THE APPOINTMENT AND REMOVAL OF JUDGES

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This is the third series in the annual Menzies Lecture series. The lectures were delivered at the University of Virginia and at William and Mary College Williamsburg on 8 and 12 October 1987.

It is a privilege for me to come to the University of Virginia as the third Menzies Lecturer. The lectures are given, in alternate years, in Virginia and Australia, to honour Sir Robert Menzies and to mark his contribution to the law and to public life. Sir Robert Menzies served as Prime Minister of Australia for longer than anyone else who has held that office. Before his entry into political life he was an eminent member of the Bar and appeared with distinction in cases of the greatest importance. He delivered the Jefferson Memorial Lecture at this University in 1963 and came here as scholar in residence in 1966. He formed a great affection and regard for the University, and spoke of it in the following words:

> "This University represents a combination, rare in this world, of vision and achievement by very great men . . . The more I see of it, the more I love it. It is beyond question one of the most beautiful universities in the world."

Now that I have seen this University I can give my respectful endorsement to those words.

Confidence in the laws, and in the judges who administer them, is an essential condition of an ordered, stable and civilised society. The confidence of the public in the judiciary can be maintained only if the judges are seen to be not only fully competent to perform their functions, but also independent, impartial and of complete integrity — integrity being, as Francis Bacon said of judges more than 300 years ago, "above all things . . . their portion and proper virtue".[1] This is true, not only of judges of the highest courts, but of all judges, because a bad trial judge may do damage which in spite of the most elaborate system of appeals may prove irreparable. General statements of this kind would no doubt command agreement in the United States as in other common law countries, but the procedures by which these aims are sought to be given effect differ strikingly in the United States from those employed elsewhere.

Traditionally, at common law, judges were appointed by the Crown and in most common law countries today appointments are still made by the executive government alone. That is the case in Great Britain, Canada, New Zealand and Australia but not, of course, in the United States, where judges appointed by the President to the federal bench must survive the vigilant scrutiny of the Senate, and judges in the states are chosen in a variety of ways of which popular election is one. There are many other possible methods of selection of judges, including election by the legislature (as in West Germany and Switzerland), selection by a committee comprising representatives of the legislature, the executive, the judiciary and the bar (the Israeli method) or appointment by the executive on the recommendation of a judicial council or selection committee (as in some

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[1] F Bacon, *Essay On Judicature* (1612).

provinces of Canada). It is no part of my task to consider whether any one of these methods is preferable to all the others, although it is easy enough to conclude that some more than others allow scope for the intrusion of politics into the process. My aim is to compare the manner in which judicial appointments are made in various common law countries and the attitudes taken in those countries to the question what matters ought to be considered in the selection of members of the judiciary, and what procedures ought to be available for the removal of judges. Some of those attitudes may perhaps be regarded by American lawyers as utopian or divorced from the political realities of a complex society.

Few would dissent from the proposition that merit (comprehensively defined) ought to be a condition precedent to the appointment of a judge. No doubt most people will also profess to agree that a judicial appointment should not be made as an act of mere patronage, although some will not always practise what they profess. Different opinions are however held in Australia on two questions: first, whether it is proper to regard as relevant in selecting a person for a judicial appointment, the question whether the proposed appointee holds views on political, social and economic questions which generally coincide with those of the authority making the appointment; and secondly whether it is right to ensure that the judiciary should, as far as possible, fairly reflect the diverse sections of society — that is, to ensure that the bench should in a general way, be fairly represenative of both sexes, of racial and religious groups, of geographical areas and even of political ideologies.

In the United Kingdom today merit seems to be the sole criterion of appointment. Lord Hailsham, who this year retired as Lord Chancellor, stated the policy which he followed in selecting candidates for the bench in England and Wales as follows:[2]

> My first and fundamental policy is to appoint solely on merit the best potential candidate ready and willing to accept the post. No considerations of party politics, sex, religion, or race must enter into my calculations and they do not. Personality, integrity, professional ability, experience, standing and capacity are the only criteria, coupled of course with the requirement that the candidate must be physically capable of carrying out the duties of the post, and not disqualified by any personal unsuitability. My overriding consideration is always the public interest in maintaining the quality of the Bench and confidence in its competence and independence.

