

Callinan, Ian David Francis (b 1 September 1937; Justice since 1998) was the sixth member of the High Court to be appointed from Queensland and the first direct **appointment** from private practice at the Bar for more than 22 years. His achievements as a writer add a further dimension to his legal career.

Callinan was born in Casino in northern NSW, the second of two sons. His parents moved to Queensland soon after his birth. His father enlisted in the RAAF, served in New Guinea, and in the post-war period went into business as an auctioneer and real estate agent, but ill-health arising from his war service forced him to retire in the 1950s.

Educated at Brisbane Grammar School, Callinan became a gifted cricketer, serving as captain of the school First XI and being selected as a member of the Queensland Colts. A large, burly man, his other sporting interests included rugby union and tennis.

In his first year after school, Callinan worked as a clerk in the Immigration Department. Guided by his mother, he obtained articles of clerkship with the city-based law firm of Feather, Walker & Delaney, and embarked upon five years of part-time study at the University of Queensland. He graduated in 1960. In the same year, he qualified as a solicitor and married Wendy Hamon, an unfailing source of encouragement in the years to come. He moved to Conwell & Co—a small firm active in the area of probate and inheritance law—and was soon admitted to the partnership. He has always maintained that service in a solicitor's office provided a valuable training for the Bar.

Callinan went to the Bar in 1965. His chambers in those days were in a three-level building—originally a boot factory dating back to 1919—on the present Inns of Court site. At that time, there were about ninety barristers in private practice in Brisbane, with a further five in Townsville and two in Rockhampton.

Increasing commercial activity in the region brought Callinan a retainer from the Queensland Cane Growers' Council, a link that was destined to last for 29 years. A fellow barrister on the 'sugar circuit' has said:

Few tasks were more testing than the extraction of cohesive instructions, in the late hours of the night, from a mill suppliers' committee comprised of men with a strong sense of a dollar's worth and often with an idiosyncratic view of what the law was or ought to be. Ian Callinan always passed that test with admirable composure.

Callinan's practice, principally in civil litigation, expanded. He took silk in 1978. Actively involved in the affairs of the Queensland profession, he played a key role in organising the Australian Legal Convention held in Brisbane in 1983, served as a Director of Barristers Chambers Ltd for many years, and held various offices including Chairman of the Barristers Board and President of the Queensland Bar Association. He then became President of the Australian Bar Association.

Deregulation and the floating of the Australian dollar in the 1980s transformed the corporate landscape and set the scene for a wide variety of entrepreneurial activities, some of which fed into and prejudiced the ways of government.

These changes were inevitably reflected in the career of a leading advocate.

Briefed by the Commonwealth Director of Public Prosecutions (DPP), Callinan prosecuted businessman Brian Maher in the first of the 'bottom of the harbour' tax cases, and gained a conviction. When the DPP was looking for a senior barrister to prosecute High Court Justice and former Labor Attorney-General **Murphy** for allegedly attempting to pervert the course of justice, he turned to Callinan again as one who had the advantage of being from outside the Sydney Bar, where **Murphy** was well known.

Callinan cross-examined effectively and secured a conviction. In *R v Murphy* (1985), he fended off a challenge to the validity of the proceedings. When a new trial was ordered, he led for the prosecution again. On this occasion, however, **Murphy** was acquitted.

Callinan's involvement in the **Murphy** prosecution brought him to national prominence as an advocate. His association with a case that led to a parliamentary commission of inquiry into whether **Murphy** should be **removed** from the High Court under section 72 of the Constitution, on the ground of misbehaviour, was not forgotten by Callinan's critics when the Queenslanders were appointed to the Court a decade later.

