

**Murray Gleeson Book Launch
Friday 8 September 2017, Sydney**

***"Advocacy and Judging: Selected Papers of
Murray Gleeson"***

**The Hon Susan Kiefel AC
Chief Justice of Australia**

It is an honour to be invited to launch this book and to say something about it and its author with whom I had the good fortune to serve on the High Court before his retirement.

I might make a general observation about the book at the outset. Its title is "Advocacy and Judging: Selected Papers of Murray Gleeson". The title does not suggest the potential for close competition with novels written by Murray Gleeson's former colleague, Ian Callinan.

Murray Gleeson's career as an advocate and as a Chief Justice of two courts spanned some 45 years. Speaking in what he calls a "mercantile" sense, he describes himself as having been both a provider of advocacy services and a consumer of them. He is therefore especially well placed to speak to both barristers and judges as well as to a wider audience.

To Bar readers he explains something which in my experience is not universally understood. It is that those who are most successful in the art of persuasion are those who display the qualities of sensitivity and tact. It is well known that he was a great exponent of the art of cross-examination. He says that the most lethal cross-examination is one conducted in a measured and deliberate fashion. The tact of which he speaks is on display when he deals with a particular approach which has been known to elevate judicial blood pressure. He suggests that the "leave no stone unturned" style of advocacy may convey an impression of weakness or even desperation.

Other papers are addressed to judges, the academy and to citizens more generally. They deal with a range of subjects, including aspects of the common law and constitutional law history, matters affecting the courts and judges, the relationship between the courts and the other branches of government, and the core values which underpin our legal system. He also mentions foreign legal systems.

Judges who may have harboured romantic ideas about how judges were viewed in the past are told that "there never was a golden age when the members of the Court basked in universal admiration". Judges are not involved in a popularity contest, he says. It is to be expected that there will be tensions between politicians and judges. The courts and the other branches of government

have their own distinctive contributions to make and there is no reason, he suggests, why each side cannot maintain a decent regard for the role of the other. He speaks with some authority since, as Chief Justice of the Supreme Court of New South Wales and of the High Court, he was able to maintain the most cordial of relations with the other branches of government.

In public lectures, to a wider audience, he explains what judges see as their place in the scheme of things. In particular he explains that judicial independence is not seen by judges as a benefit won by them, but rather as a constitutional principle. These matters are not well understood.

He exhorts judges to reach out further into the community to assist understandings of this kind. Judges can and should participate in the education of the community. They should take every opportunity to explain the court system and how it works in practice. He points out that the courts may "do an effective job of persuading sophisticated opinion about the importance of judicial independence and impartiality" but wonders whether they do so well "at the grassroots level".

Educating the community about the work of the courts and judges builds public confidence in the judiciary. It is evident from a number of the papers that the maintenance of public confidence in the judiciary is a particular concern of the author.

The decisions of the courts may sometimes touch upon matters of controversy within the community. What ultimately secures public confidence, in the author's view, is not the wisdom of the court's decisions, but their legitimacy. And the quality which maintains legitimacy is fidelity, amongst other things, to legal methodology.

I have been privileged to hear the author speak publicly on many occasions, as I am sure many of you have. I think that you will agree that his distinctive style and method of delivery is compelling, as is to be expected from someone with such a high reputation as an advocate. Although the reader will not have the full Gleeson experience, the force of his messages will nevertheless be felt through his language.

A good public speaker is someone who is able to interest his or her audience in what is said and to stimulate thinking on a topic. These aims can be difficult to achieve if the speaker is not himself or herself interested in the topic. The depth of thought given to topics such as public confidence in the judiciary, judicial legitimacy, the rule of law and legality in this collection leave the reader in no doubt that they are regarded as matters of high importance by the author.

Others have said that this book will be a great resource and I agree. I have often quoted from the former Chief Justice's papers because they so often contain an insight which cannot be better and more succinctly stated. Amongst my favourite quotations is one contained in the paper entitled "Out of Touch or Out of Reach?". There he says that some claims that judges are out of touch are based on the flimsiest of evidence and some are based on no evidence at all. Perceptively

he says "sometimes the real grievance being expressed is not that judges are out of touch, but that they are out of reach".

In 2008, in an address which is included in this book, the author was reflective. Speaking of many of the topics dealt with in these papers, he said that after 45 years he was not sure that he knows the answers to them, but at least he had learned some of the questions. I am sure that those who read these papers will see that he has achieved much more than that. And the reader is the grateful beneficiary.