

A TIME TO KEEP SILENCE, AND A TIME TO SPEAK

federal judges who use words calculated to bring their own court into disrepute are no longer at risk of being held in contempt, thanks to a High Court ruling of 1992 (10).

A last resort for those who would silence judges minded to say anything politically controversial is to tell them: 'If you want to speak on these matters you should come down from the Bench and stand for election'. This is a cheap shot because the right of freedom of speech is not the monopoly of the elected or those seeking election. If it were otherwise, then our politicians had a simple method of silencing any criticism from women who dared to speak out before the 20th century, Aboriginal people who dared to speak out before 1967 and children who still dare to speak out on any political office. The simple fact is that many people are too busy doing other useful things to wish to stand for (or in the United States, run for) political office.

My remarks tonight are themselves controversial. An opposing view is forcefully stated by Mr Justice Thomas in his book *Judicial Ethics in Australia*. However, I draw comfort from the announcement of Lord Mackay of Clashfern (yet another Scot) in 1987 that the *Kilmuir Rules* should be abolished in the United Kingdom. His Lordship said:

...I believe that [judges] should be allowed to decide for themselves what they should do ... Judges should be free to speak to the press, or television, subject to being able to do so without in any way prejudicing their performing of their judicial work ...It is not the business of the Government to tell the judges what to do. (11)

I would not want it to be thought that I am encouraging any judge to seek publicity or to see his or her office as a springboard for causes (however worthy). Controversy causes pain and the judge who speaks out on anything should weigh anxiously the cost to colleagues and the institution of justice. Sir Anthony Mason reminds us that:

Judicial reticence has much to commend it; it preserves the neutrality of the judge, it shields him or her from controversy, and it deters the more loquacious members of the judiciary from exposing their colleagues to controversy. Judges are not renowned for their sense of public relations. (12)

We all have a number of callings. One of them is to be a humane and moral citizen. For all of us there is 'a time to keep silence, and a time to speak' and each one of us will enter these times in different ways and on different issues.(13) Our right to do so and the public interest in doing so should be recognised.

1. For these and other examples, see *JUSTICE, the Judicial Functions of the House of Lords*, 19 May 1999, pp 6-7.
2. (1961) 111 CLR 264.
3. The Hon. Mr Justice RP Meagher, 'Sir Frederick Jordan's Footnote' (1999) 15 JCL 1.
4. Athol Moffitt, 'Judges, Royal Commissioners and the Separation of Powers' *Quadrant*, May 2000.
5. Judicial Commission of New South Wales, *Fragile Bastion: Judicial Independence in the Nineties and Beyond* (Sydney, 1997).
6. *Berger v United States* 255 US 22, 43 (1921), dissenting judgement.
7. B Schwatz, *A History of the Supreme Court*, (New York, Oxford University Press, 1993) p.124.
8. Proverbs 17:28 (KJV).
9. R V Bow Street Metropolitan Stipendiary Magistrates and Ors, ex parte Pinochet Ugarte (No 2) (1999) 1 All ER 577.
10. *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1.
11. *The Times*, 4 November 1987, p3.
12. Mason, Sir Anthony, 'Some Problems Old and New' (1990) 24 (2) *University of British Columbia Law Review* 345 at 352.
13. *Ecclesiastes* 3:7.

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BOOK REVIEW

Marketers and the law, Clark, Cho, Hoyle, LBC

By Gail Humble, Cridlands

A well balanced Verdelho at the poolside was the primer for survival and navigation through, what appeared to be, a law book! The quaff, however, became less interesting as the thirst for knowledge was whetted.

Such cynical beginnings questioned whether the title should have been "*The Law and Marketers*" as opposed to "*Marketers and the Law*", despite the fact that the latter has a greater pull factor (after all it would be provocative but nevertheless true to say that until recently lawyers have deprioritised their connection with marketing rather than recognising it to bridge law and marketing). This book comprehensively identifies the legal issues with which marketers industry-wide should be familiar.

For a reference book, the language is refreshingly readable and the approach both practical and resourceful. I found particularly useful the highlighted case examples in each chapter and the checklists for marketing principles.

Although the presentation could have endeared itself more to the marketing principles of alignment and balance, the book has an easy reference guide, is rather contemporary in it's chapter on electronic commerce and has excellent further reading and website references. A marketer is not lured on first viewing the chapter headings; it is a known fact that consumer law, finance law and international trade law are not big turn ons for marketers on face value!!! A better response is almost guaranteed with competition law, advertising law, intellectual property law and product and services standards and liabilities. The authors position each chapter well in relation to the issues facing both marketers and lawyers in a rapidly changing marketplace.

As a reference book it pushes traditional boundaries in the way it integrates contemporary and topical business issues with the legal framework. This book will sit comfortably in a position of prominence on the desktops of students in law and marketing and both marketing and legal professionals ... with or without the Verdelho! In a nutshell it is an interesting and educational read and a possible passport between two worlds.