

**Judicial Independence and Impartiality**  
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**Introduction**

These lecture notes are not intended to be a treatise on the subject. Entire books have been written on the history, meaning, breadth and implications of judicial independence and judicial impartiality. All one can do in a brief set of notes is highlight the points or themes judges in Canada would consider to be essential to a proper understanding by a well-informed citizenry.

Within the scope of the next few pages, we will consider certain historical milestones; discuss key concepts or principles; explain what judicial independence is and why in Canada it serves as a cornerstone of our constitutional democracy; explore the meaning of impartiality; address why it is so important that Canadian citizens, of all ages, have a clear understanding of the protection they are afforded by this country's judges and why therefore judicial independence is a public interest that must be continuously and vigorously defended.

**Judicial Independence**

What do the words "judicial independence" mean? Let's start with the word "independence." If you think back to your school days, you might have said to yourself "I can't wait till I finish high school, get a job and become independent." Or your parents might have said to you "We can't wait for you to finish university, get your own place and become independent." Do each of the speakers intend the same thing? As a student, you might have thought of being "free." Your parents might have been thinking of getting their children "out on their own".

Now what happens when you pair those words with "judicial," a word we can take to mean, as things having to do with judges, or judges' work and responsibilities, or the administration of justice.

The concepts we just talked about "free", "out on one's own", "outside, set apart from someone else's influence or supervision" are all pretty close to the mark in figuring out what we mean by Judicial Independence.

Why is it then that in countries like Canada, a constitutional democracy, we expect our judges to be independent? Why is that an attribute of this country's judiciary? Why is that a value which Canadian citizens would hold to be true? Surely the answer lies in what we expect judges to do. When we look at the role of a judge in our society it is, in simple terms, a person whose job requires them to decide matters in dispute. Sometimes we hear the phrase "resolve disputes" when we discuss what a judge does.

But that can be a little misleading. It suggests that a judge negotiates or strives to solve a problem in a way that will please the participants.

More often than not a judge's decision will not "please" the litigants (that is the people with the dispute). In cases that go to court there is always a "winner" and a "loser" such that in practically every case at least half of the people and sometimes all are hardly "pleased" with the outcome. But remember in Canada our system of laws never guarantees anyone a "favourable" trial. All the law protects is a "fair" trial.

And so before we get to a discussion of a judge's "independence" it helps to begin the discussion by asking why we need judges in the first place. The simple fact is that in life people living together in a community have disputes. It may be about a bill that isn't paid. Or a neighbour's dog gets loose and injures your toddler. Or you slip in the shopping centre parking lot. Or you are fired from a job. Or the government comes after you for back taxes said to be owing. Or the engine in the car you just bought blows up a week after you purchased it. Or the golf club where you bought a lifetime membership goes bankrupt. Or you suffer terrible food poisoning after eating in a local restaurant and are off work for two months. Or the police charge your daughter with murder. Or your husband is badly injured in a motor cycle crash. Or you almost die following surgery because of the negligence of the attending doctor and nursing staff. Or you didn't get the cottage lot you thought had been promised to you in your grandfather's will because some other relative persuaded him to change his mind. Or people divorce and they can't agree on custody and support for the children.

These are just some examples of the kinds of problems and disputes people run up against every day in this country. We no longer joust with lances on horses or challenge each other to a duel. In order to get on with life people have to have somebody decide the disagreement between them. Those chosen for the task are judges.

How do they decide disputes? What do we expect them to do before making up their minds? Certain obvious answers quickly come to mind. We would expect the judge to be competent and knowledgeable in the laws that govern Canada's citizens. We would expect the judge to listen to both sides and give each side the chance to speak. But enforce the rules so that people don't all speak at once. And enforce time limits because the case cannot go on forever. What else do we expect? Do we expect the judge to be respectful and polite? Fair? What does "fair" mean? On what basis, what facts, do we expect the judge to decide the disagreement? Is it only upon the evidence put before the judge by the parties or can the judge look elsewhere for evidence and assistance? Who ultimately decides? Is it just the judge or can the judge go elsewhere for help in deciding?

