

SWEARING IN AS A SUPREME COURT JUDGE

1 DECEMBER 2003

Chief Justice, Mr Attorney, Mr Keane, Mr Martin and Mr Ferguson, my colleagues on the Supreme Court, members of other Courts and Tribunals, the Honourable Matt Foley, members of the profession, ladies and gentlemen:

Some of you may have had the good fortune to visit the Rodin Museum in Paris – not too far from the Eiffel Tower. It's an elegant stone mansion set in a spacious garden on the Left Bank. A little over a century ago it was not a museum but a school conducted by the Sisters of the Sacred Heart. One of the students was a small, pretty, vivacious 17 year old girl from Brisbane called Nettie Power. Her father was Mr Justice Virgil Power of this Court – regarded by some good judges as one of the best advocates the State has produced. Nettie had been sent there – it is said – partly because she and her father's associate had fallen in love and her parents thought it wise, because of her youth, that they have a year apart. Her father's associate was Edward Douglas, my great uncle. He was the first Douglas admitted to the Bar of this State in 1902. The story has a happy ending. Nettie came back – she and Edward married, produced 11 fine children and Edward went on to become a successful barrister and a judge of this Court. She was still alive more than 60 years after she studied in Paris and came to the Court when my father was sworn in as a judge in February 1965 – the first

time I attended one of these ceremonies. Her youngest son Andrew, now a retired solicitor, has done me the honour of coming here today.

As my father pointed out when he was sworn in Nettie Power was the daughter, wife, sister in law and, by that day, the aunt of four different judges of this Court. Many of your very kind comments have mentioned the male members of my extensive family. Nettie Power is only one of the many women who deserve to be remembered too.

Another is my mother, Marjorie, who, at the age of 88, is present in Court today. Let me tell you something about her, but first let me go back to Nettie Power. She and Edward lived next door to the McCawleys. Those of you who remember your State constitutional law will recall that Mr Justice McCawley was appointed to this Court in controversial circumstances by T J Ryan's government in 1916. One of his best friends was Edward's brother and my grandfather - Robert or R J Douglas, still then a member of the bar. Mr Justice McCawley survived a challenge to his appointment and later was appointed Chief Justice but died shortly after he attained that office. Coincidentally, his wife was my mother's aunt. After my mother left All Hallows in 1934, having stayed an extra year after Senior to further her musical studies, she, in fairly rapid succession, obtained a job, effectively as librarian in the Crown Law office, and met my father. He was then his father's associate and visited Brisbane from Townsville

when R J sat on the Full Court. She obtained the librarian's position probably in spite of, rather than because of, the fact that her uncle, Jack O'Hagan, was then the Under Secretary of the Department of Justice.

So, from about 1935, she has been continuously associated with the legal profession in its various guises and is herself the niece of a judge of this Court, the wife and daughter in law of two others and mother to two more. She counts many other lawyers among her relations here and in Victoria. Luckily for us, her children, she retained a close affinity for her first love, music, and transmitted that to us.

By now I suspect that most of you have had your fill of my family's history. I have added to it principally for one reason, to acknowledge the women who have helped us to achieve what we have. Among those I include my wife, Margaret, without whose love, common sense and clear advice I could not have survived and my sister in law, Jenny, who was such a great support to my brother Bob.

I have been appointed to replace Mr Justice Ambrose. Those of you who were at his valedictory will remember him talking about his first contact with the profession through members of the Bar in the old Inns of Court building in Adelaide St in 1958. Coincidentally my memories of contact with the profession

go back that far too – to visiting my father’s chambers – seeing John Macrossan fresh back from Oxford sitting at a small desk in a corner of those chambers – and, from 1960, stopping by at the new Inns, a converted boot factory in North Quay, to buy a milk shake from Bruno Cappelletti, sometimes get a lift home from school with my father and engage in conversation with Frank Connolly and others while waiting. Both Frank and Bruno have done me the honour of coming here today.

Curiously enough the law itself was not a topic of discussion around our dinner table until my older brothers reached their final years of study but we were exposed very regularly to members of the profession and to its culture. We were also brought up in an environment that encouraged reading, debate and discussion - if not argument. As the youngest I had to try the hardest to be heard so if you notice that now I do not like to be interrupted you know why.

Most of you will know the skills needed by advocates to ply their trade: communication skills, knowledge of the law, general knowledge, common sense, judgment and precise knowledge of their briefs and the law affecting their case. People of many different personalities possess those abilities but I think that one characteristic common to most successful advocates is also tenacity in presenting an argument. What is not mentioned so often is that the communication skills include an ability to “read” a court, to know a judge and to know – sometimes it

appears almost instinctively – what arguments will run before him or her. It is something that can be learned by association, and the earlier the better. I suspect that it is one of the main “headstarts” that I received through my upbringing. What I did with it is for others to assess.