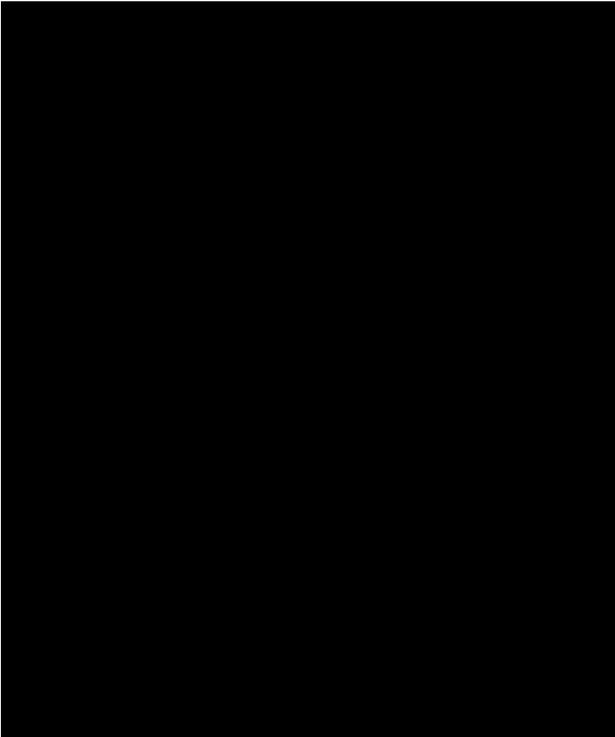
In court, Callinan spoke quietly, seldom raising his voice, and was not inclined to indulge in theatrical gestures. His technique in cross-examination has been described by those who have worked with him as 'death by a thousand whispers'. Nicholas Cowdery, a colleague in the **Murphy** trial, said: 'Callinan is remarkably quiet for such a big man. But the softness of his voice serves another purpose. It forces the witness to listen closely to what he is saying.'

In May 1986, an ABC *Four Corners* program made devastating claims about corruption in the Queensland Police Force. This led to the Fitzgerald inquiry and, later, to the resignation of Joh Bjelke-Petersen as Premier of the state. Callinan played an influential role in these events. As the government's principal legal adviser, he drafted terms of reference for a full and open inquiry. At a crucial stage, he was instrumental in arranging for the diaries of the Commissioner of Police—a man later found to be corrupt—to be made public. He also took steps to ensure that the interests of the government and the police were kept apart.

By now, Callinan was in constant demand. He was briefed to represent the high-flying Perth entrepreneur, Alan Bond, before the WA Inc Royal Commission. He defended Bond successfully against charges relating to secret commissions allegedly received during the government-backed rescue of Rothwells Ltd. He went to Majorca on behalf of the Australian government to seek an extradition order against Christopher Skase, head of the failed Qintex empire.

The list of reported cases in which Callinan appeared is long. It covers many jurisdictions—from the **Privy Council** to specialist bodies such as the Australian Broadcasting Tribunal—and embraces constitutional law, land acquisition claims, stamp duty issues, town planning, **trade practices** and insurance. The list includes various cases arising out of the notorious Mudginberri dispute of 1985, a pivotal moment in determining the boundaries of union power.

Callinan was also briefed in some widely reported **defamation** cases. These included claims brought by the



Ian Callinan, Justice since 1998

Duchess of York's sister, Jane Makim, and by leading rugby league player Andrew Ettingshausen. He held a retainer from Channel Nine, and successfully defended it in *Thiess v TCN Channel Nine* (1994), one of the longest defamation jury trials in Australian legal history.

Throughout his career at the Queensland Bar, Callinan affirmed the advocate's traditional role as an independent voice, available to either side. He was critical of the High Court's increasing activism in cases such as *Mabo* (1992), arguing that parliaments should do more to regain their authority over judicial law makers.

Callinan has a journalist son, and a daughter practising law. Since their marriage in 1960, he and his wife, Wendy, have been keen collectors of Australian art. This led to Callinan being appointed Chairman of the Queensland Art Gallery in 1996. He has also served as Chairman of the Queensland TAB.

Callinan's play *Brazilian Blue* was performed at the Twelfth Night Theatre in Brisbane in 1995 with leading actor Keith Michell in a key role. The play charts the demise of an entrepreneur embodying the greed and extravagance of the 1980s. *The Cellophane Ceiling* explores similar themes.

The first of Callinan's two novels, *The Lawyer and the Libertine* (1996), traces the fortunes of two boys brought up in Sydney during the Depression. Stephen Mentmore is eventually appointed Chief Justice of the High Court. His rival, George Dice, with some assistance from his Irish-Catholic friends, becomes Attorney-General in a Labor government. The plot centres upon recognisable political events such as the Petrov Commission and the Khemlani Affair in the Whitlam era (see **Popular images of Court**). The author's achievement is to give jurisprudence a human face and con-

nect ideology with the depths of the moral being. Dice regards bias as an inescapable fact of life and treats objectivity as an illusion to be ignored. Mentmore also acknowledges bias and prejudice as facts of life, but regards their existence as pressing reasons to insist on objectivity as the ideal. Ruminations about betrayal and loss also appear in *The Coroner's Conscience* (1999).

