



Commonwealth Lawyers Association

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# THE COMMONWEALTH LAWYER

Journal of the Commonwealth Lawyers' Association

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December 2017

Vol 27, No 3



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# Book Reviews

**CORRUPTION AND MISUSE OF PUBLIC OFFICE** by Colin Nicholls, Tim Daniel, Alan Bacarese, James Maton and John Hatchard, Oxford University Press, Oxford, 3rd ed, 2017, pp lxxviii + 934, £225.00 (hbk), ISBN: 978-0-19-87343-4.



It is difficult to imagine that six years have passed between the publication of the last edition of this magisterial work and the present one. A visible difference between the two editions is the size of the volumes: this one comes in at over 1,000 pages including the tables of cases and legislation. It also has an addition to the team of authors: James Maton, a litigation lawyer. It is dedicated to Clive Nicholls QC, who was a huge inspiration behind the work.

The book's focus continues to remain the UK, although there are useful, if comparatively brief, references to law and practice in other jurisdictions, including some non-common law ones. Now that the Bribery Act 2010 has been in force for a few years, the authors are able to offer a detailed analysis of its working, including the cases that have been brought under that law. The 'deferred prosecution agreements', under which defendants are, in certain circumstances, allowed to make fresh starts, make for particularly interesting reading.

Unsurprisingly, corruption in sport engages the attention of the authors to a degree unprecedented in previous editions. This is, obviously, as a result of a spike in the incidence of sport-related scandals in recent years. The book identifies four main categories of wrongdoing in this area: corruption within international sports bodies; manipulation of sports competitions (match-fixing) and illegal gambling; doping in sport; and other acts such as corruption in the award of contracts. The challenges for law enforcement agencies in this broad area are, say the authors, formidable. In their view, frustratingly, "law enforcement is trying to respond to the challenges of corruption in sport but ... the self-serving interests of some of the larger sporting bodies hamper such efforts."

The section of the book which deals with misconduct in public office is just as illuminating. Given how widespread incidents of questionable behaviour by public servants have become, not least in the UK, this area of wrongdoing cannot go unnoticed. As the authors note:

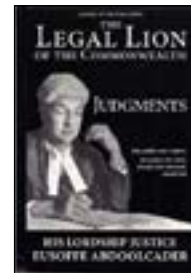
Although [the offence of misconduct in public office] has existed in its present form for more than two hundred years, it was relied upon relatively sparingly by prosecutors and

almost fell into disuse during the mid-twentieth century. In more recent times its value as an offence has been recognised in many of the jurisdictions with a common law tradition. Indeed it has become one of the offences of choice for those tasked with pursuing criminality amongst public servants and law enforcement personnel in England and Wales, Hong Kong, Australia, and some Caribbean states.

The book contains an exhaustive treatment of the offence and of the tort of misfeasance in public office.

In the less than two decades for which this work has been in existence, it has carved out a niche for itself as arguably the most authoritative source of information and guidance on what is becoming an increasingly complex area of the law. The authors are clearly right in maintaining that it remains "work in progress". The time may not be far off when the book will have to be published in two volumes.

**THE LEGAL LION OF THE COMMONWEALTH** by Angela Yap and Ritchie Ramesh (eds), Akaasa Publishing, Kuala Lumpur, 2017, pp. 932, 2 vols, Price: MYR360 + p&p (hbk), ISBN: 978-967-5764-03-5 (Set).



Eusoffe Abdoolcader was a prominent Malaysian judge who presided over, or was involved in, some of that country's landmark cases. Abdoolcader was also known for being very erudite and one of the most articulate members of the Malaysian legal fraternity. Elevated to the Bench in 1974, he soon gained a reputation for integrity and perfectionism as well as for not suffering fools gladly. This book, put together in two volumes to "revive the legacy" of this towering figure, is a collection of some of his most important judgments spanning the period 1975-1989, but it also carries tributes, vignettes from his life, an interview, and an article penned by the judge in 1977.

The compilers of the volumes have clearly been affected by what they call the "indifference" that has existed towards Abdoolcader in the years that have elapsed since his death in 1996. The book is, they say, "our musketry against such indifference". Not lawyers themselves – nor with any ties to the Abdoolcader family – they hope that their offering "goes beyond the romanticised myths that the people, the media and institutions have, rightly or otherwise, built around him."