This statement was not empty rhetoric: it expressed what the Lord Chancellor was trying — and I believe successfully trying — to achieve. He instituted an elaborate system designed to discover the fitness of potential candidates for the bench; this included continuous consultation with judges and senior members of the profession. His task was made easier by the fact that in England most judges are appointed from the senior ranks of the bar; the number of these experienced advocates is relatively small, and for that reason their virtues and their weaknesses are likely to be known to their own colleagues and to the members of the bench before whom they appear.

This admirable approach to judicial appointments has not always been accepted in England. For centuries, and until quite recent times, appointments to

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[2] *Law Society Gazette*, 28 Aug 1985, 2335; and see Lord Chancellor's Department, Judicial Appointments Group, *Judicial Appointments — the Lord Chancellor's Policies and Procedures* (1986).

the bench were not uncommonly made simply on the basis of political or personal favouritism. Lord Campbell, in his *Lives of the Lord Chancellors* (a work which one of his contemporaries said had added a new terror to death) tells us that in 1587 Queen Elizabeth I appointed as her Chancellor her favourite dancing companion, Sir Christopher Hatton, who had never been called to the bar and who, it was said, rather disparagingly, could hardly know the distinction between a subpoena and a latitat.[3] In more recent times Lord Halsbury acquired a reputation, probably not wholly deserved, for the exercise of patronage when as Lord Chancellor he was called on to make judicial appointments. The story was told of how he answered an enquirer who had asked whether, *ceteris paribus,* the best man would be appointed to a judicial position; he replied: "*Cateris paribus* be damned, I'm going to appoint my nephew".[4]

Political influence continued to play too great a part in the making of judicial appointments in England until the time of the Second World War. However, from 1946 onwards both Conservative and Labour governments in England have endeavoured to select only the best person available for any judicial position and to exclude entirely any consideration of personal or political influence. The policy described by Lord Hailsham is not his alone; it is a bipartisan policy, formulated by Lord Chancellors who put the public good before party interests; it is supported only by tradition, and has no constitutional or legal foundation.

In New Zealand also, merit seems to be the sole, or at least the predominant, criterion. There is an established, although informal, procedure for consultation between the Attorney-General, who recommends appointments to the government, and the legal profession. Usually the Attorney-General receives from the Chief Justice a list of three or four names from which he selects one after consultation with the Law Society. Again there is a small bar and the qualities of its leaders are well known and this assists in virtually eliminating the exercise of personal or political patronage.

In Canada, a report by a special committee of the Canadian Bar Association on the appointment of judges, published in 1985, revealed a very different situation. It was found that although political favouritism had not had an influence on appointments to the Supreme Court, it had been a dominant consideration in appointments to the Federal Court of Canada. In some provinces, where judicial councils or selection committees took part in recommending candidates for appointment, political considerations were not a factor in making judicial appointments to the provincial courts, but in other provinces considerations of that kind played a significant or in some cases a dominant part. The special committee concluded that the quality of the Canadian judiciary was good but uneven, with some of the more manifest weaknesses being attributable to patronage appointments. It found widespread dissatisfaction with the method of judicial selection in Canada, and said that there was such public cynicism concerning the appointment of judges that confidence in the legal system was threatened.

Australia occupies an intermediate position. Purely political appointments are rare but not unknown. There is no formal procedure for consultation between the executive and the judiciary or the legal profession. However in practice it is not

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[3] Campbell, *Lives of the Lord Chancellors,* Vol 2, 280.

[4] R Heuston, *Lives of the Lord Chancellors 1885–1940* (1964) 36–37.

uncommon for an Attorney-General to consult with the Chief Justice or with other members of the profession with regard to a prospective appointment, but sometimes an appointment may be made without consultation and sometimes advice may be received but ignored. Most governments do endeavour to appoint well qualified lawyers. However, sometimes appointments are made of persons who have not achieved the highest standard of professional ability and experience. When this has occurred, sometimes the govenment has tried but failed to make the best appointment, but more commonly considerations other than merit have intruded into the choice.

