

# BOOK REVIEW

JUSTIN CARTER\*

**Aladin Rahemtula (ed)**  
***Justice According to Law: A Festschrift for the Honourable Mr Justice BH McPherson CBE***  
**(Supreme Court of Queensland Library, 2006) 792 pp**

Judicial opinions and poetry are obviously not identical forms of expression; yet in Frost's memorable phrase about poets, the legal writer too is attempting "a momentary stay against confusion."<sup>1</sup>

On 9 December 2005, the Honourable Justice Bruce McPherson delivered his final judgment. His final judgment, that is, involving a stay of execution. The case was *Perovich & Another v Australian Securities and Investments Commission*.<sup>2</sup> It was a rudimentary application, seeking to stay an order for the winding up of two companies. His Honour dismissed the application. However, amidst the perfunctory prose of procedure, Justice McPherson delivered a judgment both rhetorically sound and aesthetically pleasing. To that end the judgment serves as an exemplar of His Honour's writings at large, as Judge Wilson has remarked: "His writing ... frequently contains simple, but precise and profound, explanations of the law and legal principles; and ... does so in a way which goes beyond the strict confines of the law and accepted legal styles, and embraces all that is good in the English language."<sup>3</sup>

It is in tribute to the judge's enduring exposition of the law, as both a jurist and a scholar, that the *Festschrift* has been produced. Traditionally, festschrifts have only been produced for academics: only five have been dedicated to Australian jurists. It is truly a testament to the lasting impact of Justice McPherson's contribution to the law that a festschrift be attributed to him. It is serendipitous that the judgment in question also considers winding up. Whilst Justice McPherson has influenced many areas of the law – as canvassed in the book – his seminal text *McPherson's Law of Company Liquidation* remains the standard. The text was the product of the judge's doctoral thesis, undertaken at the University of Queensland, and awarded in 1967. His Honour

---

\* LLB(Hons) BIntBus; Chambers Legal Associate, Family Court of Australia, Brisbane Registry.

<sup>1</sup> Walker Gibson, 'Literary Minds and Judicial Style' (1961) 36 *New York University Law Review* 915, 930.

<sup>2</sup> (2005) 56 ACSR 303.

<sup>3</sup> Judge Alan Wilson, 'Deconstructing McPherson JA' in Aladin Rahemtula (ed), *Justice According to Law: A Festschrift for the Honourable Mr Justice BH McPherson CBE* (2006) 412, 429.

was a full-time lecturer in law at the University of Queensland from 1961 to 1965, and a visiting lecturer at the University of Cambridge for two months at the end of 1989.

That said, despite inaugurating the field of company liquidation in his treatise, Justice McPherson commands a formidable expertise in numerous areas of the law. Indeed, the thirteen areas of substantive law canvassed in the festschrift suggest as much. Whilst the judge may have retired in September 2006, he continues to actively contribute to the development of the law. He has two forthcoming publications, *The Reception of English Law Abroad* and a revised edition of *The Supreme Court of Queensland 1859-1960: History, Jurisdiction, Procedure*.<sup>4</sup> The first book investigates a largely unexplored area of legal history: the ways in which the British colonies responded to the doctrine of the rule of law in establishing English law as the foundation of their domestic regimes. It will be of interest to both historians and legal professionals in its meticulous examination of the historico-legal intricacies that provided the basis for the colonial legal systems.

Digressing from discussion of his scholarly endeavours, in September 1965 the judge commenced practice as a barrister and took silk in 1975. In his chapter on McPherson's contributions to contract law, the Honourable Justice Keane scrutinises the judge's arguments as counsel. Justice Keane analyses the "masterly synthesis" of legal principles advanced by McPherson before the courts in landmark contract law cases. Even his advocacy could be characterised as a scholarly treatment of the law. Yet in 1982 Justice McPherson was appointed to the Trial Division of the Supreme Court of Queensland. It was in his judicial capacity that the judge has had a most direct impact on the development of the law.