These plays and books were timely. In an era in which the Australian landscape was littered with reports by various royal commissions into governmental bungling, the arbiters of literary taste showed little interest in works illuminating the corridors of power. Callinan's fiction—annals of the prevailing disarray—brought extra colour to the literary scene. His characters are a reminder that Australian society is a vast, sprawling, unpredictable domain. His works affirm the wisdom of the **common law** in respecting individuality, and proceeding case by case.

Callinan was appointed to the High Court in December 1997. The *Hindmarsh Island Bridge Case* (1998) marked a contentious start to his judicial career, for shortly after being sworn in he was asked to **disqualify** himself on the ground that he had given advice about the statute in question. This brought into issue for the first time the question of whether a High Court judge could be disqualified by his colleagues. The issue fell away when Callinan, upon reflection, disqualified himself.

Other contentious moments followed, some of them resonating with issues Callinan had been associated with as an advocate. A ruling by a **Federal Court** judge from Melbourne expressed disquiet about the propriety of procedural advice Callinan was said to have given to solicitors representing a litigant involved in a dispute with a Queensland builder. **Commentators** were quick to draw attention to the Murphy precedent, and the President of the Law Council of Australia called for an inquiry. Did section 72 of the Constitution extend to conduct occurring prior to appointment? Was advice about procedural tactics to be judged by the standards of the Australian **legal profession**, by those of the wider community, or, more specifically, by the standards of the Queensland Bar in the 1980s when the advice was given?

Again, the issue fell away. The Commonwealth **Attorney-General** declared emphatically that there were no grounds for an inquiry. When the original decision was taken further, the appeal court was not required to explore the implications of the ruling in the court below.

In the controversial *Patrick Stevedores Case* (1998), Callinan concluded—unlike the majority of the High Court—that orders reinstating sacked waterside workers should be set aside. Courts should not make de facto business decisions under the guise of supervisory orders. In *Yanner v Eaton* (1999), his dissenting judgment, which countenances the reduction of **native title** rights by statute, reflects his earlier views about the respective roles of parliament and the High Court. His judgments generally display the wide range of experience he brought to the Bench, especially in the area of **commercial law**.

Before his appointment, Callinan was one of a small group of advocates who built up a truly national reputation. He was well qualified to assume the burdens of high judicial office. His plays and novels link him to some equally notable lawyers

Canberra, Court's move

with literary skills who came to prominence while the Commonwealth of Australia was taking shape: Alfred Deakin, Robert Garran, Griffith, Piddington, and later, Evatt.

NICHOLAS HASLUCK

Further Reading

Nicholas Hasluck, 'Deconstructing the High Court' (1998) 42
Quadrant 12

Canberra, Court's move to. It was always intended that the seat of the Court should be at the national capital. In fact, the effect of section 10 of the *Judiciary Act* 1903 (Cth) was that when the seat of government was moved to Canberra in 1927, the principal seat of the Court would follow as a matter of course. A government amendment in 1926 that prevented the automatic removal of the Court to 'the airy and healthy, but somewhat bleak, plains of ... Canberra' was treated by Frank Brennan MP as 'an act of mercy'. The government would reconsider providing the Court with a headquarters in Canberra, said Attorney-General Latham, 'when the present pressure of building operations has been to some extent relaxed'.

Forty-two years later, Barwick persuaded the government of the day that the Court should have a home of its own in Canberra alongside the other arms of government, the Parliament and the executive. It would have a dedicated building of its own for the first time in its already long life. The move would also involve the transfer of the principal registry of the Court from Sydney to Canberra, and the closure of the state registries, which had a major role in the administration of the Court and supported the circuit system.