The weight of professional opinion in the countries of which I have spoken is that politics should not play a part in the selection of judges. It was recommended in Canada, by the report of the special committee which I have already mentioned, that no Cabinet Ministers should be considered for appointment to the bench for at least two years after resigning from ministerial office. Similar suggestions have been made in Australia but they have not been accepted. The better view seems to be that "politics should be neither a shortcut to nor an impediment in the way of appointment to a judicial office".[5] It may be that the method of election of judges by popular vote in some parts of the United States makes it almost inevitable that politics will play some part in their selection. It may be that the system of appointments of federal judges makes it inevitable that politics will play some part in federal appointments also. It has been asserted that 92 per cent of the federal judges appointed by President Nixon were Republicans and 95 per cent of the federal judges appointed by President Carter were Democrats.[6] I am in no position to comment on these matters other than to say that even where politics enters into the selection it is nevertheless possible that the adoption of suitable procedures (such as the grading of candidates by the American Bar Association) will ensure that all candidates are fully qualified for appointment. There is a great difference between appointing an unsuitable judge simply for political reasons and giving preference, among persons who are in every way fit for appointment to the bench, to those who have a particular political allegiance.

Although no government in Australia has ever admitted that it has appointed a judge for reasons other than meit, there is, I think, growing support, within all political parties, for the notion that it is proper to appoint judges whose social and ideological outlook is in sympathy with that of the administration. This view may not seem surprising in the United States where it appears to be the usual practice in the Senate for candidates for senior judicial office to be questioned extensively as to their opinions on matters of public interest. It is however, a view that is still regarded as heretical by many lawyers in Australia, as it is in Great Britain, since judges are expected to decide in accordance with legal principles rather than in accordance with their individual beliefs or sympathies. The traditional attitude was illustrated by an incident in Australia in 1913. A barrister, one Piddington, who was appointed to the High Court, had been unwise enough, while his appointment was being considered, to tell the Prime Minister, in answer to an

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[5] S Shetreet, *Judges On Trial: A Study of the Appointment and Accountability of the English Judiciary* (1976) 75.

[6] Megarry, "Seventy-Five Years On — Is the Judiciary what it was?", The Edward Bramley Lecture (1984) 8.

enquiry, that he favoured an expansion of federal power. When it became known that Piddington had informed the government of his views, however general, on a question which could well be involved in cases which he might have to decide, the storm of public criticism and protest was such that he resigned from the Court without ever taking his seat on it. I doubt whether, if the same situation arose today, public opinion would be so strongly aroused. There are, however, dangers in considering whether the social outlook of the candidate for judicial appointment coincides with that of the government; obviously enough, these dangers are that the question of merit will be obscured, and that it may be a short step from considering the compatibility of the candidate's opinions to considering whether he or she is worthy of political patronage.

Different considerations may apply in the United States from those appropriate in England and Australia. Where judges have the duty of interpreting and enforcing a bill of rights, and are called upon to decide controversial questions of a social and political kind, it is, to say the least, understandable that the President and the members of the Senate would not wish to appoint a person who had strongly held views on those questions opposed to their own. The position is different in Great Britain, where there is no written constitution. In Australia, the framers of the Constitution adopted only a few of the provisions from the Bill of Rights in the United States Constitution and under the Australian Constitution the role of judges in resolving social and political issues, although by no means unimportant, is much more limited than that of the Supreme Court. Whatever views may be held on this subject, it can I think be said (at least so far as Australia is concerned) that if merit, as Lord Hailsham defined it, is not the sole criterion, it should always be an essential and dominant criterion of judicial appointment.

Another theory which, particularly in recent times, has been to some extent put into practice in Australia, although not overtly acknowledged by those who practise it, is that all sections of society should be represented on the bench. In the past, members of particular religious persuasions have sometimes been given unwarranted preference for this reason and today women and members of minority racial groups are likely to be preferred. A judge should not be regarded as a representative of any section of society, but should do, and be seen to do, justice to all. However, it would tend to shake confidence in the judiciary if there were any reason to believe that the members of any section of society were unfairly excluded from the bench, and for that reason, where a number of candidates for appointment are of equal merit, it would no doubt be justifiable to take account of the fact that a group to which one of the candidates belonged was not fairly represented. Again, the desire to make the judiciary a fair reflection of society should never be allowed to affect the principle that the essential condition for appointment is possession of the qualities requisite to make a competent and upright judge.

The selection of judges is of critical importance in the administration of justice and for the welfare of society as a whole. The work of a judge is too important to entrust it to a person of doubtful competence. A judicial appointment obviously made for the wrong reasons will tend to shake public confidence in the bench. Whatever method of selection is used it would seem wise, or even necessary, at some stage to seek and obtain informed advice from bodies representing the legal

profession which ought best be able to assess the character and ability of their members. To achieve the result that only the best men and women available are appointed to the bench, more appears to depend on the disinterested statesmanship of those concerned in making the appointment or selecting the candidates for appointment that on the existence of any formal procedural safeguards, which are not likely to be effective if the will to make appointments on merit is lacking.

