 56 (*Banovic*); *IW v City of Perth* (1997) 191 CLR 1; [1997] HCA 30; *Purvis v New South Wales* (2003) 217 CLR 92; [2003] HCA 62;
- in the field of migration and related questions of judicial review, *A v Minister for Immigration & Ethnic Affairs* (1997) 190 CLR 225; [1997] HCA 4; *Minister for Immigration & Ethnic Affairs v Guo Wei Rong* (1997) 191 CLR 559; [1997] HCA 22; *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611; [1999] HCA 21; Re *Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57; [2001] HCA 22; *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323; [2001] HCA 30; *Minister for Immigration and Multicultural Affairs v Singh* (2002) 209 CLR 533; [2002] HCA 7; *Minister for Immigration & Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597; [2002] HCA 11;
- in the field of federal jurisdiction, *Abebe v Commonwealth* (1999) 197 CLR 510; [1999] HCA 14; and the jurisdiction of courts, *DJL v Central Authority* (2000) 201 CLR 226; [2000] HCA 17; and


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- in criminal law and sentencing, *Wong v R* (2001) 207 CLR 584; [2001] HCA 64.

In many of these cases, especially those concerning native title and prisoner's rights, John Basten's presence as counsel served to even up the disparity in resources between the litigants and thereby enhance the rule of law. This is illustrated by *Banovic*, which was a landmark judgment finding that BHP had discriminated against female workers by making them redundant on a last on first off basis. The claimants were represented by the Public Interest Advocacy Centre. While still a junior, his Honour appeared unled for the claimants in the Equal Opportunity Tribunal, the Court of Appeal and the High Court where his clients prevailed in a 3-2 judgment: see *Najdovska v Australian Iron & Steel Pty Ltd* (1985) 12 IR 250; *Australian Iron & Steel Pty Ltd v Najdovska* (1988) 12 NSWLR 587; *Banovic*.

As Basten QC, he was an acknowledged intellectual leader of the public law bar which grew rapidly in parallel with the growth of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) and the emerging administrative law jurisprudence of the Federal Court and the High Court of Australia. During this period, he also held the following appointments in the fields of law reform and access to justice:

- Chair of the Prisoners' Legal Service Advisory Committee of the New South Wales Legal Aid Commission (1981–1997), providing advice on the effective and efficient provision of free and confidential legal representation to prisoners statewide;
- part-time Commissioner of the Australian Law Reform Commission in relation to its reference on grouped proceedings in the Federal Court (ALRC Report No 46, 1988) (1986–1987);
- part-time Commissioner of the Australian Human Rights and Equal Opportunity Commission (1994–1997);
- member of the advisory committee to the joint inquiry conducted by the Australian Law Reform Commission and the National Health and Medical Research Council into the protection of human genetic information in Australia (ALRC Report No 96, 2003) (2001–2003);
- member of the National Indigenous working group, providing representation regarding the 1998 amendments to the *Native Title Act 1993* (Cth);
- part-time Commissioner of the New South Wales Law Reform Commission for its review of the *Anti-Discrimination Act 1977* (NSW) (1999); and
- Assistant Commissioner of the New South Wales Independent Commission Against Corruption (ICAC) (2003–2004).

Judicial Career

A brief written tribute such as this cannot do justice to the volume and quality of Justice Basten's judicial work over the last 17 years. The New South Wales Law Reports, Australian Law Reports, the Local Government and Environment Reports and the Australian Criminal Reports are replete with notable judgments of his. Many of them continued and refined themes referred to in his swearing-in ceremony as a judge:

> It might surprise many, though perhaps not so many in this audience, to suggest that principles of statutory construction are of fundamental constitutional importance. In public law they define the proper boundaries between the Parliament and the Executive, and between both Parliament and the Executive on the one hand and the courts on the other. But how many legislators in conferring a statutory power on a government officer think about whether that power will be constrained by some implied principles of procedural fairness governing its execution and about what those principles may be? How clearly do we, when articulating a presumption that the Parliament does not intend to interfere with fundamental human rights and freedoms, appreciate that we are formulating a principle with constitutional significance because it accords a certain level of power to the judiciary at the expense of the legislature?
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> When we are told that the state constitution embodies no principle of separation of powers, we should realise that such a statement cannot be taken too far. In a famous passage in Quin's case, Sir Gerard Brennan explained that to allow judicial review to question the merits of administrative action, as opposed to its legality, would be to permit the judiciary to impinge on the functions of the Executive. That canonical statement, containing an inherent assumption about the separate spheres of the administration and the judiciary, was made in relation to an exercise of state power.