By pursuing these other questions we get closer to a proper understanding of "independence." In Canada it means that the judge is:

1. free, but obliged to decide on his own

2. free from fear or favour
3. independent from any and all forms of coercion, threat or harassment, direct or indirect, whether from government, politicians, persons in authority, relatives, neighbours, interested parties, fellow judges, chief justices, judicial bodies or organizations, or any other source of improper influence whatsoever.

By insisting upon such barriers, both in perception and in fact, we seek to protect the judge, the decision maker, from any improper influence. Why? So that the decision will be based and only based upon the law as it applies to the evidence presented and properly admitted, so as to do justice between the parties.

The protection is enforced so that the parties will know they were dealt with fairly, that they received a fair trial, and a fair hearing from a judge insulated from any improper outside influence and who was bound only by her conscience and the law.

When we think of decision making by judges in that way, we come to understand that the protection is intended to go much farther than any particular case or any particular persons who cannot otherwise resolve their problems. The protection is for the entire community. It is a public trust. The community must have confidence in its system of justice and be comfortable in the knowledge that fairness, openness and immunity from improper influence are characteristics of its judiciary. In that way the community will believe that all of its citizens can expect the same treatment according to the Rule of law. Only in this way will respect for the administration of justice be maintained and enhanced. When we gaze upon statues of the goddess Justitia with her eyes blindfolded, holding the scales, it does not mean that justice is blind. Rather the symbolism is to remind us that the Rule of Law is intended to treat all people equally, no matter what their circumstances.

These are some of the reasons why judges do their work in public. Does that surprise you? Except in the most unusual circumstances, for example, to protect privacy, or see that evidence is properly presented, or to ensure a fair trial, cases in Canada are conducted in open court. Judges and the proceedings before them do not take place behind closed doors. The reason should be obvious. Canadians have a right to know what is going on in the court rooms of this country. That is why cases are reported in the press, on the radio and on television. Openness and transparency are qualities, characteristics of our system of justice. Members of the community ought to feel free to sit in any court room in the country, watch what is going on and draw their own conclusions about the case, the people involved and the fairness of the proceedings.

Why is it important that we have cases heard and determined by judges in this fashion? Well, consider the alternative. How would you like it if in the middle of the case where your daughter had been charged with murder, the presiding judge decided to call up the chief investigator to “find out for himself what was really going on?” Or when an

acquaintance is prosecuted for tax evasion, the judge is seen having lunch with the Minister of National Revenue? Or in the case involving your neighbour who was badly injured in a motor cycle crash, the chief justice meets with the trial judge to indicate that the other motorist involved is a close personal friend, a mother of three with a serious drinking problem, and she hopes the trial judge will “go easy on her.” Or you are about to be sentenced for trafficking in cannabis by a judge who has been frequently criticized in the newspapers for “being too lenient” and where local politicians are reported as saying that the judge “should be fired” or “sent back to school” unless “he smartens up.”

Would such contacts, or attempts at communication with the judge hearing the case, or vicious public criticism of the judge bother you? Why or why not?

Would you feel that your case against the provincial government was being dealt with fairly if you knew the premier or a member of the cabinet were in touch with the judge to discuss your case? Or the judge’s daughter was married to a high ranking official who happened to work in the government department on the other side of your dispute? How would you ever know that such approaches had been made or were being attempted? What level of comfort do you have that it wouldn’t or couldn’t happen?

Well, consider this;

More than 300 years ago a case arose in England that changed the course of history, especially the role of the judiciary in democratic countries. The abbreviated and best known name for the case is Knowles’ Trial. In 1692 Chief Justice Holt and Justice Eyre were summoned before a committee of the English House of Lords to explain their reasons for the decision they had rendered. They attended, but refused to speak of the reasons for their decision. The response of Holt, C.J. is reported in part as follows:

“I never heard of any such thing demanded of any judge as to give reasons for his judgment. I did think myself not obliged by law to give that answer.”

The judges’ refusal 300 years ago to give evidence was hardly some academic assertion of abstract privileges or immunities. It was a clear refusal to submit to a parliamentary inquiry into a judicial decision which did not meet with the parliamentarians’ approval. This came in an era when Kings, barons and attorneys general were imprisoned in the Tower or beheaded for “crimes” arguably less “treasonous.” Those two judges recognized that their independence and the future independence of all judges would cease to exist if they could be called upon to explain their deliberations to a state-sanctioned inquisitorial tribunal.