The questions in what circumstances a judge should be regarded as unfit to continue to hold office, and how it should be determined whether such circumstances exist, have assumed a new prominence in Australia during the last few years. Since the Act of Settlement, which was passed in England in 1701, and which established a procedure for the removal of a judge upon the address of both Houses of Parliament, judges in the United Kingdom have enjoyed real security of tenure. Since that time there have been a number of unsuccessful attempts (usually politically motivated) to secure the removal of a judge, but the only judge in the United Kingdom to be removed from office under that procedure was Sir Jonah Barrington who was found guilty of malversation in office and removed in 1830. The framers of the United States Constitution rejected a proposal to insert in the Constitution provisions based on the Act of Settlement, and impeachment remains the method of removing a federal judge. In early colonial days, when colonial judges could be removed by the Privy Council, some Australian judges, who displayed some of the eccentricities that were sometimes found in a rough colonial society, were removed from office. The Australian Constitution, improving on the English model, provides that federal judges shall not be removed except by the Governor-General in Council, on an address from both Houses of Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. The judges of the Supreme Courts of the States in Australia enjoy a statutory but not a constitutional protection. No judge in Australia has been removed from office during this century. It is true that there have occasionally been problems with judges who suffered from intellectual impairment due to illness, or who took to the bottle, and who were a little slow to resign. But on the whole until very recently the Australian judges, like the English, have congratulated themselves on the fact that no instance of misbehaviour warranting removal has been established or even seriously suggested in modern times. Only recently has it been found necessary to face the problems that arise when a charge of misconduct is made against a judge who has not been convicted of an offence.

When it is alleged that a judge has been guilty of misconduct, or is incapable of performing the duties of the office because of illness, premature senility or addiction to drink or drugs, two important principles come into conflict. On the one hand there is the obvious need that a person entrusted with functions as important as those of a judge should be fit to perform them — not only physically and mentally fit, but also morally fit, for nothing would be more destructive of the confidence on which the judicial system rests than the knowledge that a judge was guilty of corruption or some other serious wrongoing and yet continued to sit on the bench. On the other hand, it is equally essential that judges in the performance of their judicial functions should be completely free of pressure or influence from the administration, the legislature or anyone else. The security of

tenure which English judges have enjoyed since the Act of Settlement, which is guaranteed to federal judges by the United States Constitution, and which Australian judges also enjoy, is a necessary protection against political and other pressure and influence and it is important that it should not be weakened by whatever measures are taken to deal with complaints of misconduct or incapacity.

The procedure for removal by an address of both Houses of the Parliament is not without deficiencies, some of which are shared by the procedure of impeachment. Whether proceedings are commenced, and their ultimate result, may be determined by purely political considerations. An address may be moved, or impeachment proceedings commenced, for the purpose of getting rid of a judge whose ideas and attitudes are regarded as unacceptable — that, however, has not been the experience in Australia. On the other hand, the very gravity of the procedure may provide a disincentive to its use, and political considerations may add strength to that disincentive. A House of Parliament or the Senate is not the most suitable body for finding the facts in a complex and contested case, although it is true that a committee of the House or Senate may be constituted for the purpose. There are no legal means of ensuring that a judge will not continue to sit while the proceedings remain unresolved. In any case, the procedure is hardly a satisfactory one for dealing with the position of a judge who is suffering from mental deterioration.

The difficulties arising from these deficiencies were revealed in Australia when in 1984 allegations of misconduct were made against a very senior judge, Murphy J, who at the time was a member of the High Court, the Australian equivalent of the United States Supreme Court. Justice Murphy had been a Cabinet Minister, and this circumstance made it impossible for some members on both sides of the Parliament to consider the case in an apolitical way. Indeed the matter became the subject of bitter political controversy. It is unnecessary to discuss the matter in detail. It is enough to say that damaging allegations concerning the judge were made publicly early in 1984, and were still the subject of investigation when the judge died in October 1986. During 1984 two select committees of the Senate held inquiries into the matter, and, to quote words from a Report of an Advisory Committee on the Australian Judicial System, published in May this year, "the reports of the two Senate Select Committees . . . demonstrated the difficulty, no matter how well-intentioned the members participating, of separating questions of fact and degree from issues of politics in an inquiry conducted by a Special Committee comprising Members of Parliament from the various political parties". During 1985 the judge was tried on two counts of attempting to pervert the course of justice, and was convicted on one count, but on appeal the conviction was quashed and a new trial was ordered; at the new trial he was aquitted. However, allegations against him continued to be made and the Parliament in May 1986 appointed a commission, composed of three distinguished retired judges, to consider and report on all the allegations. That commission might at last have resolved the matter, but Murphy J died before it had completed its inquiries. In the meantime, again to quote the Advisory Committee, the existing system had operated in a "prolonged, uncertain, repetitious and unsatisfactory way . . . amid a continued blaze of publicity and speculation".

