

Remarks of the Honourable Marilyn Warren AC
To the Monash University Law Faculty, City Campus
on the occasion of the Faculty Book Celebration

24 February 2009

Intro

Professor Freiberg, Dean, distinguished members of the Faculty and ladies and gentlemen.

As lawyers, whether academics or practitioners or judges, we all appreciate and value academic research and legal writing.

In times past there were large weighty tomes – Theobald on Wills, Daniel on Chancery, McGregor on Damages, Lindsell on Torts, McGillivray on Insurance and on I could go. Legal principle developed with more grace and perhaps more reflection.

The second half saw an expansion beyond the weighty tome to the serious, analytical academic text. Hence we stocked our bookshelves with Fleming on Torts, Cheshire and Fifoot on Contract, Cross on Evidence and others.

Towards the 1980's a new text appeared on our shelves, the loose leaf service. This was a response to the increasing output of the Legislature and the Courts. So we stocked our shelves with Heydon on Trade Practices, the new Cross on Evidence, Butterworths Corporations Law, Halsbury's Laws of Australia.

The output of the courts in the electronic age is prodigious. Often courts are not told of the primary authority of the High Court but almost every judicial consideration subsequent.

The practitioner and the judge finds it difficult to keep up with the changes, developments and output. This is where we are able to turn to the field of academic research to ensure accuracy, competence and certainty.

The goddess of legal research at Monash Law School has been, I think, Professor Enid Campbell. Not only has she researched and written authoritatively on constitutional law and government, she is an authority on legal research itself. In her primary text (on the shelves of all sound researchers) Professor Campbell and her co-authors speak of legal research as an “integral” activity of the work not only of academics, but practitioners, government lawyers, judges and their staff and law reform agencies. There is a panorama of lawyers engaged in research and publication.

The legal text is a fundamental tool of judges and lawyers. It is also the means by which academic institutions make their mark. Without prestigious publication stimulating rigorous discussion a law school falls away to a technical college.

Monash Law School has prided itself on its academic writing from the beginning. The texts of Professor Waller, Allan Campbell, Fox, Freiberg and others are cited in judgments. For my part I have found the solution to a difficult legal problem through academic research resources.

More than a quarter of a century since its establishment we see an array of excellent legal texts available from Monash Law School to assist lawyers and judges in finding and developing the law. Let me give examples:

- the Corporations Law work of Professors Boros & Duns is an excellent source for the Corporations judge.
- the work on Mental Health of Professor McSherry aids in guardianship cases at VCAT and the Mental Health Review Board.
- the tax practitioner would not give advice I expect without consulting the work of Professor Barkoczy.
- on the bench of the green court of the Court of Appeal of the Supreme Court, a copy of Fox & Freiberg on Sentencing is located permanently.
- intellectual property cases in the Supreme and Federal Courts are regularly informed by the work of Sam Rickartson and his co– authors.

Of course, I can say, on an informed basis, that a primary text on cases concerned with the law of negligence is the fine work of Professor Trindade. Similarly in constitutional law we have Professor H. P. Lee's work.

Tonight we mark the publications of Monash Law School in 2007– 2008. The work is rigorous and scholarly. Importantly, it is also devoted to exploring new growth jurisdictions. An example, I have spent yesterday and today hearing argument on the application of the Victorian Human Rights Charter to Major Crime Investigative Powers. Monash, through the Castan Centre publishes substantial and careful legal research on the area of human rights.

As we observe the width and depth of Monash legal research this evening we might only endorse the remark of Professor Campbell that legal research is an “integral” component of the legal system.