This is as fundamental a principle today as it was 300 years ago. In *R. v. Beaugard* [1986] 2 S.C.R. 56, Chief Justice Dickson wrote that the crucial role of the courts:

“as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from all other participants in the justice system.”

The courage of the judges in the Knowles' Trial led to the Act of Settlement, 1701. By that British statute the independence of judges to do their job, immune from pressure or outside influence was enshrined in the law. Up to that point their selection and tenure depended on the King's pleasure. Beginning with the Act of Settlement, 1701, judges' salaries and security of office were guaranteed by law subject only to the requirement that judges hold their offices during good behaviour.

In Canada, this is reflected in the British North America Act, 1867, now the Constitution Act (1867, R.S.C. 1985, App. II) , where by virtue of three sections of the Constitution Act, the independence of the Canadian judiciary is constitutionally enshrined. With s. 96 (the appointing power), s. 99 (hold office during "good behaviour") and s. 100 (salaries "fixed and provided") all federally appointed judges in Canada are entitled to hold office during good behaviour until age 75 and are subject to removal only following a joint address and vote by the Senate and House of Commons.

These constitutional protections extend not just to federally appointed judges but to those judges who are appointed by provincial governments to serve in our Provincial and Family Courts. The independence of the members of those courts is rooted in various sources including of course the Constitution, provincial enabling legislation, s. 11 (d) of the Charter, and that body of custom and jurisprudence that has given rise to what former Chief Justice Lamer referred to as "an unwritten constitutional principle" (Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island [1997] 3SCR3).

Judges are the only people in Canada whose salaries are determined by Parliament and publicly stated and guaranteed by statute, the Judges Act, R.S. 1985, c. J-1. Improvements to judicial salaries and benefits are passed upon every four years by a constitutionally mandated Quadrennial Commission whose final report is tabled by the Minister of Justice of the day in the House of Commons. With certain modifications similar systems operate in every province to maintain an appropriately independent review of salaries paid to provincial and family court judges. These institutional safeguards preserve the public interest in an independent Canadian judiciary. Thus, protection of salaries and benefits, security of tenure, lifetime annuities upon retirement, and immunity from civil and criminal process are all important bricks in the wall intended to protect judges from extortion, attempted bribery, improper influence, intimidation or harassment.

These doctrines of judicial immunity and judicial independence were thoroughly considered by the Supreme Court of Canada in *Hickman et al v. Donald Marshall, Jr. et al* ([1989] 2 S.C.R. 796), where McLachlin, J. (as she then was, now Chief Justice of Canada) wrote at pp. 830-31:

"The judge's right to refuse to answer to the executive or legislative branches of government or their appointees as to how and why the judge arrived at a particular

judicial conclusion is essential to the personal independence of the judge, one of the two main aspects of judicial independence” (Valente v. The Queen, supra). The judge must not fear that after issuance of his or her decision, he or she may be called upon to justify it to another branch of government. The analysis in *Beauregard* supports the conclusion that judicial immunity is central to the concept of judicial independence. As stated by Dickson, C.J. in *R. v. Beauregard*, the judiciary if it is to play the proper constitutional role, must be completely separate in authority and function from the other arms of government. It is implicit in that separation that a judge cannot be required by the executive or legislative branches of government to explain and account for his or her judgment. To entertain the demand that a judge testify before a civil body, an emanation of the legislature or executive, on how and why he or she made his or her decision would be to strike at the most sacrosanct core of judicial independence.”

And so we see that judicial independence means both the independence of an individual judge from outside influences or pressure, as well as an institutional independence for the entire Canadian judiciary, as a body, from any untoward influence from external pressures, direct or indirect, and more especially from the other two branches of our government, that is the executive and the legislative branches in our constitutional democracy.

What would be a modern equivalent of the Knowles’ Trial? It would be no different than the Prime Minister calling the Chief Justice to complain about a recent decision of the Supreme Court of Canada and demanding that she come to his office to explain herself. Or Chief Justice McLachlin calling any member of a trial court or appellate court in any of the provinces or territories of Canada, trying to do the same thing. Either of these approaches would be met with disdain and outrage and made the subject of immediate complaint and investigation.

Here are some examples that would appear to undermine the independence of the judiciary, an institution which must be vigorously defended.