On the New South Wales Court of Appeal, John Basten has been an intellectual powerhouse and has produced his judgments not only with meticulous attention to detail but with incredible despatch. Always willing to sit on the most difficult and complex cases, including in recent years the challenge to the Folbigg Inquiry (*Folbigg v Attorney General (NSW)* [2021] NSWCA 44; (2021) 391 ALR 294), the Queensland Floods appeal (*Queensland Bulk Water Supply Authority t/as Seqwater v Rodriguez & Sons Pty Ltd* [2021] NSWCA 206; (2021) 393 ALR 162) and, most recently, *Camenzuli v Morrison* [2022] NSWCA 51, he has brought to the discharge of his judicial duties enormous skill, deep experience and learning, intellectual rigour and boundless energy.

In the field of public law, it is invidious to attempt to elevate any particular decision of his Honour as having special significance.

There are simply too many candidates. It suffices to observe that the leading Australian text, M Aronson, M Groves and G Weeks, *Judicial Review of Administrative Action and Government Liability* (Thomson Reuters, 7th ed, 2022), draws on his Honour's decisions more than those of any other judge (including of the High Court) as well as his Honour's extra-curial scholarship in this field, which includes:

- *Natural Justice, the High Court and Constitutional Writs (2001) 30 AIAL Forum* 21;
- *Constitutional Elements of Judicial Review* (2004) 15 *Public Law Review* 187;
- *The Supervisory Jurisdiction of the Supreme Courts* (2011) 85 *Australian Law Journal* 273;
- *Jurisdictional Error after Kirk: Has it a Future?* (2012) 23 *Public Law Review* 94;
- *Judicial Review: Can We Abandon Grounds?* (2018) 93 *AIAL Forum* 22;
- *The Foundations of Judicial Review: The Value of Values* (2020) 100 *AIAL Forum* 32;
- *Judicial Review of Executive Action: Tiers of Scrutiny or Tears of Frustration?* in N Williams (ed), *Key Issues in Judicial Review* (2014, Federation Press) 35; and
- *The Courts and the Executive: a Judicial View* in G Weeks and M Groves (eds), Administrative Redress *In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (2019, Federation Press) 44.

As presaged in his swearing-in speech, Justice Basten's judicial career has coincided with the increasing appreciation of the importance of statutory interpretation, with statutes now permeating almost all areas of legal practice. His Honour is the Australian Law Journal's section editor on statutory interpretation and important extra- curial contributions of his include *The Principle of Legality – an Unhelpful Label?* in D Meagher and M Groves (eds), *The Principle of Legality in Australia and New Zealand* (Federation Press, 2017) 74 and *Construing Statutes Conferring Powers – A Process of Implication or Applying Values?* in J Boughey and L Burton Crawford (eds), *Interpreting Executive Power* (Federation Press, 2020) 54.

One particular area where statutory interpretation has been of great significance is tort law, where the *Civil Liability Act 2002* (NSW) came into force only shortly before his Honour's appointment to the bench. Important decisions of his on this centrally important piece of legislation include *Gett v Tabet* [2009] NSWCA 76; (2009) 254 ALR 504, from which an appeal was dismissed with costs in the High Court of Australia; *State of NSW v Ibbett* (2005) 65 NSWLR 168; [2005] NSWCA 445; *Gordon v Truong* [2014] NSWCA 97; (2014) 66 MVR 241; *Curtis v Harden Shire Council* (2014) 88 NSWLR 10; [2014] NSWCA 314; *DIB Group Pty Ltd v Cole* [2009] NSWCA 210; Aust Torts Reports 82-022; *New South Wales v Corby* (2010) 76 NSWLR 439; [2010] NSWCA 27; *Dean v Phung* [2012] NSWCA 223; Aust Torts Reports 82-111; and *Woodhouse v Fitzgerald* (2021) 104 NSWLR 475; [2021] NSWCA 54. As in Judicial Review of *Administrative Action and Government Liability,* judgments of Justice Basten dominate the most recent 5th edition of *Luntz Assessment of Damages for Personal Injury and Death* (2021), for which his Honour wrote the foreword.

