

A Tribute to His Honour Leonard Lindsay Byth
By D.R. Gore QC

It is both an honour and a privilege to be asked to prepare a personal tribute to His Honour Leonard Lindsay Byth. In a sense, it builds on the honour and the privilege which the Judge granted me in 1972, when he asked me to be his Associate (then known as Clerk) for the years 1973-1974. There is an aphorism – “once an Associate, always an Associate” – and, in keeping with it, I will sometimes refer to His Honour (as Associates do) as “my Judge”.

My Judge (who was known as Lindsay) was born on 16 August 1922. He was admitted to the Queensland Bar in September 1947 and, on 20 January 1966, he was appointed a Judge of the District Court. He was the first judge of the Local Government Court of Queensland (now known as the Planning and Environment Court) and, on 5 September 1983, he was appointed as the third Chairman (now known as Chief Judge) of the District Court. He retired from the Court on 15 February 1988, after a period of more than 40 years in the law, with that period nearly equally divided between the Bar and the Bench. He passed away on 21 March 2011, at the age of 88, having been retired for a period of 23 years.

When the Judge commenced practice as a barrister in 1947, there were only 53 members of the Private Bar. When the Judge retired in 1988, there were 268 members, about a fivefold increase (from 1947) and, when the Judge passed away in 2011, there were 1,285 members, which was again about a fivefold increase (from 1988), or, in absolute terms, an increase of more than 1,000.

I mention some of these statistics for three interrelated reasons. First, they mean that, at the time of the Judge’s passing, most of the Bar had not had the pleasure of appearing before him (of course, a similar observation may be made about the solicitors branch), and so a Tribute like this plays a role in ensuring that all members of the profession gain knowledge about such a senior member of it. Secondly, they also suggest (as is the fact) that my Judge lived a longer life than most of his contemporaries, leaving it for a more “junior” member of the profession to extol his virtues on his passing. Thirdly, they also mean that some barristers who did have the pleasure of appearing before him could well have since risen to great heights, as was confirmed by the tribute paid to my Judge by the many distinguished former barristers who had appeared before him, and who attended his Valedictory Ceremony in the

Banco Court on 29 April 2011, including the Chief Justice of the Supreme Court of Queensland (The Honourable Paul de Jersey), the President of the Court of Appeal of Queensland (The Honourable Margaret McMurdo), the Chief Justice of the Federal Court of Australia (The Honourable Patrick Keane) and one of Their Honours of the High Court (The Honourable Susan Kiefel).

Judge Byth was the second of 4 children born to George Leonard Byth (known as “Len”) and Elsie Byth OBE (nee Gasteen). Len Byth was the City Solicitor for Brisbane, and it is a matter of interest that my Judge should later play such an important part in the development of planning law for Brisbane and the rest of Queensland.

Judge Byth was educated at the Brisbane Grammar School, and at the University of Queensland, where he graduated with a Bachelor of Arts. During 1946 and 1947, he was Associate to Mr Justice Ben Matthews of the Supreme Court of Queensland, and, on completing the Barristers Board Examination Course, was admitted to the Bar in September 1947.

Before his appointment to the District Court in 1966, Judge Byth practiced extensively in the Supreme Court, and also in the High Court of Australia, and had considerable experience in the field of local government law. One of the Judge’s notable appearances at the Bar was as Counsel Assisting the 1963 Royal Commission into aspects of police administration in Queensland (colloquially referred to as the Royal Commission into the National Hotel). The Royal Commissioner was Mr Justice Harry Gibbs, then a Judge of the Supreme Court (later Sir Harry Gibbs, Chief Justice of the High Court of Australia). A colleague of mine (Mr John Gallagher QC) was then a young articled clerk, who assisted in instructing one of the Senior Counsel appearing before the Commission. He tells the story that my Judge had a very beguiling manner in dealing with the witnesses of all types who appeared before the Commission. With one of the witnesses, who had been a guest at the Hotel, my Judge commenced his questions quietly: “did you ever see any girls who could be described as call girls?” The witness answered “no”. The Judge then asked: “did you ever see any girls that associated with guests or customers?” The witness again answered “no”. The Judge asked: “did you ever see any policemen with girls?”. Again the answer was “no”. The Judge quietly asked: “dont you want to assist His Honour?” Answer: “no”.

The Judge's pioneering role in the development of the Local Government Court has been heralded by all. For several years, my Judge was the only member of the Court (in late 1969, he was joined by Judge Viv Mylne). The inception of the Court coincided with the inception of both the first planning scheme for the City of Brisbane, and the statute which dealt with those two matters (*City of Brisbane Town Planning Act 1964*). The statute also dealt with many other new concepts for Queensland (for example, a rezoning application, a rezoning appeal and compensation for injurious affection caused by rezoning). It would have been a very challenging experience for the Judge, particularly working alone in those early years.