Abdoolcader's reputation and influence went well beyond Malaysia. As one British QC is reported to have said in a tribute which appeared in *The Observer* (London),

Abdoolcader's was a "legal mind as formidable as can be found in any Court in the Commonwealth". Not for nothing did he earn the nickname the "Legal Lion of the Commonwealth". As the editors note:

Firstly, his many judgments created ripples far beyond Malaysian shores and influenced the direction of other Commonwealth nations. Cited as foreign precedents by constitutional judges in countries such as New Zealand and Australia, the 'even here-even there' approach was applied when these courts relied on progressive foreign precedents such as Eusoffe's to initiate into their legal system new or revised perspectives in their respective constitutions ... As recently as 2013, international law journals have referenced Eusoffe's judgments on constitutional reform for indigenous rights.

Secondly, of the innumerable Commonwealth judges, he is one of the hallowed few with the distinction of having his judgments ... cited with approval by the Judicial Committee of the Privy Council in London circa 1981, a rare honour in the days when the Privy Council was the highest court of appeal for the Commonwealth.

But, above all, 'The Legal Lion' is a fitting monicker [sic] for a man whose fierce and regal qualities mirrored that of the king of the jungle.

The judgments chosen for the volumes span a wide range of subject areas: contract, crime, contempt of court, bankruptcy, property, citizenship, employment, education, deprivation of liberty, public order, personal injuries, rights of association, shareholders' rights, copyright, elections, land rights, equitable reliefs, judicial review and much else besides. What runs through the judgments, apart from the judge's mastery of each of these branches of the law, is a felicity of expression which is as rare as it is heart-warming. No less striking is his wry sense of humour: sample these opening sentences in two separate judgments:

This case, which, like the papacy of Pope John Paul I, lasted 33 days in the hearing...

Merdeka [Freedom], proclaimed Tunku Abdul Rahman to the resounding echo of the populace, and so it came to be. But the cry for Merdeka University has not achieved the same response and result. And thus the matter comes before the court.

Or sample this closing observation in a case involving allegations of electoral corruption:

I have dealt with the matter before me strictly on its facts and circumstances and what I have said must not be taken to bestow and unbridled licence on would-be political brawn crackers to transcend the twilight zone between campaign

pledges and promises and electoral misfeasance, as the next step beyond might well make all the difference.

There is much in these volumes by way of illumination and amusement for lawyers and lay readers alike. That the book should come out now also serves to highlight the very considerable change that the Malaysian judiciary has undergone between Abdoolcader's time and the present – a reminder which is both timely and necessary. The editors indicate that the present work is "merely the beginning, the first of several other books outlining our research to revive the legacy of Eusoffe Abdoolcader and Malaya's most illustrious forgotten family." Those books will, it can be safely said, be eagerly awaited by many in Malaysia and further afield.

**HUMAN RIGHTS AND JUDICIAL REVIEW IN AUSTRALIA AND CANADA** by Janina Boughey, Hart, Oxford, 2017, pp xxxii + 288, £100 (hbk), ISBN: 978-1-50990-786-1.



Do formal statements of rights, such as chapters on fundamental rights in national constitutions, stifle the development of common law? This is a controversial question on which there is wide divergence of views. Australia is one of the few major common law jurisdictions where fundamental rights are not protected – in formal terms – by either statutory or constitutional mechanisms. Canada, on the other hand, has a Bill of Rights that is well known and which has spawned an impressive body of case law over the years.

In this book, the author advances the thesis that, despite these differing approaches to human rights, "both jurisdictions have reached remarkably similar positions regarding the balance between judicial and executive power, and between broader fundamental principles including the rule of law, parliament sovereignty and the separation of powers."

As befits a work born out of a doctoral thesis, the book follows a predictable academic format and structure. It is divided into two broad parts, dealing respectively with Constitutional and Statutory Frameworks (which encompass both Australia and Canada) and the Effects of Canada's Rights Framework on Judicial Review. Each of the six chapters comprising the analysis carries a round-up of the issues discussed within it.

In terms of overall conclusions, the author identifies two trends which are worthy of note:

Over the past five years, Canada has gone from what appeared to be a bifurcated approach to human rights and administrative law to a deeply unified one and may now be on the cusp of a return to bifurcation. And many aspects of the relationship between the Charter [of Rights