In the field of local government and planning law, significant decisions include *Kindimindi Investments Pty Ltd v Lane Cove Council* [2006] NSWCA 23; 143 LGERA 277 and *GPT RE Ltd v Belmorgan Property Development Pty Ltd* (2008) 72 NSWLR 647; [2008] NSWCA 256, concerning the '*Mison* principle' of planning law, and *McGovern v Ku-ring-gai Council* (2008) 72 NSWLR 504; [2008] NSWCA 209, dealing inter alia with the issue of what happens if a minority of persons in a joint decision-making body (relevantly a local council) are affected by bias.

In the field of land law, an article in the most recent Australian Law Journal (C Sherry, *Judicially Identified Limits on the Body Corporate By-law Making Power: Cooper v The Owners – Strata Plan No 58068* (2022) 96 ALJ 125) commences:

> The New South Wales Court of Appeal's decision in *Cooper v The Owners – Strata Plan No 58068* is arguably the most significant decision to date for millions of Australians who live in strata schemes either as owners or tenants. On its face, the decision is about Angus, a nine-kilogram schnauzer, living in a luxury apartment building in inner Sydney, but in substance, the decision addresses crucial questions about the power private citizens have to regulate the homes and lives of their neighbours.

Justice Basten wrote the leading judgment in that decision.

Unlike in other states, criminal appeals in New South Wales are not heard by the Court of Appeal. That having been said, Court of Appeal judges regularly preside on sittings of the Court of Criminal Appeal. In his 17 years on the bench, Justice Basten has done so in over 400 criminal appeals and has also dealt with many criminal matters when exercising the court's supervisory jurisdiction pursuant to s 69 of the *Supreme Court Act* (NSW). In this context, the Court of Appeal regularly considers applications for judicial review from decisions of the District Court exercising its own appellate jurisdiction from decisions of the Local Court in relation to summary offences. In this area, his Honour's judgments have provided clear, powerful and disciplined guidance as to the proper limits of the concept of jurisdictional error: see, for example, *Wang v Farkas* (2014) 85 NSWLR 390; [2014] NSWCA 29; *Stanley v Director of Public Prosecutions* (NSW) [2021] NSWCA 337; 398 ALR 355.

The intersection between criminal and administrative law may also be seen in *Patsalis v New South Wales* (2012) 81 NSWLR 742; [2012] NSWCA 307, a significant judgment on the effect of the *Felons (Civil Proceedings) Act 1981* (NSW) regarding the restriction of rights of judicial review of prisoners. His Honour has also been instrumental in the development of principles and approaches relevant to the various high risk offender's schemes: see, for example, *Lynn v State of New South Wales* (2016) 91 NSWLR 636; [2016] NSWCA 57; *Turner v State of New South Wales* (2019) 99 NSWLR 767; [2019] NSWCA 164; *Tannous v State of New South Wales* (2020) 103 NSWLR 183; [2020] NSWCA 261, which involved construction of the *Crimes (High Risk Offenders) Act 2006* (NSW); and *Hardy v State of New South Wales* [2021] NSWCA 338, concerning the *Terrorism (High Risk Offenders) Act 2017* (NSW).

