



**"Queensland's contribution to the High Court"  
The Supreme Court History Program – Supreme Court Library  
Banco Court  
Saturday 29 March 2003, 9:00am**

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**Chief Justice Paul de Jersey AC**

I am very pleased to welcome you to the conference, and for those from elsewhere, to Queensland. In that regard we especially welcome Sir Harry Gibbs, Justice Selway and Mr David Jackson QC.

I at once applaud the initiative of the Supreme Court Library and the Supreme Court History Program in convening this conference, the latest illustration of their vital, inspired commitment to Queensland, and in this case Australian, legal history. Another recent Library initiative has been the establishment of a section within the court's webpage detailing the history of Queensland courthouses, currently covering the courthouses at Cairns, Townsville, Bowen, Rockhampton, Maryborough and Toowoomba: the accounts, with pictorial supplementation, are both instructive and fascinating, and I would urge those with a penchant for such things to explore that part of the page.

It is, of course, entirely appropriate that a State Supreme Court should commemorate in some significant way a milestone as weighty as the centenary of the High Court, constitutionally our federal Supreme Court. Although the abolition in 1986 of the right of appeal to the Judicial Committee of the Privy Council effectively enhanced the reach of the High Court in relation to State jurisdictions, the imposition of the requirement for special leave to appeal and the increasing workload of the High Court have meant that for the vast majority of the



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work disposed of in the Supreme Courts, their judgments are definitive. Yet the High Court's influence upon State law is inevitably more pervasive, for the often general application of its decisions in particular cases. Today we explore what I will inaccurately but conveniently style the "Queensland influence" on the High Court: Sir Samuel Griffith whom we proudly uphold as its first Chief Justice; Sir Charles Powers, one-time Mayor of Maryborough and a Justice for 16 years, whose appointment the "Bulletin" magazine ungraciously described as "grim tragedy"; Sir William Webb, appointed from this court and serving 12 years on the High Court; and Sir Harry Gibbs, of whom I will not presume to say more, as also in the cases of Sir Gerard Brennan and Justice Callinan. I should probably confirm for the record that Justice Hayne also was born in Queensland – Gympie in fact, though he tells, without a trace of significance, that he stayed only 18 months before moving to southern climes.

While the apex court of the federal hierarchy, the High Court of Australia is of course in no sense the "parent" of the Supreme Court of Queensland: in conventional terms an entity 100 years old could not father a child presently 141! I speak in these terms because there otherwise certainly is a familial flavour to this event today. In the first place, we are celebrating the contribution to the High Court of those six persons we present as progeny of Queensland; second, we will be privileged to hear contributions from persons once very close to the Justices, being their former Associates – in the case of Sir Harry Gibbs, Justice Glen Williams, Mr David Jackson QC and Mr James Douglas QC, and in the case of Sir Gerard Brennan, Justice Roslyn Atkinson and Professor Gerard Carney. Third, there are involved with the conference the present Queensland Solicitor-General, Mr Patrick Keane QC and his predecessor in that role, now Justice Geoffrey Davies of the Court of Appeal – their involvement being the more significant for their, in that capacity, having appeared, appearing, not infrequently, before the High Court.



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I thank the High Court for lending the fine portraits of Sir Gerard Brennan and Sir William Webb which stand on the bench, and the Bar for the bronze bust of Sir Harry Gibbs immediately outside.

I thank in anticipation, for chairing sessions, Justice White, Chairman of the Supreme Court Library Committee, Justice Spender of the Federal Court, Justice O'Reilly of the Family Court, and Dr Michael White QC, the convenor of the history program. I also thank Professor Carney, Professor Ratnapala and Mr James Douglas QC for their willing participation as speakers. It remains for me to mention the commentators, Dr Dayle Smith and Professor Saunders. We are especially grateful that Professor Saunders has been prepared to interrupt her no doubt engaging research into the Miss Australia contest!

I take the opportunity now to launch this excellent production, "Sir Samuel Griffith, the law and the constitution", edited by Dr Michael White QC and Mr Aladin Rahemtula, the Supreme Court Librarian. The work has been drawn in substantial part, but not completely, from the seminar held in this courtroom on 31 March 2001, as the Supreme Court's major contribution to the celebration of the Centenary of Australian Federation. The work is unique for the comprehensiveness of the coverage of its subject, and also, I believe, for its most interesting appendices – which include both the Inglis Clark and Kingston draft constitutions, and what many regard as the Griffith drafts, post the Lucinda cruise and bearing Griffith's handwriting, and post the 1891 convention. There is also a valuable collection of Griffith articles and speeches. I commend the editors, and thank the contributors, and am very pleased formally to launch the book today.