Reflecting on that experience nearly 20 years later, in 1984, in a paper he delivered to the North Queensland Law Conference, the Judge said:

“It was a very interesting exercise. On the one hand, we wanted to assist the legal, engineering, architectural, surveying and planning professions by laying down some guidance and principles, if we could. On the other hand, we were opening up new ground, and we did not want to lay down so-called ‘principles’ in one case, only to have such ‘principle’ relied on six months later, in cases which we had not been able to foresee, and in which the application of the so-called principle would lead to injustice. Well, we did the best we could. We were amused to read, in Dr Fogg’s 1974 text book ‘Australian Town Planning Law’, that Judges Byth and Mylne had ‘walked a tight-rope’ in the series of rezoning appeals in the early days. By now, of course, the legislation has become much more specific on rezoning matters, attitudes have become more generally accepted, and the Judges are, hopefully, no longer ‘up on a tight-rope’. (Not that the Court was ever linked to a circus, thank goodness). Another thing that perhaps made us cautious, is that, ever since the start of the Local Government Court, all our Reasons for Judgment have been reported, in one or more series of Reports. That does make one fairly careful in what one says when breaking new ground.”

Because the Court was involved with the full range of land development, it was common for it to hear cases which involved projects with a value well in excess of the monetary jurisdictional limit of the District Court. It was also common for parties to be represented by very senior members of the Bar, and for well qualified expert witnesses from a range of disciplines to give evidence (which was often of a conflicting nature). The Judge quickly developed an enviable reputation of dealing with the demands presented by these circumstances with a skilful, efficient, even-tempered and understanding approach. The Court earned the respect of the professionals (not just the lawyers) who appeared before it. Other judges who have been appointed to the Court over the years have been inspired by the solid reputation which my Judge gained for it, and have themselves worked towards

maintaining it. Through the Judge's vision and example (and the work of the other judges who have followed), the Court has recently achieved international recognition for its service to all sectors of the community, with its efficiency, and its leading case management and alternative dispute resolution mechanisms.

While the Judge could be stern when the occasion demanded, he was not aggressive by nature. He also had a good sense of humour. He displayed these features in open Court, often to relieve a difficult situation. One of my favourite stories about my Judge involved a case that he heard in 1973, when I was his clerk, where the treatment and disposal of sewerage was relevant to an issue. One of the effluent disposal experts was being vigorously cross-examined. This met with disapproval from the barrister who had called the witness, who objected several times to the way questions were being put to his witness. Eventually, it all became too much, and he threw down his pen, and uttered an inappropriate four letter word beginning with "S". My judge quickly said: "Mr So and so, I think you mean 'raw sewage'."

At Judge Byth's farewell ceremony in 1988, the President of the Bar Association stated that he could not remember a judge before whom it was more pleasant to appear. As one of the Judge's former clerks, that is an opinion which I often heard expressed, even many years after the Judge's retirement. In 2003, Judge Byth was awarded a Centenary Medal for his services to law through the Districts Courts.

Outside the law, Judge Byth held interests in reading, music and sport. He was very knowledgeable in each of these areas. I learnt this at an early stage. For example, although he was about a generation older than the members of The Beatles, in 1973, when I was his clerk, he showed more knowledge of their music than young men who had just grown up with it. On one occasion, I attended a Christmas function with him, where he was quick to disagree with a Crown Prosecutor who was quite disparaging of the songwriting skills of John Lennon.

In an address which he presented to the Burnett Club in Bundaberg in 1983, Judge Byth exposed some of his interests and skills, when he began by saying:

“I thought I might speak about ‘Words and the Lawyers’. Words, of course, are what we all use, to persuade, or influence people, or simply to communicate. Cilla Black used to sing, ‘Its only words, and words are all I have, to steal your heart away.’ Lawyers, of course, don’t steal hearts away, and, hopefully, don’t steal anything away.”

In 2010, in a letter I received from my Judge, he said:

“When I want to cheer myself up, I sometimes play The Beatles ‘Love’ CD...and sometimes my CD of the complete Mills Brothers in which they perform with Bing Crosby and with Connie Boswell and the Boswell Sisters. You may notice that I still think in terms of the words of old popular songs...”

Later in the year, on the occasion of his 88th birthday, when a young female artist was singing “Route 66” in the Judge’s honour, the Judge joined in to form a very entertaining duet.

My Judge made a very significant and everlasting contribution to the law. However, his primary interest in life was his family. On 17 February 2010, prior to his passing, he was able to celebrate the 60th wedding anniversary of his marriage to Pauline. They were a close couple during all their years together, and complemented each other perfectly. They had 4 children (each of whom, the Judge used to observe, was wise enough not to enter the law), and he was survived by 13 grandchildren and 3 great grandchildren. Judge Byth was a fine example to them all.

On the occasion of my Judge’s 88th birthday, I recognised that he would be disappointed if I did not think in musical terms in the way that he did, and so, with apologies to John Lennon and Paul McCartney, for modifying the introductory verses of “In My Life” (from the 1965 “Rubber Soul” album), I said (in the course of a short toast to his honour):

*“There are cases I remember
All my life though some have caused pain
Some forever not for better
Some have gone and some remain
All these cases have their moments
With judges and lawyers I still can recall
Some are dead and some are living
In my life I’ve witnessed them all
But of all these judges and lawyers
There is no one compares with you.”*

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