

## Frank Stratton McAlary QC (1925–2010)

By Andrew Bell SC



Frank McAlary QC has died at the age of 84, having retired in 2003 after 55 years of highly distinguished practice at the New South Wales Bar, including almost 35 years as a silk. His retirement was noted in the Winter 2003 edition of *Bar News*. The memorable dinner in honour of Frank, Chester Porter QC and Tom Hughes QC on the occasion of their respective 50 years of practice was also featured in the Spring 1999 edition of *Bar News*.

Frank McAlary was a formidable, courageous advocate and a forceful and highly skilled cross-examiner, with an unqualified commitment to his clients' cause. He cut his teeth in the common law and workers' compensation, being regularly briefed on behalf of injured workers and was highly influential in the New South Wales Labor Council, but he came to develop the broadest of practices, appearing in every jurisdiction from the courts of petty sessions to the Privy Council. His practice traversed criminal and family law, local

government, equity, commercial and company law as well as the common law, and he was equally at home at trial as on appeal.

the then president of the New South Wales Court of Appeal, Justice Keith Mason, made reference to McAlary having the hallmarks of a true appellate

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He continued to appear at the highest appellate level right up until his retirement, in his final years at the bar arguing three significant appeals in the High Court – *Astley v Austrust Pty Limited* (1999) 197 CLR 1; *Brodie v Singleton Shire Council* (2001) 206 CLR 512 and *Burnie Port Authority v General Jones Pty Limited* (1994) 179 CLR 520. He appeared regularly in the New South Wales Court of Appeal over five decades. In the course of his final case, in what may be an unprecedented tribute to a still practising advocate,

advocate, namely 'the ability to inform, to persuade and not to bore the bench; and to do so with charm and utter frankness.' His arguments were described as being marked by 'clarity of definition of issues and agility of expression' accompanied by 'a mine of persuasive anecdotes.'

Nicknamed the Roan Bull, and also immortalised iconically as 'The Dancing Man', McAlary QC was a man of many dimensions: on the one hand, a man of profound faith and compassion whilst at the same time enjoying

enormous success as a businessman and pastoralist (with extensive interests in the Kimberleys and northern New South Wales) as well as being, simultaneously, one of New South Wales's leading advocates for many decades. His success was entirely self-made, with his father having died when he was 10 and not attending formal schooling until the age of 13. His country roots gave him a deep knowledge of human nature, which he teamed with an insatiable intellectual curiosity and interest in world affairs. He will be remembered

by members of the New South Wales bench and bar with enormous respect and deep affection.

In a wonderful tribute, a function open to all, and attended by many members of the bar, was held in the Bar Common Room in April of this year to celebrate his life and contribution to the New South Wales Bar (of which he was a life member). Retired District Court Judge John McGuire, Brian Rayment QC and James Poulos QC all delivered memorable tributes that were recorded on video and are available in the Bar Library. His old Floor, Eleven Wentworth,

has named a new conference room after him which was opened in February of this year by Spigelman CJ who also paid a moving tribute in the presence of his widow, Patricia, children and grandchildren, as well as former Floor colleagues.

The red-haired boy of the Stone Age, Frank very early came to the fore. Year Rep. in his first year, he was on the S.R.C. in his third and fourth years. He took a courageous stand last year in the often thankless job of Director of Student Publications. A brilliant student, he left no page of Stone unturned. The child Jesus disputing with doctors in the temple would have been no match for Frank disputing in lectures with the Doctor of Scientific Jurisprudence.

**EG Whitlam on McAlary,  
Blackacre, 1947**

But to really understand his technique of advocacy one had to see him from the other side of the Bar Table. Opponents never knew his secret weapon. It was those eyes. It was unbearably painful for a judge to reject the slightest argument, however trivial, of a barrister always so utterly convinced of the rectitude of his client's cause. I hope those eyes are captured on video in the High Court's filmed archives. They should be played and replayed in centuries to come to teach new judges of the need to be on the lookout for advocates of passion like Frank McAlary. A big mind. A big heart. Impossible to believe that he will retire.

**MD Kirby  
on McAlary's retirement**

Your advocacy has been marked with clarity of definition of issues and agility of expression. You have a mine of persuasive anecdotes. ... The marks of a true appellate advocate are the ability to inform, to persuade and not to bore the bench; and to do so with charm and utter frankness. These have been your hallmarks.

**Keith Mason  
on McAlary's retirement**