I wish finally to acknowledge three valuable donations in recent times to the collection of the Supreme Court History Program.



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Dr Anne Fitzgerald, Senior Lawyer of State Law, has generously furnished a fascinating volume containing original editions of *Home Mag* (1930-1933), an otherwise modest magazine rendered distinctive for contributions from the Gibbs and Wilson families, particularly for our purposes a young Sir Harry Gibbs and his friend Dr Harry Gilmore Wilson. Another keen contributor was Dr Brian Gilmore Wilson, grandfather of Ms Eve Gilmore Wilson, one of my own former Associates. The magazine featured short stories, poems, crosswords, sports reports, drawings and a number of fictional serials continued over many editions.

The volume was located by Dr Anne Fitzgerald, who is Dr Harry Wilson's daughter-in-law, and she has kindly agreed to deposit it with the Library as part of our Queensland heritage collection.

Second, a donation by Dr Dayle Smith, Solicitor. This donation is considerable, both for the number of items included and their significance to the historical record. The material relates to the Tokyo War Crimes Trials (1946-1948), and particularly the role of Sir William Webb who was appointed President of the International Military Tribunal for the Far East (IMFTE) by Supreme Commander General Douglas MacArthur. The Tokyo trials began on May 3, 1946, and lasted two and a half years.

This donation includes:

- 50,000 pages of transcript from the trials spread over 20 volumes plus a comprehensive 5 volume text;
- full-text of the judgment including the separate opinions of Sir William Webb, Judge Henri Bernard (France), Judge Radhabinod Pal (India), Judge B V A Roling (Netherlands) and Judge Delfin Jaranilla (Philippines);
- extracts from the newspaper *The Nippon Times* (later known as the *Japan Times*) (1934-1939, 1941, 1946 and 1948);



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- extracts from Japanese Cabinet minutes (1934-35) including Cabinet meetings held where Emperor Hirohito was present, between June and 8 December 1941;
- extracts from the brief given to Sir Arthur Comyns-Carr to prosecute for the United Kingdom at Tokyo before the IMTFE in 1947 to 1948, with some exhibits;
- a microfilm from The MacArthur Foundation, Virginia, containing copies of all the communications between MacArthur and the US State Department (1945-1952);
- copy of Ph.D thesis, "By What Authority", submitted to, and accepted by, the University of Queensland in 1993; and
- copy of LL.M thesis, "The General Treaty for the Renunciation of War: its Genesis and Perceived Effects Up to 1 September 1939".

The body of evidence assembled during the Tokyo Trial is, from the perspective of any historian interested in Asian history in the early twentieth century, remarkable, and includes evidence from witnesses as far apart as the last Emperor of China Henry Pu-Yi to Australian nurse Bullwinkle, from General Hideki Tojo to allied military personnel who fought between 1941 and 1945.

The Pact of Paris of 1928, the international agreement relied on as supporting Allied contentions at Nuremberg and Tokyo may, in light of current events in Iraq, take on some additional legal and historical significance.

There are no other copies of most of these materials available in Australia. Their deposit with the Supreme Court Library will ensure they are preserved and made accessible to the wider community.

Third, we gratefully acknowledge a donation by the T C Beirne School of Law of the University of Queensland. This primarily comprises over 1,400 judgments, some hand-written, spanning the judicial career of Sir Roslyn Foster Bowie Philp KBE, appointed Puisne Judge of the Supreme Court of Queensland in 1939



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(aged 43) and Senior Puisne Judge in 1956. He died on 19 March 1965 aged 69.

Sir Roslyn Philp was an Associate to Mr Justice Shand, served in the AIF in World War 1, and lectured in probate admiralty and divorce at UQ. His knighthood was accorded in recognition of untiring community work as well as eminence as a jurist.

In his eulogy, Archbishop Strong said "Sir Roslyn was a man with an unquenchable yearning for justice, a love of the law and a love of people...his understanding of the Queensland Criminal Code will long influence judgments in this State".

Bar Association President, then Mr W B Campbell QC, noted "he controlled his court with authority, but always displayed kindness and courtesy to those who appeared before him".

The materials were in the care of Mrs Quentin Bryce AO when she worked at the University. The Law Librarian, Ms Barbara Thorson, determined to deposit the items for preservation with the Supreme Court Library as part of the Queensland heritage collection.

We express sincere thanks for all of these interesting and valuable additions to our collection.

And now in concluding, Your Honours, ladies and gentlemen, I confidently express the view that we will all enjoy a most stimulating day.



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I am honoured to introduce our first speaker, Justice Bradley Selway, who since last November has been a member of the Federal Court of Australia, whence he came from the position of Solicitor-General of South Australia. We are fortunate our opening speaker is a constitutional lawyer of such eminence and distinction...