There have also been leading decisions concerning the powers of ICAC, the NSW Crime Commission and NCAT: *A v ICAC* (2014) 88 NSWLR 240; [2014] NSWCA 414; *D'Amore v ICAC* [2013] NSWCA 187; (2013) 303 ALR 242, rejecting judicial review challenges to findings of corrupt conduct; *Lee v NSW Crimes Commission* (2012) 84 NSWLR 1; [2012] NSWCA 276, in which Justice Basten's leading judgment was upheld by the High Court (*Lee v New South Wales Crime Commission* (2013) 251 CLR 196; [2013] HCA 39); *Attorney General (NSW) v Gatsby* (2018) 99 NSWLR 1; [2018] NSWCA 254, in which it was declared that NCAT was not a 'court of a State' for the purpose of Ch III of the Constitution and s 39 of the Judiciary Act 1903 (Cth); *Gaynor v Attorney General of New South Wales* (2020) 102 NSWLR 123; [2020] NSWCA 48.

In matters of Indigenous affairs, his Honour has also delivered important judgments which include *NSW Aboriginal Land Council v Minister Administering Crown Lands Act (Nelson Bay Claim)* (2014) 88 NSWLR 125; [2014] NSWCA 377, a case concerning the definition of 'claimable Crown lands' in the *Aboriginal Land Rights Act 1983* (NSW); *Minister Administering the Crown Lands Act v New South Wales*

Aboriginal Land Council (Goomallee Claim) (2012) 84 NSWLR 219; [2012] NSWCA 358, holding, in effect, that the fact that Crown land was subject to a grazing licence did not prevent it being claimed under the *Aboriginal Land Rights Act; Minister Administering the Crown Lands Act v La Perouse Local Aboriginal Land Council* [2012] NSWCA 359; (2012) 193 LGERA 276, holding that transitory physical activities on land do not necessarily amount to use or occupation, such as to prevent a land claim being made. There is a sensitive analysis of heritage in *Hackett (a pseudonym) v Secretary, Department of Communities and Justice* [2020] NSWCA 83; (2020) 379 ALR 248 at [146] ff, and on the significance of Aboriginal objects in *Country Energy v Williams; Williams v Director-General National Parks and Wildlife* (2005) 63 NSWLR 699; [2005] NSWCA 318.

In sitting on some of the most difficult and high-profile cases in the country, his Honour's judgments have proven extremely influential and, in numerous cases, his decisions have been upheld in the High Court, with a number of powerful dissenting judgments in the Court of Appeal being vindicated. Notable decisions in these two categories include:

- *Garnock v Black* (2006) 66 NSWLR 347; [2006] NSWCA 140, a case turning on the construction of provisions of the *Real Property Act 1900* (NSW) as to the nature of a purchaser's interest in land in circumstances where a third-party creditor of the vendor registers a writ for the levy of property after execution but before settlement. Justice Basten's dissent was upheld by the High Court in
- *Black v Garnock* (2007) 230 CLR 438; [2007] HCA 31.
- *Cesan v Director of Public Prosecutions (Cth)* [2007] NSWCCA 273; (2007) 174 A Crim R 385, a case concerning whether a miscarriage of justice was caused by the trial judge falling asleep for parts of criminal trial, in which Justice Basten's dissenting judgment was upheld by the High Court in *Cesan v The Queen* (2008) 236 CLR 358; [2008] HCA 52.
- *Dowe v Commissioner of the New South Wales Crime Commission* [2007] NSWCA 296; (2007) 177 A Crim R 44, concerning unlawfully obtained evidence. Justice Basten's dissent was ultimately upheld in *Gedeon v Commissioner of NSW Crime Commission* (2008) 236 CLR 120; [2008] HCA 43.
- *Royal v Smurthwaite* [2007] NSWCA 76; (2007) 47 MVR 401, involving causation in the law of tort, and in which Justice Basten's dissent was upheld in *Roads Traffic Authority v Royal* [2008] HCA 19; (2008) 245 ALR 653.
- *Chief Commissioner of State Revenue v Pacific National (ACT) Ltd* (2007) 70 NSWLR 544; [2007] NSWCA 325, concerning stamp duty payable on lease instruments, which was upheld in *Asciano v Chief Commissioner of State Revenue* (2008) 235 CLR 602; [2008] HCA 46.
- *Sydney Harbour Foreshore Authority v Walker Corp Pty Ltd* (2005) 63 NSWLR 407; [2005] NSWCA 251 and *Sydney Harbour Foreshore Authority v Walker Corp Pty Ltd (No 2)* (2006) 68 NSWLR 487; [2006] NSWCA 386, which concerned the compulsory acquisition of Ballast Point, on the shores of Sydney Harbour. Both decisions were upheld in *Walker Corporation v Sydney Harbour Foreshore Authority* (2008) 233 CLR 259; [2008] HCA 5.
- *Gerard Cassegrain & Co Pty Ltd v Cassegrain* (2013) 87 NSWLR 284; [2013] NSWCA 453, a complex case raising questions as to breach of fiduciary duty, agency, and defeasibility of title under the *Real Property Act*, in which Justice Basten's dissent was upheld by the High Court: *Cassegrain v Gerard Cassegrain & Co Pty Ltd* (2015) 254 CLR 425; [2015] HCA 2.
- *Shade Systems Pty Ltd v Probuild Constructions (Aust) Pty Ltd (No 2)* (2016) 95 NSWLR 157; [2016] NSWCA 379, concerning the NSW security of payments legislation, which was unanimously upheld by the High Court in *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd* (2018) 264 CLR 1; [2018] HCA 4.
- *South West Helicopters Pty Ltd v Stephenson* (2017) 98 NSWLR 1; [2017] NSWCA 312, a carriers' liability case turning on construction of the state and federal Acts and the Warsaw Convention. Justice Basten's judgment in the majority was unanimously upheld by five members of the High Court: *Parkes Shire Council v South West Helicopters Pty Ltd* (2019) 266 CLR 212; [2019] HCA 14.