It is obviously undesirable from the point of view of the community — and indeed from that of the judge — that the truth or falsity of serious allegations made publicly against a judge should remain in doubt for years. The Advisory Committee on the Australian Judicial System has accordingly recommended that there should be established a judicial tribunal to which serious allegations made against a judge could be referred without delay to enable it to decide whether the allegations are capable of being sustained by the evidence. The role of the tribunal would be to find the facts and to determine whether the facts so found were capable of amounting to misbehaviour or incapacity warranting removal. The Houses of Parliament would still have the final responsibility for the removal of the judge if the tribunal made a finding adverse to him. The object of the Advisory Committee was to propose a system which involved the safeguard of a thorough and dispassionate finding of fact made through workable procedures and by persons whose identity and method of selection would ensure that no allegation of bias could sensibly be made. The Committee recommended that only an Attorney-General should be able to initiate procedures for the removal of a judge by referring allegations to the judicial tribunal. It took that view because it believed that the damage to a judge's reputation which would occur if his or her conduct were referred to the tribunal should not be inflicted unless a Minister, politically responsible to the electorate for the decision, decided that there was a case which warranted the investigation. There has not yet been an opportunity for the Commonwealth authorities to consider these recommendations.

While the controversy concerning Murphy J was continuing, serious allegations were made against a judge of the District Court of New South Wales. The judge was charged, tried and acquitted. After his acquittal further allegations were made against him. He later resigned. These events prompted the legislature of the State of New South Wales to enact legislation to provide an organisation to deal with complaints against a judge, whether or not the conduct complained of would warrant removal. A statute known as the *Judicial Officers Act* 1986 was passed setting up an elaborate system for the making of, and dealing with, complaints against judges of all courts in New South Wales. The Act sets up a judicial commission consisting of the Chief Justice or other presiding member of every court in New South Wales, together with a legal practitioner and a layman of high standing in the community. There is one very significant difference between the scheme of this Act and the proposal of the Advisory Committee — under the Act any person may complain in writing to the commission about a matter that concerns or may concern the ability or behaviour of a judge. On receipt of a complaint, the commission, or a committee of its members, conducts a preliminary inquiry, so far as practicable in private. It may dismiss the complaint or classify it as minor or serious. there is established a conduct division of the commission consisting of three judicial officers one of whom may be retired and none of whom need be a member of the commission. A complaint classified as minor may be referred either to the conduct division or to the head of the court to which the judge belongs. The hearing of a serious complaint would normally take place in public and that of a minor complaint in private. Where there is a serious complaint the commission may, if it considers that the judicial officer may be physically or mentally unfit, order a medical examination. If it decides that a serious complaint is wholly or partly substantiated, and if it forms

the opinion that the matter could justify parliamentary consideration of the removal from office of the judicial officer complained about, it makes a report to that effect which is laid before Parliament and thereafter the Governor may remove the judge from office on the address of both Houses of Parliament. Power is given to suspend a judge while this procedure is being followed, but the judge is entitled to be paid during the period of the suspension.

The Act is said to have been modelled on Californian statutes. Its framers have taken a great deal of care in an attempt to set up a system that will allow complaints to be ventilated and at the same time will afford a reasonable degree of protection to judicial officers. However, the judges of New South Wales have strongly objected to the new system. They fear that the number of complaints from dissatisfied litigants is likely to be large. Figures from the United States show that only a very small portion of complaints ever survive a preliminary examination and it is thought that the same situation will be likely to prevail in Australia. Although it is probable that most complaints will be dismissed by the commission and will never reach the conduct division, the fact that they are made and have to be processed is a source of vexation and possible damage to a judge. If a complaint is one that cannot be summarily dismissed, and is grave in character, the judge against whom the complaint is made may suffer very seriously. Even if the complaint is found to be unfounded, he or she will be subjected to the unwelcome publicity of the proceedings and may be forced to incur great cost in defending them. The judges claim that there is no need to introduce this new procedure, with the possible risk of damage to the individual judge and the standing of the judiciary generally, since the cases which had given rise to concern were exceptional in character and unlikely to recur.