The next ten years were spent in planning the building, finding a suitable site, organising a design competition, inviting tenders, letting the contract, and finally, in 1975, beginning construction. The building was completed in 1980, and opened by the Queen on 26 May of that year. The Governor-General, Zelman Cowen, did not look favourably upon the

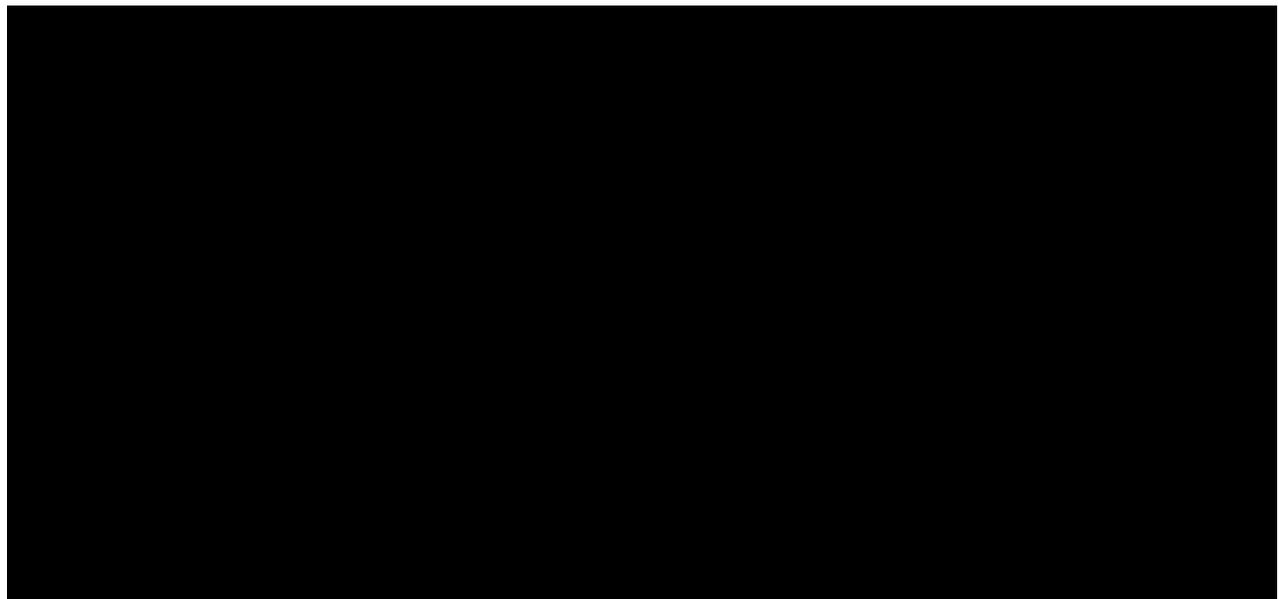
government's decision that he should not attend (the Governor-General was the Queen's representative and, with the Queen in attendance, she did not need a representative).

The opening occasioned much criticism. Politicians argued about the building's cost (the budget blew out from \$10.9 million in 1974 to \$50 million upon completion); architects and others questioned the building's style; and many lawyers held grave doubts about the move. This controversy was nothing, however, compared to the reaction of the *puisne* Justices in 1979 and early 1980 to Barwick's plans for the Court.

The full detail of Barwick's plans became apparent towards the end of 1978. Over the previous 75 years, the practice had developed of allowing Justices to decide where they would live and could most conveniently work on their judgments. From the beginning, the Court adopted the practice of visiting all the capital cities at least once a year, but the vast majority of their work was in Sydney or Melbourne.

Conveniently, most Justices had lived in Sydney or Melbourne before their appointment to the Court, and remained in the same city thereafter. There were few appointments outside that magic circle, and there was no pressure on those appointed to move to Sydney or Melbourne, although some did so.

Under Barwick's plan, however, not only was there going to be a very expensive building and the provision of only one central registry in Canberra, but all the Justices would move to Canberra. Only one of them (Murphy) lived there. Furthermore, a suitable 'homestead' style residence outside the city would be acquired by the government for the use of the Chief Justice (but see *Humour*). The other Justices would have to find homes of their own. To round off this plan, Barwick also proposed that the Court should have access to Parliament via the treasury to obtain its desired budget. The role of the Attorney-General's Department in determining the



The Queen at the opening of the High Court, 26 May 1980 with, from left to right, Wilson, Murphy, Gibbs, Barwick, Stephen, Mason and Aickin