1. An Attorney General wants to take steps to transfer a local judge to an isolated region because the judge’s decisions are not in keeping with government policy;
2. Appearing on an open line radio show, a Premier threatens to fire any judges who protest their dissatisfaction with their salaries. Within hours he is reminded by his chief legal officer that he has no such authority or power;
3. An urban court house is evacuated so that armed police officers and their canine unit can search the building for several bombs said to have been hidden on the premises;
4. A lawyer is stabbed to death in the court’s parking lot after arguing a contentious divorce case;

5. A SWAT team races through a court house to arrest an armed litigant who is roaming the building trying to locate and shoot his wife's divorce lawyer and the judge who heard the case and found against him;
6. A judge has his life threatened and he and his family are given police protection after he is vilified in the press having struck down a statutory provision purporting to prohibit possession of child pornography as being unconstitutional.

Do these incidents disturb you? Do they shock your conscience? Would it surprise you to know that they all happened in this country? Each is an actual case that arose in various parts of Canada in the last 15 years.

Judges rarely and only for good reason, speak out publicly on behalf of themselves or the judiciary as an institution. There are many reasons behind this custom which need not be discussed during our consideration of this topic. It is enough to point out that a significant reason is a recognition on the part of judges that to do so might "put them in the fray" thereby diminishing the way the community would perceive their role and their independence. For the same reason a great many judges in Canada give up the right to vote following their appointment to the bench so that they are not in conscience, or in perception, partisan. That choice is a subtle but important reminder of the clear separation between the judicial branch and the legislative and executive branches of government.

It is for these reasons that we think it so important that the public begin to appreciate and vigorously defend their judiciary and its members whenever their independence is compromised. It is often said that the single greatest threat to judicial independence comes from politicians and their civil servants. Whatever the source, judges' silence in the face of it is for good reason. Equally pertinent is the resolute maintenance of judicial silence in the face of media provocation. But our silence means that others must step up. It means that the public should know what goes on in their country and that they bear a responsibility as citizens to always ensure a true and respected separation between their three branches of government. The judiciary has no power base except one of public confidence in its integrity and competence in performing the work and duties assigned to it. Thus it falls to the public, the members of the community to be vigilant and speak out in defence of its judiciary whenever those occasions arise.

To conclude on this subject we say the concept of an independent judiciary exists for the benefit of the public, not the judges. There can be no doubt as to the pre-eminent importance of the principle of judicial independence in a free and democratic society founded upon the Rule of law. Independence can be defined as the freedom to judge honestly, and impartially, in accordance with the law and evidence, without concern or fear of interference, control or influence from anyone.

The principle of judicial independence is reflected in Canada's Constitution, its legislation and by convention. Unhappily, the principle of judicial independence is not always well understood. Its importance is often underestimated.

As the then Chief Justice Lamer recently noted:

"Unfortunately judicial independence is often linked with situations in which judges are seen as wanting something."

The principle does not arise to protect a perk of office. In order that all members of the public may be confident that their disputes may be entrusted to judges to be decided fairly and impartially, the principle of judicial independence must be seen to, and in fact, shield judges from any degree of outside influence, from whatever source and in particular, the legislative and executive branches of government.

The primary and sworn duty of a judge is to interpret and apply the law in the adjudication of disputes initiated by litigants or the state. We are bound by the law. We do our best to keep our knowledge of the law and of social issues current. Any judge must be free to adjudicate in accordance with the law, guided by his or her conscience, unfettered by coercion, or influence from anyone, be it government, the public service, popular public opinion, pressure groups, or other judges, except, of course, to the extent that the opinions of other judges may have been recorded and found to be useful as precedent.

Canadians ought to know that justice isn't fickle. It does not depend on the judge's whim or preference. It does not bend to the mob, or to political winds, or to the agenda of special interest groups. It isn't dispensed as a flavour of the month. Rather, justice's only loyalty is to the Rule of law.

Judicial independence requires that a judge adjudicate without fear or favour, even in the face of a contrary view widely held by others, whether judicial colleagues, government, the public, the media, or interest groups. It is the community's responsibility to vigorously resist any steps or initiatives deemed to be an encroachment on judicial independence such as would harm rather than protect the public interest.