The direct impact of Justice McPherson is highlighted in John McKenna's incisive exposition of the judge's decision in *Riches v Hogben*.<sup>5</sup> In that judgment, His Honour enunciated an 'equity of expectation', which was subsequently affirmed by the Full Court of the Supreme Court,<sup>6</sup> and has informed the reasoning of the High Court.<sup>7</sup> Whilst Justice McPherson intervened and fashioned the doctrine to ensure that justice was done in the circumstances of the case, Mr. McKenna posits questions that reveal the double-edged nature of the judge's solution. McKenna also considers recent authority from England that resolves the same issue using common law estoppel. Despite the fact that judgment was handed down in 1984, almost a quarter of a century ago, Justice McPherson's analysis survives as a fundamental contribution to the historical development of the equitable jurisdiction in the common law world. It still poses questions that perplex both Bar and Bench alike.

The chapters have been prepared by recognised leaders in their respective fields. These include Dr. Rob O'Regan, who has written on criminal law; Professor WA Lee on equity and trusts; Associate Professor Peter McDermott on law reform; and the Honourable Justice Dyson Heydon of the High Court of Australia – and author of the standard *Cross on Evidence* – on evidence. It is representative of Justice McPherson's reputation in the Australian legal profession that the contributors to the *Festschrift* are

<sup>4</sup> Both books will be published by the Supreme Court of Queensland Library in 2007.

<sup>5</sup> [1984] 2 Qd R 292.

<sup>6</sup> *Riches v Hogben* [1986] 1 Qd R 315.

<sup>7</sup> *Commonwealth of Australia v Verwayen* (1990) 170 CLR 394 at 454 per Dawson J; *Giumelli v Giumelli* (1999) 196 CLR 101, [5], [35], [43].

themselves representative of the profession at large. Judges from both Commonwealth and Queensland courts, barristers and solicitors, and noted academics, have all produced entries for the book in praise of the judge. His Honour has had a profound impact upon the development of the Australian common law.

In addition to his judicial commentary, Justice McPherson was a member (1969-1982) and chairman (1982-1991) of the Queensland Law Reform Commission. The judge was at the forefront of the reforms to Queensland's real property regime in the 1960s, which culminated in the *Property Law Act* and the *Real Property Act*. This legislation will rival the *Sale of Goods Act* and Sir Samuel Griffith's *Criminal Code* to stand the test of time. The property law framework devised by Justice McPherson has become a critical cornerstone of the Queensland legal system. Judge Robin reviews these developments. Justice McPherson was also involved in the overhaul of trusts law in the state with Professor WA Lee, which the Professor recounts in a dedicated chapter. Associate Professor Peter McDermott also examines Justice McPherson's contribution to law reform in Queensland, in recognition of which he was appointed a Commander of the Most Excellent Order of the British Empire (CBE) in 1988.

Whilst the book focuses on the professional accomplishments of the judge – of which there are numerous – it also opens with a section entitled 'Reminiscences'. In this section, three fellow judges – including the Honourable Justice Ian Callinan of the High Court of Australia – and a former associate reflect upon their dealings with the judge during the course of his distinguished career. He is remembered warmly. The second shift in focus from His Honour is the section entitled 'The Judiciary'. This section begins with comparative commentary by Senator Brandis of the Australian Senate and Chief Justice de Jersey of the Supreme Court of Queensland on the Kilmuir Rules. The Kilmuir Rules were those rules promulgated by the Lord Chancellor in England restricting extra-judicial comment by judges there. Interestingly, Senator Brandis calls upon the Attorney-General to defend the judiciary from attack when they make public comment. This commentary is intriguingly followed by extra-judicial commentary by two members of the Federal Court of Australia, Justices Dowsett and Kiefel.

One could be forgiven for getting lost amidst the seemingly endless contributions that Justice McPherson has made to the law, as a scholar, as a jurist, and as a reformer. One might even become confused by the dizzying array of accomplishments. Much like His Honour's writings, however, the *Festschrift* serves as a momentary stay against such confusion. In a bold attempt to reduce the life work of an eminent jurist to a single volume, the heavy digest amounts to almost 800 pages. The Supreme Court Library has produced yet another compelling, scholarly publication, which effectively showcases the insights of many Queensland legal luminaries. Each of the chapters deftly focuses upon a particular moment in His Honour's judicial career, and suspends the reader's attention as it reveals the extent and depth of the judge's historic influence in any given area of law. The breadth of the volume is at once a testament to the breadth of His Honour's accomplishments as it is to the cohesiveness of the text itself. It is also extensively referenced, providing a useful starting point for readers wishing to explore McPherson's background. It is an engaging portrait and essential reference of one of Queensland's – one of Australia's – most influential judges. One can envisage the kind of influence Justice McPherson would have had were he elevated to the High Court.