Judicial education has flourished under John Basten's leadership and he has worked especially closely with the Judicial Commission of New South Wales in this regard. In his role as Chair of the Supreme Court's Education Committee for 13 years, he has developed and overseen the NSW Supreme Court's Annual Conference with senior judges from the United Kingdom – including Lords Neuberger, Hope, Briggs and Sales – from the United States and from the High Court of Australia attending. In addition, as Chair of the Education Committee, he has overseen the regular practice of seminars being provided to interested members of the court and other courts on topical issues relevant to the work of the New South Wales judiciary. In addition, he has chaired the Standing Advisory Committee of the Judicial Commission on Judicial Education since 2009, the Caselaw Governance Committee since 2013 and been a member of the Law Courts Library Advisory Committee since May 2005 and of Parliamentary Counsel's Consultative Group.

Outside the court, his Honour's longstanding involvement in and commitment to legal education has seen him serve on the UNSW Faculty Advisory Council until 2017 as well as chairing the Committee of the Gilbert + Tobin Centre of Public Law at UNSW. The Centre's work focuses on challenging contemporary issues in constitutional and administrative law, Indigenous and First Nations' rights, human rights and discrimination law both domestically and internationally.

From October 2010 to March 2011, he was a Robert S Campbell Visiting Fellow at Magdalen College, Oxford University where he had obtained a BCL in the early 1970s following undergraduate study at Adelaide University Law School, where he was awarded the Stow Medal. He was a friend and contemporary at both Adelaide University and in Oxford of the late Professor James Crawford AC, SC, FBA, a member of the International Court of Justice at the time of his death and formerly Whewell Professor of International Law at Cambridge University.

Conclusion

John Basten's career exhibits 50 years of continuous service to the community in the promotion of access to justice, in legal education, in the pioneering of Indigenous land rights, in the upholding of the rule of law and as a quite outstanding judge. As a scholar judge, he has never lost sight of the fact that the law affects individuals in profound ways. The relations between citizen and government have been at the centre of his life's work, and modern Australia has benefitted significantly from his scholarship, judgments and insights.

Justice Basten's judicial colleagues salute the career of one of Australia's most significant jurists and recognise his prodigious energy, incisive mind, deep knowledge and understanding of the law and commitment to principle. **BN**

* The Chief Justice acknowledges the valuable insights of his colleagues Justices Leeming, Payne, Beech-Jones and acting Justice Griffiths as well as his soon to be colleague, Jeremy Kirk SC, in the preparation of this tribute. The absence of footnotes in this article is intentional. In the spirit of Magritte, this is not a footnote.