### **Judicial Impartiality**

Section 11(d) of the Charter provides:

- d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Accordingly, Canadians enjoy a constitutional right to a fair trial, held in public, before an independent and impartial decision maker.

We have just mentioned that judges are entrusted to decide cases fairly and impartially. Everyone has a pretty good idea what “fairly” means. We spoke earlier of giving each side the opportunity to be heard and present their side of the case; that the case should only be decided upon the evidence presented; and that each side to a dispute should be treated equally in a sense that one side is not given an unfair advantage over the other.

But the words “impartially” or “impartiality” may be harder to define. And how does it relate back to judicial independence?

Judges who serve in Canada’s courtrooms are in many respects no different than their neighbours. They read, hear, think, talk and write like people of all ages in their community. In doing that they form opinions about things.

It is not unreasonable to assume that judges will have personal views about matters of current, public importance. Things like: abortion, bullying, child abuse, corporal punishment, domestic violence, health care, homelessness, pedophilia, pornography, same sex marriages, taxation and terrorism. It would be odd if responsible, well-educated and informed citizens were not possessed of sentiments or positions concerning such subjects.

But that does not mean that judges holding such personal beliefs or having such views cannot sit as judges where these same issues will arise. If that were the rule there would be no one left to judge the conduct of others.

In simple terms Canadians have the right to expect, based on what a reasonable observer would think who is present throughout the trial, that the judge presiding will decide the case with an open and dispassionate mind.

What is demanded is that the judge be able to set aside whatever personal beliefs may be held and decide the case according to the evidence presented and the law.

Often that is exceedingly difficult. But it is something that has been done by judges for centuries and occurs everyday in this country. It is what we mean by “impartiality” which is an essential quality of a judge’s work. Anything less would be a violation of the oath taken when the judge was sworn into office.

As we have seen already, this is another reason why a judges’ work in presiding over a case is done in public for “all the world to see.” Print journalists, radio and television reporters, interested family members and entirely disinterested citizens who have nothing to do with the proceedings ought to feel welcome at the back of any courtroom in Canada to see for themselves what goes on there and come to their own conclusions as to whether respect for and confidence in the administration of justice is well-founded.

We live in a country where the decision (but not the judge(s) who wrote it) can and ought to be subjected to public scrutiny and debate by academics, journalists, in letters

to the editor, or on the Web, or any other medium chosen by informed and responsible citizens who have formed an opinion on the subject. That is what freedom of expression is all about.

In a brilliant paper titled "Judicial Neutrality and Equality" (presented by McLachlin, J. (as she then was) to a conference on "Aspects of Equality" held in Hull, Quebec, November 17-19, 1995), Chief Justice McLachlin captured the essence of judicial impartiality and what she described as the art of judging:

"The process of judging is more than the sum of the judge's life experiences as amended by rules of bias and courses on gender and racial equality. In my view, we need to focus not only on the person who is the judge, but on the process of judging.

What mental practices will lead judges to impartiality in the sense I have described? One, as old as judging itself, is the injunction that the judge should proceed on the basis of the facts, the submissions and the law in the record before the court. The judge on the bench is no longer a member of this interest group or that. She is not sworn to promote this cause or that; she is sworn only to do justice between the parties. As Judge Calabresi of the United States has put it: 'A judge may have many views, but he has only one constituency, and that is the law.'

A second injunction, almost equally well-recognized, is that the judge should hold the decision in abeyance until she has thoroughly considered all sides of the issue. This is one of the hardest tasks facing a judge. And it is harder for some than for others. We must resist the temptation to let our minds, trained to pierce to the heart of the matter, wrap it up in the first minutes or hours of a difficult case. The human tendency is to solve the problem, get to the answer. But that is not our job as judges. Eventually we will get to the answer. But our first job is to listen and hold our judgment in reserve until we have fully canvassed all the points of view presented. The first task of the judge is not to judge, but to understand. In a word, judges should not be too quick; they should never be result-oriented.