What the Bar has provided historically, through its collegiate life, habit of practising in sets of chambers close to the Courts and continuing relationships with those who become judges, is a forum for developing those learned and instinctive responses, an awareness of how the law is developing and how arguments can be presented most attractively and efficiently. I think it fills an important role in our system particularly because of the independence its practitioners enjoy and their corresponding obligation to appear for anyone. The profession, both the Bar and solicitors, and the Courts are vital barriers between the citizen and the raw or capricious exercise of executive or commercial power. Together, they should operate to provide a cogent response to the jesting Pontius Pilate’s question “Truth? What is that?” – or, at the least, a better response than Pilate’s own which, as we know, was an elegant Roman shrug of his shoulders, reversal for political reasons of his initial finding of no case and surrender of his victim to the mob. The point is that our system of a clear separation of the judiciary from the executive, an independent legal profession presenting evidence and arguing in an open forum, where the Court is obliged to give logical reasons for its decisions and is subject to appeal, has great merit. We

should not take it for granted.

I have loved being part of the profession and I intend to keep my links with it and with the many barristers and solicitors who have become my friends over the 35 years since I began to study the law. I also look forward to meeting newcomers to the profession and not just in the courtroom.

During my career I have incurred many debts – and not just of a financial nature. I owe most to my father who was a man of great strength of character, a personality pithily summarized by Frank Connolly to me some years ago as unusual because he was not only a good man but a strong man. He was certainly formidable but also, to those who knew him, lovable. His enthusiasm for the performing arts, particularly drama and ballet, which he discovered when posted to Russia at the end of the Second World War, communicated itself to us as much as our mother's love of music. His interest in wine and food remains as an abiding theme within the family.

I also owe much to those who helped to educate me, the priests at Villanova and some of my lecturers here and at Cambridge. Outside my family and in the legal profession, one of the most significant debts is owed to Sir Harry Gibbs whose associate I was for about 18 months in 1973 and 1974. It was he who really brought the law to life for me and it is his sense of justice, respect for the litigant

and rigorous and intellectually honest approach to the law and its development that I have always admired.

I have also been fortunate to practise from chambers with congenial colleagues and good secretaries. May I mention in particular Isabel Quik who decided recently that the prospect of having three children under one finally disqualified her from coming back from maternity leave. The fact that she has had four of her barristers appointed – two to the Supreme Court of New South Wales and two to this Court – says volumes for her efficiency in handling solicitors, juniors, paperwork and accounts. We certainly were not trying to escape her. We being, in this case, Justice Philip McMurdo and myself. Over the last 10 years he and I have had adjoining chambers and the same secretary. We have always been great friends and when he went to the bench earlier this year I missed his wit, warmth, keen legal mind and common sense. One of my great pleasures in accepting the appointment is that I shall be rejoining him and Justice Wilson who was also on our floor as was Justice Kiefel, now on the Federal Court.

In fact it is probably just as remarkable as my family producing five judges of the Supreme Court over the last 80 years that the nine rooms on our floor have produced five Supreme Court judges since 1993. Of those five only two had a family background in the law – the other being my brother Bob. It was the first anniversary of his death last Wednesday, the day before my commission was

signed. My great regret in accepting the appointment is that he is not here on the bench. As I told his daughter Charlotte, now married and a solicitor in London, by e-mail the other night, if we had been here together we would probably have had as much fun together as judges could have - legally. He continues to live in our memories and the warmth of his imagined response to my appointment could only be matched by that of my other brother, Francis Douglas QC, who has arranged an adjournment of his current trial in Sydney to be here at the bar table and my sister Catherine McCourt who is in the courtroom. I know, and they will tell you, that I am innately more serious than Bob was, but I'll do my best to keep his sense of fun alive - outside the courtroom!

I've been lucky in having a life outside the profession - sharing interests with Margaret and through our children Francis and Hannah of whom we are very proud.

Thank you to those who spoke for your thoughts and your kind remarks. Mr Attorney, thank you for the confidence you and your government have shown in appointing me to this position. You have taken on an important task in reforming the structure of the legal profession and I wish you well in its completion. I am also honoured by the presence of your colleague, the Honourable Matt Foley. We have known each other since we began at the University of Queensland in 1968.

Mr Keane, we have been against each other professionally many times over the years and I've also had the pleasure of appearing with you on several occasions since you became Solicitor General. We've always been the best of friends and I'm sure we'll have many more opportunities to share our mutual interests in French, Latin, Irish and Bangladeshi language and culture.

Mr Martin, you and I have been in many cases together and, more recently, against each other. One of the best aspects of having you as a junior was your capacity to enliven long, dull days in the Industrial Relations Commission with your wit. I was looking forward with some trepidation to hearing it used against me and - as they say - you'll keep.

Mr Ferguson, thanks for your remarks. Over the years I've acted for the Society and against it and given it advice. I've enjoyed that involvement with your members. Through its disciplinary hearings I've learned something about the regulation of the profession and, through my friendships with solicitors and my roles on the Bar Association and the Law Council, much about your concerns in your ever changing world. I hope to keep up good relations with your members for many years to come.

I am looking forward to the challenges of my new role and will do my best to

live up to the hopes all of you have for me.