It is by no means clear that either the procedure proposed by the Advisory Committee or that set up by the legislature in New South Wales provides a satisfactory solution to the problem. The two grounds on which a judge may be removed — incapacity and misbehaviour — are very different in character. In the nature of things judges do from time to time become incapable, by reason of illness, of performing their functions and although they can usually be persuaded to resign there have been instances in which judges, unfit by reason of serious and permanent illness, have resisted persuasion for too long. There might thus be advantages in making provision for the compulsory medical examination of a judge in strictly defined circumstances and with proper safeguards. This course would require constitutional change so far as federal judges are concerned, at least in Australia, and I expect in the United States as well, and whether it is a course that should be followed depends on whether the situation of an incapable judge clinging to office is common enough and serious enough to justify a change which would to some extent erode the traditional security of judicial tenure. An allegation that a judge has been guilty of serious misconduct creates grave difficulties if the allegation has not been the subject of a charge prosecuted to conviction. There is something to be said for the suggestion that there should be a standing tribunal to which any such allegation can promptly be referred. The difficulty is, who may make the reference? If the reference can be made by any member of the public, or even by any member of the legislature, the system may encourage the making of complaints which are unfounded or politically inspired, and thus weaken the authority and standing of the court. On the other hand, if the

power to refer is limited to the Attorney-General or other member of the Administration, political considerations may influence the question whether a reference should or should not be made. Since cases of misbehaviour warranting removal are very rare indeed, at least in England and Australia, it may be doubted whether there is a real need for any change in those countries. But on the whole the idea that there should be a standing committee of judges to which the Chief Justice could refer allegations of this kind has some attractions for Australia. I understand that some similar system exists in the federal courts of the United States. There are also attractions in the suggestion that if allegations of serious misconduct are made against a judge, the Chief Justice should have power to suspend the judge from sitting until the matter is resolved.

I of course could express no opinion as to whether the actual working of the system of receiving and investigating complaints from the public, which I think originated in California and has been adopted in many other states of the United States, has proved satisfactory. It does appear that in California there has been an increasing number of complaints, a large proportion of which proved groundless. Any scheme of this kind necessarily detracts to some extent from both the security and the standing of the judges. Whether such a scheme is warranted in any jurisdiction again would seem to depend on the extent to which there are, within that jurisdiction, departures from the proper standards of judicial conduct. It would obviously be preferable to rely, if that were possible, on the influence of the opinions of the judges' fellows and of the profession generally — peer pressure as it is sometimes called — rather than on controls administered by an investigatory commission, since the more effective an external control, the greater the potential inroad upon judicial independence. In Australia, the judiciary has, with few exeptions, maintained such high standards of conduct, that a formalised system of receiving complaints hardly seems necessary. In America, where the number of judges has become very large, the position may be different, but of that I am unable to speak.

The delemma between, on the one hand, allowing a judge who is suspected of misconduct to remain in office although the charge has not been properly investigated, and, on the other hand, threatening the independence and standing of the bench by the investigation of groundless complaints, is not readily resolved. The fact that it is so difficult satisfactorily to deal with the case of a judge against whom misconduct is suspected makes it all the more important that the appointment of a judge should be approached with scrupulous care. If the personal and professional qualities of a candidate for judicial appointment are thoroughly investigated in the first place, and if there is no weakening of the resolve that none but persons of the highest character and competence should ever be appointed, judicial misconduct should remain a rarity, even if an unsuitable appointee occasionally slips through the net. I believe that in Australia and in the United States the standing of the judiciary remains very high, notwithstanding the publicity that any suspected fall from grace always attracts. To maintain that standing, more depends on appointing good judges in the first place than on censuring or punishing the misconduct of bad judges after it has occurred. Our appointment procedures are very different, but they have the same aim — to have, as judges, only people who adhere to the standards which must be observed if public confidence in the bench is to be maintained.