But patience alone will not bring us to understanding. An understanding what is really happening and really significant in the case requires an active effort to appreciate how each party sees the matter. To use the current phrase, the judge must appreciate the social and psychological context of the case. A useful technique to ensure that one has fully appreciated both sides of the debate is to consciously put oneself in the shoes of first one party, then the other. How would I feel if I were in this person's position, the judge should ask? In an act of imagination, the judge should attempt to see life through each litigant's eyes, much as an actor attempts to see a situation through the eyes of the character being portrayed. If the character is unsympathetic, the effort may be difficult, even distasteful. Yet it is important. For it is in this way that the judge sees the larger picture; it is in this way that the judge moves from partiality to impartiality. To take the example of *R. v. Lavallee* [1990] 1 S.C.R. 852, the partial picture of a woman who shoots her common-law husband in the back is replaced by the fuller picture of a

woman who is certain that if she does not shoot now, he will kill her later. Or to take the example of *Brooks v. Canada Safeway Ltd.* [1989] 1 S.C.R. 1219, the partial picture of a woman who chooses to become pregnant and hence to leave her job, is replaced by a larger picture of a woman who, if deprived of employment benefits, will unfairly be made to bear the entire social cost of pregnancy.

Deciding on the basis of the record, suspending judgment, and putting oneself in each litigant's shoes by an act of imagination, are three techniques which can be used to ensure judicial impartiality. A final and indispensable judicial practice in the search for impartial justice is a conscious commitment to rationality. Gender and racial stereotypes are at base simply a shorthand way of solving problems. The essence of stereotypes is the pigeon-holing of people and drawing a facile inference from the category into which they have been placed to the desired conclusion, be it the ability to do a job, the approach of a person to an intimate relationship, the likelihood that the person committed the offence in question, or the appropriate sentence. Stereotypical thinking, characterized by phrases like, "Just like a woman, what do you expect?", or "He's a man, what else could he do?" save the thinker, if that is the word, the trouble of examining the real facts relevant to the decision which must be made. The decision is made not on the basis of relevant circumstances, but on the basis of the category into which we have slotted the person or persons in question.

Stereotypical thinking – and make no mistake, it can creep up on all of us, however well intentioned – is not easy to eradicate. Yet judges can train themselves to avoid it. The first step lies in sensitizing oneself to the stereotypical assumptions that form part of our mental baggage. Having thus identified these faux amis, the judge must go on to eliminate them from the reasoning process, replacing them with an appraisal of the true reality of the case and the relationship it involves. I call this the rational process. Followed honestly – that is in a spirit of examination rather than confirmation – this process can be a powerful aid to ensuring that our decisions are not based on stereotypical assumptions, but rather on a true and impartial examination of the facts proved in the case and the proper application of the law.

The end result of these practices – the putting aside of personal views, the preserving of an open mind, the mental act of placing oneself in the position of each of the parties, and finally, the use of reason to draw inferences from carefully considered facts instead of stereotypical assumptions – might be called the art of judging. It is much more than according a pro forma hearing, much more than arriving at a conclusion that makes us comfortable. It is a professional process which has been used by the most respected judicial and quasi-judicial decision-makers for centuries to attain the degree of objectivity required for good judging. It is, I believe, the final and best guarantee of judicial impartiality."

If judges in Canada commit themselves to the values Chief Justice McLachlin has described, then they will honour their oath and the special responsibility and trust they have been given to judge the lives of others.

By making an effort to keep themselves informed, our young people and the public will understand their responsibility of ensuring that such values are reflective of their judiciary whose independence as an institution is critical to the public interest and serves as a cornerstone of the democratic freedom we cherish.

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## **BIBLIOGRAPHY**

The Independence of the Judiciary in Canada, Special Report of the Canadian Bar Association, Ottawa, Ontario, August 20, 1985

A Place Apart: Judicial Independence and Accountability in Canada, a report prepared for the Canadian Judicial Council, by Martin L. Friedland, O.C., Q.C., Ph.D., and F.R.S.C., May, 1985

The Independence of Provincial Court Judges: A Public Trust, prepared for the Canadian Association of Provincial Court Judge, by Schmeiser & McConnell, M & M Printing, Fortune, Newfoundland, September, 1996

Court Bashing and Reality - Judicial Independence Issues, The Judges' Journal, American Bar Association, Volume 36, No. 1, Winter, 1997

Judicial Independence and Accountability: Can They Co-Exist? , by the Honourable Mr. Justice R. D. Nicholson, The Australian Law Journal, Volume 67